12275

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00/AH/LSC/2017/0059**
Property	:	**Ground Floor Flat, 50 Parchmore Road, Thornton Heath, Surrey, CR78LW**
Applicant	:	**Lakeside Developments Limited (the landlord)**
Representative	:	**Brady, Solicitors**
Respondent	:	**Theresa Muwo Vonu (the tenant)**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**PMJ Casey MRICS** **Alan Ring**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**17 July 2017**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £1,404.21 is payable by the Respondent in respect of the service charges for the years 2011 to 2016. She is not however liable for any administration charges.

(2) The tribunal makes the determinations as set out under the various headings in this Decision

(3) 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") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2011 to 2016. The amount claimed in service charges totals £5,002.69

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

The hearing

3. The Applicant was represented by Mr Luke Gibson at the hearing and the Respondent appeared in person assisted by her husband Mr Richard Chukuma.

4. At the commencement of the hearing Mr Gibson handed in further documents, namely Health and Safety/Fire Risk and Asbestos surveys carried out by 4 Site Consulting Ltd. The respondent had no objection to their admission so we allowed them to be included in the hearing bundle.

The background

5. The property which is the subject of this application is a flat in a late Victorian two storied end of terrace house now arranged as two flats.

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. In 2012 Ms Vonu made an application to the then named Leasehold Valuation Tribunal (the LVT) under the provision of Section 27A of the 1985 Act. The LVT's decision dated 18 August 2012 is included in the hearing bundle. The Applicant brought its own proceedings to seek recovery of allegedly unpaid service charges in the County Court in 2015. Their claim was struck out by Deputy District Judge Bruce by an order dated 29 April 2015 and their appeal against that order was refused by Her Honour Judge Chapman on 17 January 2017. The reason for the striking out related to failures to particularise the claim and lodge pleadings in an appropriate manner. Judge Bruce had refused an application to transfer proceedings to the First tier Tribunal, telling the Applicant to make its own application.

8. 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

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

Whether the tenant's liability to pay service charges to the applicant for the years in dispute (in particular the 2011 service charge year) has already been determined by the 2012 tribunal determination;

Whether the costs demanded are for items that fall within the landlord's obligations under the lease;

Whether the cost of those items are payable by the tenant under the terms of her lease by way of service charge or as administration charges;

Whether the cost of works and services provided have been carried out to a reasonable standard; and

Whether an order under S20C of the 1985 Act should be made.

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.

Implementation of 18 August 2012 LVT decision

11. Mr Gibson called Mr Hemel Davda, a director of Trust Property Management (Trust) the landlord's Managing Agents to give evidence. He had provided a witness statement dated 8 June 2017 which contained a statement of truth and was duly signed. He sought to explain how Trust had adjusted the Respondent's service charge

account to give effect to the LVT decision. That tribunal determined that the lease made no provision for service charges to be paid in advance. It also found, at paragraph 18, "the evidence established that the Applicant had paid the Respondent's service charge demands to date." and determined that Ms Vonu had overpaid the sum of £1,401.39 in service charges to the landlord in the service charge years up to 28 February 2012. In response to questions put to him by the Tribunal Mr Davda accepted that the Respondent's service charge account should have shown a credit of £1,401.39 at the start of the 2012/13 service charge year and that payments thereafter should be after expenditure had been incurred.

The tribunal's decision

12. The tribunal accepts Mr Davda's concessions on this point as being the correct way to implement the previous LVT decision

13. Mr Davda made further concessions in response to our queries. He agreed Trust had been wrong to disregard the LVT determination in respect of management fees in these subsequent years. £100 plus VAT should have been charged at least initially with possibly some uplift for inflation in the later years. The Respondent had indicated a willingness to pay£25 plus VAT per quarter (the service charge is demanded quarterly) and we accordingly determine that the sum payable for management fees is £100 plus VAT for each of the years 2012/13, 2013/14, 2014/15, 2015/16 and 2016/17. In our view no uplift is justified given the fact it has taken Trust some five years to properly account for that previous decision. Mr Davda also conceded that [in the circumstances] no administration charges should be sought from the Respondent, as the previous tribunal had determined that such charges were not permitted under the lease. He accepted too that as the LVT had found that no major works would take place unless the landlord received upfront payments from the lessees which would not be forthcoming given the decision on the interpretation of the lease it was wrong to seek recovery through the service charge of the fee, £300 plus VAT, charged by bmcs Chartered Surveyors to prepare a report for Section 20 of the 1985 Act consultation procedures in respect of such works.

Service charge item & amount claimed

14. The Respondent disputed the amount charged each year in respect of insurance premiums. Mr Davda said in his evidence that Trust placed the insurance through brokers who were required to obtain 3 quotations for an annual review. No commission was received by Trust who made payment of the premium direct to the broker. The cover provided included terrorism and emergency call out. He did not know what information the Respondent gave insurers when obtaining her quote but confirmed there was no recent claims history at the property. Given the wide cover obtained he did not see the premium paid to AXA

for the period 30.11.15 to 29.11.16 of £808.12 plus tax £76.77 (which would also cover claims handling) was so much greater than the Respondent's quote, also from AXA, of £512.82 plus £51.28 tax. The Respondent's case was that this showed the premium she was paying a share of was excessive.

The tribunal's decision

15. The tribunal determines that the amount payable in respect of insurance for each of the years in question is reasonable as charged by the Applicant.

Reasons for the tribunal's decision

16. A landlord has the right to choose the risks he insures against and is not obliged to seek the lowest cost possible. As long as he insures with a reputable insurer and the premium is within the range available in the market he cannot be said to have acted unreasonably.

Service Charge - Electricity

17. The Respondent complained that electricity charges were too high for a single bulb lighting the minimal sized common entrance. The Applicant's case is it paid what is was charged and frequently changed supplier. Mr Davda did however accept that late penalty charges should not be recharged to the lessees. The amounts claimed for each year are as follows: -

2012/13	2013/14	2014/15	2015/16	2016/17
£162.65	£134.47	£251.08	-£55.79	£266.27

The average over the 5 years is £151.73. This is an excessive charge for a single light bulb and the billing is all over the place. A competent Managing Agent would have long ago resolved this issue. Even allowing for standing charges the most we think it reasonable to allow is £100 per annum for the two flats.

Service Charge – Miscellaneous

18. The Respondent also disputed three other items included in the service charge demands mainly on the basis that she was unaware of them but as she lets the flat that is not surprising. They were £246 billed in February 2015 which the Applicant says was for cleaning and fixing guttering and the relevant invoice was included in the bundle. We allow this sum as we do the £138 billed in November 2012 for an asbestos survey update, a previous survey having identified asbestos in

the boiler flue from the first floor flat. In such circumstances monitoring is not unreasonable and it is the only such charge in the five year period. The final such item is £371 billed in May 2013 for a Health/Safety/Fire Risk survey. The report made certain recommendations for action to be taken by Trust which have still not been carried out. When we pressed Mr Davda on this he accepted it was unreasonable to charge the lessees in the circumstances. He did however say the bill included £18 for warning signs put up by the inspector and we allow this.

19. The Respondent raised other issues in relation to her attempts to sell the flat and charges she had to pay Trust for two sets of "Leasehold Information Packs" in relation to two abortive sales. These are not matters within our jurisdiction. She did however raise the question of whether or not Trust had repaid the application/hearing fees of £350 that the LVT in its decision had ordered be repaid to her. Again and for the same reasons as at paragraphs 11 and 12 we cannot see this has been done. The Respondent should either have been sent a cheque, which she was not, or the £350 should have been credited to her service charge account so that it showed an opening balance of £1,751.39 at the commencement of the 2012/13 service charge year.

20. We set out as follows the amounts the Respondent is liable to pay for each of the years in question.

	2012/13	2013/14	2014/15	2015/16	2016/17
Electricity	£50	£50	£50	£50	£50
Management	£120	£120	£120	£120	£120
Insurance	£385.02	£396.43	£411.83	£442.30	£460.02
Asbestos	£69	-	-	-	-
Health/Fire	-	£18	-	-	-
Repairs/Main	-	-	£123	-	-
	£624.02	£584.43	£704.83	£612.30	£630.02

The total is £3,155.60 from which is to be deducted the opening balance of £1,751.39 to leave the Respondent owing the Applicant £1,404.21 in unpaid service charges.

Application under s.20C and refund of fees

21. At the directions hearing, the Respondent applied for an order under section 20C of the 1985 Act. 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 Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: P M J CASEY **Date: 17 July 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

(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 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).