12407

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AX/LSC/2017/0181**
Property	:	**56B Brighton Road, Surbiton, Surrey, KT6 5PL**
Applicant	:	**Ms Zoe Andrews**
Representative	:	**In person**
Respondent	:	**Peter Steward (trading as JP Developments)**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge Dickie** **Mr C Gowman MCIEH**
Date and venue of Hearing	:	**25 September 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**25 September 2017**

DECISION

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 service charge years 2013/14 to date.

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

The hearing

3. The applicant appeared in person at the hearing accompanied by her mother and the respondent appeared in person.

The background

4. The subject property is a period building comprising a shop on the ground floor and three flats (one in the basement and two above ground floor level). 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.

5. The respondent is the freeholder and trades as JP Developments. The applicant 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 lease is dated 19 April 1984 and the term was extended in a supplemental lease dated 20 Fenruary 2003 for a period of 99 years from 25 March 1999.

6. Under Clause 2 of the lease the tenant covenants:

"(9) To pay to the landlord one third of the cost of:

(a) maintaining repairing renewing cleansing repainting and redecorating and otherwise keeping in good tenantable condition the whole of the building including the roof roof timbers foundations and all walls drains pipes wires and cables gutters downpipes cisterns and tanks used in common by the tenants owners and occupiers of the property provided that this shall not include the cost of repairing renewing cleansing repainting and redecorating the shop front included in the building

(b) insuring the said building in accordance with the Landlord's covenants hereafter contained

(10) To pay to the Landlord one half of the cost of cleansing maintaining repairing and redecorating the hallway and staircase shown edged in blue and brown on the said plan."

The issues

7. At the start of the hearing the parties identified the relevant outstanding issues for determination as follows:

(i) Fee for arranging a Fire Safety Report for the year 2016/17 - £166.66

(ii) Insurance credits for the years - 2013/14 – 2015/16

8. The parties agreed that there were no other items in dispute, all other service charges challenged in the application having been settled by a credit from the respondent to the applicant's service charge account issued on 20 June 2017. The applicant asked the tribunal in narrative form to settle a number of other questions concerning her rights as leaseholder, but these were outside of its jurisdiction under s.27A of the Act.

9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the issues as follows.

Arrangement of Fire Safety Report

10. The disputed item was described in the applicant statement of account as:

"Extras: Fire safety report required by law, arrangement of 3 quotes, visiting site and final assessment of report. Implementation of works following report to follow."

11. The applicant disputed that management fees could be charged by the landlord under the terms of her lease, and contended that this fee was in fact nothing more than a management fee.

12. Ditton was the managing agent Mr Steward had used to manage this property until recently (though their management fees had been disputed by the applicant in these proceedings and refunded to her by way of the above mentioned credit). Mr Steward said that his step-sister was involved in running this business. The tribunal noted that the address for Mr Steward on the supplemental lease was the same as the address for Ditton Property Management ("Ditton") and for JD Developments. Its invoice did not record that Ditton is a limited company. Mr Steward said he was not aware if Ditton is a limited company or a trading name, but given his close association with the business the tribunal does not find this credible.

13. Mr Steward said that he contracted Ditton to arrange the fire safety report. The service charge demand implied that the arrangement of three quotes for the report had been carried out by Ditton which raised an invoice "To implement a fire safety report for the above property".

14. One other quotation was produced. It was from Wallakers chartered surveyors and address to "Peter Steward at Ditton Property Management." It was for the preparation of a fire safety report for 56 Brighton Road at a cost of £750 plus VAT. Mr Steward said he had also

obtained a quotation from Grinley Taylor chartered surveyors. Mr Steward confirmed in evidence that it was he who had obtained the three quotations for a fire safety report, not Ditton. There was therefore inconsistency in his account in that he acknowledged that he personally sought quotationss and the invoice was addressed to him.

15. The fire safety report was ultimately obtained from Capital Fire Risk Assessments UK Limited, and was produced in evidence. The invoice showed that it carried out a fire risk assessment in respect of four properties in the area (all with KT postpodes), and invoiced Ditton £600 plus VAT (£720). Mr Steward confirmed that these were all properties owned by him. The applicant did not dispute she was liable to pay £50 for the fire safety report under the terms of her lease (being one third of the £600 cost apportioned between four properties). The VAT was not charged and Mr Steward did not seek to charge it.

16. Mr Steward confirmed that the Ditton invoice was not for carrying out the recommendations in the fire safety report. He claimed that Ditton had charged him £500 plus VAT to obtain the fire safety report for the apportioned cost of £150 for 56 Brighton Road only (and had charged separate invoices for obtaining the fire safety report on the other three other properties mentioned on the invoice). No evidence was produced to support this assertion, which given the disproportionate cost of arranging the report as opposed to the actual production of the report, the tribunal does not find credible or reasonable.

17. The tribunal notes that the estimate from Wallakers was for this property only, and did not therefore include any economies of scale (as the Capital Fire Risk Assessments invoice did)

18. As a matter of law, if an individual landlord wants to employ managing agents and recover the cost from the leaseholder, he must include express provision in the lease permitting this. In the present case, there is no such express provision in the lease and it cannot be implied for routine management services by an individual landlord.

19. The tribunal has considered whether on the facts of this case the services provided by Ditton were not routine management, but were part of the landlord's expenditure on contracting a specialist professional service in commissioning a fire safety report. However, there was insufficient and inconsistent evidence to demonstrate the services Ditton had in fact carried out, or to show that the cost was reasonable in amount and reasonably incurred. The tribunal finds that this is a management fee irrecoverable under the lease terms, and not part of the landlord's expenditure under Clause 2(9) or (10) and the tribunal disallows the sum of £166.66 claimed as a service charge.

Insurance credits for the years - 2013/14 – 2015/16

20. 2013/14 – An amount of £345 for insurance was demanded and paid. The respondent has produced evidence that the premium was £390.15. The applicant's share is therefore £130.05 and she has received a creidt for £215.00 (£0.05 more than she is due).

21. 2014/15 - An amount of £355 was demanded and paid for insurance. The applicant did not dispute that the actual cost of insurance was £385 and that her third share was £128.33. She has been credited £225, and the respondent did not dispute that the applicant is entitled to a further credit of £1.67.

22. 2015/16 – An amout of £385 was demanded and paid for insurance. The applicant did not dispute that the actual cost of insurance was £385 and that her one third contribution was £128.33. She has been credited £255 and the respondent agreed she is entitled to a further credit of £1.67.

23. The tribunal accordingly determines that the applicant is entitled to a refund in respect of insurance of £3.29.

Application under s.20C and refund of fees

24. The applicant has paid an application fee of £100 and a hearing fee of £200 (though in her application she said she would be content with a determination on the papers). Taking into account the applicant's overall success in these proceedings, the tribunal orders the respondent to refund £300 in fees to the applicant within 28 days of the date of this decision.

25. In the application form the applicant applied for order under section 20C of the 1985 Ac and under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Although the landlord indicated that no costs in these proceedings would be passed on to the tenant for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for orders to be made under both of the aforementioned provisions, so that the respondent may not recover any of its costs incurred in connection with the proceedings before the tribunal as a service charge or administration charge.

Name: F. Dickie **Date:** 25 September 2017

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 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.