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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) IN THE COUNTY COURT sitting at 10 Alfred Place, London WC1E 7LR

Case reference	:	**LON/00AZ/LSC/2017/0404**
County Court	:	**D90yx234**
Property	:	**Flat 11, 189-191 Stanstead Road, London SE23 1HP**
Applicant	:	**London Real Estates Limited**
Represented by	:	**Mr Romalo Russo-Director**
Respondent	:	**Quadron Investments Limited**
Represented by	:	**Mr Ben Preko (associate Director)** **Mr Raj Rao (managing agent)**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal member(s)	:	**Judge Daley** **Mr M Mathews FRICS**
Date and venue of hearing	:	**14 February 2018 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**2 May 2018**

DECISION

Decisions of the tribunal

(1) **The Tribunal's decision is set out at paragraphs 40 onward.**

The application

The background

1. The Applicant sought a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges were reasonable and payable.
2. Directions were given at a case management conference, on 23 November 2017; Where the following issues were identified the reasonableness and the costs of major work which made up part of the outstanding service charges, in the sum of £15,123.00, as a result of a major works project at the building in the sum of £52,690.00.
3. Subsequent to the Applicant issuing his claim for a determination of the reasonableness and payability of service charges, the Respondent to these proceedings issued a claim in the county court for unpaid ground rent, insurance and service charges. The claim was transferred by the county court on 23 January 2018 and the Tribunal accepted jurisdiction for both the service charges and the ground rent and insurance pursuant to tribunal's Deployment Practice Direction.
4. The parties were given directions to file additional submissions, (pursuant to a request for an extension of time) by 11 April 2018. The Tribunal has reached its decision on the bases of the oral evidence at the hearing on 14 February 2018 and the documents submitted in respect of the county court application.
5. The premises that are the subject of this application, is a flat situated in a block of 11 flats in a four storey converted office block. The subject flat is flat 11.
6. The premises are subject to a lease agreement dated 28 July 2003, which provides that the Respondent will provide services, the costs of which are payable by the leaseholders (a service charge). The lease also makes provision for the payment of ground rent on 1 April of each year (pursuant to clauses 2 and 3.1).

7. Where specific clauses of the lease are referred to, they are set out in the determination.

The Hearing

8. At the hearing the Applicant was represented by Mr Romalo Russo Director of the Applicant Company. The Respondent was represented by Mr Raj Rao also in attendance was Mr Ben Preko Managing Director of the Respondent Company.

The Applicant's case on the major works

9. The Tribunal was informed that Mr Russo was a director of a company which owned several properties including the subject property. He had owned the lease of the property for approximately 10 years. On 8 July 2013 the Respondent had served a notice under section 20 of the landlord and tenant Act 1985, informing the leaseholders of their intention to carry out major works to the building. This was a mixture of external and internal painting and redecorating.

10. On 18 October 2013 the Respondent informed the leaseholders that they were considering two contractors; M Pugh Building Services Limited £46,576.80 and Alfred Bagnall and Sons Limited in the sum of £47,330.40.

11. Mr Russo did not respond to the section 20 Consultation until 2014, he put in an offer for his company London Real Estates to carry out the work for the sum of £15,000. His quotation was not considered as he was informed that it was too late to tender for the work. However despite this the work was not carried out for a further two years.

12. Mr Russo considered that given this he ought to have been permitted to tender for the work. He also considered that the costs of the work was unreasonable, given his tender and also he had obtained a more recent quote in the sum of £18,000 which suggested that even with the passage of time it was still possible to undertake the work for a more cost effective price.

13. Mr Russo also stated that the standard of workmanship was poor in his Statement of Case he relied upon photographs which was taken a few weeks before the hearing.

14. In his statement of case he stated that-: *"... the poor quality of the workmanship (a testament of how Salter Rex regard us as leaseholders do a cheap job but exploit us with ridiculous fees) The metal stairs were painted only 1 ½ years ago and rust had appeared again. London Real Estates Ltd would have ensured metal work was sanded, rust inhibitor used with a primer then a top coat. According to the lease 6.2.2. All metal work and wood work to be painted every 3rd year. Salter Rex have been in breach as it was never painted for at least 7 yrs. It was mentioned my tender was received after the tender period deadline in 2014. I dispute this. My estimate was ignored. SR provided us with 1 quote (3 is fair) Under the lease 6.4.2 the leaseholder must pay a*

reasonable fee. Also under 6.6 no sinking fund was provided. The external works were not carried out until 2/3 years after the expiration of their tender in 2016 allowing S Rex sufficient time to re-consider my estimate..."

15. In their response, the Respondent stated that the Major work was Repair and Redecoration contract carried out to the external common parts. The Tribunal was referred to the detailed specification which was included in the Respondent's hearing bundle. It included provision for setting up costs (preliminaries) including health and safety. The work also included the external redecoration, external repairs, "overhaul of the flat roof", site clearance, and internal repairs including work to the electricals and replacing the carpet.

16. Clause 6 2.1 of the lease, provided that the landlord would maintain and keep in good and substantial repair clause 6.2.2 provided for the landlord to paint the exterior every 3 years and clause 6.2.3 provided that every 7 years the landlord redecorate the interior of the premises.

17. The Tribunal was informed that the landlord had not undertaken cyclical maintenance since the property had been converted into flats and sold to the leaseholders.

18. In reply the managing agent for the Respondent stated that the freehold of the property had previously been owned by a different freeholder management company, (Woodhill Trading Limited) and the company had gone into liquidation and had been placed under the control of administrators.

19. There was also another practical issue that had caused a delay in the work being carried out; there were considerable arrears at the premises and this had affected the Respondent's ability to build up a reserve fund and to undertake the work had been tendered for.

20. In their statement of case the landlord stated-: *"...With regards to the major works, it is our contention that all the necessary processes and procedures in regard to the consultation were followed and the amount levied was reasonable. The applicant submitted his quotes from the nominated contractor, well after the consultation period had passed; they were not on a like for like basis as they were not prepared to the specification of works. Due to non-payment of the applicant, the freeholder was required to forward fund the shortfall and the amount demanded is still due..."*

21. The Tribunal was informed that the Respondent had complied with section 20 of the Landlord and Tenant Act. They had sent the leaseholders a pre-notification of intention to carry out work. This had been followed by a stage 1 letter and then the results of the tender. The Tenders were checked by an independent person, and the firm of Alfred Bagnall were chosen. The Applicant had not responded to the consultation exercise in compliance with the time table given.

22. The Respondent had subsequently after the deadline for consultation had passed indicated that he wanted to tender for the work. However his tender had not complied with the specification, as it had not been priced based on the specification and had also been submitted after the tender process had closed.

23. The Tribunal wanted to know why there had been a two year delay after Alfred Bagnall's tender had been accepted, before the work was actually undertaken, The Tribunal was informed that out of the 11 flats, only 4 had paid their contribution to the major works. Accordingly the delay had been trying to obtain the additional funds as between 2013-2015; the managing agents had been attempting to finance the project by collecting outstanding service charges. The freeholder had then stepped in, and had had to contribute to the costs of the work.

24. The Tribunal was informed that although tender was obtained on 15 June 2014 and the work was not undertaken for a further 2 years, the successful tenderer had agreed to undertake the work at the same contract price given in 2014.

25. The Tribunal was informed that the scaffolding had been required at the premises this work had been sub-contracted out to Eastway Scaffolding Ltd in the sum of £10,302.00, the Tribunal was also informed that the work had been managed by a surveyor who worked for the managing agents.

26. The Tribunal asked for details as to how contractors were selected to tender for work. The Tribunal was informed that normally the managing agents are approached by contractors who let them know that they are available to carry out work. If Salter Rex decides to invite them to tender then they carry out background checks, and take up references, and ask to see a copy of the company's public liability insurance, and their health and safety procedures. The surveyor from Salter Rex then carries out post work inspections, with a certificate of practical completion and only after that are the retained funds released.

27. The Tribunal asked Mr Russo for details of how he had put his tender together, he stated that he had priced on the basis of the scaffolding and then had used the Schedule of Rates that was applicable, and then had based the tender on his experience, by working out the sub-contractors costs.

28. He also stated that although the Respondent's had stated that part of the costs included preliminaries, he had not seen any builder using hard hats or other safety equipment, he had also not seen signs of any on-site facilities such as toilets for contractors. In respect of the Specification of Work although the schedule had included costs for sanding down and preparing the area prior to painting, from the photographs that he had submitted, it was apparent that this had not happened.

29. Mr Russo in his Statement of Case also stated that there was no sinking fund held in a separate account, as required by the lease.

30. In the Respondent's Statement of Case they acknowledged that the Applicant's submission on the sinking fund was correct, in their oral submissions, it was stated that this was as a result of the arrears position at the premises, as not everyone, including the applicant had contributed to the reserve fund. Accordingly it was not possible to pay for all of the work undertaken from the reserve.

31. In his statement of case the Applicant Mr Russo also complained that a fire risk assessment had been carried out on 4 October 2017 and that a number of works had been recommended however the landlord had not carried out these works.

32. In reply the Respondent stated that they had commissioned a report in March 2017, as one of the flats was up for sale and the solicitor's enquiry had requested a report. The Tribunal was informed that this work was not covered by the major work specification and that although it was acknowledged that work remained outstanding from the report, this was as a direct consequence of the lack of funds, resulting from non-payment of service charges.

33. On 23 January 2018, the Central London County Court transferred claim no D90yx234 to the First-tier Property Tribunal this claim between Quadron Investments Limited and London Real Estates Limited involved identical issues, save for that of the matter of ground rent and service charges in relation to insurance.

34. The Tribunal pursuant to its powers of delegation pursuant to Power of Delgation determined that subject to representations from the parties and any further submissions it would determine the outstanding issues on the basis of the documentary evidence provided.

35. The Tribunal received copies of the county court pleadings together with the submissions of the parties. In their Particulars of Claim, Quadron Investment Limited ("Claimant" in the county court) stated that the Ground Rent Provision means the provision in the Lease requiring the Lessee to pay Ground Rent by clause 3.1 of the lease ... "To pay the Rent hereby reserved at the times and in manner herein provided without any deductions. And further by clause 1.8 of the lease "the Annual Rent" means the annual rents specified..." In paragraph 5 of the Particulars of Claim, the Claimant stated-: " In breach of the terms of the lease, the Defendant has failed to pay money due under the Service Charge, Ground Rent and Major Works Provisions in the Lease..."

36. A Statement of Arrears was attached, which included legal costs, service charges and ground rents in the total sum of £11,731.12. No separate breakdown was provided of insurance.

37. A helpful breakdown, at the rear of the statement further broke down the sum as follows Additional Costs £840.00 PDC fee £150.00 and collecting £62.06 which left a balance of £9056.04. This was different to the figure in the statement of arrears.

38. In his Defence to the County Court proceedings. The Defendant in those proceedings London Real Estate Limited stated that Insurance and Ground Rent payments had been paid up to date-: " Salter Rex have misallocated my payments when I expressly requested within my letters that the payments should be paid for the insurance and Ground Rent..." Separately the Defendant made a partial admission in the sum of £2,500.

39. In the additional written submissions sent to the Tribunal the Claimant provided an additional statement of case in relation to the county court proceedings, the statement provided details of the costs claimed in the County Court, (£455.00 court fee and £100.00 solicitors' costs). Also attached were demands for ground rent and service charges. The demands for ground rent were 1.05.2014 -31.03.2015 dated 1 May 2014, in the sum of £300.00 and 1.05.2015 -31.03.2016 dated 1 April 2015 in the same sue. There were no further demands which related solely to ground rents. In his submissions dated 11 April 2018 on behalf of the Defendant, Mr Russo stated-: Salter Rex are requesting a Ground Rent payment owing from 01/05/2014 to 31/03/2015. I checked my records and can find a bank statement showing a £300.00 payment made. I checked and found this was sent to Salter Rex for the Ground Rent. It was sent on 7/7/14 and cashed on 16/7/14. Another payment was sent on 25/11/14 for £300 (I believe that may have been an over-payment) ... Please see bank statement and a copy of a letter to show that many payments of service charges were not being correctly allocated or even showing up on my account..."

40. Mr Russo also provided letters and copies of payments sent recorded delivery via the Post office in the following sums
£1,171.76 (29/4/15)
£800.00 (ground rent and insurance) 25/02/16
£300.00 (ground rent) 24/10/16
£300.00 (ground rent) 05/04/17
£500.00 (insurance) 05/04/17
£718.00 (ground rent and insurance) 7/3/2018

41. **The decision in relation to the ground rent and the insurance is set out at paragraphs 49 of the decision together with details of the Tribunal's reasons for its decision.**

The Decision of the Tribunal on the Reasonableness and payability of the service charges

42. The Tribunal having heard from the parties determined as follows-:

43. The Tribunal finds on a balance of probabilities that the major work was carried out in accordance with the specification and that the sum claimed save for as set out in paragraph 47 is reasonable and payable.

44. The Tribunal in reaching its decision has considered the specification in detail. It was acknowledged by Mr Russo that as well as including external repair and re decoration, the specification included internal redecoration and carpeting. The Tribunal has also noted that it had sight of a photograph of the front of the premises, which confirms that scaffolding was put up at the premises. The Applicant does not appear to take issue with the fact that work was undertaken, his issue appears to relate solely to the costs of the work and the standard of workmanship and the fact that based on his experience the work could have been undertaken for less than the sum of £52,690.00.

45. The Tribunal noted that section 20 had been fully complied with and that Mr Russo had not nominated a contractor under the section 20 process until after the date for nominating a contractor had passed and indeed after the tenders had been received.

46. Mr Russo did not attempt to use the specification and it was difficult for the Tribunal to see how he had priced the work and arrived at his estimate. The Tribunal finds that there was no obligation on the Respondent to accept his tender as it was not in the format expected and it was submitted after the tender process had closed. Further it was not a like for like tender, and the respondent's had an obligation to use contractors who demonstrated reasonable understanding of what was involved and also demonstrated an ability to manage the contract.

47. The Tribunal has noted that the work was not undertaken for two years, and accepts that this was a direct consequence of non- payment of the service charges for major work. The Tribunal is satisfied that it was a reasonable approach to award the work to a contractor who had already tendered as steps were taken to safeguard the leaseholders' interests by negotiating an arrangement whereby the contractor's where held to the tender price.

48. The Tribunal is satisfied that the work was carried out and that the costs of the tender was reasonable and payable however, the Tribunal accepts that the standard of some aspects of the finish of the work is lower than would be expected, accordingly the Tribunal has made a globe adjustment to reflect this element of the work. The Tribunal determine that the Applicant's contribution should be reduced by £500.00 to reflect the poor finish has shown in the photographs of the rear and of the internal area.

49. In respect of the Applicant's complaints concerning the lack of a sinking fund and the failure to carry out the fire safety work, the Tribunal noted that the respondent stated that this was because of lack of funds for this work.

50. The Tribunal finds that in relation to the ground rent payments were made by / on behalf of London Real Estate Ltd from 2014 onwards. The Tribunal accepts that there were arrears of service charges, insofar as they relate to the major works, the Tribunal finds that the Defendant in the county court is liable to pay the sums outstanding in relation to the major works. The Tribunal noted that the statement of account which was provided did not separately break down the arrears into service charge sums, insurance and ground rents. The Tribunal has considered the documents provided by London Real Estate Ltd, and is satisfied on a balance of probabilities that Ground Rent was paid, and that sums were paid to discharge the Defendant's insurance liability.

51. The Tribunal has been provided with no additional submissions in respect of the legal costs, which were placed on the account, no information was provided that the sums were demanded as Administration Charges. Accordingly the Tribunal makes no finding in respect of the payability of these charges. **The Claimant in the county court should by separate schedule set out the service charges up until 19/9/2017 (being the date issued in the County Court) showing insurance and the ground rent, and the payments made by the Defendant. This schedule should be provided to the Tribunal within 28 days of this decision.**

Application under s.20C and refund of fees

52. The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985. The Tribunal makes no order for a refund of the fee paid in the tribunal.

Name: Judge Daley **Date:** 2 May 2018

ANNEX - RIGHTS OF APPEAL

1. **Rights of appeal**

2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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

(1) Section 27A

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

of any question which may be the subject matter of an application under sub-paragraph (1).