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

Case Reference : LON/00AJ/LSC/2014/0613

Property : 146 Lynton Road, London W3 9HH

Applicant : Brian Maurice Denny Stubbs (1)
Colin Denny Stubbs (2)
Richard Ivan Stubbs (3)

Representative : Hubbard Pegman and Whitney LLP

Respondent : Mr Parmjit Singh Viridi

Representative : Messrs E D C Lord & Co

Type of Application : Liability to pay service charges
and/or administration charges

Tribunal Members : Ms N Hawkes
Mr W R Shaw FRICS

Venue : 10 Alfred Place, London WC1E 7LR

**Date of Paper
Determination** : 14th April 2015

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that of the items listed in the Scott Schedule the sum of £2,025 is reasonable and payable. The Tribunal notes from the applicants' statement of the respondent's account that this sum appears to have been paid.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985.

- (3) Since the Tribunal has no jurisdiction over County Court costs and fees, this matter should now be referred back to the County Court at Uxbridge.

The application

1. The applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the respondent in respect of the service charge years 2007/8 to 2013/14 inclusive.
2. Proceedings were originally issued in the County Court at Northampton under Claim No. A15YP527. The claim was transferred to the County Court at Uxbridge and then in turn transferred to this Tribunal, by order of District Judge Banks on 3rd November 2014.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The property which is the subject of this application is a ground floor flat in a converted house.
5. Two photographs of the exterior of the house 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.
6. 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 relevant provisions of the lease are clauses 3.1.4, 3.1.5, 3.1.6, 3.1.14, 3.3.2, the First and Second Schedules and the Definitions section of the lease.
7. On 6th January 2015 the Tribunal gave directions for a paper determination, the parties having agreed that they wish to have this matter determined on the basis of the papers without an oral hearing.
8. The parties have helpfully listed the outstanding issues in the form of a "Scott Schedule". In addition, the Tribunal has received written submissions from both parties; a Reply from the respondent; a witness statement dated 2nd March 2015 prepared by the third applicant; and various documents relied upon by the parties.

The applicants' claim that the terms of the lease have been varied

9. On 30th August 2007, shortly after the respondent had acquired the leasehold interest in the property, the third applicant wrote to the respondent stating:

".. Payments are due monthly into the Flat a/c. The account has been set up at zero and payments of £56.00 should be made monthly from that date. This will cover a quarterly management fee of £89.03 plus buildings insurance and day to day maintenance. Any surplus monies in the account remain the property of the leaseholder. To keep the Flat account in credit when items of maintenance arise, we do have to go to the leaseholders to pay for these. You will receive accounts annually."

10. The lease does not require the respondent to make monthly payments. However, the applicant asserts that the respondent made monthly payments for some 18 months and that, accordingly, the terms of the lease have been varied.
11. The respondent asserts that promissory estoppel does not arise on the facts of this case; that the lease is a deed; and that any such variation of the long lease must be in writing. The Tribunal accepts the respondent's submissions and finds that the terms of the lease have not been varied.

The quarterly payments

12. The applicants claim a quarterly service charge payment of £89.03 throughout the period of their claim. This appears to be based on an annual management charge of £356.12 (see the Scott Schedule). At paragraph 5 of his witness statement, the third applicant states that the annual management charge is £365.12 but the Tribunal assumes that this is an error.

13. By clause 3.1.5 of the lease, the tenant covenants:

"To pay on account of the Tenant's obligations under Clause 3.1.4 of this Lease by equal quarterly instalments in advance on the 1 day of January 1 day of April 1 day of July and 1 day of October in every year such sum as the Landlord shall reasonably estimate to be the likely amount of the Tenant's contribution for that year and a proportionate part of such instalment calculated from the date hereof to the next day for the payment shall be paid on execution of the lease".

14. In his written submissions, the respondent states that the landlord has not in any year provided the tenant with an estimate of the likely expenditure for the following service charge period and that, in the absence of such an estimate, no advance service charges are payable.

15. However, this submission does not appear to be pursued on the Scott Schedule in which the tenant states that £89.03 is excessive having regard to the total level of the annual expenditure and offers to pay £20 per quarter.
16. The items covered by the annual management charge are listed at paragraph 5 of the third applicant's witness statement. However, no indication is given of frequency of the site inspections and sweeping of the common forecourt; there is no supporting documentation in respect of the maintenance costs and running costs of the lighting; and there is no evidence before the Tribunal that audited service charge accounts have been prepared.
17. Statements of the leaseholder's individual account have been provided which are said to have been audited. However, by the Second Schedule to the lease, the Landlord is required to keep an account of "the Landlord's expenses" which is to be audited by a qualified accountant who shall certify the "total amount" of the landlord's expenses. There is no evidence that this has been done. Further, it appears to be common ground that the information required by section 21B of the Landlord and Tenant Act 1985 ("the 1985 Act") was not served on the respondent until 17th September 2014.
18. In all the circumstances, the Tribunal determines that the sum of £250 per annum or £62.50 per quarter would constitute a reasonable management fee. The Tribunal notes that the applicants have adduced no evidence that VAT is payable.

Interest for late payments

19. The respondent states that because the information required by section 21B(1) of the 1985 Act was not served on the respondent until 17th September 2014, he was entitled to withhold payment of the service charges demanded until section 21B(1) had been complied with. Further, by section 21B(4) any provisions of the lease relating to the non-payment or late payment of service charge do not have effect until 17th September 2014 and no interest is payable prior to that date.
20. At paragraph 17 of his witness statement, the third applicant states that he does not dispute the late service of the summary of the rights and obligations of the tenants of dwellings in relation to service charges but he argues that it is clear that the respondent was in fact aware of his rights and obligations.
21. The Tribunal determines that section 21B applies whether or not the respondent was aware of his rights and obligations and that no interest is payable in respect of any period prior to 17th September 2014. Section 21B of the 1985 Act is set out in full in the appendix to this

decision. The Tribunal determines the interest rate of 8% per annum put forward by the respondent at page 72 of the bundle in respect of the period following 17th September 2014 is reasonable if any service charges were outstanding at this date.

Bank charges including bank interest payments and overdraft arrangement fees

22. The Tribunal considers that it was not necessary for an individual bank account to be set up for the respondent's payments which was separate from any client account for the building in which the property is situated. Further, the Tribunal notes that no payments from the respondent became due until 17th September 2014. The Tribunal is not satisfied on the basis of the limited information which has been provided by the applicants regarding the bank charges that any of the bank charges and/or fees were reasonably incurred.

External building decoration

23. The respondent has offered the sum of £250 under this heading on the basis that the consultation provisions of section 20 of the 1985 Act have not been complied with. This offer has been accepted by the applicants. Accordingly, the sum of £250 is payable by agreement between the parties.

Gate repair

24. The applicants claim the sum of £93.75 representing the respondent's 25% share of the cost of work to a gate which is said to have cost £375 in total. The applicants state that the gate was repaired by an outside contractor that this was considered necessary for maintenance and security reasons. They state that "this payment has been audited and is payable." The respondent states that no detail has been provided and offers to pay the sum of £25.
25. The Tribunal accepts the applicants' assertion that the sum of £375 is payable to an external contractor in respect of work which was carried out to a gate in November 2011. However, the applicants have failed to provide the Tribunal with any particulars of the type of the work which was carried out to enable the Tribunal to assess whether or not the sum charged is reasonable having regard to the type and complexity of the work carried out.
26. In the absence of any particulars of the nature of the work carried out, the Tribunal is not satisfied on the balance of probabilities that the sum of £93.75 claimed from the respondent is reasonable for the work in question and determines that the sum of £25 is payable by the respondent.

Application under s.20C of the 1985 Act

27. In the statement of case, the respondent applied for an order under section 20C of the 1985 Act. 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.

The next steps

28. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court at Uxbridge.

Judge N Hawkes

14th April 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 21B

21B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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).