9941

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AN/LSC/2013/0812**
Property	:	**Flat 2, 44 Charleville Road W14 9JH**
Applicant	:	**44 Charleville Road Ltd**
Representative	:	**Katerina Kaplanova of Urang Property Management Ltd**
Respondent	:	**Ms Antonella Veccia and Mr Paola Sparapsassi**
Representative	:	**N/A**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Dr Helen Carr** **Mr Trevor Johnson**
Date and venue of Hearing	:	**17th April 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**21st May 2014**

DECISION

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Decisions of the tribunal

(1) The tribunal makes determinations on the issues before it as set out under the various headings in this Decision. In the light of these determinations the parties must revisit the service charge accounts to determine their respective liabilities.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 as the lease does not provide for the costs of legal proceedings to be charged to the service charge account.

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 2009 - 2012

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

The hearing

3. The Applicant was represented at the hearing by Ms Kaplanova of Urang, the managing agents for the Applicant. Ms Kaplanova was accompanied by Mr Smulders and Ms Kristiansen. The Respondents appeared in person.

4. The Tribunal heard evidence from the parties. The hearing was not concluded on 17th April 2014. It was agreed between the parties that written submissions from each would deal with the outstanding issues. The Tribunal issued further directions and then reconvened to consider the written submissions on Wednesday May 21st 2014.

The background

5. The property which is the subject of this application is a four storey terraced house comprising three flats, the basement, the ground floor and the upper flat which comprises the first, second and third floors of the premises. The Respondent lives in the ground floor flat. The other two flats are owned by Mr Smulders and Ms J Kristiansen.

6. Photographs were provided in the hearing bundle. 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.

7. The Respondent 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.

The issues

8. In the application and the documentation provided to the tribunal the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges demanded for the years 2009 – 2013 in particular

      a. The payability of service charges demanded in connection with works carried out in 2009 to repair a blocked pipe and a flat roof

      b. The payability of service charges demanded in connection with damp-proofing the basement flat

      c. The reasonableness of charges relating to drain clearage

      d. The status of £750 paid by the Respondents for structural work to their property

   (ii) The payability and reasonableness of estimated service charges for 2014

   (iii) How much of the service charges were outstanding as the Respondents claim that they have made payments and that they were in credit in 2009.

9. During the course of the hearing the tribunal heard arguments in respect of issues 1 (a) - a(c) and issue (ii). The parties agreed that the following issues remained between them:

   (i) The payability of administration fees for late payment

   (ii) The reasonableness and payability of the contingency fees demanded in connection with the major works

   (iii) The reasonableness and payability of the management fees of URANG in connection with the major works.

(iv) The Respondents made a s.20C application in connection with the costs of the hearing.

10. The tribunal issued directions in connection with written submissions on the outstanding issues. The parties provided useful documentation in respect of these matters.

11. Having heard oral evidence from the parties and considered all of the documents provided and the written submissions, the tribunal has made determinations on the various issues as follows.

The payability of service charges demanded in connection with works carried out to a blocked pipe and a flat roof during 2009

12. The sums demanded for these works were (a) for the works to the blocked pipe £266.74 p and (b) for the works to the flat roof £427.15. The Applicant should have, but did not, consult in connection with these works.

13. The Tribunal gave the Applicant an opportunity to make an application entitling it to dispense with the statutory consultation procedures. The Applicant made an application.

14. The Applicant argued that in both cases the works were emergency works which resulted in damage to the property which if not repaired as a matter of urgency would cause further damage. Moreover there was a risk to the health and safety of the occupiers.

15. The Applicant had not known about the statutory procedure or to apply to the Tribunal for dispensation from the requirements.

16. The Respondents were reluctant to accept that the works were emergency works as problems had been identified previously. They considered that they had suffered prejudice as they had not had the opportunity to consider the need for the works and to obtain quotations.

The tribunal's decision

17. The Tribunal accepts the evidence of the Applicant that the work was necessary and that it was necessary for it to be carried out quickly.

18. This however does not provide an excuse for failing to consult. Moreover the failure was not a technical failure to comply with one or two elements of the consultation procedure. It was wholesale ignorance of the statutory scheme. On the other hand, the Applicant is a resident owned freeholder and the Tribunal considers that there should be some

leeway in these circumstances, particular as the Applicant has subsequently realised the need for expert advice in connection with the management of the property.

19. It is difficult for the Respondents to produce at this late stage evidence of prejudice. However the Tribunal considers that the concerns expressed by the Respondents at the time of the work indicate that had they been given an opportunity they would have explored both the need for the works and the question of costs.

The tribunal's decision

20. The tribunal determines that the amount payable in respect of the repairs to the blocked pipe is £250 and in respect of the flat roof repairs £327.15

Reasons for the tribunal's decision

21. The reductions made reflect the level of prejudice that the tribunal considers has been suffered by the Respondents in this matter.

The payability of service charges demanded in connection with damp-proofing the basement flat

22. The Applicant explained the works that had been carried out to the basement flat in connection with damp proofing. The works included plastering works which indicated that the work carried out was structural and therefore covered by the lease. The Applicant accepted that there had been no s.20 notice, and therefore that the contribution of the Respondents should be limited to £250.

23. The Respondents argued the beneficiary of the works was Mr Smulders and that they should not have to pay.

The decision of the tribunal

24. The tribunal determines that the Respondents pay £250 towards the costs of damp proofing the basement flat.

The reasons for the decision of the tribunal

25. The tribunal considers that the works involved in the damp proofing were structural and therefore fell properly within the ambit of the service charge provisions of the lease. However the failure to comply with the statutory procedure for consultation means that the Respondents' liability is limited to £250.

The reasonableness of charges relating to drain clearage

26. The Applicant gave evidence of drain blockages to the property which required attention from a specialist company.

27. The charges incurred were £127.76p, and £97.34p.

28. The Respondents were sceptical about the needs for the works and the costs. They noted that Urang had a contract with a particular company to carry out drainage works. However the Respondents could produce no substantial evidence to show either that the works were unnecessary or to demonstrate that the costs were excessive.

29. The Applicant pointed out that Mr Smulders was paying the greater share of these costs and clearly he would neither commission unnecessary work or pay more than he had to in order to complete the works.

30. During the hearing it was agreed between the parties that the Respondents could arrange for drain clearance themselves in future.

The tribunal's decision

31. The tribunal determines that the amount payable in respect of the drainage charges are payable and reasonable.

Reasons for the tribunal's decision

32. Drawing on the expertise of the tribunal it determines that the level of charges falls within a reasonable range and is properly payable. No evidence was provided that the works were not carried out.

The status of £750 paid by the Respondents for structural work to their property

33. The Respondents argue that they had to carry out works to their balcony in June 2012 as a matter of emergency because of a leak to their flat. What they were looking for was a swift and affordable solution to an immediate problem pending major works to the property.

34. In the supplementary bundle the tribunal saw evidence of email communications from the Respondents to the Applicant explaining the deteriorating situation within their flat, and their intentions to carry out works.

35. The Applicant argues that the necessity for temporary works was caused by the failure of the Respondents to contribute to the costs of the proposed major works. It also argues that there is no power under the lease for the Respondents to carry out works to the property, other than within their demise.

The decision of the tribunal

36. The tribunal determines that the £750 is properly charged to the service charge account, meaning that the Respondents are liable for 25.35% rather than 100% of the charge.

The reasons for the decision of the tribunal

37. The tribunal finds that the work clearly needed doing as a matter of emergency, and that the Applicant's lack of action in connection with this left the Respondents with no choice other than to carry out the works themselves. Indeed, if they had not done so the Applicant could have become liable for any additional damage to their property caused by the delay.

38. The tribunal has some sympathy with the Applicant. There was clearly frustration caused by the lack of progress on the major works proposal because of non payment by the Respondents.

39. Neither party comes out of this matter with much credit. The tribunal urges the parties to work together in the future to prevent such problems arising.

40. Nonetheless the tribunal concludes that the works had to be carried out in order to protect the property from further deterioration, and that the Respondents had no other choice than to organise remedial works for themselves.

The level of interim charges

41. The Respondents raised the issue of the level of interim service charges. They argued the sums demanded were unreasonable.

42. Urang informed the tribunal that the amount demanded was estimated on the basis of previous year's outgoings.

43. The tribunal notes that this is standard practice, and that if the actual sums demanded differ, balancing payments will be made in the year end accounts.

44. The tribunal therefore determines that the level of interim service charges is reasonable and properly payable.

Administration fees for late payments

45. The Applicant argues it is entitled to administration costs arising from its costs in connection with managing arrears of service charges. In the supplementary bundle provided for the determination Urang argue that the costs fall within the definition of service charges set out in the Commonhold and Leasehold Reform Act 2002.

46. However Urang do not refer to any relevant term of the lease, nor does it explain why its charges are reasonable.

47. The Respondents argue that the administration charges are not payable because the Applicant has not provided a demand, or any information to demonstrate that the administration charges have been correctly demanded. As they point out, the Applicant has provided sample letters which are dated 25th April 2014 which is after the oral hearing.

The decision of the tribunal

48. The tribunal determines that the administration charges levied in connection with late payments are not payable.

The reasons for the decision of the tribunal

49. There is no evidence that the lease provides for charges to be made in connection with late payments, nor have the demands been made in the statutorily required form. Furthermore there is no evidence that the amount requested is a reasonable sum.

The reasonableness and payability of the contingency fees demanded in connection with the major works

50. The Applicant, acting on the advice of the chartered surveyor overseeing the works, included a contingency sum of £3000 in connection with the major works.

51. The Applicant argues that this is a reasonable sum to demand to cover contingencies in such a project.

52. The Respondents dispute that the sum of £3000 is reasonable for contingencies, but do not provide any argument that contradicts the advice of the chartered surveyor. They propose a contingency sum of £1500.

The decision of the tribunal

53. The sum of £3000 as a contingency sum is payable and reasonable.

The reasons for the decision of the tribunal

54. The tribunal determines that the advice of the chartered surveyor as regards the contingency sum should be followed unless there are strong arguments to the contrary. No such argument has been made.

The reasonableness and payability of the management fees of URANG in connection with the major works.

55. The Respondents argue that Urang agreed in the circumstances of these particular works which are to be supervised by a quantity surveyor, that they would only charge 2% for their work as it was more limited in scope than if the quantity surveyor was not involved.

56. Urang argue that the offer to reduce the charge from their standard charge was based upon an understanding that there would be very little work involved other than running the s.20 consultation procedure. In the event, that procedure had to be run twice, and they say they had to respond to numerous emails from the Respondents. They therefore are now intending to charge 7%, their normal rate for supervision of major works.

The tribunal's decision

57. The tribunal determines that Urang are entitled to 5% in connection with the supervision of the major works.

The reasons for the tribunal's decision

58. The tribunal understands the position of the Respondents who consider that Urang has to carry out limited work on the project and who made an offer to reduce their charges. However it also understands that Urang, due to the history of the relationship between the parties, have become involved in extensive additional work. Nonetheless some of the work involved in a standard project is being undertaken by the quantity surveyor and the Respondents are contributing to his charges. Therefore the tribunal has determined that in the circumstances a charge of 5% is reasonable.

Unaccounted for payments by the Respondents

59. No evidence from the parties has been made available to the tribunal in connection with this claim by the Respondents.

60. In the directions which were issued following the oral hearing, the parties were directed to agree a schedule setting out the total service charge demands for the years 2009 – 2013.

61. The parties are requested to revisit this schedule in the light of the determinations of the tribunal and taking into account any evidence from the Respondents that they have made payments to the service charge account that have not been credited.

62. The parties are urged to rebuild their relationship. The Applicant must understand that the Respondents are worried that as a minority within the building they are vulnerable to exploitation. The Respondents must learn to trust the Applicant more. It is hoped that with a professional managing agent, and the steer from this determination, the parties are now in a better position to ensure that they focus on the best interests of the property as a whole.

Application under s.20C

63. At the hearing, the Respondents applied for an order under section 20C of the 1985 Act. The Applicant argues that it is entitled to put the costs of the hearing onto the service charge as a result of clauses 2(2) (iv) (i) and 2(6) of the lease. The tribunal does not consider that the first of the clauses relates to costs arising from legal disputes, and in relation to the second clause, considers that there is no evidence that the proceedings had any relationship with forfeiture proceedings. The tribunal therefore determines that the Applicant is not entitled to pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Helen Carr **Date:** 21st May 2014

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 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).