12845

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00/AH/LSC/2018/0031**
Property	:	**Flats 1-10 The Red House Apartments, 256 Sanderstead Road, South Croydon CR2 0AG**
Applicant	:	**The Tenants of the Red House Apartments Lead Applicants: Dr Yayganeh Boakye -Acheampong-Chiang and Dr Ishmail Boakye-Acheampong**
Representative	:	**Dr Yayganeh Boakye-Acheampong-Chiang**
Respondent	:	**Assethold Ltd**
Representative	:	**Ms Imram of Counsel**
Type of Application	:	**S27A and s20C Landlord and Tenant Act 1985, Schedule 11 Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Judge F J Silverman Dip Fr LLM** **Mr N Martindale FRICS** **Mr C Piarroux JP**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR** **04 June 2018**
Date of Decision	:	**10 June 2018**

DECISION

1. **The Tribunal finds that the Respondent's charges for building insurance for the year 2017. and estimate for 2018 are reasonable.**

---

2. **The Tribunal finds that the Respondent's proposed estimates for 2018 relating to fire assessment, cleaning and contributions to reserve funds are reasonable.**
3. **The Tribunal makes an order under s20C Landlord and Tenant Act 1985 .**
4. **The Tribunal orders the Respondent to repay to the Applicants their application and hearing fees amounting in total to £300.**

REASONS

1 The property to which this decision relates is a purpose built block of 10 flats in South Croydon. The original application, received by the Tribunal on 18 January 2018, was filed by the persons named above as the Lead Applicants who are the tenants of Flat 1. Since that date the tenants of all the other apartments in the block have asked to be joined into the application and have been treated as joint Applicants. This decision therefore applies to the tenants of all 10 apartments comprising the property. Directions were issued by the Tribunal on 22 February 2018 (page A73).

2 The Respondent purchased the property at auction on 13 February 2017 and is said to have completed its purchase on 13 March 2017. That being so, as at the date of the hearing the Respondent is the beneficial owner of the freehold reversion of the property but recent Land Registry official copy entries show that the legal title remains vested in its predecessor, Espressa Management Ltd. It is understood that an application for registration of the Respondent's title is pending. Unsubstantiated oral evidence from the Applicants at the hearing suggested that the delay in registration might be caused by a boundary issue. The Tribunal accepts the Respondent's submission that it relies on ss 23 and 24 Land Registration Act 2002 and pending registration, is entitled to act as landlord/freeholder, to issue demands for service charge and receive sums due under such demands.

3 The hearing took place before a Tribunal sitting in London on 05 June 2018 at which Dr Yayaganeh Boake Acheampong-Chiang represented the Applicant and the Respondent was represented by Ms Imran of Counsel.

4 Although the Directions identified a large number of service charge issues in dispute between the parties (page A74) at the date of the hearing only three substantive matters remained outstanding: building insurance, fire assessment and questions relating to expenses carried over from the previous manging agents linked with the demands for contributions to the sinking fund.

5 A bundle of documents was presented for the Tribunal's consideration. Page numbers in those bundles are referred to herein.

6 It was agreed that no part of the claim related to administration charges.

7 The Tribunal was asked to consider the service charges for the calendar year 2017 and estimate for 2018.

8 In relation to buildings insurance the Applicants had originally queried the figures proposed by the Respondent because the Respondent's quotation was more than twice the sum previously paid. After negotiations the

Respondent reduced the figure for 2017 to an amount similar to that payable by the Applicants for the previous year and submitted a reduced quote for the current year. They also refunded the overpayment to the tenants. However, the Applicants challenged the quotation for 2018 asserting that the Respondent's survey of the property, compared with their own survey appeared to have overvalued it by about £1 million. An examination of the respective surveys confirmed the Respondent's assertions that the survey commissioned by the Applicants was not comparable because it failed to take account of a number of matters including some external areas which formed part of the property and which had been properly included in the Respondent's own survey. The Tribunal notes that the quotation for 2018 obtained by the Respondent is marginally lower than that obtained by the Applicants. On that basis the Tribunal finds that the Respondent's charges for building insurance service charge for the year 2017 and estimate for 2018 are reasonable.

9 The Applicants' second query related to the charges for fire and health and safety assessments. The Respondent said that the £354 charged for the year 2017 included the costs of signage and the £400 estimated for the current year contained a contingency in case other issues arose. They pointed out that the quotations obtained by the Applicants were not like for like in that two of the Applicants' quotations (pages C141 and C143) dealt only with fire assessments and did not deal additionally with health and safety. The third quotation did not deal with signage. On balance, the Tribunal considers that the Respondent's estimated charge for 2018 is reasonable.

10 Lastly, the Applicants queried the amount of the reserve fund which had been transferred to the Respondent when they acquired the property. This had occurred mid-year and thus it is likely that the £14,000 (page C90) which had been transferred to the Respondent at that time comprised partly unpaid current expenses and partly reserves. The Applicants' complaint was that, despite having asked for clarification, the Respondent had failed to identify the precise sum which they held as reserve. Page C147 suggests that the reserve fund amounted to £3559.24 but page C52 shows a figure of £2879.51, a difference of less than £700.

11 The Applicants were not alleging malpractice or dishonesty on the part of the Respondent but merely seeking clarification of the position. This is not a matter on which the Tribunal can pronounce reasonableness nor, on the documents before the Tribunal, was it possible to know how or why the difference on figures had arisen. It does appear however, that most of the Applicants' unease about the Respondent's accounts could have been dispelled by better communication by the Respondent with their tenants and the Tribunal encourages them in future to adopt a more open attitude to dealing with tenants' queries.

12 Linked to the previous item (paragraph 11) is the Applicants' query about the amount demanded for the reserve fund for the current year 2018. There is no doubt that the lease does make provision for the tenant(s) to make advance contributions to a reserve fund (page A28 lease, Sched 11 D 5) but it is severally referred to by the Respondent as a 'reserve' fund, a 'repair' fund and in places a 'sink' fund. The confusion is compounded by the estimate for the current year appearing to demand two separate contributions to reserve funds, one being a repair fund. The Tribunal does not accept the Respondent's assertion that it is entitled to maintain two separate reserve funds, one for

repairs, since the purpose of a reserve fund is primarily to pay for repairs. The logical answer to the query seems to be that the amount demanded by the Respondent for a 'repairs fund' is an estimate of the amount needed for general running repairs during the current year and the amount required for 'reserve' is attributable to a sinking fund to be held in reserve to meet or contribute to the cost of future major works such as reroofing. The Tribunal recommends that the Respondent clarifies this matter with the Applicants and in future applies a consistent terminology in their documentation. It is also recommended that in future and to ensure clarity the Respondent sets out its service charge demands to identify the four categories and proportions of service charge as set out in the lease (Page A19/20).

13 The Applicants challenged the Respondent's estimates for cleaning for the current year 2018. However their own estimate (page C139) does not cover a number of items which are included in the Respondent's estimate eg gardening, bin cleaning. That being so the Tribunal prefers to rely on the Respondent's estimate as being more accurate reflection of the likely costs to be incurred in the current year.

14 The Tribunal reminds the parties that any approval by the Tribunal of the landlord's service charge estimates for the current year does not preclude a challenge as to reasonableness by the tenants when the final accounts are delivered.

15 The Applicants made an application under s20C Landlord and Tenant Act 1985 which was opposed by Counsel for the Respondent. On the Applicants' behalf it was stated that they had requested information from the Respondent on several occasions and that the Respondent had failed to provide it. Some of the answers to the Respondent's queries were only resolved at the hearing itself. Confusion had arisen because of the Respondent's historically poor and muddled presentation of accounts which together with their consistently tardy responses to earlier queries from the leaseholders compounded some basic errors (eg. an insurance quote and premium at more than twice the correct figure for a converted block when it was manifestly a new build). Had they provided the correct information it is likely that these proceedings would not have been necessary. The Tribunal considers therefore that this a case where it is appropriate to make an order under s20C Landlord and Tenant Act 1985 and for the same reasons to order the Respondent to repay to the Applicants their application fee (£100) and hearing fee (£200).

16 The Tribunal did not consider it necessary to inspect the property and no inspection was requested by the parties.

17 **The Law**

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).

Land Registration Act 2002
Section 24

A person is entitled to exercise owner's powers in relation to a registered estate or charge if he is -

(a) The registered proprietor, or

(b) Entitled to be registered as the proprietor.

Judge F J Silverman as Chairman
Date 10 June 2018

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking