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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AD/LSC/2012/0666**
Property	:	**25 Mariners Walk, Erith, Kent DA8 2PE**
Applicant	:	**Mrs Miriam Stern**
Representative	:	**Mr A Kasriel instructed by Liefman Rose Solicitors**
Respondent	:	**Mariners Walk Management Company Limited**
Representative	:	**Mr R Robson**
Type of Application	:	**Payability of service charges**
Tribunal Members	:	**Judge Tagliavini** **Mr T N Johnson FRICS**
Date and venue of PTR	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**30 May 2015**

DECISION

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(1) The Tribunal determines that all sums are properly demanded from and payable by the Applicant sum in respect of her contribution to the service charges for the years 2010, 2011 and 2012, except as conceded by the respondent in respect of legal costs and the carpet replacement costs of £104.00

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

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

(4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Shoreditch and Clerkenwell County Court in respect of the service charge years 2010 and 2011 for a determination on costs and interest.

The application

1. By an application dated 3/8/2012, the applicant tenant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service payable in respect of the service charge years 2010, 2011 and 2012.

2. In addition, an earlier claim made in the Clerkenwell and Shoreditch County Court in respect of a claim issued by the respondent management company on 11/07/2012 for unpaid service charges for the years 2010 and 2011 was transferred to the Tribunal on 1/10/2012. .

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

The hearing

4. Mr A Kasriel represented the applicant. Mr Robson represented the respondent.

5. The tribunal noted that the original representative for the respondent, Amax Estates and Property Services Limited was no longer acting as the respondent's managing agents. The tribunal was also made aware that the relationship between individuals employed by, or formerly employed by Amax had irretrievably broken down and allegations and counter allegations had been made, which were subject to a criminal investigation. Individuals from Amax attended the hearing together with counsel in the capacity of "observer".

6. The respondent, in addition to Bundles A and B provided Service charge accounts for 2012, at a late stage. The applicant sought to rely upon an Auxiliary Bundle prepared in response to the respondents two bundles A and B. The tribunal were also in possession of earlier documentation from the earlier hearing on a preliminary issue.

The background

7. The property which is the subject of this application is a flat (formerly known as Flat 12) which forms part of an Estate comprising 272 flats contained in 31 separate blocks of flats and 140 houses.

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. The tribunal was, however provided with a number of photographs of the subject premises and Estate. The tribunal made it clear to the parties at the outset, that the sums challenged concerned the applicant only, as no other lessee had sought to be joined to these proceedings. Therefore, the tribunal could only make a determination that affected the applicant's share of any challenged service charge item although the decision might be of interest to other tenants.

9. The applicant holds a long lease of the property dated 20 June 1988 for a term of 99 years from 1 September 1987. The lease requires the landlord, through the respondent, a Company limited by guarantee to which each long lessee is entitled to membership, to provide services and the applicant to contribute towards their costs by way of a variable service charge

The issues

10. At the start of the hearing of the substantive issues held on the 15th April 2015, the tribunal identified the relevant issues for determination as follows:

The payability and/or reasonableness of service charges for 2010, 2011 and 2012 relating to:

(i) The apportionment of expenditure between the blocks and the estate.*

(ii) The apportionment of management fees between the blocks and the estate.*

(iii) The reasonableness of charges for repairs, maintenance and decoration and gardening costs.

(iv) The reasonableness of management fees.

(v) The reasonableness of charges for refuse removal.

(vi) The payability and reasonableness of legal fees.

(vii) The reasonableness of health and safety charges.

(viii) The payability of a TV upgrade.

(ix) Whether an order under S20C should be made.

(x) Whether an order for the reimbursement of the application and the hearing fee should be made.

The county court transfer identified the following issues to be determined by the tribunal:

(i) The reasonableness and payability of service charges for the service charge period 01/01/2010 to 31/12/2011.

11. In a decision on a preliminary issue dated 25 March 2013, the tribunal determined that the applicant is not estopped from seeking to rely on a challenge to the payability of service charges including Block costs as a consequence of the Respondent's incorrect method of calculation. On an appeal to the Upper Tribunal the parties compromised the appeal as set out in a Schedule and Upper Tribunal Order dated 2 April 2014 LRX/64/2012, whereby it was agreed;

> *".....that the Applicant would no longer seek to raise the apportionment issue in respect of service charge year ended 31/12/2012 and previously and the Respondent will re-calculate service charges on a building by building basis, fully in accordance with the lease provisions."*
>
> And
>
> *"There was no order for costs in respect of the preliminary issue.*

12. Although the applicant provided a Schedule of disputed items in accordance with the tribunal's directions dated 31/10/2012 and 15/10/2014, the applicant failed to specify either her share of any particular item of service charge challenged, the amount she would be willing to pay or reasons for the continued dispute, other than stating that the item had been *"incorrectly charged"* and was *"excessive"* to which, the respondent uniformly replied *"correctly charged"* and

"reasonable" to each item challenged. Further the applicant appeared to challenge the whole amount charged and not only her contribution despite having no authority from any other lessee to do so. The applicant produced no witness statement in support of her assertions either from herself or from any other person but relied upon the assertions contained in a Statement of Case and Response to Further Evidence both prepared and signed by her representative Mr Kasriel. Neither the applicant nor any other person gave any oral evidence in support of the application.

13. Consequently, the Tribunal was provided solely with the assertions and submissions of counsel on the applicant's behalf. The applicant's brother Mr Cik attended the hearing, and the tribunal was informed that he manages the property for the applicant, although he too gave no oral or written evidence to the tribunal.

14. The respondent relied upon the oral evidence of Mr Robson and Ms Warnes, the latter an ex-employee of Amax as well as a Statement in Reply. Neither party sought to rely on the written or oral evidence of Ms Maxine Fothergill, the sole director of Amax, the former managing agent and whose services had been discontinued in apparently acrimonious circumstances. As a consequence of these circumstances the tribunal were required by the prevailing conditions of bail to exclude Ms Fothergill and other Amax employees from the hearing in order to hear the evidence of Miss Warnes. Having heard evidence and submissions from the parties and considered all of the documents provided,

The applicant's case

15. The applicant's case was presented by way of submissions from Mr Kasriel speaking to his Statement of Case and the applicant's Response to Further Evidence in reply to the two bundles provided by the Respondent for the hearing.

16. The applicant asserted that the accountant's fees in 2010 in the total sum of £30,789.39 attributable to all lessees should be disallowed as they in fact related to security works and were therefore misrepresented on the service charge account. The applicant also asserted that no invoices for the accountant's fees for 2011 had been provided.

17. The lessee claimed that the management fees charged of £174 per flat and £80 per house in 2010 are excessive. It was asserted by Mr Kasriel that the figure should be £150 plus VAT per flat. The applicant challenged the payment of £15,980 paid to the managing agents, Amax in respect of security works as being "unjustified and excessive".

18. The applicant asserted that voucher receipts did not support the sum of £69.95 of the cleaning costs in 2010.

19. It was conceded on behalf of the applicant that the charges for garden and grounds maintenance are reasonable.

20. The applicant asserted that a piecemeal approach to the cleaning of drains should not have been adopted which proved to have been ineffective and the problem should have been handled more expertly using technical/professional advice.

21. The applicant challenged the buildings insurance premiums but provided no evidence to any alternative quote on a "like for like" basis.

22. The applicant accepted that of the 2010 heating and lighting charges, only £265.05 remained in dispute with the applicant's share of this sum unspecified.

23. The applicant challenged the amounts spent in 2010 on general repairs and maintenance to the extent that there appeared to be a lot of them and there was a lack of clarity as to what work was carried out and therefore the works appeared "inefficient".

24. The applicant challenged the sums spent on cleaning and asserted that the cost appeared excessive in relation to the work done. It was accepted by the applicant that cleaning had been carried out, although asserted there was a lack of clarity as to how the costs had been incurred.

25. The charges made as to the general repairs and maintenance were also challenged, but the applicant gave no description or detail of the items challenged and did not assert that no work at all had been carried out.

26. It was accepted that the lease provided for the collection of a reserve fund and that the sum collected was reasonable, although it appeared it was being used to pay annual service charge bills rather than major works and therefore was not recoverable.

27. The applicant challenged the miscellaneous expenses of £681.19 asserting that this was a duplicate entry. The applicant's share of this sum was unspecified.

28. The applicant queried the insurance premium contribution and asserted that it should have been the sum of £7.26 and not the £101.64 claimed.

29. The applicant made similar arguments to the postage and stationery charges (they should be included in the management fee) the general repairs and maintenance charges, the refuse removal, the garden and grounds maintenance and management fees for 2012 as made for the charges said to have been incurred in 2010 and 2011.

The respondent's case

30. The respondent's case was supported by a Statement in Reply, service charge accounts and numerous invoices in addition to the oral evidence of Mr Robson and Ms Warnes.

31. Mr Robson, a director of the respondent company, conceded that there was no provision in the lease for the recovery of legal fees and therefore this item should be omitted from any demands made to the Applicant. Mr Robson also conceded that there had been no carpet replacement and therefore any sum attributable to this should be refunded to the applicant.

32. Ms Warnes, previously employed by Amax in the management of the subject property and Estate, explained to the tribunal that many of the blocks had not received any electricity bills since a change of provider from EDF to Npower, as the old bills has been going to the managing agent in place before the appointment of Amax in 2008. Consequently, no (communal) electricity bills were paid between 2008-2011 until the arrears were notified to Amax in 2011 resulting in the large bill reflected in the service charges.

33. Ms Warnes also explained to the Tribunal that the Government imposed digital switch required the installation of further/new equipment because of the low level of signals received by the relevant Block and other blocks on the Estate. Consequently, as Sky had offered a favourable deal in respect of the installation of satellite television it was advantageous to accept this offer and leave it to individual tenants to increase the provision of channels as they chose. The provision of satellite television therefore, was in compliance with the lease provisions and did not qualify as an "improvement". The old and redundant television aerials were removed for health and safety reasons.

34. Ms Warnes told the Tribunal that "fly tipping" was a continual problem with items frequently being set on fire creating a hazard. Consequently, these bulky items of waste had to be removed and charged to the tenants as it was not possible to identify any individual responsible for this waste.'

35 Ms Warnes informed the Tribunal that "block by block" accounting was now in place as had been agreed between the parties.

The tribunal's decision and reasons

36. Having had regard to the documentary and oral evidence of the parties, the tribunal has made the determinations on the issues in dispute as follows:

2010 /2011/2012

Service charge items – postage and stationery, general repairs and maintenance, refuse removal, garden and grounds maintenance, miscellaneous expenses, management fees, cleaning, buildings insurance, communal external redecoration and repair, health and safety and accountant's fees.

37. The tribunal finds the sums charged are reasonable and payable by the applicant except for the sum of £104.00 for carpet replacement, which is to be credited to the applicant.

Reasons for the tribunal's decision

38. The tribunal finds the applicant's approach to this application of simply putting the respondent to proof of matters without either giving any oral or witness statement evidence to support her assertions, unsatisfactory. Although, the applicant repeatedly challenged the efficiency of the provision of services as not being the most cost effective, the applicant provided no evidence to show that the same services could have been obtained at a more economical price. Further, the failure to specify her contribution to the various heads of service charges was not helpful to the tribunal and their absence failed to reveal the relatively small amounts of service charge disputed by the applicant. Having had the benefit of written and oral evidence from Mr Robson and Miss Warnes on behalf of the respondent, who were not extensively cross-examined on the issues raised by the applicant, the tribunal preferred the respondent's evidence to the assertions made by the applicant.

39. Although the respondent's approach to the recording of the management of the subject property, the Block and Estate by way of clearly organised invoices, records and service charge accounts with all items properly identified it is also apparent, both from the photographs provided and the applicant's own case as well as the invoices, that works of repair and maintenance has been carried out on a regular basis.

40. The tribunal disagrees with the applicant's assertion that postage and stationery should properly form part of their charges. Additionally, the tribunal finds the annual cost per unit charged for management to be

reasonable and well within a scale of charges that the tribunal considers appropriate for this sort of Estate.

41. The tribunal finds that significant (security) works have been carried out at this Estate, which has attracted both professional fees and additional management fees. Although, the tribunal finds the respondent's approach to the recording and reflection of these works on the appropriate service charge accounts to be less than ideal, the tribunal is satisfied that these costs have been properly incurred.

42. The tribunal is satisfied that accountant's have been instructed to and have dealt with the production of service charge accounts and that the sums incurred are reasonable. Although the tribunal accepts that the service charge accounts and items of service charge have not been as clearly presented at first instance as they could have been, the tribunal is satisfied, on balance that the sums demanded have been properly incurred and have now been accounted for.

43. The tribunal accepts that the provision of a television service required a government imposed "upgrade" and is satisfied that in the circumstances this does not constitute an "improvement" within the context of the terms of the lease, even though it may provide an improved service.

44. The tribunal determines that it is reasonable to attempt piecemeal and patch repairs on the drains before a more expensive option is pursued. It is the tribunal's view that were initial patch repairs not attempted it would render a more comprehensive and expensive approach, unreasonable.

45. On balance, the tribunal is satisfied that the services that the applicant seeks to challenge have been provided and are reasonable in cost and are payable to the extent of her demanded contribution. The tribunal does not share the applicant's view that a misclassification of certain charges renders them unrecoverable as the tribunal is satisfied that these costs have been properly incurred and now properly identified. The tribunal notes and accepts the respondent's concession that the carpet replacement did not take place and therefore this sum must be re-credited to the applicant together with any legal costs charged to the applicant.

Other applications

46. No application pursuant to section 20C was made and the applicant did not seek the reimbursement of her application or hearing fee. .

47. The tribunal now remits this matter back to the county court for a final determination of any interest and costs payable for the service charge years 2010 and 2011.

Signed: Judge LM Tagliavini Dated: 30 May 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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 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) a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.