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**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case reference** | : | **LON/00AC/LSC/2015/0173** |
| **Property** | : | **66C Friern Park London N 12 9LA** |
| **Applicant** | : | **Ms H Kiamil** |
| **Representative** | : | **N/A** |
| **Respondent** | : | **Dr P M Ashbridge and Mr C A Asbridge** |
| **Representative** | : | **N/A** |
| **Type of application** | : | **For the determination of the reasonableness of and the liability to pay a service charge** |
| **Tribunal members** | : | **Judge Carr**<br>**Mr Gowman BSc MCIEH** |
| **Date and venue of determination** | : | **11th August 2015**<br>**10 Alfred Place, London WC1E 7LR** |
| **Date of decision** | : | **11th August 2015** |

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**DECISION**

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## Decisions of the tribunal

(1) The tribunal determines that the sum of £66.66 is payable by the Applicant in respect of the service charge demand for works to the external sill.

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

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessee through any service charge.

## The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years.

2. A Case Management Conference was held on 26th May 2015 which was attended by Ms Kiamil and Dr Ashbridge. At that CMC the Tribunal decided to determine the matter on the basis of papers submitted by the parties rather than convene a hearing. The parties were given an opportunity to request a hearing. As no such request has been made, this determination is being reached on the basis of paper submissions.

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

## The background

4. The property which is the subject of this application is the top floor flat of a Victorian house converted into three flats. The flat has one bedroom.

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.

6. 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 specific provisions of the lease and will be referred to below, where appropriate.

## The issues

7. At the CMC the parties identified the relevant issues for determination as follows:

   (i) Whether on construction of the lease dated 17th December 1991 together with the variation of the lease dated 16th May 2005, the Applicant is required to contribute to the cost of repairs to the external sill of flat 66B in the sum of £66.66.

   (ii) Whether the costs of the lock change at the premises in the sum of £161.75 is payable in full by the Applicant either as an Administration charge or as a Service Charge in accordance with the lease.

   (iii) Whether an order under section 20C of the Landlord and Tenant Act 1985 should be made

   (iv) Whether an order for reimbursement of the application/hearing fees should be made

8. Having read the submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

## Payability of service charge demand in relation to the cost of repairs to the external sill of flat 66B

9. The payability of the service charge demand of £66.66 being the applicant's share of the costs of repairing the external window sill to flat 66 B is dependent upon the terms of the lease.

10. The applicant argues that the sum is not payable under the lease. She quotes from clause 1 of the lease to argue her point. '...the Landlord HEREBY DEMISES unto the Tenant FIRST ALL THAT flat on the second floor including ...therein the glass and sashes of the windows and the window frames... but excluding the main structure of the building and all external parts thereof... '

11. She states that she contacted the Leasehold Advisory Service on two separate occasions for advice on the matter. They advised that they agreed with her understanding of the lease that each flat is individually responsible for the windows to their property, including the frame, the wooden window sill and the sashes and the glass.

12. The respondent argues that clause 2(xii) of the lease requires the applicant to pay to the landlord 'a contribution of one third of the costs

and expenses (and reasonable accountancy and management fees) incurred by the landlord in carrying out such work as may be reasonable and necessary for the proper maintenance repair and decoration of the exterior of the building.

13. A further clause, 3(2), of the lease adds a requirement on the landlord ' to keep the roof and structure and foundations and common parts and common services of the building in a proper state of condition decoration and repair including in every fourth year of the term the repainting of the exterior.

14. The respondent argues that the external parts of all three flats are excluded from the demises to leaseholders.

## The tribunal's decision

15. The tribunal determines that the demise to the applicant excludes the external parts of the window frames and that therefore the applicant is responsible for one third of the costs of external redecoration of the window frames.

## Reasons for the tribunal's decision

16. Whilst the demise of the property appears confusing because it simultaneously includes the window frames and excludes the external parts thereof, the tribunal considers that the proper reading of the demise excludes the external parts of the window frames and that therefore the landlord has a responsibility to maintain them and the ability to make service charge demands in connection with their maintenance.

17. Such a reading accords with the landlord's responsibilities to decorate the exterior of the building every four years.

## The payability of the charge levied by the respondent for changing the lock to the front door of 66 Friern Park

18. The changing of the lock arose in the context of a long standing dispute between the parties about responsibilities for redecorating the exterior of the property. It is hoped that the tribunal's determination of the extent of the demise will help the parties resolve this dispute in the future. However the payability of the charge levied by the respondent following her changing the lock to the common front door of the property depends upon whether there is a clause within the lease enabling her to make such a charge.

19. The applicant argues that the 'control you have taken over our shared front door is excessive and unacceptable'. Despite a clear direction from the tribunal she does not refer to any clauses in the lease.

20. The respondent in a letter to the clerk to the tribunal refers the tribunal to clause 2(vi) of the lease and to the responsibility of the applicant to indemnify the landlord. The respondent also expresses concerns that the applicant, by inviting her brother to stay in the property whilst she was on holiday, was in some way, invalidating the insurance to the property.

## The tribunal's decision

21. The tribunal determines that there is no power in the lease enabling the respondent to charge either as a service charge or as an administration charge a sum for replacing the lock to the front door of the property in the manner in which she did. Therefore the sum of £161.75 is not payable by the applicant.

## Reasons for the tribunal's decision

22. The tribunal notes that the clause of the lease referred to by the respondent relates to the responsibility of the parties, and the tenant in particular, to observe and comply with statutes and regulations and to indemnify the landlord in respect of any costs etc in respect thereof. This clause is not relevant to the changing of the external lock.

23. The tribunal could not locate a clause within the lease that entitled the respondent to make the charge she did and therefore the sum is not payable.

## Application under s.20C and refund of fees

24. The Applicant, at the case management conference made an application for a refund of the fees that she had paid in respect of the application. Having read the submissions from the parties and taking into account the determinations above, the confused nature of the submissions from both parties and the proportionality of the matter, the tribunal does not order the Respondent to refund any fees paid by the Applicant.

25. The Applicant also applied for an order under section 20C of the 1985 Act. Having read the submissions from the parties and taking into account the determinations above, the tribunal determines that in this particular case, given the history of the dispute between the parties and the relatively small sums of money at stake, the parties should each bear their own costs and therefore the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of

its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Judge Carr **Date:** 11th 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).