12403

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AM/LSC/2017/0183 and LON/00AM/LDC/2017/0092**
Property	:	**32a Barnabas Road, Hackney, London E9 5SB**
Applicant	:	**Mr Clinton Robinson**
Representative	:	**In person**
Respondent	:	**Scopeville Limited**
Representative	:	**Mr Glick**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge** **Application by the Respondent for dispensation under section 20ZA**
Tribunal members	:	**Judge S O'Sullivan** **Mr M Cairns MCIEH**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**19 September 2017**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £87.89 and £87.87 in respect of the insurance premiums for the years ending 31 October 2015 and 2016 are reasonable.

(2) It is noted that the applicant is due a reimbursement in the sum of £269.34 in respect of the insurance having been wrongly apportioned and charged to him at 25% rather than 20% for the years ending 31 October 2008 to 2016.

(3) The tribunal determines that the sum of £10.98 and £24.49 in respect of management fees for the years ending 31 October 2015 and 2016 are reasonable.

(4) The tribunal finds the sum of £135 in respect of gutter and associated works in the year ending 31 October 2016 is reasonable.

(5) The tribunal finds the sum of £1,260 in respect of the 2015 major works together with a management fee of £126 is reasonable.

(6) The tribunal makes an order under section 20ZA granting dispensation in relation to the 2015 major works.

(7) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

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 Applicant Respondent in respect of the service charge years ending 31 October 2015 and 2016 and major works in relation to insulation works in the sum of £1,260 demanded on 1 June 2016.

2. The respondent seeks retrospective dispensation in relation to the same insulation works under section 20ZA. Directions were dated 16 August 2017 and it was directed on 25 August 2017 that both applications be considered together on 7 September 2017.

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

The hearing

4. The applicant appeared in person at the hearing and the Respondent was represented by Mr Glick and Mr Rosner, directors of the respondent company.

The background

5. The property which is the subject of this application is a 2 bedroom flat in a converted building known as Flat A, 32 Barnabas Road, London E9 5SB. The flat is part of a Victorian house converted into two flats. The adjacent house has likewise been converted into two flats and the respondent has also constructed flats to the rear.

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 applicant 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 and will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for the year ending 31 October 2015.

   (ii) The payability and/or reasonableness of service charges for the year ending 31 October 2016

   (iii) Whether an order for dispensation should be made under section 20ZA

   (iv) Whether an order should be made under section 20C

9. 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.

Insurance

10. Documentation in the respondent's bundle which confirmed that the sun invoiced for insurance in the y/e 31 October 2015 and 2016 was £109.87 and £109.83 respectively. However Mr Glick explained that there had been an error with the apportionment of insurance since the redevelopment of the adjoining flats. As a result the applicant had been wrongly charged 25% of the cost when the correct percentage was in fact 20%. The correct figures for insurance were therefore confirmed to be £87.89 and £87.87 respectively.

11. Mr Glick had produced a schedule showing the sums to be reimbursed for this overcharging for the period y/e 31 October 2008 to date totalling £269.34. Mr Glick was asked when the redevelopment had taken place and he was unsure. The tribunal pointed out that a tenant is arguably not bound by limitation on challenging service charges and Mr Glick agreed to check the date of the redevelopment and produce a full reconciliation of the credits due. It was acknowledged that this was unlikely to be a large amount.

12. As far as the two years before us were concerned Mr Glick explained that the insurance falls due on 1 December in each year and thus the costs are apportioned across service charge years. A calculation of that apportionment was produced. As far as the apportionment of the costs across the 6 flats is concerned Mr Glick explained that this was done years ago by an insurance specialist who took into account the units and sizes and advised us the percentages". The property is included on a block policy. Mr Glick produced a schedule of the premiums over the last 8 years and pointed out that the cost had in fact decreased from 2008. We were informed that the respondent seeks very competitive quotations each year.

13. Mr Robinson questioned why the policy included insurance for loss of rent/alternative accommodation. Mr Glick produced an email from the broker which confirmed that the total cost of this cover was only £18.76 in respect of which the applicant paid only 20%. Mr Robinson also submitted the cost seemed high. He had not produced alternative quotations as he said that he had not been provided with sufficient details in the past.

Insurance – the tribunal's decision

14. We are satisfied that the costs of the insurance are reasonable in the sums of £87.89 and £87.87 for the years ending 31 October 2015 and 2016 respectively. The placing of portfolio insurance had in our view resulted in a saving and it was clear from the schedule provided that the respondent had made every effort to obtain a competitive premium evidenced by the significant variations.

Management fees

15. The applicant was charged management fee in the sum of £10.98 and £24.49 for the years ending 31 October 2015 and 2016 respectively. It was not contested that the lease made provision for the payment of a management fee.

16. The management fees were not challenged and the tribunal would comment that these are very modest and certainly lower than the norm.

Y/e 31/10/16 – repairs £135

17. The applicant challenged the cost of repairs in the sum of £135.

18. We were referred to invoices in the bundle. Mr Glick explained that these were works to the gutters which had taken place as a result of his inspection. It was noted that these also included works to the brackets.

19. Mr Robinson was concerned as to where these works had been carried out. Mr Glick's evidence was that they were to the front of the property although Mr Robinson submitted that there were no problems to the front only to the side. The works were carried out in 2015 and it was clear that neither party had a clear recollection of events.

20. Mr Robinson also relied on an email from a proposed contractor who had provided a quotation for works. Mr Glick said that he had contacted this contractor who had changed his price when he realised what the work entailed.

Repairs £135 – the tribunal's decision

21. We had been provided with copies of the relevant invoices and were satisfied on Mr Glick's evidence that the works had taken place. Having regard to our expertise and experience we considered the cost as reasonable having regard to the description of the works carried out.

The major works and application under section 20ZA

22. The major works concerned insulation and rendering works in the main and the applicant had been invoiced the sum of £1260.

23. We were referred to photographs of the rear of the Property by Mr Glick which showed the rendering had perished. We were also referred to the report of ECD Architects which set out the poor condition of the rear of the Property and the works required. Mr Glick confirmed that he had become aware of the possibility of obtaining a grant to the cost of the works if combined with thermal insulation of the solid brick walls but had had to move quickly or may have lost the grant. He also relied on an Energy Performance Certificate which provided evidence that the

thermal insulation was ineffective. A condition of the grant meant that a contractor nominated by the Local Authority had to be used. Accordingly he said that the landlord had not been able to follow the section 20 procedure.

24. We also considered the Householder Grant Agreement dated 20 October 2015. We also considered the detailed evidence which showed that even the site preparation and scaffolding costs alone would have taken the costs well above the £1260 which the applicant had been asked to pay. It was therefore said that the insulation works had effectively subsidised the cost of the major works.

25. The total cost of the works as shown on the invoice was £5040, a grant had been received in the sum of £3780 leaving £1260 to be paid by the applicant. A management charge of £126 was also made.

26. Mr Glick also added that the value of the Property would have been enhanced by the works.

27. The applicant questioned how much the landlord had in fact received by way of grant. He had been in email correspondence with the London Borough of Islington who had suggested that the grants were £6,000 per property. Mr Glick confirmed however that he had received £3,780 as set out in the agreement and he produced original invoices at the hearing. After some discussion Mr Robinson conceded that he had no real problem with the works if he had been properly consulted.

28. As far as the lack of consultation was concerned the applicant was concerned that he had not been provided with details of the works at an earlier date. If he had been he could have been earlier to make provision for the payment of the works rather than having to take out a loan. He would also have liked to inform his tenant in good time that the works were to take place.

The major works and 20ZA application – the tribunal's decision

29. We considered the documents before the tribunal. We were satisfied that the respondent had received the sum of £3,780 from the Local Authority in relation to the improvements. We considered the sum payable by the applicant of £1,260 to be reasonable. In fact we consider that any leaseholder finding itself the recipient of a grant in these circumstances should consider him or herself fortunate. The cost charged for the major works was much reduced and the Property was likely to be enhanced in value.

30. We were satisfied that the management fee charged in respect of the major works of £126 was also reasonable.

31. As far as the application for dispensation is concerned we determine that it is appropriate to grant the order for dispensation in accordance with the guidance laid down by the Supreme Court in *Daejan Investment Ltd –v- Benson and others [2013] 1 WLR 854*. We have no doubt that the proper course of action would have been for Mr Glick to consult with the leaseholders at the earliest stage. He did not do so with the result that the applicant was surprised to receive an invoice for which he had not been able to plan. However if the landlord had gone through the full section 20 procedure this may well have resulted in an increase in costs given the risk that the grant would not have been received. We do not consider that the applicant suffered any prejudice as a result of the failure to consult in these particular circumstances.

General comment

32. It appeared to us that the problems between the parties have arisen as a result of poor communication. In future years the landlord may consider sending a copy of the insurance certificate to the tenant as a matter of course. Likewise in simple service charges such as these where very few works are carried out providing copy invoices with the accounts may avoid further issues arising.

Application under s.20C

33. The applicant applied for an order under section 20C of the 1985 Act. The respondent accepted that it could not recover legal costs under the lease and thus consented to an order being made under section 20C. As a result the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: S O'Sullivan **Date:** 19 September 2017

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).

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

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 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

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.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or

(b) on particular evidence,

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