1285

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AC/LSC/2017/0010 and 0099**
Property	:	**32 Audley Road, London NW4 3EY**
Applicant	:	**Cyril Freedman Limited (landlord) (and Respondent to the second application)**
Representative	:	**Mr C de Beneducci, Counsel instructed by Spalter Fisher**
Respondent	:	**Ms Natalia Rubinstein (longleasee) (and Applicant in the second application)**
Representative	:	**Mrs Rita Weissman**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**P M J Casey MRICS** **Stephen Mason FRICS FCIArb**
Date and venue of Hearing	:	**25 May 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**25 July 2017**

DECISION

---

5. At the start of the hearing Mr de Beneducci handed in further documents, namely inspection reports and RICS disciplinary reports relating to Mr Benjamin Mire. There being no objection from the Respondent we admitted these into evidence.

The background

6. The property which is the subject of this application is a ground floor one bedroomed flat in a two storied semi-detached former house now arranged as two flats.

7. 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.

8. Ms Rubinstein 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

9. By the start of the hearing the parties had identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of the in advance service charge for the major works (1st application)

   (ii) The payability and/or reasonableness of the in advance service charge for the 2017 service charge year (2nd application).

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.

11. Mr de Beneducci provided a helpful skeleton argument. In it he set out the relevant provisions of the lease which is dated 8 October 1984 for a term of 99 years from 29 November 1983. Ms Rubinstein took an assignment of the lease on 20 January 1987. The preamble defines the flat and the common parts. Clause 2(iii) contains the lessee's covenant to pay service charges in respect of the matters set out in the Fourth Schedule whilst the landlords covenant to "maintain, redecorate, renew ... etc" is at sub-clause 3(2)(i). Sub-clauses 2(3)(a)-(i) set out the mechanism for payment and certification of the service charge including at 2(3)(f) the provision that "the lessee shall if required by the lessor with every payment of rent reserved pay to the lessor such sum in advance and on account of the Service Charge as the lessor ... shall specify at their discretion to be a fair and reasonable interim payment.

also claimed that the scaffolding cost was excessive compared with the quotation she obtained and that the flat roof needed no repairs.

Decision on Major Works Costs

15. The only oral evidence before the tribunal was the specification, the costed tender, the Peter Cox report and the scaffolding quotation. Mr de Beneducci submits that the evidence shows the work needs to be done and that because of the competitive tendering process the estimated costs are reasonable. Certainly we accept from the limited evidence that some of the works needs to be carried out, external decorations for example appear not to have been attended for some considerable time. We would also normally accept that cost estimates obtained from competitive tendering on the basis of a well prepared specification would be reasonable but as an expert tribunal we have concerns over the specification and schedule of works prepared by BMCS. Provisional cost sums included total £3,500 or 31½% of the lowest quote obtained. In our opinion given this amount of provisional sums the general contingency of £1,500 at clause 2.4.2 of the preliminaries should be reduced to £500. The specification called for full scaffolding which is not normally required for what amounts to external redecoration and minor repairs to a two storey house. Usually the work would be undertaken off ladders and the sum of £250 should be substituted for such provision instead of £2,750 at items 2 and 3. Items 7, 14 and 18 demonstrate poor surveying practice with very small quantities of repointing, 1m (presumably square metre), 2m and 3m priced at rates of £100, £80 and £90 m2 respectively. Should it be necessary to execute larger areas then these very high rates would apply to the additional work. At item 9 the £500 PC sum is to be omitted as the condition of the roof should have been apparent to the surveyor preparing the specification when viewed from ground level. Thus the amount we consider is reasonable as an estimate of the cost of the proposed works is £8,090. Whilst Mr de Beneducci points out that unexpended PC sums will be re-credited if unspent a landlord has a duty when seeking interim service charges to have regard to a lessee's ability to pay and this is clearly an issue with the Respondent. The amount it is sought to charge as surveyor's fees is also in our view excessive especially in the light of these criticisms. Whether or not this is some minimum fee level that BMCS seeks to charge its clients at nearly 25% of what in our view these works should be estimated at it is unreasonable. A normal range for fees on such relatively small jobs would be 12½% - 15%. In our opinion a fee of £1,200 is the most that is justified. The administration fee at 6% of the estimated cost is also excessive. The normal range for the tasks associated with major works is 2%-3%. We allow a maximum of £300.

16. The amount we allow as a reasonable interim service charge is accordingly £8.090 plus £1,200 plus £300 plus VAT on all three sums is £11,508 of which the Respondent's share is £5,754.

2011 and 27 June 2013. Any inspections for Health/Fire Safety or asbestos are carried out by 4 site Consulting Ltd and separately charged.

21. The accountancy fee was said to be required for the service charge certificate required by the lease and was modest.

The tribunal's decision

22. The right of a landlord to insure on a portfolio basis with an insurer of repute at a premium reasonably within the range to be expected in the market is well established in law even if it results in a higher premium to the leaseholder than a standalone policy would entail. There is no alternative quotation provided by the Applicant to suggest the premium paid here is so wildly out of such a bracket as to make it unreasonable. The insurance premium element of the service charge is payable as claimed.

23. Trust seem to do very little for the management fee they charge other than invoicing and chasing arrears in part caused by its inflated fee levels. There are no regular inspections, no cleaning, no gardening not even any common parts electricity bill to be paid and Trust does not deal with the insurance. The most we could possibly allow as a management fee in such circumstances is £150 plus VAT per flat.

24. The accountancy fee is required and reasonable.

25. The Applicant's liability for service charges for 2016 is thus £1,041.67.

26. If the Applicant's challenge is truly to the 2017 interim, on account service charge we can see no reason why her liability to pay a reasonably estimated amount should exceed this sum.

Application under s.20C

27. In the application form Mrs Rubinstein applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the landlord may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

(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—

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).