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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LSC/2018/0145 & LON/00AY/LDC/2018/0060**
Property	:	**80 Craster Road, Brixton, London SW2 2AX**
Applicant	:	**South London Grounds Rents Limited**
Representative	:	**Mr McDermott of Counsel**
Respondents	:	**(1) Grant Damien Nichols (2), Kate Barwise (3), Meadow Developments Ltd**
Representative	:	**In person**
Type of Application	:	**For dispensation from consultation requirements and determination of liability to pay a service charge**
Tribunal Members	:	**Judge W Hansen (chairman)** **Mr P Casey MRICS**
Date and venue of Hearing	:	**14 June 2018 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**19 June 2018**

DECISION

Decisions of the Tribunal

(1) The consultation requirements provided in section 20 of the Landlord and Tenant Act 1985 are dispensed with.

(2) The Tribunal determines that the service charges in issue, in the sum of £9,554.40, are payable in full and that each Respondent is liable to pay 1/3rd of this sum being the service charge proportion attributable to each lessee in their respective leases.

(3) The Tribunal makes an order under s.20C of the Landlord and Tenant Act 1985 to the effect that the Applicant shall not be entitled to add the costs incurred in connection with these proceedings to the service charge.

The Application

1. This is the Applicant's application for (i) dispensation from the consultation requirements provided for in section 20 of the Landlord and Tenant Act 1985 ("LTA 1985") and (ii) the determination of the reasonableness of service charges relating to the urgent installation of a new power supply and associated electrical and ground works at 80 Craster Road, Brixton, London SW2 ("the Property").

2. The Applicant is the freehold owner of the Property which is a 2-storey house that has been converted into 3 flats. The Respondents are the leasehold owners of the three flats. The Property was originally a single house but was converted into flats in or about 2006. This is consistent with the fact that that the Respondent's leases are dated 23 March 2006. It now appears that when the Property was converted into flats, the original lawfully installed service cable which previously connected the Property to the electricity main was altered without the consent of UK Power Networks ("UKPN") resulting in an unsafe electrical load on the service cable. This would have happened in or about 2005 or 2006 when the Property was being converted, and therefore long before the Applicant acquired the freehold which it did in April 2013. That unlawful connected was revealed by UKPN by letter dated 15 March 2018 but there is no evidence that the Applicant was aware of that particular problem before then. There is also no evidence that there had been any problems with the supply before 2018.

3. On 9 March 2018, a Friday, there was an incident of flooding in the vicinity of the Property. The Property itself was not flooded but there was flooding in the local area. Thames Water attended the scene and there is evidence that they dug up the in the vicinity of the Property. On the same day, the power supply to the Property failed. There is no clear evidence as to why this happened. It may have been related to the flooding and work by Thames Water; it may have been just one of those things that happens on occasion with electrical installations; it may have been due to one or more of the specific problems noted in an Electrical Installation Condition Report ("EICR") when the electrical installation in the communal areas was inspected on 16 July 2015. There is a lack of evidence before us as to the cause of the power supply failure. This is because UKPN have refused to disclose their inspection report and there is no other contemporaneous evidence available.

4. Doing the best we can on the limited evidence available, and having regard to the lack of any previous problems with the power supply in the preceding 12 years, we find that the outage was caused by the flooding and/or consequential work by Thames Water in the vicinity of the Property. We noted that this appears to have been the conclusion of Mr Ennis, who lives in the First Floor Flat with the Second Respondent, as he wrote an email dated 13 March 2018 which said, inter alia, the following: "... *Rosamund was around on Friday when the street was experiencing flooding. Thames Water had been called out and dug up the road outside the neighbouring property, then on the Friday evening the power went out. Clearly there is cause and effect...*" Mr Ennis explained that he was simply reporting what he had been told by others but this email satisfies us that there was local flooding, that Thames Water had dug up the road nearby and that the power supply then failed. Whilst we cannot be precise about the mechanics of what caused the outage, on balance, therefore, we conclude that the flooding and related work by Thames Water is the likely cause of the power outage.

5. As a result of the outage the Applicant commissioned urgent repair works. Its managing agents sought quotes from a number of companies. Most refused to quote. The reasons varied. A number of the companies could not complete the work sufficiently quickly. One said that it could not compete with UKPN on price. Ultimately on 26 March 2018 the Applicant accepted two quotes for the works: (i) a quote from UKPN in the sum of £4,514.40 for the connection of a

new underground three phase 100 amp service (ii) a quote from Tech Maintenance Services in the sum of £5,040 for the associated ground works and electrical works. The power supply was finally reconnected on 16 April 2018. The Respondents did not ultimately oppose the application for dispensation. However, for the avoidance of doubt, we make it clear that we would have granted dispensation on the basis that it was reasonable so to do in the urgent circumstances as they presented to the Applicant. As to the works themselves, it is common ground that the work was done to a reasonable standard. It is also common ground that the price was a reasonable one for the work required. The Respondents make two points in response and by way of resisting the charges: (i) they contend that it should have been covered by the insurance policy which they pay for as part of their service charge and (ii) the work would have been unnecessary or much less costly if the Applicant had attended to the repairs that had been identified as necessary in the 2015 EICR referred to above.

6. As to (i), the position is as follows. The insurers were approached by the Applicant. They declined cover. There was a dialogue between them but the insurers maintained their position. They declined cover primarily because of the unlawful connection to the electricity main but also because of the lack of any clear evidence as to the cause of the outage. Ultimately the Respondents accepted at the hearing that the insurers were entitled to decline cover in these circumstances. We would have so found in any event. None of this was the fault of the Applicant. There was nothing more that the Applicant could have reasonably done. The only other option would have been litigation against the insurer but that would have been a hopeless and expensive piece of litigation. In the circumstances it is clear that the Applicant was under no obligation to sue the insurer. The insurance point does not therefore avail the Respondents of any defence.

7. As to (ii), the position is as follows. The power supply failed on 9 March 2018 for reasons that are not entirely clear. We have found that the most likely cause was the flooding and consequential underground work by Thames Water in the vicinity of the Property. The Respondents contended forcefully that the more likely cause was the problem or problems identified with the supply to the communal area when that was inspected in 2015 and/or that that inspection ought to have revealed the problem with the unlawful

connection and that the necessary work could and should have been undertaken at that time and had this happened, some or all of the costs would have been avoided. It is important to bear in mind that the 2015 inspection was a very limited one. It was confined to the communal areas. No underground cables were inspected. The Report identified 4 problems. Two are clearly irrelevant for present purposes (the lack of emergency lighting and the lack of a fire/smoke alarm). The other 2 problems were (i) the absence of an RCD (residual current device) and (ii) circuits with ineffective overcurrent protection circuit 2. Circuit 2 relates to the lights. There is no evidence to suggest that any problem with the lighting circuit was causative of the outage. That leaves the RCD. Our understanding of an RCD is that its primary purpose is to prevent someone from getting a fatal electric shock if they touch something live, such as a bare wire. However, there is simply no evidence that the absence of an RCD caused the outage. The fact that the Applicant did not remedy the absence of an RCD following the EICR is therefore irrelevant for present purposes. In an ideal world it should have happened reasonably promptly after the problem was identified but the Respondents cannot build a defence to this claim on the basis of that failure. There is no evidence either that the absence of an RCD caused the outage or that its absence increased the costs of the necessary works in 2018. Further, there was nothing in the EICR to put the Applicant on notice of the unlawful connection and no reason why that inspection should have revealed the problem. Even if the Applicant had uncovered the problem in 2015, and work to rectify the problem had been undertaken later in 2015, we are satisfied that that would have been work the costs of which would have been recoverable through the service charge in any event and there is no evidence it would have been any cheaper. However, there was nothing in the 2015 Report to alert the Applicant to the problem with the unlawful connection. It was the outage in 2018 and the subsequent investigation that revealed the underlying problem and it had to be resolved and paid for in order to restore power. The problem with the unlawful connection went back to 2005/6 when the Property was converted, long before this Applicant became the freeholder. Thus even if we had found that it was that dubious connection which caused the outage, we would still have found that the charges connected with putting it right were reasonably incurred in all the circumstances. For all those reasons we conclude that the service charges in issue were reasonably incurred and are reasonable in

amount and must be paid by the Respondents in the proportions provided for in their leases (i.e. 1/3rd.)

8. Finally, we must deal with the Respondents' application for an order under s.20C of the LTA 1985. The Tribunal has a discretion in the matter which must be exercised having regard to what is just and equitable in all the circumstances: *Tenants of Langford Court v. Doren Ltd* (LRX/37/2000). We have found for the Applicant on the issue of service charge recoverability. We have also dispensed with the consultation requirements, the first and second Respondents having indicated that they were not opposing dispensation. However, both applications were made before the works had been completed. The tenants were not fully consulted, hence the dispensation application. The Third Respondent has played no part in the proceedings and it is likely that the Applicant would have had to come to the Tribunal in any event to obtain a dispensation order given the lack of any response from the Third Respondent. Whilst we have been primarily concerned with the disputed service charges, and the Applicant has ultimately succeeded, we had to tease out of the Applicant its full case, particularly in relation to the insurance issue, which was not properly dealt with in the Applicant's statement of case and evidence. We also bear in mind the late disclosure of the EICR and overall the lack of engagement by the Applicant with the tenants. In all the circumstances, we consider it just and equitable to make a s.20C order.

9. There were no other applications.

Name: Judge W Hansen **Date:** 19 June 2018

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 20ZA

Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any part of the consultation requirements in relation to any qualifying works..., the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

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.