9823

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	LON/00AU/LSC/2013/0730
Property	:	3 Holmbury House, Hilldrop Estate, Carleton Road, London N7 0QJ
Applicants	:	Mr R Grant ("the Tenant")
Representative	:	In person
Appearances for Applicants:	:	Mr Grant
Respondent	:	London Borough of Islington ("the Landlord")
Representative	:	In house
Appearances for Respondent:	:	(1) Ms N Karmel, lawyer (2) Mr R Powell, special projects officer (3) Mr K Douglas, lift engineer
Type of Application	:	For the determination of the reasonableness of and the liability to pay service charge
Tribunal Members	:	(1) Judge A Vance (2) Mr T W Sennett, MA FCIEH (3) Ms S Wilby

Date and venue of Hearing	:	26.03.14 10 Alfred Place, London WC1E 7LR
Date of Decision	:	02.04.14

DECISION

Decision of the Tribunal

1. The tribunal determines that the sum of £13,354.58 is payable by the Applicant in respect of service charge for the year ending 31.03.13.

Introduction

2. The Tenant applies under section 27A Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of his liability to pay service charge to the Respondent in respect of 3 Holmbury House, Hilldrop Estate, Carleton Road, London N7 0QJ ("the Property") for the service charge year ending 31.03.13. The sum in dispute is £13,486.40 sought by the Respondent in respect of the Applicant's contribution towards the replacement of two lifts in Holmbury House.

3. The Applicant sold the Property on 07.03.13 but a retention of £15,000 was made by his solicitors on completion of that sale to cover his potential liability for these costs. A service charge demand for the cost of these works, in the sum of £13,486.40, was sent to the current lessee on 18.10.13. The sum has not been demanded from the Applicant as he was not the lessee at the time of the demand. However, the Applicant confirmed to the tribunal that his application is made on the basis that he accepts liability to pay the costs in question, subject, of course, to this tribunal's determination as to whether or not the costs have been reasonably incurred.

4. The Property is a two-bedroom flat on the first floor of Holmbury House, a four story block ("the Block"). The Block is divided into two sub-blocks comprising flats 1-8 ("the Building") and flats 9-16. The Respondent stated that, in fact, the Building now consists of only seven flats as two of the eight flats had been converted into one flat. The Block forms part of the Hilldrop Estate ("the Estate").

5. The lift refurbishment works involved both the Block and Howell Court, another four storey block on the Estate which the Respondent states consists of a total of 16 flats. In total, four lifts were replaced. Work commenced to replace the two lifts in Howell Court in about September 2012 and started on the two lifts in the Block in about January 2013. The tribunal was informed by Ms Karmel that works concluded in around May 2013.

6. The Applicant disputes that the cost incurred by the Respondent in respect of these lift works was reasonable. He relies on quotes that he obtained in support of the contention that the works could have been carried out a lot cheaper.

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

8. Numbers appearing in square brackets below refer to the hearing bundle unless stated otherwise

The Lease

9. The Applicant's lease **[1]** was granted following his exercise of the right to buy his council flat. The lease commenced on 25.12.82 and is for a term of 125 years.

10. The Tenant covenants to pay by way of service charge a proportion of the expenditure incurred or to be incurred by the Landlord in respect of the matters specified in the Third Schedule which include the repair, maintenance renewal and improvement of the Building together with:

- *"Any other services, improvements or facilities from time to time provided by the Council for the Building which the Tenant enjoys in common with other occupiers thereof"* (paragraph (g) of Part 1 of the Third Schedule); and
- *"All improvements including equipment reasonably deemed by the Council to be necessary or desirable for the Building and/or the demised premises"* (paragraph (h) of Part 1 of the Third Schedule).

11. Clause 5(3)(a) requires the amount of the service charge to be ascertained on an annual basis and for it to be certified by a certificate signed by the Council's Director of Finance or some other duly authorised officer.

12. Clause 7(5) imposes an obligation on the Landlord to *"repair clean improve redecorate and keep in repair"* the structure of the Building as well as *"the lifts and lift shafts and machinery (if any) ....."*

13. The Applicant did not dispute that the sum demanded was payable under the terms of his lease.

Case Management Conference

14. An oral case management conference took place on 28.11.13. Both the Applicant and the Respondent attended. The tribunal identified that the only matter requiring determination was the reasonableness of the costs incurred by the Respondent.

15. Directions were issued by the tribunal on the same day as the pre-trial review.

Inspection

16. Neither party requested that the tribunal inspect the properties and the tribunal did not consider this to be necessary or proportionate.

The Hearing

17. During the course of the hearing the Respondent provided copies of the following additional documents which were added to the hearing bundle:

(i) Final Account Breakdown for two lifts **[90A]**.

(ii) Final Account Breakdown for four lifts **[90B]**.

18. The Applicant did not object to the Respondent being allowed to rely on the additional documents provided. The tribunal allowed him sufficient time to consider

them and considered it just and equitable for them to be relied upon as evidence despite their late provision.

19. The tribunal heard oral evidence from Mr Powell and Mr Douglas, both of whom had provided witness statements **[106]** and **[109]**. Informal oral evidence and submissions were provided by the Applicant.

The Applicants Case

20. The Applicant's position was that the costs of these works, totalling £431,564.67 was excessive. In his statement of case he had also argued that the lifts should have been replaced as opposed to being repaired but this assertion appeared to be based on a mistaken apprehension as to the meaning of the word "refurbished" in the Respondent's correspondence relating to these works. At the hearing, Mr Douglas confirmed that all four lifts were replaced as they were in poor condition. Parts had become hard to find, the lifts were breaking down regularly and it was considered to be more economical to refurbish than carry on repairing them. All the lift cars and all major parts were, he said, replaced.

21. In his statement of case **[43]** the Applicant referred to four quotes that he had obtained:

(i) Swallow Lifts in the sum of £25,987 plus VAT **[59]**;

(ii) Acre Lifts Ltd in the sum of £70,000 – £100,000 **[69]**;

(iii) CE Lifts in the sum of £30,000 - £70,000 plus VAT; and

(iv) Elevators Ltd in the sum of £31,966 plus VAT **[53]**;

22. No quote in respect of CE Lifts appears in the hearing bundle. There is, however a quote not referred to in the Applicant's statement of case from Skyscrapers UK totalling £28,000 - £40,000 plus VAT **[68]**.

23. At the hearing, the Applicant confirmed that he had obtained these quotes by telephoning the individual companies and asking them to quote for an estimate of the cost of replacing one lift in a four storey block, at the address of the Block, carrying 4 to 6 passengers. He referred to the figures included by the Respondent in its consultation notice dated 10.05.12 **[47]** in which the Council provided details of four estimates it had obtained for these works.

24. He also contended that the Council had a history of overcharging for the costs of works. They had previously demanded sums from him in respect of major works carried out to windows which they had not pursued when he challenged them, it seems because the works were carried out within five years from the grant of his lease and therefore excluded under s16B of Part 3 of Schedule 6 Housing Act 1985.

The Respondent's Case

25. The Respondent's position is that the contract for these works had been subject to a competitive tendering exercise and properly assessed in a tender analysis report **[89]**.

26. It also contended that the alternative quotes supplied by the Applicant were of insufficient detail to be reliable and that the incurred costs were reasonable and are payable by the Applicant in full.

Decision and Reasons

27. The tribunal determines that the costs demanded in the sum of £13,486.40 are payable by the Applicant in full subject to the deductions referred to below.

28. In oral evidence, Mr Powell explained that the sum demanded had been calculated by taking the total cost of the replacement of all four lifts (the two in the Building and the two in Howell House) in the sum of £431,564.67 and dividing that figure equally between the two blocks. That results in a figure of £215,782.33 which was then apportioned equally to the sixteen flats in both blocks.

29. The tribunal queried why an equal apportionment was appropriate given that paragraph 4.1 of the tender specification refers to the installation of two lifts in the Building capable of carrying four person at a weight of 315 kg whereas the two lifts for Howell House were to carry up to eight persons at a weight of up to 630 kg.

30. The explanation from Mr Douglas, which the tribunal accepts, was that the variance in actual costs between the two blocks was minimal. He accepted that the lift shaft in Howell House was wider and deeper (2100 mm width x 1350 mm depth)compared to that in the Building (1350mm width x 1260 mm depth) but believed that this would not have made much difference to the costs of the works in the individual blocks. He also suggested that working in a smaller lift shaft can actually increase costs due to the difficulties in working in a more confined area.

31. The tribunal took Mr Douglas through the tender specification **[70]** and asked him to comment on costs referred to under each of the headings in that document. His evidence was that the only variation in costs between the two blocks was likely to be the following:

(i) Paragraph 4.6 – Lift Car Works

Mr Douglas accepted that the smaller size of the lift car cabins in the Building would result in a difference of £500 - £1,000 per lift compared to the costs associated with Howell Court.

(ii) Paragraph 4.9 Builders Works

Mr Douglas agreed that less painting and decorating would have been required to the lift entrance fronts and thresholds in the Building when compared to Howell Court. He would estimate this would amount to no more than £200 per lift.

32. Mr Douglas also explained that, in his view, greater economies of scale are achieved by replacing four lifts as opposed to two and that the costs of these worked compared favourably when assessed against the cost of other lift refurbishment works on the Estate. One block, that he said was of a similar size to the Building, had cost £110,000 to refurbish.

33. The tribunal found Mr Douglas to be a credible and persuasive witness. Some considerable time was spent at the hearing going through each head of expenditure in the tender specification and an examination of the description of the works set out in that specification leads the tribunal to accept Mr Douglas' evidence that there was unlikely to be significant variation in the costs of these works between the two blocks. Matters such as drawings, site preparation, machine room works, shaftway works; electrical works, building works and testing on completion are, in the tribunal's view, unlikely to vary significantly between the two blocks.

34. The tribunal therefore accepts that the method of apportionment adopted by the Respondent was reasonable even though the Applicant was effectively paying 1/32 of the total cost of the works in respect of all four lifts as opposed to 1/8 of the costs solely attributable to the lift works to the Building.

35. The tribunal considers, however, that there would have been some variation between the blocks in respect of the cost of lift car works and builder's works, as conceded by Mr Douglas. The tribunal considered Mr Douglas' estimates in this respect to be realistic and concludes that the cost of the lift car works would have been £1,500 cheaper for the two lifts in the Building and that the costs of builders works would have been £400 cheaper when compared with the same works in Howell Court.

36. The Applicant suggested that Howell Court was significantly larger than the Block. However, there was no evidence to corroborate such an assertion which was strongly contested by the witnesses for the Respondent who suggested that the flats in Howell Court were larger rather than being greater in number than in the Building.

37. The tribunal therefore determines that the costs that the costs that it is reasonable for the Applicant to pay towards the works in dispute is £13,354.58 (on the basis that this is the amount that was reasonably incurred by the Respondent).

38. The tribunal found the quotes supplied by the Applicant to be of very limited evidential value. They were obtained over the telephone without the contractors visiting the Block or having sight of any documentation relating to the works including, importantly, the tender specification. One of the quotes referred to in the Applicant's statement of case did not appear in the bundle. The ones for Elevators Ltd and Swallow Lifts are for hydraulic lifts as opposed to the traction lifts that Mr Douglas stated were installed by the Respondent's contractor. The remaining two quotes in the bundle do not provide any detail concerning the proposed installation.

39. The tribunal cannot be satisfied that the quotes obtained by the Applicant are like for like quotes when compared to the estimates provided following the Respondent's competitive tendering exercise. One quote obtained by the Applicant from Acre Lifts Limited (£70,000 to £100,000 per lift) was not dissimilar from the quotes obtained by the Respondent which, Ms Karmel suggested, plausibly, was probably because they had tendered to the council for the works, but did not make the final shortlist, and therefore knew what was required.

Additional Remarks

40. Attached to the Applicant's statement of case were copies of two decisions of the Leasehold Valuation Tribunal involving Islington Council. One of these **LON/AU/LSC/2010/0613,** concerned the cost of lift works demanded by the council which that tribunal decided were not payable by the tenant, Mr Agyekum. The tribunal in that case decided that the costs had not been correctly demanded in accordance with the terms of Mr Agyekum's lease which did not allow the council to demand ad-hoc service charges throughout the year given the annual certification requirements set out in the lease.

41. No reference to either of these cases appears in the Applicants statement of case and when asked by the tribunal why these cases had been attached to his statement of case, the Applicant's response was that the law centre who had previously been advising him had included the cases but he was not sure why they had done so. They were unable to represent in the hearing before the tribunal and he was not able to make any submissions to us regarding the two cases.

42. The tribunal considered whether or not it should delay reaching its decision pending written submissions by both parties as to whether or not the sum demanded was payable by the Applicant given the conclusion reached by the tribunal in the case of Mr Agyekum. It decided it was inappropriate to do so. This was not a point that was referred to in the Applicant's statement of case nor did he refer to it in his oral submissions to the tribunal. As such, the tribunal considers that it should be cautious about raising matters on its own volition even if any prejudice to the Respondent could be cured by allowing it time to make written submissions.

43. The tribunal considers that it may have been appropriate to request written submissions if this was a point that was likely to be finally determinative of the dispute between the Applicant and the Respondent. However, whilst doing so might, arguably, have resulted in a determination of this application in the Applicants favour, this would be unlikely to provide him with any long-term benefit. This is because of what Ms Karmel indicated the Respondent would do in the face of such a determination. She indicated that the council would simply arrange for a certification of the service charges and then seek to recover those certified costs from the Applicant. This, she said, is what the council did in Mr Agyekum's case who was served with a service charge demand for full the cost of the disputed works after the tribunal's determination had been issued.

44. Whilst the circumstances in this case are slightly unusual in that the Applicant is no longer the lessee of the Property, he would still be liable to pay a sum properly demanded from the current lessee following appropriate certification by the Respondent in accordance with the provisions of this lease. This is because of his own concession that he remains liable for the costs of these works as evidenced by the retention made by his solicitor. It seems to this tribunal that it would be of little benefit, in the long-term, to the Applicant if the tribunal were to find that, as far as this application was concerned, the Respondent had failed to demand the costs of these works in accordance with the requirements of the applicants lease. This is because it would not assist him to find himself in the situation where the

Respondent served a fresh service charge demand on the current lessee who would then, almost certainly, seek to recover the sums from the Applicant given the retention agreement in place.

45. In addition, further delay (including a possible appeal by the Respondent) would increase costs to this tribunal and to the Respondent and also delay the return of the balance due to the Applicant from the sum retained by his solicitor

46. The tribunal therefore concluded that it should proceed to make its determination on the evidence and submissions before it and it was inappropriate to request any further written submissions from the parties.

Application under Section 20C

47. This was withdrawn by the Applicant at the case management conference as he was no longer the lessee for the Property.

Name: Amran Vance **Date:02.04.14**

Annex

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 - Meaning of "service charge" and "relevant costs"

(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 – Limitation of service charges: reasonableness

(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 – Liability to pay service charges: jurisdiction

(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 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.

[.....]

Service Charges (Consultation Requirements) (England) Regulations 2003.

SCHEDULE 4

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

Regulation 7(4)

Part 1

Consultation Requirements for Qualifying Works for Which Public Notice is Required

Notice of intention

1

(1) The landlord shall give notice in writing of his intention to carry out qualifying works--

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall--

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom he should try to obtain an estimate for carrying out the works is that public notice of the works is to be given;

(d) invite the making, in writing, of observations in relation to the proposed works; and

(e) specify--

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

Inspection of description of proposed works

2

(1) Where a notice under paragraph 1 specifies a place and hours for inspection--

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

3

Where, within the relevant period, observations are made in relation to the proposed works by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

Preparation of landlord's contract statement

4

(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a statement in respect of the proposed contract under which the proposed works are to be carried out.

(2) The statement shall set out--

(a) the name and address of the person with whom the landlord proposes to contract; and

(b) particulars of any connection between them (apart from the proposed contract).

(3) For the purpose of sub-paragraph (2)(b) it shall be assumed that there is a connection between a person and the landlord--

(a) where the landlord is a company, if the person, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(4) Where, as regards each tenant's unit of occupation, it is reasonably practicable for the landlord to estimate the amount of the relevant contribution to be incurred by the tenant attributable to the works to which the proposed contract relates, that estimated amount shall be specified in the statement.

(5) Where--

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and

(b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed contract relates, the total amount of his expenditure under the proposed contract,

that estimated amount shall be specified in the statement.

(6) Where--

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4) or (5)(b); and

(b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the works to which the proposed contract relates,

that cost or rate shall be specified in the statement.

(7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the reasons why he cannot comply and the date by which he expects to be able to provide an estimated amount, cost or rate shall be specified in the statement.

(8) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, the statement shall summarise the observations and set out his response to them.

Notification of proposed contract

5

(1) The landlord shall give notice in writing of his intention to enter into the proposed contract--

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall--

(a) comprise, or be accompanied by, the statement prepared in accordance with paragraph 4 ("the paragraph 4 statement") or specify the place and hours at which that statement may be inspected;

(b) invite the making, in writing, of observations in relation to any matter mentioned in the paragraph 4 statement;

(c) specify--

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) Where the paragraph 4 statement is made available for inspection, paragraph 2 shall apply in relation to that statement as it applies in relation to a description of proposed works made available for inspection under that paragraph.

Landlord's response to observations

6

Where, within the relevant period, the landlord receives observations in response to the invitation in the notice under paragraph 5, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.

Supplementary information

7

Where a statement prepared under paragraph 4 sets out the landlord's reasons for being unable to comply with sub-paragraph (6) of that paragraph, the landlord shall, within 21 days of receiving sufficient information to enable him to estimate the amount, cost or rate referred to in sub-paragraph (4), (5) or (6) of that paragraph, give notice in writing of the estimated amount, cost or rate (as the case may be)--

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.