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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2013/0584**
Property	:	**20a Urlwin Street, London SE5 ONF**
Applicant	:	**The London Borough of Southwark**
Representative	:	**Ms E Bennett, Home Ownership Services**
Respondent	:	**Sarah Waller (1)** **Miles Waller (2)**
Representative	:	**Mr Waller, in person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge O'Sullivan** **Mr F Coffey FRICS**
Date and venue of Hearing	:	**12 December 2013 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**12 December 2013**

DECISION

Decisions of the tribunal

(1) The tribunal's determinations are set out below.

(2) 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

(3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Lambeth County Court.

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 and administration charges payable by the Applicant in respect of the service charge years 2011/12 and 2012/13.

2. Proceedings were originally issued in the Northampton County Court under claim no. 3YK14650 . The claim was transferred to the Lambeth County Court and then in turn transferred to this tribunal, by order of District Judge Waschkuhn dated 6 August 2013.

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

The hearing

4. The Applicant was represented by Ms Bennett, an enforcement officer. Also appearing for the Applicant were Mr Dudhia, an accountant, and Mr Hall, both in the employ of the Applicant. The Respondents were represented by Mr Waller in person.

5. At the hearing the Applicant handed in a full copy of a document at page 256 of the bundle which had been incomplete.

The background

6. The property which is the subject of this application is a flat contained in a converted Victorian end of terrace house. The Respondents are the leaseholders of the lower flat comprising the lower two floors of the property. The upper flat is occupied by a tenant of the Local Authority. The Respondents took an assignment of the lease in 2004.

7. From the papers before the tribunal it appears that the roof over the property is of Gambrel type and formed between brick parapet walls with stone or concrete copings over. There is a flat roof dormer window to the front of the property and doubtless one at the rear. The first containing a wood sliding sash window.

8. 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.

9. The Respondents hold 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. There are no issues between the parties as to the lease terms.

The issues

10. The claim in the county court sought judgment in the sum of £1,078.81. Arrears for 2011/12 and 2012/12 were £545.41 and £399.91 respectively. However it was confirmed by Mr Waller at a case management conference on 1 October 2013 that no challenge was made to the service charge of £523.40 for the year 2012/13 and that it was agreed that this was payable.

11. It was also confirmed at the case management conference that the only item of expenditure challenged by the Respondents was the cost of roof repairs carried out in 2011/12 for which the Respondents had been charged £950.18 plus an administration charge of 10%. The Respondents say that this is excessive given that the original estimate was £498.80. It is also said that the expenditure was not reasonably incurred given that roof repairs had been carried out in 2004 and had these been carried out properly further works would have been unnecessary.

12. The parties both lodged statements of case in accordance with the directions and a bundle was lodged. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made the following determination.

The Applicant's case

13. The statement of case dated 30 October 2013 correctly identified that no challenge was made to the general service charge for 2012/13. It noted that the Applicant had been instructed by the tribunal to confine its case to the roof repairs carried out in 2011/12. However after having noted this it went on to deal with the issues of insurance, un-itemised repairs and service charge calculations, none of which were challenged. The statement was also incomplete in parts with references to

documents omitted. On the whole the statement was poorly prepared and did not address matters before the tribunal.

14. The Applicant confirmed that major works had been completed to the roof between 2002/04. The cost of these works in the sum of £13,253.38 was refunded to the service charge account on 18 July 2007 and the Applicant provided a print screen showing the credit to the Respondents' account.

15. As far as the 2011 roof works are concerned the Applicant says simply in its statement of case that the works were necessary and that the standard and cost of the works was reasonable. The tribunal heard that the works were carried out as emergency repairs on 17 June 2011. A Stage 1 notice under section 20 was served on 23 June 2011. This informed the leaseholders of proposed works at an estimated cost to them of £548.68. The tribunal heard however that although the works had in fact been carried out by this date the actual costs of these works were not known to the Respondent until the end of its financial year when they were provided by the contractor.

16. The Applicant's stance in its statement of case was that the consultation requirements had been fully complied with. However it was accepted at the hearing that valid consultation had not taken place and that an application for dispensation should have been made under section 20ZA. Thus at the hearing the Applicant made an oral application for dispensation from the consultation requirements in relation to the 2011 works. The grounds for the application were that the works were necessary emergency works required.

17. As far as the works themselves were concerned the tribunal had very little information as to what works had been found necessary and actually completed. The person dealing with the works had now left the Council. No-one at the hearing was able to provide any detail although Mr Hall did his best to surmise what he thought may have been carried out. In fact the Local Authority failed to provide any officer for questioning with a detailed knowledge of the subject matter to be considered.

18. This appears to be a consistent problem with cases before the tribunal involving the Applicant.

19. The Applicant also relied on a witness statement of Gulam Dudhia, an accountant in the employ of the Applicant dated 27 November 2013. This dealt with issues of apportionment and insurance and the tribunal did not consider its contents relevant to the matters before it.

20. Reliance was also placed on a witness statement of Justin Hall, a Technical Quality Coordinator in the employ of the Applicant. He stated

that there was no evidence that the works in 2011 were not completed to a reasonable standard and the costs incurred are therefore reasonable. The Respondent says that since the works there have been no reports of water ingress or damage to the Respondents' premises.

The Respondents' case

21. The Respondents' main challenge was to the cost of the works which had been estimated at £548.68. The actual cost invoiced to them was however £1078.61. Their proportion of the actual cost of works themselves increased from £400 to £563.94. The cost of the scaffolding increased from £597.60 to £1303.03. There was an increase in the administration fee as it was charged at a rate of 10% on the cost of the works.

22. The Respondents query why the cost of the scaffolding has more than doubled given that the work did not take longer than estimated and no additional scaffolding was required. The Respondents also ask why the scaffolding was erected before the expiry of the deadline for replies to consultation to the Stage 3 notice on 25 July 2011.

23. As far as the 2002/04 works are concerned the Respondents say that the 2011 works were only necessary due to the poor quality of the 2002/04 works.

24. The Respondents also rely on the witness statement of Johnny Rich dated 29 November 2013, a leaseholder. Evidence is given that the works were of a poor standard and that settlements were reached with leaseholders in 2007 in relation to compensation and costs.

The tribunal's decision

25. The tribunal granted dispensation from consultation under section 20ZA of the 1985 Act.

26. The tribunal allows the major works carried out in 2011 in the sum of £548.68.

Reasons for the tribunal's decision

27. It was accepted at the hearing that the Applicant had failed to properly consult the leaseholders in relation to the works. An application for dispensation was therefore made under section 20ZA. The tribunal granted the application for dispensation. It was satisfied that the works appeared to be urgent in nature and that no prejudice had been suffered by the leaseholders in relation to lack of consultation. This was indicated by the fact that although the leaseholders had been served

albeit too late in the day with the various notices required under section 20 they had not made any observations and would therefore have therefore been unlikely to have done so even if the consultation had taken place prior to the works being carried out.

28. Turning to the reasonableness of the cost of the major works themselves the tribunal was dismayed at the lack of information provided to it by the Applicant. This lack of information being such that even the tribunal members were at a loss to understand the overall meaning of the costings prepared. No-one appeared who was able to provide the tribunal with any information on the works required and those in fact carried out. The tribunal had no evidence to confirm the condition of the roof and to support the use of scaffolding.

29. In fact whilst there was a general description of matters to be undertaken to deal with a leak apparently caused by defects within the roof covering, there was no detailed or in fact specific description of works which might be required. Despite this a very precise estimated sum was provided to the leaseholders.

30. The tribunal members are familiar with matters of roof defects in general and aware that specification of the same can frequently not be provided without close examination from a scaffold or scaffold tower. In the subject case it appears that the cost of the works increased at accounts stage from £597.60 to £1303.03 without explanation as did the cost of the scaffold. As a result the leaseholders were presented with an account which they did not understand and for which there was no valid explanation. In the opinion of the tribunal a final cost should have been prepared following completion of the works and produced in readily understandable written form prior to its inclusion in the service charge account for the year. This would have been desirable in the interests of transparency if nothing else.

31. As a consequence of the above the tribunal has decided to allow only the original estimated cost of £548.68 in relation to the 2011 roof repairs. We reluctantly accept that some works were required when the repair request was raised on 31 May 2011. We were however not satisfied as to the extent of the total works carried out and their costings.

32. The tribunal would mention that it did not consider the prior roof works which took place in 2004 to be relevant. It heard that the charges were credited to leaseholders in respect of these works and there was therefore no element of double counting.

The claim for contractual interest

33. The claim included a claim for contractual interest pursuant to clause 2(3)(b) of the lease. The tribunal considers this must fail in relation to the sum of £1078.61 before it given the decision the tribunal makes in relation to the major works.

34. It is considered that the Applicant is entitled to recover contractual interest in relation to any other sums sought in the proceedings which are undisputed.

Application under s.20C

35. The Applicant confirmed that it did not intend to pass any of its legal costs incurred in connection with the proceedings through the service charge. It consented therefore to an order being made under section 20C. Accordingly for the avoidance of doubt the tribunal makes an order under section 20C.

The next steps

36. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the Lambeth County Court.

Name: S O'Sullivan **Date:** 12 December 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 27A

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 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 a leasehold valuation 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 a leasehold valuation 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).