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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AE/LSC/2015/0221**
Property	:	**9a Doreen Avenue, London NW9 7NX**
Applicant	:	**Darryn Madigan**
Representative	:	**Self**
Respondent	:	**Alan and Steven Mattey T/As The Alan Mattey Group**
Representative	:	**Self**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Hargreaves** **Ian Thompson BSc FRICS**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**3rd August 2015**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £893.12 is payable by the Applicant in respect of the insurance charge element of the service charges for the years 2014 and 2015 and the sum of £54.55 in respect of a building insurance valuation carried out in March 2014, for the reasons set out below.

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

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 Applicant in respect of the Respondent's invoices dated 2nd May 2014, 4th June 2014, and 29th June 2015. The application is dated 19th May 2015 which predates the June 2015 invoice, but it refers to the subject matter of the dispute, which concerns respectively the Applicant's share of (i) the expense of a building insurance valuation (£54.55 after a credit for £5.45) (ii) £444.34 being his share of an insurance charge for the period 25th March 2014-24th March 2015; and (iii) £448.78 being his share of the insurance charge for the same period 2015-2016.

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

3. Directions were given for a paper determination.

4. The property which is the subject of this application is a self-contained flat on the first floor of a 1930's terraced house.

5. 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 read and considered the parties' submissions, including a statement on behalf of the Respondent dated 3rd August 2015.

6. The Applicant holds a long lease of the property dated 12th February 1998 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 will be referred to below, where appropriate. In the lease the building at 9 and 9a is "the property" and "the premises" defines the Applicant's flat (see clause 1 of the recitals and the First and Second Schedules).

7. The Respondents' insuring covenant is at clause 3(b) of the lease. The obligation is to insure "the property" on the usual terms and conditions.

8. The Applicant's obligation under clause 1 of the lease is to pay the ground rent *"and SECONDLY the further rent being a sum equal to the expenditure by the Lessor in keeping on foot the insurance of the Premises in accordance with [*clause 3(b)*] the payment of such further rent to be made on demand subject to the rights set out in the Fourth Schedule hereto and to the covenants on the part of the Lessee and the conditions hereinafter contained".* Paragraph (1) of the Fifth Schedule provides for the Applicant *"to pay the reserved rents at the time and in the manner above mentioned."* It follows that the Applicant is liable to pay the insurance premium attributable to the flat "on demand". There are no other service charge provisions relevant to this dispute. The tribunal concurs with the Respondents' submission that *"keeping on foot"* is wide enough to include the cost of obtaining an updated valuation report every 10 years as part of the expenditure of insuring the property/building. Further, there is nothing to suggest that the Respondents' division of the insurance premium into two halves is unreasonable.

9. The Applicant was irritated and concerned by the 4th June 2014 invoice and the bill for the survey fee (originally £60). By his calculations and investigations he was paying too much, and the survey was unnecessary. He has obtained alternative quotes for his flat and produced them for the tribunal. It appears, though this is not totally clear, that the Applicant might have bought the flat relatively recently. The Respondents' position was set out in a letter dated 1st August 2014 to which the Applicant replied in October, rebutting the Respondents' points.

10. It appears that the Applicant has misunderstood the nature of each party's obligations under the lease. The Respondents have to insure "the property" ie the building as a whole against the usual risks and *"as to an amount equal to the full reinstatement value"* of the property. The quotes obtained by the Applicant are therefore not "like for like" and do not provide useful evidence in support of his case: they relate only to the flat, for example, and as the Respondents point out, contain occupancy restrictions[1] and do not include non-invalidation clauses (which enable the Respondents to obtain full cover even if a leaseholder has committed an act which would otherwise invalidate the policy).

11. The Respondents have acted reasonably and prudently. They have used an insurance broker and with a view to their obligation to insure the

[1] The leases do not restrict occupancy of the flats; this is also an important requirement for the Respondents because the ground floor flat is owned by a local authority/housing association. It follows that any insurance provisions which restrict occupancy would be inappropriate.

property to full reinstatement value, commissioned a valuation report to ensure they can meet the reinstatement obligations if necessary. There is no requirement for them to choose the cheapest quote, and the fee for the building valuation appears reasonable in comparison to market rates. They have split the cost which they are entitled to do. Further, their demands complied with the statutory requirements. It follows that the disputed sums are payable by the Applicant.

12. No application was made for a s20C order and it would be inappropriate to make such an order in this case.

Judge Hargreaves

Ian Thompson BSc FRICS

3rd August 2015

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 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).