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

**Case Reference** : **LON/00AH/LSC/2015/0278**

**Property** : **Flat C, 5 Troy Road,  
London SE19 3SU**

**Applicant** : **Ms Y Kellerman**

**Representative** : **In person**

**Respondent** : **Mr P Jackson**

**Representative** : **Mr R Dyer  
Director of VFM Property  
Management**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal Members** : **Judge J E Guest  
Mr H Geddes**

**Date and venue of  
Hearing** : **17/09/2015  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **28/09/2015**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £1,298.00 is payable by the Applicant in respect of the estimated service charges for the period from 29/09/2014 to 28/09/2015.
- (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 lessees through any service charge.
- (4) The tribunal determines that the Respondent shall pay the Applicant £315.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

### **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 estimated service charges payable by the Applicant in respect of the service charge year for the period from 29/09/2014 to 28/09/2015.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicant appeared in person and her sister, Ms J Kellerman, was also present for support. The Respondent was represented by the director of the managing agents, VFM Property Management, Mr R Dyer.
4. Directions were given by the Tribunal at a case management hearing attended by the Applicant and Mr Dyer on 23/07/2015. In accordance with those directions, a bundle of documents was prepared by the Applicant that was considered by the Tribunal.
5. During the course of the hearing, the Applicant also provided the Tribunal with a letter dated 01/07/2015 with accompanying tender summary in respect of a major works consultation. This document was also considered by the Tribunal.

## **The background**

6. The property which is the subject of this application is a three bedroom flat situated on the first floor of a three storey detached house divided into three separate self contained flats. In addition to the property, there is a one bedroom flat at basement level (*“Flat A”*) and also a one bedroom flat on the ground floor (*“Flat B”*). The property and Flat B share a communal entrance and small hallway at ground floor level whilst Flat A has its own entrance. Access to the property is via a separate door within the communal hallway so that the staircase to the property is situated within the demise. Flat A has exclusive use of the rear garden.
7. 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.
8. The Applicant has owned the leasehold interest of the property for about 8 years. Until managing agents were appointed in September 2014, the Respondent demanded only a share of the building insurance and ground rent. No other service charges were demanded.
9. After the appointment of managing agents, a demand was served on 09/01/2015 for a payment on account of service charges for the period from 29/09/2014 to 24/03/2015 in the sum of £963.17. This was based on a budget prepared by the managing agents, which amounted to a total of £5,779.00 for the period from 29/09/2014 to 28/09/2015 for the three flats. These estimated charges were apportioned equally between the three flats so that each leaseholder was required to pay £1,926.33 for the 2014/2015 service charge year.
10. The Applicant had not expected such a demand for payment of service charges. The Applicant was understandably concerned and she consulted solicitors for advice. Following correspondence between the Applicant and the managing agents, a revised statement of account was sent on 08/05/2015, as the Respondent had agreed that communal electricity costs of £300.00 had been wrongly included in the budget. This was because the electricity supply to the communal hallway is actually included in the electricity supplied to Flat B. The sum claimed from the Applicant, therefore, was reduced to £1,826.33. The Applicant referred these charges to the Tribunal.
11. 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 issues

12. The Tribunal heard that the property has been the subject of water ingress over the course of a number of years. The Applicant informed the Tribunal that there have been leaks due to roof defects and water penetration as a result of defects to a flank wall. The Applicant said that the Respondent had failed to remedy these defects and that she had suffered loss (namely damage to decorations estimated in the region of £2,000 to £3,000), inconvenience and distress as a consequence.
13. It had been suggested at the case management hearing that the Applicant could put forward a 'counterclaim'. The Tribunal may only consider a set off against the service charges that it is required to determine. The Tribunal does not have jurisdiction to award damages in respect of a claim for breach of contract.
14. In view of the above, the Applicant decided that she did not wish to pursue a 'counterclaim' within these proceedings and she may, instead, bring a disrepair claim in the County Court if no settlement can be reached.
15. Therefore, the issues to be decided by the Tribunal related to the reasonableness of the estimated service charges for the period from 29/09/2014 to 28/09/2015. Of those charges, the building insurance, accountancy fees and managing agents' fees were not in dispute. During the hearing, Mr Dyer conceded that it was not appropriate to seek a contribution into a reserve fund at present, given that major works were planned following completion of a s.20 consultation in August 2015.
16. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows:

### **(1) Emergency help line £121.00**

## The tribunal's decision

17. The tribunal determines that the amount is disallowed in full.

## Reasons for the tribunal's decision

18. Mr Dyer confirmed that there is no requirement under RICS Code or the ARMA Standards for an out of hours service to be provided and he informed the Tribunal that leaseholders can have the option of being advised as to what action to take in an emergency. The Tribunal also

heard that the managing company manages a total of 40 freeholds, including estates, with a total of about 600 flats and that only about 7 or 8 of those freeholds have an out of hours service.

19. The Applicant and the other leaseholders have not asked for such a service to be provided.
20. Given the above and taking into account the size and nature of the building, the Tribunal did not consider it necessary and, therefore, reasonable for a helpline to be provided.

**(2) Repairs and Maintenance £500.00**

**The tribunal's decision**

21. The tribunal determines that the amount is payable in full.

**Reasons for the tribunal's decision**

22. Although there has been a consultation in relation to major works, it is in the nature of property management that other works may nevertheless be required. Therefore, it is appropriate to make some provision in the budget for repairs and maintenance.
23. Given the nature and size of the building, the Tribunal considered that this was a reasonable amount. It may be that no other works are carried out. In such circumstances, the Applicant will not bear the cost as there is provision in the lease for any over paid service charges to be applied against the service charges estimated for the following year. It is also hoped that this would be taken into account when the managing agents produce in budgets in future.

**(3) Sundry expenses £200.00**

**Tribunal's decision**

24. The tribunal determines that this amount is disallowed in full.

**Reasons for the tribunal's decision**

25. Other than sending post by recorded delivery and dealing with extraordinary requests from leaseholders, Mr Dyer was unable to give any other examples of the sundry expenses that may be incurred.
26. In view of the level of management fees and the limited nature and level of service provided by the managing agents, the Tribunal considered

that it was reasonable that the managing agents' fees should incorporate sundry items. The summary of service in the managing agents' contract includes services that will not be provided, such as gardening, cleaning communal parts and arranging communal lighting. It was noted that the managing agents' fees have not be reduced to reflect this reduced service.

**(4) Health & Safety (Fire Risk Assessment Recommendations)  
£750.00**

**Tribunal's decision**

27. The tribunal determines that this amount is disallowed in full.

**Reasons for the Tribunal's decision**

28. Mr Dyer informed the Tribunal that a combined fire safety and asbestos assessment had been undertaken in recent weeks. The Tribunal heard that no fire safety recommendations had been made. Accordingly, the charge is not reasonable, as such costs will not be incurred.

**(5) Statutory fees and charges £600.00 (in total)**

**Tribunal's decision**

26. The tribunal determines that this amount is allowed in full.

**Reasons for the tribunal's decision**

27. The managing agents are under a statutory obligation to arrange such assessments. Mr Dyer informed the Tribunal that a saving had been made as a joint survey had been carried out in relation to both the fire risk and asbestos survey so that a saving had been made. Although no fire risk assessment recommendations were made, the property was found to have an asbestos coating to the ceiling of the communal hallway, which will require monitoring.

28. The tribunal considered that the estimated costs were not unreasonable given that a survey had to be undertaken, which included a laboratory analysis.

**(6) Section 20 fees £550.00**

**Tribunal's decision**

29. The tribunal determines that this amount be reduced to £336.00 (inc. VAT).

**Reasons for the tribunal's decision**

30. The tribunal heard from Mr Dyer that the managing agents had prepared two statutory notices. These were largely but not entirely standard documents. The tribunal also learnt that the managing agents receive a payment of 15% of the costs of the works so they are otherwise recompensed for the time spent undertaking the tendering process.
31. Given the above, the tribunal considered that a total of 2 hours was reasonable to prepare the notices. The managing agents charge £140.00 per hour (plus VAT) so a total of £336.00 (incl. VAT) was found to be reasonable.

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

29. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application (£125.00) and hearing<sup>1</sup> (£190.00). The fees total £315.00.
30. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
31. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, 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.
32. The Respondent demanded revised service charges totalling £1,826.33. As a result of this decision, these charges have been reduced to £1,298.00. This represents a significant reduction. The Applicant was clearly justified in making the application. The Applicant also sought to resolve issues without resorting to making an application, in particular

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

she requested a meeting with the managing agents in a letter dated 22/03/2015, but the managing agents failed to respond.

**Name:** Judge J E Guest

**Date:** 28/09/2015



## **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).