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

Case reference : **LON/00AY/LSC/2015/0520**

Property : **Flat 2, 5 Deerbrook Road, London
SE24 9BE**

Applicant : **Southern Land Securities Limited**

Representative : **Hamilton King Management
Limited**

Respondent : **Janinder Singh Supple**

Representative : **Self**

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

Tribunal members : **Judge Hargreaves
Michael Taylor FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **7th March 2016**

DECISION

Decisions of the tribunal

- (1) For the reasons given below, the tribunal determines that (i) the sum of £629.17 is payable by the Respondent in respect of the service charges for the year ending 31st December 2014 (less the sum of £84.80 which has been re-credited to him in respect of his share of a repair bill for £254.40: see p11A) (ii) the sum of £699.30 is payable on account of the year ending 31st December 2015 and (iii) the sum of £899.33 is payable on account of the year ending 31st December 2016.
- (2) For the avoidance of doubt 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 Respondent in respect of the service charge years ending 31st December 2014, 2015 and 2016. The amounts claimed are set out in the Applicant’s application form which was received in December 2015. The sums claimed for 2015 and 2016 are “on account” or “anticipated” claims but this does not affect the exercise undertaken by the tribunal so far as the “reasonableness” of the service charges is concerned, as the Respondent will have the benefit of any balancing exercise if appropriate.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. The parties have consented to the disposal of the matter on paper, as opposed to having an oral hearing. Directions were given on 23rd December 2015. The tribunal has been assisted by the paginated bundle prepared for the hearing, and in particular by the fact that the relevant demands and invoices have been produced in the bundle. In addition the tribunal has read the statements and correspondence between the Respondent and the managing agents who act for the Applicant and understand how the dispute has “travelled”. In this respect the tribunal is also assisted most by the schedule produced by the parties at p1-11 of the bundle. In producing the global figures set out above, the tribunal has focused on the “reasonableness” of the particular amounts claimed by the Applicant rather than conducting a mathematical exercise to determine the precise balance due to the Applicant, which is not necessarily straightforward on a paper determination, particularly where the bundle shows detailed and protracted correspondence has taken place and some payments have now been made. The Respondent summarised his position in an email to the tribunal dated 2nd February 2016, which does not make out any detailed case on “reasonableness” as such. It appears to the tribunal that the Applicant’s representative

has in fact made a considerable effort to answer the Respondent's queries.

4. Furthermore, although not directly relevant, the Applicant's representative has taken a pragmatic stance in relation to certain charges, for example, in waiving contractual interest otherwise payable on unpaid accounts, in order to "draw a line under this matter." Part of the background to the dispute is that the Applicant's representatives were appointed as managing agents in July 2014 and have, contrary to the previous agents who did no more than collect ground rent and insure the property, taken a more pro-active role in the approach to managing the property. As is often the case this has generated an increase in service charges, but the mere fact of an increase is not evidence that the charges themselves are unreasonable or have been unreasonably incurred. For example, certain steps have been taken which have not been carried out previously, such as undertaking a fire risk survey, and obtaining additional insurance.
5. Certain items which are referred to in the bundle are no longer matters for the tribunal eg payments of ground rent and the invoice for repairs caused by a leak (subsequently re-credited to the Respondent's account see eg p31, p40 and p11A).

The background

6. The property which is the subject of this application is a first floor flat in a three storey conversion.
7. The Respondent holds a long lease of the property dated 21st March 1988 (p88) which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
8. Of particular relevance are the following definitions and provisions. The maintenance charge percentage is 33% and the annual payment on account is (at least) £150. These form part of the rents payable in accordance with clause 1 of the lease, payable in advance on 1st January every year. Paragraph (ix) of the First Schedule defines the "maintenance year" as 1st January-31st December, and see paragraph (x) as to the "maintenance charge" and the "maintenance fund". These have to be read with the Fifth Schedule (p96) which clearly provides for payments to be made on account, to be certified by the Applicant's managing agents. Once these provisions are understood, then many of the Respondent's "in principle" objections to paying in advance fall away: the Applicant is entitled to raise sums referable to maintenance in advance because the lease provides for that in the Fifth Schedule.

9. The Eighth Schedule to the lease (p107) sets out the costs and expenses which can be charged to the maintenance fund. In particular these provisions extend to insurance, complying with statutory requirements, the cost of employing managing agents and surveyors, the cost of auditing the accounts of the maintenance fund, and any sum required by way of "reasonable provision" towards accumulating a "Reserve Fund". All the disputed items are recoverable as a matter of construction of the lease.
10. The tribunal takes the view that bearing in mind the Applicant's ability to issue demands on account, the best approach is to take the items listed in the relevant disputed service charge demands and making a finding on each as the annual fluctuations are small. The relevant demands are at p22 (2014 actual, dated 31st March 2015, audited), p13 (anticipated 2015, dated 25th December 2014), p14 (anticipated 2016, dated 25th December 2015).
11. **Accountancy:** the relevant figures are respectively £269, £269 and £274, of which the Respondent's share is one third. The amounts claimed whether actual or on account, are reasonable, and there is no evidence to the contrary from the Respondent. The anticipated claims, furthermore, are based on the actual figure for 2014.
12. **Electricity:** included for the avoidance of doubt, but as the Respondent accepts, the figures claimed (£58.26, £75, £145) are reasonable and payable.
13. **Insurance premium:** although various issues are raised by the Respondent, there can be no doubt on the basis of the documents before the tribunal, that the figures for insurance (£894.55, £894, £1050), see p35-39 of the bundle, are reasonable. No alternative quotes have been provided and there is no basis for any suggestion that the figures are too high. The Respondent's complaints are not properly directed at the reasonableness of the sums: again, an increase is not evidence of unreasonableness.
14. **Terrorism cover:** There is now no doubt that terrorism cover, if landlords wish to acquire it, is generally acceptable as a matter of principle. Again, as to the amounts in dispute (£170.53, £170, £194), the tribunal finds on the basis of the evidence in the bundle (with nothing to undermine the figures claimed which are evidenced), that they are reasonable.
15. **Repairs:** although there appears to be little reason for challenging the modest figures claimed for repairs (the £254.49 which has in fact been re-credited, with £450 and £450 for anticipated expenditure for 2015 and 2016), and it looks as though the Respondent is on the verge of accepting liability for his share subject to clarification of the invoice which has been re-credited, for the avoidance of doubt the tribunal has

concluded that the service charges as levied are reasonable in this respect, especially when a one third share is calculated.

16. **Management fees:** The Applicant claims £240.39 in respect of roughly half a year for 2014, and on that basis the sum of £240, probably by mistakenly extrapolating the same figure forwards, for 2015. The figure for 2016 is £510, which is probably more accurate. Taking the latter figure as a test figure, the actual and anticipated figure is coming in at less than £200 per unit, and that is below a figure which is accepted as reasonable in terms of current market charges. It follows that all the figures claimed for management fees, actual or anticipated, are reasonable in the context of managing this type of property.
17. **Alarm/emergency lighting:** this is an item which appears in the anticipated budget/demand for 2016 (p14) in the sum of £75. Although the Respondent has paid this, it has been queried: the answer is provided by the Applicant at p49-71 of the bundle and for the avoidance of doubt, the tribunal confirms that the amount claimed is both reasonably incurred and reasonable.
18. **s20C:** no application has been made to the tribunal by the respondent, but for the avoidance of doubt, no order would be made if it had. The Applicant has been successful on all counts and the Respondent has failed to make any serious challenge to the reasonableness of any sums claimed for the reasons given above.

Judge Hargreaves

Michael Taylor FRICS

7th March 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 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).

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).