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

Case Reference : **LON/00/BJ/LSC/2013/0168**

Property : **16 Castle Court, 2 Brewhouse Lane,
Putney SW15 2JX**

Applicant : **Mark O'Brien**

Representative : **None**

Respondent : **A2 Housing Solutions Limited**

Representative : **None**

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

Tribunal Members : **Judge S O'Sullivan
Lady J Davies FRICS**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **15 July 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision
- (2) 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 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 Applicant in respect of the service charge years 2012/13 and 2013/14.
2. The application generally sought a determination on the basis the charges had risen dramatically and asked whether this represented a "fair increase". Directions were made dated 8 April 2013 which indicated that the Applicant must specify which charges he considered unreasonable. In accordance with those directions the Applicant completed a scott schedule and a bundle was filed for the tribunal's use.
3. The relevant legal provisions are set out in the Appendix to this decision.

The issues

4. Both parties were content for the matter to be considered by way of a paper determination, that is, without a hearing. The application was accordingly considered by the tribunal on the papers on 15 July 2013.
5. 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.
6. The Applicant 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.
7. The flat is a shared ownership one bedroom flat in a block on a larger estate.

8. The Respondent is A2 Housing Solutions Limited part of the A2 Dominion group. There is a headlease made between Castle Court Putney Wharf Limited (1) and Apex Housing Solutions Limited (2). The sub underlease is made between A2 Housing Solutions Limited and Mark O'Brien. The service charges are set and managed by Peverel Property Management and are passed on.
9. Having considered the evidence filed on behalf of the parties, the tribunal has made determinations on the various issues as follows.

Maintenance of landscaped areas

10. The cost of this item was £96 for 2012 and estimated at £77 for 2013.
11. The Applicant's case was simply that he did not have any liability for any maintenance of landscaped areas as he did not have any access to any such areas nor could he in fact see any.
12. In response in a one page statement the landlord simply referred the tribunal to the service charge provisions of the lease which state at clause 8(2)

"The relevant expenditure to be included in the Service Charge shall comprise all expenditure reasonably incurred by the Landlord in connection with its obligations in the Superior Lease and shall include (without prejudice to the generality of the foregoing):-

8(2)(a) the costs of and incidental to the performance of the Landlords covenant contained in this Lease"

13. In response the Applicant says in his reply that this expenditure cannot be reasonably incurred if it relates to landscaping areas the Applicant has no access to or benefit from. The Applicant also relies on an information sheet given to him on his purchase which states that the shared ownership flats do not have the benefit of a number of facilities such as the gymnasium or concierge. It goes on to say that *"some of the documentation may indicate otherwise that this was (sic) at the insistence of the developer. However the service charge is reduced accordingly and does not include payment for anything for which each flat does not have the benefit."*

Maintenance of landscaped areas - the tribunal's decision

14. The tribunal disallows the costs in respect of this item for both 2012 and 2013.
15. The Applicant raised a clear challenge to this item that this should not form part of his service charge as he derived no benefit from any landscaped areas. The Respondent filed only a one page statement in response which simply referred to the service charge provisions of the lease. This has a reference only to expenditure which is "reasonably incurred". The Respondent has made no effort to address the Applicant's challenge and indeed to assist the tribunal in its understanding of how the service charge operates across the estate. The flat is clearly part of a much larger estate and it appears from the documents before the tribunal that many of the services are not invoiced to the shared ownership properties. As it appears that the Applicant has no access to and derives no benefit from the landscaped areas in such circumstances the charges cannot be said to have been "reasonably incurred" under clause 8(2) of the Applicant's sub-underlease and/or it cannot be said that any payment required to be made by A2 Dominion to Castle Court Putney Wharf represents a "due and fair proportion" of the maintenance expenses in accordance with paragraph 10 of the particulars of the headlease.

Landscaping of internal courtyard

16. The costs for this item were £259 in 2012 and estimated charges in 2013 of £222.
17. The Applicant raised the same arguments as in respect of the maintenance of landscaped areas above. The tribunal has only a one page statement from the landlord which is of limited assistance.

Landscaping of internal courtyard - the tribunal's decision

18. The tribunal disallowed the amounts for both 2012 and 2013 on the same basis as the maintenance of the landscaped areas.

CCTV and door entry system

19. The costs for this item were £45 in 2012 and estimated charges of £68 in 2013.
20. The Applicant simply says his block has no CCTV or door entry system. The Respondent again relies on the one page statement which is of limited assistance. No invoices in relation to the individual services carried out have been provided.

CCTV and door entry system – the tribunal’s decision

21. The charges for 2012 and 2013 are disallowed.
22. The Respondent has failed to satisfy the tribunal that the property benefits from CCTV and a door entry system. In such circumstances the charges cannot be said to have been “reasonably incurred” under clause 8(2) of the Applicant’s sub-underlease and/or it cannot be said that any payment required to be made by A2 Dominion to Castle Court Putney Wharf represents a “due and fair proportion” of the maintenance expenses in accordance with paragraph 10 of the particulars of the headlease.

Maintenance of video entry systems

23. The charges for this item were £65 for 2012 and estimated at £65 for 2013.
24. The Applicant simply says the property has no video door entry system. The Respondent relies on the one page statement of case. No invoices have been provided in respect of the individual services carried out.

Maintenance of video entry systems – the tribunal’s decision

25. The charges for both 2012 and 2013 were disallowed.
26. The Respondent has made no effort to address the specific challenge raised by the Applicant relying solely on the lease provisions. It is unclear whether it accepts there is no video entry system relying simply on an invoice from Consort Property management for the service charges. In such circumstances the charges cannot be said to have been “reasonably incurred” under clause 8(2) of the Applicant’s sub-underlease and/or it cannot be said that any payment required to be made by A2 Dominion to Castle Court Putney Wharf represents a “due and fair proportion” of the maintenance expenses in accordance with paragraph 10 of the particulars of the headlease.

Cleaning of communal areas

27. The charges for this item were £145 in 2012 and £145 for 2013.
28. The Applicant says this amount is not reasonable. He does not specify whether the standard of cleaning is challenged or provide any evidence of poor cleaning. Although the directions indicated he should rely on alternative quotations he failed to provide any.

Cleaning of communal areas – the tribunal’s decision

29. The tribunal allowed the charges for both years in full.
30. It had no evidence of any poor standard and no alternative quotations to suggest the cost was too high.

General repairs

31. The Applicant challenged a provision of £15 for general repairs on the basis that no repairs had been carried out.

General repairs – the tribunal’s decision

32. The tribunal allowed the estimated charges. As the Respondent rightly pointed out this was an estimated provision and the cost of any repairs would be adjusted at the end of the year.

Concierge Services

33. The cost of the concierge was £532 in estimated at £539 in 2013.
34. The Applicant says these costs were specifically excluded from his lease. He relies on an information sheet provided on purchase which states that shared ownership flats do not have the benefit of the concierge service and the service charge would be reduced to remove payment for anything for which each flat does not benefit.
35. In response the Respondent says the cost is included in the managing agent’s fee. From the documentation supplied the tribunal is unclear whether a charge for the concierge service is made to the shared ownership flats as it appears from the accounts that this is excluded. The tribunal is not clear how the charge is said to be included in the managing agent’s fees.

Concierge service – the tribunal’s decision

36. To the extent that any charges are passed to the shared ownership flats the costs for 2012 and 2013 are disallowed.
37. The property does not appear to benefit from the concierge service. The pre sales information sheet indicated that these costs would be excluded. In any event where a property does not benefit from concierge services the charges cannot be said to have been “reasonably incurred” under clause 8(2) of the Applicant’s sub-underlease and/or it cannot be said that any payment required to be made by A2 Dominion to Castle Court Putney Wharf represents a “due and fair proportion” of

the maintenance expenses in accordance with paragraph 10 of the particulars of the headlease.

Section 20C

38. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Although the directions indicated the parties should make submissions on any application for costs in their statements of case the Respondent failed to do so. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: S O'Sullivan

Date: 15 July 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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 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) a leasehold valuation 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.

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).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.