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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/LSC/2015/0473**
Property	:	**71 Dunfield Road, London, SE6 3RG**
Applicant	:	**Phoenix Community Housing Association**
Representative	:	**Mr R Parker (Leasehold Consultation Adviser)**
Respondent	:	**Mr Emmanuel Ebohoin**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge L Rahman** **Mr T N Johnson FRICS**
Date and venue of Hearing	:	**17/3/16 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**27/4/16**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £15,523.61 is payable by the respondent in respect of the 2012-2013 service charge year.

(2) The tribunal does not make any order under section 20C of the Landlord and Tenant Act 1985.

(3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court sitting at Bromley.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the respondent.

2. Proceedings were originally issued in the County Court sitting at Bromley under claim no. B7QZ728A for unpaid service charges totalling £15,523.61 arising out of the 2012/2013 financial year. By order of Deputy District Judge Mohabir dated 2/11/15 the matter was transferred to this tribunal.

3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The applicant was represented by Mr R Parker (Leasehold Consultation Advisor) and Ms Jenny Guilfoyle (Project Manager) and the respondent appeared in person with his wife and Mr Olaniyan, a friend.

The background

5. The property which is the subject of this application is a 1930's block with flats laid over three floors. It has a central internal stairwell at the rear of the block which provides access to all the properties situated on either side of the communal area.

6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. At the start of the hearing the respondent confirmed he had submitted a general defence at the county court and had failed to provide a fully pleaded defence as ordered by the county court, he provided his response to the applicants case in the Scott Schedule, he received the tribunals further directions dated 8/1/16 to provide a more detailed response to the applicants case but had not provided any further evidence, he received the tribunals letter dated 4/2/16 identifying the relevant issues to be determined by the tribunal and he did not write to the tribunal identifying any further issues to be determined, and he had received the applicants Statement of Case dated 11/2/16 and he had not provided any further statement in reply.

9. Both parties confirmed the relevant issues for determination as follows:

   (i) Whether the respondent had been consulted on the works that had been carried out;

   (ii) Whether the costs were reasonable;

   (iii) Whether the works were done to a reasonable standard;

   (iv) Whether the works were necessary.

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Consultation

11. Mr Parker stated the relevant Notices were sent to all the lessees by post, copies of which have been provided at pages 95, 103, and 117 of the bundle. His job was to ensure that the Notices had been sent out. He personally put each Notice inside separate envelopes, put the envelopes into the Franking machine, and ensured the correct number of letters had been processed and posted. He stated that some responses were received from various lessees but none from the respondent. Furthermore, additional non-statutory consultations in the form of forums on 13/7/11, 24/8/11, 18/10/11, and 24/1/12, took place. Ad-hoc drop-in sessions were also arranged to allow residents an opportunity to see what was going on and so that they could voice their opinion. The contractor carrying out the works and the applicant had "Resident Liaison Officers" on site for residents to contact if they had any queries/issues.

12. The respondent stated there was a difference between "information", which he believed did not require consent, and "consultation", which he believed required consent and mutual agreement. He received the notices set out on pages 95 and 103. However, this amounted to "information" not "consultation". He did not give his consent for works to be carried out and the works should not have been carried out without his consent and agreement.

13. The tribunal found the respondent had misunderstood the consultation process. The applicant did not require his consent or agreement to carry out the proposed works. If the respondent had made observations, the applicant would have been required to "have regard" to those observations, which is not the same as having to follow any observations made. Of course, the respondent accepts that he did not even make any observations in this case.

14. The tribunal noted the contents of each of the Notices.

15. The "Notice of intention to enter into a qualifying long term agreement " dated 2/6/11 explains the applicants intention to enter into a qualifying long term agreement, it explains that notice was being given in accordance with section 20 of the 1985 Act, that it was an agreement for a term of more than 12 months, it set out the works to be provided under the agreement, it explained why a long term agreement was being entered into, it explained why the respondent believed that the proposed works were necessary, it invited written observations by 2/7/11, it explained the need to ensure that observations were made during the 30 day consultation period, and further explained that proposals should not be made to obtain estimates from any particular individual as the proposed agreement required public advertisement within the European Union Journal.

16. The "Notice of proposal to enter into a qualifying long term agreement where public notice is required" dated 7/12/11 states that notice was required in accordance with section 20 of the 1985 Act, the proposal to enter into a long term agreement was enclosed with the letter, that all written observations should be received by 10/1/12, that the buildings had been divided into four "lots" and that the intention was for two contractors to be appointed to carry out all the required works, the total expenditure was stated as £21,938,684.35, and that a final survey would take place with the contractor and further consultation with leaseholders would take place which would provide the leaseholders with an estimated proportion of their costs. Enclosed with the Notice were notes explaining the procedure, the landlords proposal, and a detailed breakdown of the proposed works.

17. The "Notice of intention to carry out works under a long term agreement" dated 6/8/12 states the reason for the notice, enclosed a statutory notice of intention to carry out the works under a long term

agreement which contained information about the proposed works, why the works were necessary, and an estimate of the respondents likely contribution (£16,098.71), and stipulated that written observations must be received by 7/9/12.

18. The tribunal is satisfied, and the respondent has not provided any evidence to the contrary, that the Notices satisfy the relevant consultation requirements.

19. The tribunal notes the respondent accepts that he received the first two notices. The tribunal notes the detailed evidence from Mr Parker that he was personally responsible for sending out the three Notices. On balance, the tribunal is satisfied that the Notice dated 6/8/12 was received by the respondent. Alternatively, the tribunal is satisfied that the relevant Notice was posted and therefore deemed to have been served upon the respondent.

20. The tribunal found the applicant had complied with the relevant consultation requirements.

Were the costs reasonable in amount?

21. Mr Parker stated that of the five contractors involved in the tender process, Mulalley & Co offered the lowest price and were offered the contract. This represented the best price and value for money.

22. The respondent stated that the word "reasonable" meant that he should know what is reasonable and he should determine what is reasonable. In his view, the cost was too much. When asked to explain on what basis he felt the cost was too high, he stated it was because he did not benefit from the works. When the question was repeated, he stated he did not have any alternative quotes or a background in construction. When asked to explain on what basis he felt the cost was unreasonable, he stated it was because he could not afford it. The respondent agreed that generally, picking the lowest price out of five tenders, is a reasonable process to get the best price and value for money.

23. The tribunal is satisfied, and the respondent agreed, that choosing the lowest price from five tenders is a reasonable process to get the best price and value for money. The respondent provided no reasonable basis for arguing that the costs were too high.

24. The tribunal found the costs to be reasonable.

Were the works done to a reasonable standard?

25. Mr Parker stated that photos of the property and the works that had been carried out were on pages 411-505 of the bundle. The photos were taken in November 2015 after completion of the works. The applicant had employed an independent "Clerk of Works", unrelated to the contractors who carried out the works and who was a fellow of the "Institute of Clerk of Works", to ensure that the work carried out by the contractor was to the required standard and that correct materials were used. Once the works were completed and signed off by the contractor, the Clerk of Works checked the works before signing off the work as having been satisfactorily completed. The relevant report is on page 195 of the bundle. Ms Guilfoyle stated that there was a one year defect period during which the contractor was required to remedy any defects. Ms Guilfoyle confirmed that no remedial works were required and that she had visited the property the previous Thursday and was pleased to see that the property was still looking very good.

26. The respondent initially stated that the works done to the path leading to the property (photos on pages 535 and 547) was of poor quality as there continued to be a problem with rainwater collecting on the path. He then accepted that works to the path and the grass area were not part of the relevant works. He stated that the door entry system had no problems before being changed. Now, they are unable to see or speak with the person pressing the buzzer. This has been a problem from day one. The fobs for the door entry system were out of function for 3-4 months in 2015 but were now working. The delay was unreasonable. Four to five months after the satellite dish had been installed, a distortion appeared in the quality of the picture and the TV went blank and the problem lasted seven days. Now, once a month the TV reception goes off by itself and stays off for 1-2 days. He made complaints on three occasions but had no evidence in the bundle as he complained in person.

27. Mr Parker stated in reply that the applicant had one record of a complaint regarding the door entry system not working, referred to in the respondents letter dated 29/10/14 on page 531. The applicant has no record of any formal complaints from any other tenants. The applicant has a repair system in place whereby complaints are recorded and given a job reference number. The respondents complaint was recorded as a non-urgent matter and repaired within 21 days. The door entry system was upgraded as part of an ongoing upgrade of all door entry systems to the applicants properties as the GDX system had various benefits over the older system previously installed at the property. He agreed that you cannot see but you can hear and speak with the person pressing the buzzer. He stated that in relation to another matter, where someone had complained that you cannot speak with the person pressing the buzzer (the complaint having been made at the tribunal and not via the usual channels and therefore the matter was not recorded as a formal complaint), he went to the property with a

colleague six weeks ago to test the system. He confirmed that although faint, it was possible to communicate via the door entry system. With respect to the satellite dish, the tenants needed consent to install their own dishes and no such permission had been given. The applicant had no record of any complaints concerning the satellite dish.

28. The respondent confirmed that he had no supporting witness statements from other tenants in the block to confirm any problems with the door entry system or the satellite dish. He stated that people were afraid but he could not say why. He stated that he did not ask anyone to provide any supporting statements but he knew they were suffering.

29. The tribunal notes the lack of any supporting witness statement / letters from other tenants in the property confirming ongoing problems with the satellite dish or the door entry system and the respondents failure to provide a reasonable explanation for the absence of such evidence. The tribunal notes the only supporting evidence provided by the respondent concerning any complaints made is in relation to the door entry system in October 2014, which the applicant states had been dealt with. There is no evidence of any complaints being made about the satellite dish or any recent complaints concerning the door entry system. The tribunal notes the evidence from the applicant that it has no record of any formal complaints from any other tenants regarding the door entry system or the aerial. The tribunal notes the visit by Mr Parker six weeks ago to test the door entry system and confirming that whilst it was faint, it was nevertheless possible to communicate via the door entry system. Most significantly, the tribunal notes the applicant had employed an independent Clerk of Works who had signed off each of the works confirming it was completed to a reasonable standard. The tribunal also notes the evidence from Ms Guilfoyle (the project manager) that no remedial works were required to be carried out during the one year defect period.

30. For the reasons given, on balance, the tribunal is satisfied that the relevant works were completed to a reasonable standard.

Were the works necessary?

31. Ms Guilfoyle stated a Pre-Condition Report was carried out for the relevant block by Martin Arnold (Chartered Surveyors & Construction Consultants) dated 30/7/12, which identified the relevant works (page 511).

32. The respondent stated he was not consulted and that the applicant should have taken his view as to whether the works were necessary. He stated that every single item of work was unnecessary as nothing needed to be repaired or changed. When asked whether the communal satellite dish had to be installed, as according to the terms of the lease

(clause 19 on page 80) individual flats were not allowed to install aerials without the applicants prior written consent, the respondent stated he did not have any written consent and had not sought any such consent.

33. The tribunal notes the respondents evidence that nothing was necessary. However, his evidence was general and non-specific. The tribunal also found part of his evidence inconsistent. For example, when asked about the satellite dish, his evidence suggested the work was necessary as he did not have permission to have his own satellite dish. No evidence was provided by the respondent to show that any of the other tenants had permission to have their own satellite dishes.

34. With respect to the instalment of the new door entry system, we agree with the findings made by the tribunal in LON/00AZ/LSC/2014/0063 (extracts contained in the applicants statement of case on page 62) that the installation of the GDX Entry Phone System was not unreasonable. That such a system had significant cost savings to be achieved in terms of the installation and maintenance of the system, given the applicant was seeking to install the same system throughout its properties. Mr Parker had stated that quotes received for a maintenance contract for the GDX System in 2012 were low because having a uniform system meant lower maintenance costs. Mr Parker had also stated that the applicant was having difficulties securing parts for older installations in other blocks. We agree with the tribunals finding that having a uniform system would result in realistic savings.

35. Most significantly, we note that the relevant works were identified in an independent Pre-Condition Survey Report, which formed the basis of the works in compliance with the applicants obligations under the lease.

36. For the reasons given, the tribunal is satisfied that the relevant works were necessary.

Order under s.20C and refund of fees

37. The tribunal makes no orders as neither party made written representations or any application / submissions at the hearing.

The next steps

38. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the County Court sitting at Bromley.

Name: Judge L Rahman **Date:** **27/4/16**

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.