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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AN/LSC/2014/0322**
Property	:	**1 Bronte Court, Girdlers Road, London W14 OPX**
Applicant	:	**London Borough of Hammersmith and Fulham**
Representative	:	**Ms Dwomoh of Counsel**
Respondent	:	**Mr Mehrdad Reyhani**
Representative	:	**None**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Mrs S O'Sullivan** **Mr I Thompson** **Mr A Ring**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**6 November 2014**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £18,624.79 is payable by the Respondent in respect of the major works invoice dated 22 September 2009. Since the Respondent has made payments of £5251.27 the sum remaining due is £13,373.52.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court at London West (case number 3YM19280).

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 Respondent in respect of a major works invoice dated 22 September 2009 in the total sum of £22,970.89. Mr Reyhani has since made some instalment payments and the balance claimed by the landlord stands at £17,223.61.

2. Proceedings were originally issued in the County Court at London West under claim no. 3YM19280. The claim was transferred to the tribunal, by order of District Judge Ryan on 31 May 2014.

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

The hearing

4. The Applicant was represented by Ms Dwomoh of Counsel. Also attending for the Applicant were Robert Richmond, a major works manager, Jerome Otoo, a project surveyor and Ms Cave, a service charge manager. The Respondent appeared in person and was accompanied by his wife, Mrs Jaksch.

5. At the commencement of the hearing Counsel handed in a skeleton argument.

The background

6. The property which is the subject of this application is a ground floor flat in a building containing a total of 11 flats known as 1-11 Bronte Court, Girdlers Road, London W14 OPX (the "Property").

7. Photographs of the exterior of the property were provided by the Respondent. 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, given that the major works commenced over 9 years ago.

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 and will be referred to below, where appropriate.

The issues

9. The directions had provided for the Respondent to serve a statement of case, a schedule outlining each separate charge in dispute and any witness statements. He had however failed to serve the schedule or any signed witness statements. He had served a statement of case but this was concerned principally with the general service charges which were not before the tribunal. He relied on what he described as a witness statement of Mr Alfred Gonzalez, a neighbour, but this was in the form of an email without any statement of truth. He also relied on comments in his statement of case which he attributed to another neighbour, Mr Momcilo. The tribunal explained that as these were not signed and did not contain any statement of truth little weight could be placed on them by the tribunal. We found ourselves therefore lacking in any evidence from the Respondent and no document which set out his opposition with the major works. A further difficulty lay in the fact that due to the historical nature of the works the Applicant had been unable to produce any witness with direct knowledge of the contract. We therefore did the best we could in taking the Respondent through the major works final account and identifying those matters in dispute.

10. The major works project was heard to be external and communal refurbishment.

Liability for internal communal areas

11. As a preliminary point the tribunal considered an issue of lease construction. The Respondent argued that he was not responsible for any items which related to internal communal areas. He relied on clause 1 of Part 1 of Schedule 8 to the Lease. He submitted that by virtue of this provision he was not responsible for the cost of any repairs to the lift, entry phone or internal communal areas.

12. It was agreed by the Applicant that the Respondent was not liable for the cost of lift and entry phone maintenance and repairs. However it was submitted that this exclusion did not extend to the internal

common parts and in this regard Counsel relied upon clause 1 of Part 1, [and Part 1??] of the 6th Schedule.

13. The relevant lease provisions are as follows;

"Pursuant to clause 1 of Part 1 the landlord covenants to repair and maintain (and to renew and improve as and when the lessor from time to time in its absolute discretion consider necessary or desirable)

(e) the structure of the Building and in particular ..the entrance hall staircases landings corridors and other common parts of the Building.."

(f) the lifts lift shafts and machinery and the passages landings and staircases and all other parts of the Building enjoyed or used by the Lessee in common with the others

(g) the entry phone as may be now or hereafter installed in the Demised Premises

Eighth Schedule Part 1 – Costs and expenses for services

1.The cost incurred by the Lessor in complying with its obligations of or in exercising its rights in Part 1 of the Sixth Schedule (except the costs incurred under the provisions of Clause 1(f) 1(g) and 4(a) and 4(b) (i)respectively"

14. The Respondent also referred the tribunal to correspondence from his solicitor at the time of purchase, namely a letter dated 8 December 2007. In this letter his solicitor of Sheridan and Stretton Solicitors stated as follows;

"Further to my letter of 11 November I have now received an amended lease form the London Borough of Hammersmith and Fulham. The same has been amended to take out reference on page 29 of the Eighth Schedule to the cost of replacing the lift. In those circumstances I am enclosing the amended lease. Would you please sign it..."

Liability for internal common parts – the tribunal's decision

15. We agreed that the lease clearly provided that the Respondent was not liable for the cost of works to the lift or entry phone. However the position in relation to the internal common areas was less clear. Although clause 1(f) clearly refers to the internal passages and landings and is excluded from the Respondent's liability under this provision

other provisions such as those set out above are contradictory and suggest the liability remains. There was a clear conflict in the provisions of the lease. We therefore considered what the intention of the parties had been when they entered into the lease. In this regard we took into account the correspondence from the Respondent's solicitors which indicated that the exclusion did not refer to the internal common parts. We therefore concluded on the evidence before us that it was the intention of the parties that the internal common parts were not excluded from the lease and the Respondent therefore remained liable for their repair.

16. The Respondent's issues in relation to the individual items are set out below together with the Applicant's response and the tribunal's decision.

Windows and associated works

17. The Respondent accepted his liability for some element of the window replacement but argued that he was not responsible for any communal windows. He also questioned the cost of the works.

18. We found the cost of the works to be reasonable. We had found that the Respondent was liable to contribute to the cost of the communal areas. The Respondent produced no alternative evidence as to the cost of the windows which in any event had been the subject of competitive tendering.

Brickwork and concrete repairs

19. The Respondent questioned whether any works had been carried out under this heading. He had not previously raised this point and therefore the Applicant had not brought any evidence to answer this. We accepted the findings of the audited final account and allowed this in full.

Roof coverings

20. The Respondent suggested there was a problem with leaks. We had no evidence in support and allowed this in full.

Works to communal areas

21. The Respondent had argued he was not liable to contribute. We had found that he was and allowed the cost in full.

Electrical works and drains

22. The Respondent questioned what works had been done under this heading and said he had not seen any evidence of these. Again this point had not been raised previously and the Applicant was not in a position to adduce any evidence in reply. We accepted the contents of the final account which had been audited.

Electrical services

23. The Respondent raised no real argument in relation to any items under this category.

Mechanical services

24. Of the works under this section the cost of the water booster and the plant room were the only items in respect of which any real argument was raised. Again these issues were raised for the first time at the hearing. The tribunal heard that the water booster had been installed to keep pressure constant following Thames Water decreasing its pressure. We accepted the necessity for this item and allowed it in full.

25. It had been decided for safety purposes to create a plant room in which the booster would be situated. This appeared in the final account at a cost of £41,654.94. There was some discussion as to whether the plant room served only the block or the Estate, which also comprised the neighbouring block. On the final account the cost had been allocated solely to the Property. The Applicant conceded that it did serve the neighbouring block and thus should have been apportioned as an estate cost at 0.98 % pursuant to the lease rather than at the block cost rate of 9.09%. This meant that the Respondent was liable to contribute the revised cost of £408.22 rather than the sum of £3,786.43.

26. It was confirmed for the Applicant that this error on apportionment was only relevant to the plant room entry and all other items had been correctly apportioned. All other items under this heading were allowed in full.

Fees

27. Fees had been charged at 12.5%. These had not been directly challenged by the Respondent but were considered by the tribunal to fall within a reasonable range and were therefore allowed in full.

Installation of extractor fan

28. The final account included an item for an extractor fan at £1,091.24. The Applicant explained that these had been installed in bathrooms and kitchens as part of recommended guidelines. We heard that the Respondent had an extractor fan installed in his bathroom but not in his kitchen due to the positioning of his cupboards. As only one fan had been installed this item was conceded at 50%.

The tribunal's decision

29. The tribunal therefore determines that the costs payable are as follows;

Original major works net cost	£19,448.58
Less amount charged for plant room	-£3,786.43
Add correct % for plant room	£408.22
Total	£16,070.37
Add fees at 12.5%	£2,008.80
Sub-Total	£18,079.17
Add revised extractor fan cost	£545.62
Total	**£18,624.79**

30. The tribunal is informed that the Respondent has paid the sum of £5251.27 by instalments and thus calculates that the amount due is now £13,373.52.

31. We would like to thank the Applicant for its assistance with what are historical works and for readily making concessions where appropriate.

Application under s.20C and refund of fees

32. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that no order should be made under section 20C.

The next steps

33. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the County Court at London West.

Name: S O'Sullivan **Date:** 6 November 2014

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 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).