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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AT/LSC/2016/0034**
Property	:	**Flat 4, 25 Spencer Road, London W4 3SS**
Applicant	:	**25 Spencer Road RTM Co Ltd**
Respondent	:	**David John Pritchard**
Type of Application	:	**Liability to pay service charges**
Tribunal	:	**Judge Nicol** **Mr S F Mason BSc FRICS FCIArb**
Date and Venue of Hearing	:	**12th May 2016;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**19th May 2016**

DECISION

Decisions of the Tribunal

(1) The charges of £378.15 incurred in 2011 were not incurred by the Applicant and so are not payable to them.

(2) To the extent that it is required, dispensation from the statutory consultation requirements is granted in relation to the external works carried out in 2012.

(3) The remaining service charges claimed are reasonable and payable by the Respondent, save that the asbestos survey and fire risk assessment should have been apportioned amongst all four flats rather than three, resulting in a reduction to the Respondent's charges of £32.

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The Applications

1. This case concerns a four-storey house converted into four flats. The Applicant is the right to manage company of which three lessees are members. The Respondent is the lessee of the top floor flat; he is not a member of the company although only because he has yet to provide the formal document which would allow him to become one.

2. On 20th January 2016 the Applicant applied for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the reasonableness and payability of the following service charges:

	2011	2012	2013	2014	2015
External works	£378.15	£2,410.72	£62.50	£109.36	
Buildings insurance		£564.26	£278.34	£283.90	£358.96
Internal works			£258.64		
Asbestos survey			£78		
Fire Risk Assessment			£50		
Total	£378.15	£2,974.98	£727.48	£393.26	£358.96

3. At the case management conference on 23rd February 2016, the Tribunal identified that the external works in 2012 engaged the statutory consultation process under section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003. The directions order provided for the Applicant to make an application for dispensation under section 20ZA of the Act. They did so on 10th March 2016.

4. Relevant legislative provisions are set out in the Appendix to this decision.

Background

5. For many years, the building was effectively self-managed by the lessees even though there was no formal legal basis for so doing. The Respondent was heavily involved in this for some years together with one of the other lessees who has since sold her lease and moved on. From 2009, the building was managed by Trust Property Management. In 2010 they purported to carry out consultation for major works but the lessees unanimously objected to the high charges proposed. They

decided to exercise their right to manage and it was acquired on 16th March 2012.

6. Since the acquisition of the right to manage, Mr Peter Coomber, the lessee of one of the other flats, has taken primary responsibility for management of the building. In his written responses to the applications, the Respondent has made a large number of criticisms of that management. At the hearing the Tribunal had to explain that its jurisdiction was limited to considering the reasonableness and payability of service charges and did not include failures to provide services. Further, there are no management fees and so any failures of management could not be reflected in any reduction of such fees. This decision only addresses those issues within the Tribunal's jurisdiction which the Respondent has specifically challenged.

7. Having said that, the Tribunal would comment that it is disappointing that this dispute has gone as far as a Tribunal hearing. At the hearing Mr Coomber relied not only on his own written and oral representations but on supporting witness statements from the other two lessees and members of the Applicant company, Mr Leon Hackett and Ms Amanda Pettett. The Respondent has isolated himself from his fellow lessees by failing to engage with them, including by failing to respond to some attempted communications (see further below). The unavoidable fact is that all four are property owners in the same building and have an ongoing relationship. It would be better for all four if they could re-engage and attempt to work together in all their interests. It is clear to the Tribunal that the Respondent feels somewhat left out after his previous extensive involvement but he is going to have to set that feeling aside if he wants his relationship with his fellow lessees and the management of the building to improve. Many of his complaints were difficult to pin down or unsupported by any evidence which rather suggested that his motive for challenging the service charges was more about such feelings than the alleged unreasonableness of those charges.

2011 Service Charge

8. In 2011 there was a problem of penetrating damp which Mr Coomber, Mr Hackett and Ms Pettett agreed to tackle by asphalting the front entrance steps. The Applicant now seeks a payment from the Respondent of £378.15 as his contribution to the costs of the works. However, the works were carried out before the acquisition of the right to manage. The lessees who agreed to the works are also the members of the Applicant company but they are separate legal entities. The overlapping membership of the lessee group and the Applicant company does not empower the latter to charge for costs incurred by the former. The Respondent's obligation to pay service charges arises under his lease and none of the other lessees are a party to that lease. Therefore, this charge is not payable by the Respondent, however essential the works may actually have been and irrespective of whether

he would have had to pay if the mechanisms in his lease had been used to trigger his liability.

2012 Major Works

9. In the loft of the building there is a 100-gallon cistern. The Applicant asserts that it is communal, providing a gravity-fed water supply to each flat. Somewhat improbably, given its size, location, the lack of any other cisterns serving the other flats and his lack of any evidence, the Respondent claims that it only serves his flat.

10. In any event, water dripping from the cistern overflow was reported as far back in 2003. In October 2011 Mr Hackett blamed serious damp in his flat on water from the overflow. When Ms Pettett had works done to her flat in 2012, her plumber reported a constant flow of water down the soil stack pipe estimated at 3 gallons per minute. Mr Hackett, Mr Coomber and Ms Pettett each made a number of attempts to contact the Respondent (25th November 2011, 20th and 21st February and 8th and 14th May 2012) in order to arrange for access so someone could investigate the source of the problem but there was no response other than an e-mail on 25th November 2011 in which the Respondent claimed to have investigated the claims himself and found no evidence of any leak from an overflow pipe.

11. Thames Water came to inspect the problem on 14th August 2012. They could also not inspect the loft because the Respondent did not respond to the engineer's knock, despite being seen at the window of his flat, but their report does confirm the water overflow problem. A meeting of the Applicant company was held the following day, partly in order to discuss this issue. The Respondent claimed to have got too short notice to attend but he did not explain what kept him away, despite being pressed to do so. The other three lessees did attend, Mr Coomber coming in especially from where he lives in Devon, and agreed to arrange for remedial works to address this problem and overdue external decorations. Scaffolding was to be required for both.

12. The Applicant did not consult further or carry out a tendering process. Mr Martin Beglin was recommended to Mr Hackett by a neighbour and he was appointed to carry out the works. After the scaffolding had been erected, the roof hatch was cut through (the Respondent had apparently bolted it from the inside) and the cistern inspected. It was found that the ballcock was severely corroded and that the Respondent had tied it up so that it was not operating.

13. Mr Coomber presented a document which he said summarised Mr Beglin's work, save that the roofing work had been sub-contracted:

- Exterior redecorations as per schedule (inc paint and materials) £3,860
- Guttering/downpipes and soil pipes – clean, repair and reseal £280
- Roofing works, chimney pot repair and repointing, roof slates, etc

£1,100

- Loft hatch inspection, cut-out, replace with galvanised zinc hatch £480
- New front door repair, fittings and locks £320

14. The Respondent complained that the work was not done satisfactorily but his only specific complaint was that an unqualified roofer had been used and a further roof repair was required – he said it was three months later but it turned out to be a year later. As with a number of his allegations, he had no evidence to support his claim. Although he was right that another roof repair was required, namely the replacement of some dislodged slates, there was no evidence that it was connected in any way with the earlier works.

15. The more significant issue in relation to these works was that it resulted in a charge of more than £250 for each service charge payer and so triggered the statutory consultation requirements. The Applicant concedes that they did not comply with those requirements. The Tribunal is concerned that the Applicant did not even try to get anywhere near the terms or spirit of the requirements – most landlords seeking dispensation will at least have attempted some form of consultation or tendering so that, even though they do not comply fully, they can demonstrate their good intentions by as much compliance as the circumstances allow.

16. Mr Coomber and his fellow members of the Applicant company have a somewhat cavalier attitude to complying with the terms of the lease and statute. For example, the lease clearly puts the obligation for the external decoration of the windows on the lessor but the three members of the Applicant company decided that each lessee should address that by themselves. Mr Coomber appears to be involved in the management of a number of properties and should know better. While it is possible to end up in the right place whatever route is taken, the lease terms and statutory provisions have experience and thought behind them which minimise the risks of things going wrong. Moreover, other parties will conduct themselves on the basis that the terms and provisions will be applied and, if they are not, time- and resource-consuming disputes are far more likely to arise. While the Respondent may well have ended up in the Tribunal anyway, the Applicant's compliance failures made it less likely that litigation could be avoided and increased the number of issues in dispute.

17. The law relating to dispensation from the statutory consultation requirements was explained by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854. Under the law as it was understood before that case, it is possible that the Applicant would have failed to obtain dispensation. However, the principal issue now is whether the lessee who was not consulted in accordance with the statutory provisions has been financially prejudiced by that lack of consultation. The Respondent said that, if consulted, he would have pointed out the lack of qualifications of the roofer and the absence of decorative works to the windows. However, as explained above, there is

no reason to think that the roofer issue had any adverse financial impact while the absence of works to any extent reduces the charges. Beyond that, the Respondent had no submissions or evidence to show any financial prejudice.

18. The Applicant relied on the fact that there had been some previous consultation carried out by the previous agents, albeit that the lessees had unanimously rejected the outcome. The Applicant also asserted that some of the works, including to the cistern, the roof slates and the chimney were both urgent and overdue. Since these issues had been outstanding for months or even years and the members of the Applicant company took four months from the acquisition of the right to manage before they even met to discuss carrying out works, it is difficult for the Tribunal to believe that they could not have gone through the full consultation process or, if not that, at least some consultation or tendering.

19. The evidence suggests that, fortunately enough, the Applicant managed to get the work done adequately and at a moderate price. Given the lack of financial prejudice to the Respondent, the Tribunal has concluded that it would be reasonable in all the circumstances to grant dispensation but the Applicant must not imagine that they will necessarily be able to do the same in similar circumstances in future.

20. On the other hand, the Respondent should also not imagine that the Tribunal's criticism of the Applicant's approach is a vindication of his position. Time and again when pressed by the Tribunal, he could not come up with any realistic, substantive challenge to the service charges he was being required to pay, as further exemplified by the matters discussed below.

Service Charge Demands

21. The next item provides another example of the Applicant's unsatisfactory approach. For most of the period since the acquisition of the right to manage, the Applicant did not comply with the statutory provisions or guidance relating to demands for service charges. On 2nd November 2015 Mr Coomber sent to the Respondent for the first time a demand for service charges which was accompanied by the Summary of Rights and Obligations required under section 21B of the Act and accounts for the years 2012-2016. Prior to that, he had simply sent e-mails from time to time demanding contributions to various items of expenditure. Mr Coomber did not include copies of these e-mails in the bundle for the Tribunal hearing but it is noteworthy that the Respondent did not deny that he had received them.

22. In accordance with section 21B(3) of the Act, the Respondent was entitled to withhold his service charges unless and until the requirement under section 21B(1) to serve the aforementioned Summary had been complied with. Now that the Applicant has finally

complied, the Respondent no longer has that entitlement – the effect of section 21B(3) is only suspensory, not permanent.

23. Under section 20B(1) of the Act, service charges must be properly demanded within 18 months of the expenditure being incurred. Under section 20B(2), the 18-month cap can be avoided by notifying the lessee of the relevant expenditure. Fortunately for the Applicant, Mr Coomber's e-mails demanding payment constitute sufficient notification under section 20B(2), so the cap does not apply to charges included in the November 2015 demand.

24. The Applicant has been using the same bank account for the service charges as was used by the previous agents. The Respondent had been concerned that £991 left in that account at the time when the right to manage was acquired might not have been credited against service charges. The accounts finally served in November 2015 accounted for this sum.

2013 Internal Works

25. In 2013 the Applicant instructed Jamie White to carry out internal works for £700 plus VAT. Originally, the cost was going to be split equally between the four lessees but Mr Hackett's flat has its own separate entrance and he does not use the relevant common parts. Therefore, the cost was split between the other three lessees.

26. This different apportionment is permitted under the lease. Under paragraph 35 of the Fifth Schedule, the Respondent is obliged to pay 25% of relevant expenditure but it is 33□% for expenditure in connection with paragraph 8 of the Sixth Schedule:

    (a) To keep properly lighted the passages landings and staircases and all other parts of the Reserved Property normally lighted and enjoyed or used by the Lessee in common as aforesaid

    (b) to furnish and refurnish with floor covering the interior of the Reserved Property of such style and quality as the Lessors shall from time to time in their absolute discretion think fit

27. The Respondent complained in his written submissions that the works were unsatisfactory in that his entrance door was painted while it was closed, the hall mirror and window curtains were removed but not replaced and the agreed colour scheme was changed at the last minute. He did not provide any evidence in support, explain why these matters would or should make a difference to the charge for the work or propose an alternative figure.

28. There is no reason to think that the works were not necessary or properly carried out. In the circumstances, the Tribunal is satisfied that this expenditure was reasonably incurred and the resulting service charge is payable.

Asbestos Survey and Fire Risk Assessment

29. The Applicant paid £234 for an asbestos survey and £150 for a fire risk assessment. The Respondent did not challenge that they should have been done but objected to the cost being split three ways again rather than four. The Applicant gave the same justification for the differing apportionment as in relation to the internal works. However, the only expenditure for which 33□% is the correct apportionment rather than 25% is that which comes under paragraph 8 of the Sixth Schedule. The only paragraph of the Sixth Schedule which the asbestos survey and fire risk assessment could come under is paragraph 13. They certainly do not come under paragraph 8 (as quoted in paragraph 26 above).

30. Correctly apportioned, the Respondent's charge for the asbestos survey reduces from £78 to £58.50 and for the fire risk assessment from £50 to £37.50 for a total reduction of £32.

Conclusion

31. The Applicant has succeeded in establishing the reasonableness and payability of all the charges claimed save for the 2011 charge and the apportionment used for the asbestos survey and fire risk assessment. The total claimed has been reduced by £410.15 from £4,858.57 to £4,448.42 which is the sum the Respondent should now pay to the Applicant.

Name: NK Nicol **Date:** 19th May 2016

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 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—
   "qualifying works" means works on a building or any other premises, and
   "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
   (a) if it is an agreement of a description prescribed by the regulations, or
   (b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognized tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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.

Section 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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.