



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

Case reference : **LON/00AE/LSC/2015/0082**

Property : **Ground Floor Flat, 259 Harvist Road, London NW6 6HH**

Applicant : **Crestlodge Limited**

Representative : **Ms S Walker of counsel**

Respondent : **Ms C Hector**

Representative : **In person**

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

Tribunal members : **Mr S Brilliant
Mr I Thompson FRICS**

Date and venue of hearing : **8 June 2015
10 Alfred Place, London WC1E 7LR**

Date of decision : **15 July 2015**

DECISION

Decisions of the Tribunal

- (1) At the hearing the Respondent did not dispute that the following sums are payable by her in respect of service charges for the following years:

Year ending 28 September 2013	Buildings Insurance	£639.01
Year ending 28 September 2014	Cleaning	£386.21

- (2) At the hearing the parties reached agreement on how much the Respondent should pay towards the costs of building works including professional fees. The Respondent agreed to pay £6,600.00 and the Applicant agreed to carry out the work necessary to fix the outstanding concerns about the carpets.
- (3) The Tribunal makes an order for costs against the Respondent that she pays one-third of the Applicant's costs in the sum of £1,912.27.

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 Respondent in respect of the service charge years ending 28 September 2013 and 28 September 2014.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by counsel at the hearing and the Respondent appeared in person.
4. The Applicant provided a bundle containing 191 numbered pages.

The background

5. The property which is the subject of this application ("the flat") is a self-contained ground floor flat in a building ("the building") containing 3 flats.
6. The Respondent holds a long lease of the flat dated 31 March 1995 ("the lease"). The lease requires the Applicant to provide certain services, including building insurance, exterior repairs and cleaning of the

common parts and the Applicant is entitled to employ professional persons where considered necessary. The lease requires the Respondent to contribute towards these costs by way of a variable service charge. Her share is one third of the total.

The issues

7. In 2013 the Applicant carried out extensive works to the building. The total cost of the works came to £21,552.00. The Respondent's share of these costs was £7,184.00. The statutory consultation procedure was complied with. The solicitor's costs in connection with the procedure came to £1,917.04. The Respondent's share of these costs was £639.01. In 2013 the Respondent's share of the building insurance was £409.16. In 2014 the Respondent's share of the cleaning costs amounted to £386.32.
8. The Respondent did not pay these sums. The Applicant made the application to the Tribunal to determine the liability to pay and reasonableness of these sums on 13 February 2015.
9. There was a directions hearing on 10 March 2015. The Respondent failed to attend. The Respondent was directed to send to the Applicant by 21 April 2015 a statement of case setting out the reasons why she did not consider that the disputed costs were payable or were reasonable, if relevant to provide alternative figures, and to state what sums were agreed.
10. The Respondent failed to do this. Both parties were directed to serve witness statements by 19 May 2015. The Respondent did not serve a witness statement.
11. The Respondent sent an email to the Applicant's solicitors on 19 March 2015. It said that the works had not been completed, and that there was still a dispute which would remain until the works were complete. On 26 May 2015 the Respondent sent a further email complaining about unfinished jobs, such as missing panels and the flap of the hall carpet against her door. She also complained of irreplaceable items having been thrown out by the builders.
12. Apart from these emails the Respondent did not engage in the proceedings prior to the hearing.

Resolution of the issues

13. At the hearing the parties were given an opportunity to discuss the costs of the works and the costs of the professional fees in connection with the works. The parties reached agreement that the Respondent would pay £6,600.00 in respect of these costs.

14. The Respondent said that she had no challenge to either the building insurance or cleaning costs.

Discussion

15. These proceedings resolved themselves at the hearing once the Respondent was prepared to become engaged in the process and accept she had no challenge to part of the amount claimed.
16. It is regrettable that both parties did not become more engaged in the process of resolving the dispute earlier, as there is no reason why the agreement which was reached could not have been reached much earlier. There is no evidence before us that the Applicant attempted to resolve the dispute before commencing these proceedings, and there was no attempt at mediation. There was little or no engagement after the proceedings were issued.
17. Our considered view is that in all the circumstances the Respondent has acted unreasonably in defending or conducting proceedings within the meaning of rule 13(1)(b)(iii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and should make a contribution to the Applicant's costs. We assess that contribution as one third of the Applicant's costs. This amounts to £1,912.27.

Name: Simon Brilliant

Date: 15 July 2015

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.