1245

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00/AN/LSC/2017/0017, 0063,0065 and 0132
Property	:	Flats 2,3,4 and 10 Broadway Mansions, 25 Effie Road , London SW6 1 EL
Applicant	:	Lambert Pressland Ltd
Representative	:	Mr R Brown of Counsel
Respondent	:	Peter Hensher and Stephanie Hensher (Flat 2) (1) Dr J V Field (Flats 3 and 4) (2) Ms R H O'Connor (Flat 10) (3)
Representative	:	Ms G O'Connor on behalf of Second and Third Respondents The First Respondents were neither present nor represented
Type of Application	:	S27A and s20C Landlord and Tenant Act 1985 , Schedule 11 Commonhold and Leasehold Reform Act 2002
Tribunal Members	:	Mrs F J Silverman Dip Fr LLM Mr L Jarero BSc FRICS Mr P Clabburn
Date and venue of Hearing	:	10 Alfred Place, London WC1E 7LR 25 September 2017
Date of Decision	:	27 September 2017

DECISION

1. In accordance with the terms of the letter to the Tribunal from the First Respondents dated 22 September 2017, the application against the First Respondents is withdrawn with the consent of both parties.

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2. **All the applications which are the subject of this decision are transferred back to the County Court for the latter to deal with any outstanding issues relating to costs.**

3. **The Tribunal determines that under the terms of the settlement agreement dated 23 June 2015 the Applicant landlord is only entitled to carry out minor works the value of which has been assessed by both parties' surveyors not to exceed £5,000.**

4. **The Tribunal finds that the sum of £634.56 paid by the second Respondent in February 2017 is not attributable to her service charge account.**

5. **The Tribunal makes an order under s20C Landlord and Tenant Act 1985 limited to £2000.**

REASONS

1 The Applicant is the landlord of the premises known as Broadway Mansions 25 Effie Road London SW6 1 EL (the property) which the Tribunal understands to comprise ten flats occupying the two upper storeys of the property above commercial premises on the ground floor. The Respondents are the tenants of the flats as designated against their respective names on the front sheet of this document.

2 The Applicant issued separate proceedings against the Respondents in the County Court claiming arrears of ground rent, service charge and insurance premiums.

3 Those proceedings were transferred to the Tribunal on 11 January 2017 and Directions were issued by the Tribunal on 3 March 2017, 10 April 2017 and 10 May 2017. It was directed that the cases be conjoined and heard together.

4 The hearing took place before a Tribunal sitting in London on 25 September 2017 at which Mr R Brown of Counsel represented the Applicant and the second and third Respondents were represented by Ms G O'Connor. The First Respondents did not appear at the hearing and were not represented.

5 Two bundles of documents were presented for the Tribunal's consideration. Page numbers in those bundles are referred to below.

6 The parties agreed that there were no outstanding issues between them relating to ground rent.

7 The Tribunal had received a letter from the first Respondents' solicitors on 22 September 2017 (the working day immediately preceding the hearing) which indicated that the first Respondents had reached an agreement with the Applicant over their outstanding service charges and asking for the application to be withdrawn. Counsel for the Applicant was unaware of this letter and the Tribunal adjourned briefly to allow him to take instructions from his client. On resumption Mr Brown told the Tribunal that the Applicant had received a cheque from the first Respondents in the agreed sum and thus consented to the withdrawal of the application subject to it being remitted to the county court for the latter to determine any outstanding issues relating to costs.

8 It was also agreed that any issues relating to costs in the applications against the second and third Respondents should similarly be referred back to the county court for their determination.

9 In relation to service charges the second and third Respondents had already paid the sums demanded by the Applicant and they confirmed to the Tribunal that they did not wish to challenge either the items or the amounts charged. The Tribunal was not therefore required to make a determination about the reasonableness of service charges in this matter.

10 Two further issues remained outstanding between the parties. Firstly, following an earlier Tribunal case in 2015 a settlement agreement had been drawn up on 23 June 2015, clause 4 of which related to major works (page 113E et seq).

11 The background to this issue is that the Applicant landlord wished to develop the property by building additional flats on the existing roof and the settlement agreement contained provisions dealing with various options, depending on the grant or otherwise of planning permission, in relation to major works. In broad terms, it was provided that if the development was to go ahead, the major works proposed for the property, including re-roofing, would be deferred and only such works as were necessary to keep the property wind and water tight during the development period would be carried out.

12 The present position is that the Applicant has succeeded on appeal in securing permission to build a two story extension on the roof of the property but, subject as below, have not commenced work on it. They have drawn up a schedule of major works, the scope of which has been agreed by both parties' surveyors, and wish to proceed with those repairs for which the second and third Respondents are required under the terms of their leases to make an advance contribution. The first Respondents' lease is in different terms and does not provided for advance payments.

13 The cost of the works to be carried out under the schedule is estimated to be about £53,000 exclusive of VAT and fees (giving an estimated grand total of around £70,000).

14 The second and third Respondents say that the Applicant has not served notice on them under the provisions of clause 4(vii) of the settlement agreement to say that they are not going ahead with the development of a new single storey extension nor have they confirmed or denied their intentions to proceed with a two floor extension although they have said that it would not be possible to proceed without vacant possession of the property and have not yet succeeded in persuading the lessees to vacate their flats. Further, the second and third Respondents say that the Applicant's proposals are in breach of the settlement agreement the terms of which limit the Applicant to carrying out minor repairs only, the cost of which has been agreed by both parties surveyors as not to exceed £5,000.

15 For the Applicant, Mr Brown said that the likelihood of the development preceding were about 1% and therefore the major works should proceed. It was conceded that the Applicant was not proceeding with plans to build a single storey extension to the property and the current plans related to a two storey extension permission for which permission had been obtained on appeal. That permission was itself under appeal in relation to the removal of restrictions concerning parking. The Respondents said that work appeared to have commenced this week on the side of the ground floor of the property which the Applicant said was to comply with the permission and to keep it

live. The Tribunal notes however that the planning permission (page 318) allowed the Applicant three years in which to commence the works which term would not expire until 2019.

16 The Tribunal considered that the issue in dispute related to the interpretation of clause 4 of the settlement agreement sub-clause (ii) of which states: 'the proposed major works (currently estimated at £45,000) are to be postponed until after the decision is known of the current planning application for a two-storey extension or, if it is refused, until after the decision on appeal as follows;' The present permission was obtained on appeal and it was not disputed that the present schedule of works prepared by the Applicant's surveyor is substantially the same as that which was in issue when the settlement agreement was negotiated.

17 Clause 4 continues as follows: '(iii) If the decision on the first instance planning application is 'yes' then the parties' surveyors shall be instructed to act independently and meet at Broadway Mansions in March 2016, carry out a post-winter inspection of the building and agree on works necessary again to make sure the building is wind and water tight until the start of the construction of the two–storey extension; repeating this again in September 2016, if the works have not been started by then; and in the case of dispute they shall appoint a third surveyor to decide on the works, failing which the RICS will be asked to appoint a third surveyor for this purpose.' Further, sub-clause (v) states that: 'on determination of any appeal, if the decision is 'yes', the current proposed major works (the £45,000 works) will not be carried out'.

18 The parties agreed that the major works described in the settlement agreement were substantially the same as those which are now in dispute although the total cost has increased slightly.

19 The Tribunal considers that sub-clauses (iii) and (v) cited above are directly applicable to the situation that pertains in the present case and therefore holds that the Applicant is not entitled to proceed with its proposed major works but must confine itself to the agreed minor works at a maximum cost of £5,000 (a sum in respect of which s20 notices will be required). The Applicant stated at the hearing that the £5,000 minor works had been calculated as part of and was included in the £53,000 estimate for the major works.

20 The final issue in dispute concerned the second Respondent only who had paid £600 to the Applicant's solicitors on 7 February 2017. She averred that the payment had been a part payment of her outstanding service charges and described it as the 'price' of obtaining the Applicant's consent to setting aside a default judgment entered against her in October 2016 pursuant to an action to recover outstanding service charges. The Tribunal is conscious that the second Respondent is a lay person who does not profess knowledge of court procedure and terminology, however it is abundantly clear from the correspondence between her and the Applicant's solicitors that the sum she was being asked to pay at this time related solely to the payment of costs incurred by the solicitors in the court action which they had commenced against her. The word 'costs' occurs in each of the letters and emails relating to this issue including those written by the second Respondent herself (pages 120,121, 123, 124,126,127,128, 130). Even after the deduction of £634.56 from her debit card in relation to 'the agreed sum for costs' (page 130) the second Respondent made no objection and did not seek to point out to the Applicant's

solicitor that she intended the amount paid to represent a part payment of her service charge debt. In these circumstances the Tribunal is unable to accept her argument that she did not understand that she was paying costs and consequently finds that the sum of £634.56 paid by her in February 2017 is not attributable to her service charge account.

21 The Respondents made an application under s20C Landlord and Tenant Act 1985 which was opposed by Counsel for the Applicant who reminded the Tribunal that any order made would adversely affect the remaining tenants who had pad their service charges and who had not queried the major works costs. On the Respondents' behalf it was stated that the Respondents had requested information from the Applicant on several occasions and that the Applicant had failed to provide it. They had also not been given sufficient information about the Applicants' intentions to develop the roof area of the property. Although the Respondents' concession of the case against them in relation to service charges came too late to avoid the hearing from taking place, with a consequent effect on costs, the Respondents were successful in their argument relating to the major works. The Tribunal considers therefore that this a case where it is appropriate to make an order under s20C Landlord and Tenant Act 1985 and limits the amount to be charged to £2000.

22 The Tribunal did not consider it necessary to inspect the property.

23 This matter is now remitted to the County Court.

24 **The Law**

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).

Judge F J Silverman as Chairman
Date 27 September 2017

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a

request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking