13074

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2018/0283**
Property	:	**3A Elcot Avenue, London SE15 1QB**
Applicant	:	**Primeview Developments Limited**
Representative	:	**Mr Newman, solicitor, D & S Property Management**
Respondent	:	**Mr Charanjeet Singh**
Representative	:	**In person**
Type of Application	:	**For the determination of the liability to pay a service charge**
Tribunal Members	:	**Judge W Hansen (chairman)** **Mr P Casey MRICS**
Date and venue of Hearing	:	**8 November 2018 at 10 Alfred Place, London WC1E 7LR**
Date of Directions	:	**19 November 2018**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the Respondent is liable to pay the following sums by way of service charge for the service charge year 1/4/18 – 31/3/19: (i) £25,824.50 (ii) £340.98 and (iii) £655.00. Such sums are payable on 30 November 2018.

(2) The Tribunal records the Applicant's agreement that it will not add the costs incurred in connection with these proceedings to the service charge.

The Application

1. By an application dated 23 July 2018 the Applicant seeks a determination of the Respondent's liability to pay and of the reasonableness of advance service charge demanded by the Applicant on 30th April 2018 in the sum of £26,820.48 for the service charge year 1/4/18 – 30/3/19.

2. The original demand included a claim for £400 by way of ground rent but we have excluded that figure from the demand as it is not a matter within our jurisdiction.

3. The adjusted demand is made up of three sums: (i) £25,824.50 (contribution to major works); (ii) £340.98 contribution towards insurance and (iii) £655 contribution towards management costs.

4. Item (i) is disputed. Item (ii) is not disputed. £375 out of the sum claimed of £655 for management costs in (iii) is disputed.

5. The Applicant is the freehold owner of 3 Elcot Avenue, London SE15 ("the Property") which is a property divided into 2 flats. The Respondent is the lessee of Flat 3A, on the first and second floor.

6. The Respondent holds under a lease dated 3 November 2005 ("the Lease"). By that Lease he covenants to pay 65% of the costs incurred by the landlord in providing the services set out in the Fifth Schedule, 65% of the estimated costs of insurance and such percentage as the landlord shall reasonably determine of the costs of employing managing agents and surveyors ("the Clause 3 charges"). The landlord has determined

that percentage at 50% which is self-evidently reasonable given that the property is divided into 2 flats.

7. The Fifth Schedule contains the landlord's repairing and decorating obligations and includes an obligation to paint the exterior every 3 years and an obligation to maintain, repair or renew the foundations roof main walls and structure of the Property.

8. The Clause 3 charges are payable "*on demand and in advance of any payments being made by the landlord with regard to services set out in the Fifth Schedule*" (Clause 3(1)). The Lease contemplates that they will be estimated as soon as practicable after the beginning of each service charge year which runs from 1st April to 31 March.

9. On 30 April 2018 a budget was prepared with the assistance of a Chartered Building Surveyor, Mr Henry. He had inspected the Property on 26 March 2018 and following that inspection he prepared a detailed specification of the works required to be done by the landlord to comply with the landlord's repairing obligations in the Lease.

10. Mr Henry was of the opinion that the likely cost of the required works would be in the region of £35,000. The budget was prepared on that basis. Provision was also made for surveyors' fees (£3,500), a fire risk assessment (£380), a reserve (£1000) and an Electrical Installation Condition Report (£350). Those figures total £40,230. 65% of that is £26,149.50 but a further adjustment is necessary to reflect the Respondent's 65% of the accrued reserve of £500 (£325). If the figure of £325 is deducted from the sum of £26,149.50 one arrives at the figure claimed for the major works of £25,824.50.

11. This is the principal area of dispute.

12. The insurance contribution is, as noted above, admitted.

13. We will, additionally, have to determine whether the unadmitted balance of £375 claimed for managing agents' fees relating to the section 20 consultation is payable and reasonable.

Consultation

14. The consultation is almost but not quite complete. A Notice of Intention to carry out work was sent to the Respondent on 1 May 2018 enclosing the specification. His written

observations on the proposed works were invited by 4 June 2018. He was also invited to nominate contractors from whom the landlord should seek an estimate. No comments or nominations were forthcoming from the Respondent. The other tenant nominated two contractors. They were approached but did not submit tenders. Estimates were received from the landlord's 3 nominated contractors. They varied in amount from £37,525+ VAT to £51,730 +VAT. A Statement of Estimates was sent to the Respondent on 12 October 2018. To date no observations on those estimates have been received although the Respondent has until 16 November 2018 to submit observations. We considered of our own motion whether in these circumstances it might be said that the application is premature. However, no point was taken by the Respondent and we concluded that it would wrong and unfair to explore this point further. For what it is worth, the tenders received reinforce the reasonableness of the budgeted figure, albeit we are satisfied that the budgeted figure of £35,000 plus sundries is reasonable even without the benefit of the subsequent tender evidence by reference to the evidence of Mr Henry to which we now turn.

Evidence

15. We heard evidence from Mr Henry and the Respondent.

16. Mr Henry gave evidence in accordance with his Report dated 18 October 2018. He is a chartered building surveyor who clearly has relevant experience and expertise. His report complied with his professional duties in giving expert evidence as a surveyor. There was no meaningful challenge to his evidence. The Tribunal asked him a number of questions and were entirely satisfied that his estimate of the likely cost of the proposed works, £35,000, was reasonable having regard to the poor condition of the Property to which he deposed. It is clear from his evidence that the Property is in both poor structural condition and poor decorative order. We are also satisfied as to the reasonableness of the other elements of the claim referred to above in the absence of any meaningful challenge.

17. There is, to a very large extent, an evidential void on the Respondent's side. There was no statement of case or witness statement as such prepared for the final hearing. All we had was a document described as a statement on behalf of the Respondent in lieu of attendance on 16 August 2018. This appears to have been a document prepared for the CMR in August. Apart from suggesting that the tenants were about to or had embarked upon the process of seeking to enfranchise, there was a suggestion that he

had not been properly consulted and that the tenants had instructed their own surveyor who assessed the cost of the necessary works at £5,000 +VAT.

18. This is a reference to a Structural Report from Tricorn Consultants apparently commissioned by the other tenant of the Property. The difficulty with this report is that it is, as it says itself, an inspection report limited in its scope. It is not a report on the condition of the Property generally. It is concerned only with the structural integrity of the property. It does not consider decoration or wear and tear and disrepair generally. Mr Henry commented in his written report on the limitations of this report. In his oral evidence he said it did not go anywhere near dealing with all the works which were required to bring the Property up to the condition required by the repairing covenants. We agree. We derive no real assistance and can see no justification for limiting the costs claimed to £5,000.

19. We are not unsympathetic to the Respondent, faced as he is with a very large demand. However, the fact is that the Property is in very poor condition, no works has been done to it for at least 13 years (on his own case) and his own impecuniosity, which he raised more than once in the course of his evidence is not, without more, a reason for reducing the demand.

Discussion and Conclusions

20. We have had in mind at all times the fact that where a service charge is payable before the relevant costs are incurred, as this Lease provides for, "*no greater amount than is reasonable is so payable*" (s.19(2) LTA 1985). We are satisfied that the full amount claimed is payable under the Lease and is reasonable in amount. There was no timeous objection to the proposed works. The landlord was, in our view, entitled to conclude that there was no serious objection to the proposed works: see e.g. *Southall Court (Residents) Ltd v. Tiwari* [2011] UKUT 218 (LC) at [16]. There has been proper consultation thus far and the fact that the process is not quite complete is not, without more, a reason to reduce the sum claimed on the basis of unreasonableness. The extent of the proposed works is fully set out in the specification and there is no evidential basis for challenging the estimated figure of £35,000. There is no rival evidence on point. The report of Tricorn Consultants is too narrow in its scope to assist. It was also provided after 4 June 2018. We have considered *Parker v. Parham* (2003) LRX/35/2002 and what the President said in that case at [23], but on the facts of this case we are satisfied that it is reasonable to demand the full sum now. We are satisfied

that the landlord intends to undertake these works as soon as possible following completion of the consultation period and in any event within the relevant accounting period. The proposed works are clearly in accordance with the terms of the Lease. For all those reasons we consider that the full sum claimed is payable. It was technically payable on demand but the landlord indicated to the tenants that it would not requirement payment until 14 days after 16 November 2018, the date when the consultation period ends. We consider that the landlord should be held to that representation, and determine that the sum of £25,824.50 is payable by the Respondent by way of his contribution to the major works on 30 November 2018. For the avoidance of doubt, since we are making this determination *before* any works have been carried out, it cannot be and is not determinative of the standard of the work when finally completed.

21. There was no dispute about insurance in the end but for the avoidance of doubt we determine that the Respondent is liable to pay the sum claimed of £340.98 by the same date. Finally, we consider that the disputed sum of £375 is also payable as those management fees have been reasonably incurred and are reasonable in amount.

22. The Applicant very fairly indicated that it would not be seeking to add the costs incurred in connection with these proceedings to the service charge and in those circumstances we have not considered s.20C of the 1985 Act but will expect the Applicant to honour that promise.

23. There were no other applications.

Name: Judge W Hansen **Date:** 19 November 2018

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.