12367

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AZ/LDC/2017/0156**
Property	:	**Flats A – G, 26 Duncombe Hill, London SE23 1QB**
Applicant	:	**Ms Renee De Villiers (Flat A) Mr Matthew Benny (Flat C) Mr Yoav Zeevi (Flat F)**
Representative	:	**Ms De Villiers**
Respondent	:	**Orchidbase Limited**
Representative	:	**Michael Richards & Co**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge O'Sullivan Ms M Krisko FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**8 September 2017**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the management fees shall be reduced as set out below.

(2) The tribunal finds the sum of £3,867.50 to be reasonable in relation to the cost of removing and rebuilding the boundary wall and all associated works.

(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.

The application

1. The applicants seek 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 applicants. The tenants also seek an order for the limitation of landlord's costs under section 20C.

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

The hearing

3. The applicants were represented by the leaseholder of Flat A, Ms De Villiers. The respondent was represented by Mrs Burr, the property manager of the Property since April 2017.

The background

4. The property concerned is described in the application as large converted 3 storey (ground floor/first floor and upper floor level) residential building constructed in the 1900s and converted in the 1990s into 7 self contained flats known as Flats A-G, 26 Duncombe Hill, London SE23 1QB (the "Property"). 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 applicants each 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.

6. The tribunal has previously issued a decision dated 27 February 2017 reference LON/00AZ/LDC/2017/0007 in relation to the Property which granted dispensation in relation to works carried out.

7. Directions were made in this matter dated 6 June 2017 further to which a bundle was lodged by the applicants in readiness for the hearing.

The issues

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

   (i) The payability and/or reasonableness of the management charge for the years 2011/12 to 2015/16.

   (ii) The reasonableness of the costs incurred in relation to the removal and rebuilding of a wall.

9. 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.

The management charges

10. The charges in issue were as follows;

2011/12	£235 plus Vat
2012/13	£235 plus Vat
2013/14	£235 plus Vat
2015/16	£245 plus Vat
2016/17	£300 plus Vat

11. The applicants do not dispute that a management fee is payable but say that the charges are excessive given the limited scope of the service that has been provided.

12. The services are said to be limited as there are no estate inspections/communal cleaning and very little gardening. Repairs are said to be carried out on a reactive rather than proactive basis. The only service said to be offered is a "back office" producing two estimates during the financial year and one final account. In addition the applicants had requested details of the site inspections carried out but only two had been produced after the application for dispensation was challenged. The authenticity of these inspection notes was challenged.

13. The applicants say they have compared these costs against other charges. It is said Circle Housing charge £160 plus Vat per flat when the service level is low, £185 plus Vat for a medium level of service and £248 plus Vat for a high service. However we were not provided with any description of what these levels of service would include. The applicants also rely on quotations received from Home Group whose charges were £124 plus Vat for a low level, £188 plus Vat for a medium level and £248 plus Vat for a high level. We had no written documentation from Home Group within the bundle to support these figures. Based on this it is said that a fee of £124 to £160 per flat would be more appropriate in line with the service provided.

14. It is also said that the managing agents display a lack of care in that they are rude and do not respond. However Miss De Villiers acknowledged that she had not included any emails in the bundle which evidenced poor communication and/or response.

15. Managing agents for the landlord, Michael Richards & Co prepared a bundle of documents on behalf of the landlord. This set out a summary of the work carried out by the landlord to include preparation of service charge budgets, issuing service charge demands, preparing service charge accounts, general management including queries and maintenance issues. The accounts show charges variously for items such as communal electricity, refuse collection, gardening, health and safety surveys, pest control, repairs and maintenance and an accountancy fee. Repairs included such items as repairing security lights, renewing roof slates and so on. Mrs Burr submitted that the fees had not increased for three years from 2012 to 2014 and said that the tenants would not always be aware when inspections took place. She pointed out that all bar one of the tenants were non resident.

16. Mrs Burr also explained that she wanted to develop a more positive relationship with the tenants and was keen to meet with them to move forward.

The tribunal's decision

17. We allow the following management charges as reasonable;

2011/12	£180 plus Vat
2012/13	£180 plus Vat
2013/14	£180 plus Vat
2015/16	£190 plus Vat

2016/17 £200 plus Vat

Reasons for the tribunal's decision

18. We considered the charges to be high for the management services provided. This is not a complicated development. The insurance is carried out by the landlord direct. The majority of work carried out by the landlord is the administration of charges such as the electricity and gardening charges (carried out by a trust and invoiced to the landlord) rather than active management. Although we accept that the landlord does carry out some repairs these would appear to be reactive and limited in nature. There was no evidence that there had been regular inspections and Mrs Burr had only been a manager of the property since April 2017. We note however her willingness to form a more positive relationship with the tenants.

19. We did not consider we could place a great deal of reliance on the applicants' alternative quotations for management charges. They were unsupported by a summary of what would be provided for the varying levels of management and it was clear that neither managing agent had visited the Property to see what management was necessary.

20. Having regard to our experience and expertise therefore we reduced the charges to what we would consider is a reasonable amount for the periods in question.

Cost of rebuilding the wall

21. The applicants also challenged the cost of rebuilding a wall at the Property. These works had been carried out urgently and on 27 February 2017 the tribunal granted dispensation in respect of the same under section 20ZA. We first clarified the amount actually in issue. The projected cost in December 2016 was £4,000. The tenants were later informed that the works cost £5,190 inclusive of Vat with an invoice being produced from Brock & Sons dated 15 December 2016. However it had since become clear that there had been a further invoice from Brock & Son in the sum of £1750 in respect of the removal of the old wall. We were not provided with a copy of that invoice but were informed by Mrs Burr that this was in relation to *"the taking down and cutting out of all bushes and roots including the hire of a skip"*. The total cost of the works was therefore confirmed by Mrs Burr as £6,940.

22. The leaseholders do not challenge the payability of an amount but rather the reasonableness of the cost incurred.

23. The tenants say that the work was not emergency work because it was said to be due to a lack of maintenance over several years. They relied on a survey dated 6 February 2014 commissioned by the leaseholder of

Flat C in which it was stated that "*the front boundary wall is out of plumb and has been pushed over by the retained soil etc and it will be important to monitor this*". This was said to be have been highlighted to Michael Richards & Co. It is also said that Michael Richards & Co does not carry out regular property inspections. The tenants do not believe that the wall was regularly monitored as alleged and say that no evidence has been produced of any such monitoring. It is also said that if the work had taken place in 2014 when it was first identified it would have cost less.

24. It is also said that the landlord only obtained one quotation rather than multiple quotations, no explanation was given as to why the cost had increased so dramatically from that projected in December 2016, there had been an increase from a projected cost of £4,000 to a final cost of £6,940. The leaseholders obtained a quotation from a local contractor MG Services of £3,867.50. The tenants say that the fact only one quotation was obtained suggests that the work was handed to its preferred contractor without any regard to value for money or the impact of the cost on leaseholders. They say it would have been straightforward to obtain a further quotation in the same timescale. The tenants also rely on comments made by a builder on the landlord's quotation.

25. The respondent relies on its statement in its application for dispensation. Ms Awan became the property manager in August 2016 and had monitored the wall since that date. It had previously been monitored by the previous property manager. On 18 October 2016 Ms Awan inspected the property and noted the movement of the wall and that it needed monitoring and that some work may be required. On 2 November 2016 Ms Awan was informed by the contract gardeners that the wall had moved since they last inspected. On 17 November 2016 contractors on site advised that they were concerned about the state of the front boundary wall and that it was leaning towards a public footpath. It was at this stage considered that the wall was in a dangerous state and posing a Health and Safety risk. Advice was then sought from Lewisham Council Public Highways Department. The Council confirmed that if a wall leaned around 50% of its width it would need attention. On 24 November 2017 the freeholder took the decision to take down the wall as emergency works as the risk to users of the busy public footpath was sufficiently high to require immediate action. It was hoped that the rebuilding of the wall would be the subject of consultation. However the soil behind the wall began to move and a further danger arose as the soil and substantial shrubs could also fall onto the public highway. The freeholder made the decision to rebuild the wall immediately. During the works it became clear that the footings were only 100mm in depth and new footings were required to a depth of 500mm. Photographs were provided.

26. It is said that the works were an emergency and not a failure to maintain as the wall deteriorated significantly towards the end of 2016.

Routine inspections had been carried out regularly every six months or more frequently if matters dictate. Surveyors' reports in 2014 reported that the wall was in a stable condition although it was identified that it would need rebuilding at some point. In any event given the inadequate foundations any amount of maintenance would not have prevented the need to ultimately replace the wall.

27. We were referred to a comparison between the Brock & Sons invoice and the tenants' quotations from MG Services within the bundle prepared by the landlord. It is said that the quotation by MG Service was not comparable as it did not contain materials as did the quotation by Brock & Sons. The number of estimated man hours was critisised with the landlord having spent 184 hours and MG Services estimating 88 hours needed. It was also said that the quotation appears to assume that 100% of the original bricks could be reused when this wasn't the case, the provision for materials of £500 was inadequate and the project took 184 man hours when an allowance of only 88 hours was made. However the tenants had produced a further email from their contractor which confirmed that the quotation was for the cost of all works including the cost of all bricks and materials and the deepening of any foundations.

28. The landlord further says that the wall has been rebuilt to a good standard and relies on photographs in the bundle.

29. We would also mention that Miss De Villiers questioned whether she had been charged the correct percentage of the works. It was clarified however that she had been charged 13% of the total of £6,940 in accordance with the percentage in her lease.

The tribunal's decision

30. The tribunal determines that the amount payable in respect of the works to remove and rebuild the wall is £3,867.50.

Reasons for the tribunal's decision

31. We considered that the landlord had ample time from its decision to rebuild the wall to obtain further alternative quotations. We were also of the view that the breakdown provided of Brock & Sons invoice which showed some 184 man hours was wholly excessive. The wall had been removed on 26 November 2016 in one day. It appeared one day had been spent removing soil. It is then said that the wall took approximately 5 days to rebuild. This suggests a minimum of 7 days. In fact 184 hours was charged equating approximately to 2 men spending over 11 days. This appears excessive. Accordingly we considered that the resultant cost was likely to be excessive.

32. The applicants had produced a quotation from an independent company. Although the landlord had suggested this was not comparable in our view it was directly comparable to the works carried out by Brock & Sons. The further email provided by M & G confirmed that the quotation included all materials and the deepening of any foundations thus the cost of removing any roots and/or bushes would also be included. We considered that we could place reliance on this quotation which appeared a reasonable cost to us for the removal and rebuilding of an approximately 8 metre section of wall having regard to our experience and expertise.

33. We would also mention that the February 2014 survey also referred to a possible issue with the right hand boundary wall which was said to be *"out of plumb"* and showed *"evidence of movement cracks"*. Mrs Burr confirmed that this would be monitored and if repairs or replacement were required they would be carried out with full consultation under section 20 of the Landlord and Tenant Act 1985 if appropriate.

Application under s.20C

34. In the application form the applicants applied for an order under section 20C of the 1985 Act. Mrs Burr considered that the lease did not allow for the recovery of legal charges save in relation to a notice under section 146 and so consented to an order under section 20C being made. As a result the respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. In any event the tribunal would have considered it just and equitable to make an order under section 20C given the decisions it has reached.

Name: S O'Sullivan **Date:** 8 September 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 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 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.