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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AY/LSC/2016/0173**
Property	:	**12 Montrell Road, London, SW2 4QB**
Applicant	:	**Claire Wynne-Jones**
Representative	:	**In person**
Respondent	:	**12 Montrell Road Freehold Ltd**
Representative	:	**Matthew Avent (sole director and shareholder)**
Type of application	:	**For the determination of the reasonableness of and the liability to pay service charges**
Tribunal members	:	**Judge Robert Latham** **Michael Cartwright JP FRICS**
Venue	:	**4 July 2016 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**23 August 2016**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the following sums are payable in respect of the advance service charge demanded on 29 May 2016:

(i) building insurance: £321.08;
(ii) electricity: £42.75;
(iii) accountancy: £67.50;
(iv) communal parts maintenance: £54.90;

(v) communal parts cleaning: £108;
(vi) tree cutting/clearance; garden clearance; front fence and gate: £250.
(vii) management fee: An addition of 15% to these sums.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that only 50% of the landlord's costs of the tribunal proceedings may be passed to the lessee through any service charge.

(3) The Tribunal determines that the Respondent shall pay the Applicant £157.50 within 28 days of this decision, in respect of a 50% reimbursement of the tribunal fees paid by the Applicant.

The Application

1. By an application, issued on 20 April 2016, the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by her in the year 2015/6. The Applicant issued a second application for an order under Section 20C of the Act.

2. 12 Montrell Road ("the building") has five flats. The building is a two storey semi-detached property. The Applicant is the tenant of Flat 3 ("the flat"), and acquired the leasehold interest on 26 February 2008. Her flat is on the first floor. On 10 October 2002, Matthew Avent acquired the leasehold interest in Flat 5. On 15 July 2015, Mr Avent also acquired the freehold interest in the building for £73,500. This interest is registered in the name of 12 Montrell Road Freehold Limited, a company in which he is the sole shareholder and director.

3. In her application, the Applicant challenges five items: (i) annual maintenance charge: £427.50; (ii) building insurance: £352.23; (iii) accountancy: £64.69; (iv) maintenance: £51.75; and (v) cleaning: £129.38. On 13 March 2016, the Respondent issued a demand for these service charges (at p.131 of the Bundle). The demand stated that these sums related to the period 15 July 2015 to 26 June 2016. This demand was issued prior to the end of the service charge year and was therefore an advance service charge. The Applicant asks the Tribunal to determine a number of issues: (i) whether the freeholder is entitled to levy a management charge in excess of that provided in the lease; (ii) whether the building insurance was acquired for the benefit of the lessees; (iii) the proportion of the service charge that she should be required to pay given the proposal to expand Flat 5 to include a loft space conversion; and (iv) whether the landlord is entitled to levy an advance service charge.

4. On 4 May, the Tribunal issued Directions. On 20 May (at p.20), the Applicant complained that the reserve fund had "gone missing". She

asked for permission to include this as part of her claim. On 13 May, the Tribunal gave the Applicant permission to amend her claim.

5. On 15 May, the Applicant served her Statement of Case (at 56). She stated that the primary reasons for issuing the claim was that she was concerned that the property was not properly insured and the Respondent had failed to engage with her on this.

6. On 29 May, The Respondent issued a second service charge demand for the accounting period 15 July 2015 to 26 June 2016 (at p.176). Strictly, this is a revised advance service charge demand. The Respondent now claims the following: (i) incurred costs: £281.25; (ii) building insurance: £321.08 (previously 352.23); (iii) electricity: £42.75 (£49.16); (iv) accountancy: £67.50 (£64.69); (v) communal parts maintenance: £76.95; (vi) communal parts cleaning: £135; (vii) tree cutting/clearance: £125; (viii) garden clearance: £132.50; (ix) front fence and gate: £216; and (ix) management fee: £205.84.

7. On 30 May, the Respondent served its Statement of Case (at 59-73). The Applicant wrote to the Tribunal querying whether she was able to challenge this revised demand. On 1 June, the Tribunal responded that it was not able to micro-manage and this was a matter to be raised at the hearing. On 10 June, the Applicant served a Statement in Reply. The Respondent has also provided a second statement.

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

The Hearing

9. The Applicant appeared in person and Mr Avent appeared on behalf of the Respondent. They each elaborated upon their Statements of Case.

10. Both parties agreed that the Tribunal should focus on the revised service charge demand dated, 29 May 2016. The one item that is not challenged is the sum of £42.75 claimed in respect of electricity. The Respondent accepts that he will have to produce service charge accounts after the year end, namely 26 June 2016. However, all the disputed items are based on sums actually incurred, rather than estimated items. The one exception is item (iv), the claim for accountancy.

11. A particular issue was raised in respect of items (vii) tree cutting/clearance: £125; (viii) garden clearance: £132.50; and (ix) front fence and gate: £216. None of these items had been included in the initial advance service charge demand that had been made on 13 March. All these works were executed over a short period in May/June 2016. The Applicant contended that these were a single set of works for

the purposes of Section 20 of the Act, and were therefore "qualifying works" to which the statutory consultation requirements applied. We heard submissions from both parties on this issue.

12. On 5 July, Mr Avent wrote to the Tribunal stating that he had not had a sufficient opportunity to address the Section 20 argument. He would have wished to provide further evidence to argue that these were not a single set of works but were executed "on three different occasion, spanning a two month period and were carried out be entirely different contractors and at the request of different leaseholders".

13. On 6 July, the Tribunal wrote to the parties giving them an opportunity to make further representations and provide any additional documents on this issue. We indicated that we would aim to issue our decision by 22 August. On 11 July, the Respondent provided a Chronology with supporting documentation. On 18 July, the Respondent provided her written submissions in response.

The Lease

14. The Tribunal has been provided with two leases:

(i) The original lease in respect of the Applicant's flat, Flat 3, is at p.21-40. It is dated 27 February 1986 and granted a term 99 years from 24 June 1985. On 4 October 2012, there was a lease extension of 90 years, this taking effect as a surrender and re-grant on the same terms as the original lease (p.41-55). This is the lease with which we are concerned and sets out the contractual provisions whereby the Respondent can demand service charges from the Applicant.

(ii) The lease dated 15 November 1985 in respect of Flat 5, the flat of which Mr Avent is the tenant (p.79-100). This differs in some respects from the lease for the flat. Thus by Clause 4(9), the landlord covenants to keep service charge accounts with a year end of 24 June. This provision does not appear in the Applicant's lease. These differences are not material to our determination, but explain why the landlord has worked to an accounting period ending 24 June.

15. The Tribunal highlights the following terms of the lease:

(i) The "building" is defined as "the freehold property known as 12 Montrell Road ... which is divided into five flats" and includes the grounds thereof.

(ii) The "flat" is defined to include the ceilings and boards, but exclude the floor and ceiling joists. It includes all windows and doors and internal non-load bearing walls.

(iii) By clause 3(4), the tenant covenants to keep the flat in good and tenantable repair.

(iv) By clause 4(1), the landlord covenants to maintain and repair those parts of the building which are not demised to any tenant. The landlord further covenants to keep clean and proper order the common parts of the building. The obligation to decorate the exterior of the building falls on the landlord.

(v) By clause 4, the landlord covenants to insure the building. The landlord is obliged to produce to the tenant a copy of the policy of insurance on 14 days notice.

(vi) The tenant's contribution to the service charge account is 22.5% (Clause 1(2)) of the expenses incurred by the landlord or which the landlord may reasonably require in respect of anticipated expenditure. The clause makes express provision in respect of the payment of the proper fees of any surveyor or other agent employed by the landlord to discharge its obligations.

(vii) Clause 6 permits the landlord to charge a management charge of 15% of the costs of the cost of repairs and maintenance and other expenses incurred.

The Background

16. 12 Montrell Road has five flats. There is a lease plan at p.101. The building is a two storey semi-detached property. Flats 1 and 2 are on the ground floor, Flat 3 is on the first floor; Flat 4 is on the first and second floors and Flat 5 on the second floor. A previous landlord permitted the tenant of Flat 4 to have a roof terrace.

17. The original leases of the five flats were granted between 1985 and 1986. The lease in respect of Flat 3 was the last to be granted. Max Carry was the original landlord. On 10 October 2002, Mr Avent acquired the leasehold interest to Flat 5. On 26 February 2008, the Applicant acquired the leasehold interest to Flat 3.

18. In April 2016, the other flats were owned as follows: Flat 1: Sally Williams; Flat 2: Mark Bhardwaj; Flat 3: the Applicant; Flat 4: Anthony Williams and Ian Kavanagh; Flat 5: Mr Avent. The Applicant and Mr Avent occupy their flats; the tenants of Flats 1 and 4 do not.

19. On 31 December 2011, the Applicant issued proceedings in the County Court seeking damages and injunctive relief for disrepair against the then landlord, Pemco Investment Limited ("Pemco"), a company based in the Turks and Capos Islands. The proceedings were transferred to

the High Court and the lease extension was part of a settlement of the dispute.

20. On 15 July 2015, The Respondent acquired the freehold interest. The Applicant has raised the issue of any reserve fund that should have been transferred at the time of time of the transfer of the landlord's interest. Mr Avent states that no funds were transferred and that he started the service charge accounts afresh.

21. The Tribunal has been provided with the service charge accounts for the 12 month period to 31 December 2014 (at p.109-116). These record deficits for the years 2013 and 2014 (p.112). There is some reference to a "general reserve" of £15,580" (p.114), and a bank balance in the service charge account of £6,848" on 31 December 2014 (p.115).

22. It seems to be common ground that the services provided by Pemco were extremely poor. Pemco would have held any service charge funds on trust for the tenants (Section 42 of the Landlord and Tenant Act 1987). Whether there were any such funds is far from clear. On 10 June 2105, HML Andertons, Pemco's managing agents, wrote to the Applicant asserting that there was an overall net deficit for 2014 of £1,148 of which her liability was £258.30. A demand was also made for an advance service charge for 2015 in the sum of £1,131.26 (p.107-8). It seems that the Applicant did not pay this. If Pemco held any service charges on trust for the Applicant, this is a matter between the Applicant and Pemco.

23. On 22 September, 2015, Mr Avent informed the Applicant that he was proposing to carry out a loft conversion (p.120). The Applicant responded suggesting that the loft space was a communal area and inquiring how this would impact upon the service charge. Mr Avent stated that the roof space belonged to the freeholder. This seems to be correct. He stated that the service charges would be reviewed once the works had been completed. He further stated that he intended to manage the property himself, unless problems arose in which case he would revert to the use of managing agents. The Applicant responded stating her opposition to the proposed plans (p.119). On 27 October, the Applicant softened her tone and suggested meeting for a cup of coffee (p.122). In his response (at p.122), Mr Avent referred to plans to get the front garden upgraded, once the loft was out of the way.

24. On 26 January 2016, the Respondent granted Mr Avent a new 125 year lease in respect of Flat 5, the demise of which now extends to the roof space and the roof terrace (p.153). On 10 March, the London Borough of Lambeth ("Lambeth") notified the Applicant that Mr Avent had applied for planning permission to carry out a roof conversion including the installation of new roof lights (p.128). On 29 April, Lambeth granted planning permission. Works have not yet commenced.

25. On 7 April, the Respondent offered to sell the tenants the freehold for £90,000. The Tribunal is satisfied that it has no jurisdiction on the current application to consider the impact on the service charges payable by the Applicant of any loft conversion. The parties accept that this must be reviewed once any conversion is completed.

26. On 13 March 2016 (at p.131), the Respondent issued its demand for an advance service charge in the sum of £1,074.71. On the same day, the Applicant requested the supporting documentation pursuant to Sections 21 and 22 of the Act (p.137). On 6 April (at p.188), the Applicant sent the Respondent a draft copy of her application form. She issued her application on 20 April.

27. On 29 May (at p.176), the Respondent issued a revised demand in the sum of £1,578.13. This represents a total expenditure of £6,671 for the building. The Tribunal is satisfied that Clause 1(2) of the lease permits the landlord to demand an advance service charge. Mr Avent stated that he sought to minimise the service charges that would be payable by managing the property himself and arranging for his partner to carry out the cleaning and gardening duties. In principle, there is nothing wrong in this. However, transparency is required if tenants are to have confidence in such arrangements.

28. The Tribunal notes that under the ownership of Pemco, the service charges had apparently amounted to £5,528 in 2015 and £6,004 in 2014 (see p.112). The cost of insurance was £1,226 (2015) and £1,501 (2014). A fixed management fee of £1,170 (2015) and £1,230 (2014) was charged. No services were provided in respect of cleaning the common parts or maintaining the garden.

The Tribunal's Determination

Issue 1: Incurred Costs - £281.25 (£1,250)

29. The Respondent claims £1,250 pursuant to Clause 1(2)(d) of the lease in respect of "uncovenanted time expenditure resulting from a wide range of complaints, litigation, and historic service charge and insurance queries all of which are not linked to the normal management of 12 Montreal Road" (see p.174). The Applicant's 22.5% share is £281.25. The invoice, dated 29 May 2016, is at p.174. Mr Avent claims 50 hours at £25 per hour. No details are provided as to the dates when the Mr Avent was engaged in this work.

30. The Applicant disputes her liability to pay this sum. First, she disputes that Mr Avent has carried out this work. Secondly she disputes that this work is recoverable pursuant to the terms of the lease. Thirdly, she contends that this work falls within the Respondent's normal

management duties for which he charges 15%. Finally, she contends that such a claim undermines the Section 20C procedure.

31. The Tribunal agrees with the Applicant and disallows this claim. The Tribunal notes that no such sum was claimed in the initial demand, dated 13 March 2016. The charge rather seems to arise from the Applicant's decision to issue her current application on 20 April. No adequate particulars have been provided of the works involved. The work involved relates to Mr Avent's normal management responsibilities.

Issue 2: Insurance - £321.08 (£1,427.02)

32. The Respondent claims a total of £1,427.02 in respect of which the Applicant is liable for £321.08. The Respondent claims 9 months at £113,44 per month which was taken out for the period 15 July 2015 to 14 July 2016 (see p.117) and 3 months at £135.36 for the period 29 March 2016 to 29 March 2017 (see p.140). The policy was initially in the name of Mr Avent. When this error was brought to the attention of the Respondent, a new policy was taken out in the name of the Respondent company. The new policy was issued on 19 April 2016, to be effective from 29 March 2016. This superseded the previous policy.

33. The Applicant contends the initial policy was invalid and should be disallowed. She also refers to a claim made on 2 June 2016 in respect of water damage on 3 April 2016 (see p.185). The sum claimed was £195. There was a £250 excess on the policy (see p.141).

34. The Tribunal is satisfied that the sum is payable. The landlord is liable to insure the building. We are not satisfied that the insurance company would have treated the initial policy as void merely because of the error in registering the policy in the wrong name. The claim for flood damage seems to be irrelevant. It is standard practice to have an excess on a policy. It is in the interests of the tenant for a landlord to negotiate such a policy.

Issue 3: Accountancy - £67.50 (£300.00)

35. The Applicant contends that this sum is not payable as the landlord has failed to provide a set of account for 2015. The Respondent contends that this is an estimated item of expenditure which will become payable when the accounts are prepared after the end of the current financial year, namely 24 June 2016.

36. The Tribunal are satisfied that the Respondent is entitled to claim this as an advance service charge which will appear in the accounts when these are prepared for the financial year to 24 June 2016. The Respondent was entitled to change its financial year, particularly

having regard to the lease in respect of Flat 5 (and possible some of the other leases). It is in the interests of the tenants for there to be audited accounts. We are satisfied that this expenditure is recoverable pursuant to Clause 1(2).

Issue 4: Communal Parts Maintenance - £76.95 (£342.00)

37. The Respondent claims £342, in respect of which the Applicant is liable for £76.95. Mr Avent claims 6 hours at £25 per hour (£150) for cleaning gutters, changing light bulbs and decorations. There is no invoice in respect of this. There is a further claim 16 hours at £12 per hour for gardening duties (see p.165). The invoice is dated 14 May 2016. Two hours are claim for 8 visits at £12 per hour. The work was carried out by Vera Leba, the Mr Avent's partner.

38. The Tribunal allows £100 in respect of Mr Avent's duties and 12 hours for gardening (£144). There is nothing to stop the Respondent from employing Mr Avent and his partner. However, the Respondent must be able to satisfy us that the work has been done. The paperwork is not sufficient. We therefore reduce this sum to £244, the Applicant's share being £54.90.

Issue 5: Communal Parts Cleaning - £135.00 (£600.00)

39. The Respondent claims £600 for one hours cleaning over 50 weeks at £12 per week, for which the Applicant is liable for £135 (see p.165). The invoice is dated 14 May 2016. One hour a week is claimed over a period of 50 weeks at a rate of £12 per week. The work was again carried out by Vera Leba, the Mr Avent's partner.

40. In her Statement of Case, the Applicant puts her case in stark terms: "In the event however, the Respondent has not employed any cleaning service and this cost for cleaning is, at best, unreasonable and at worst, a fabrication". In her evidence, the Applicant conceded that Ms Leba had cleaned the corridor and the two flights of stairs. She denied that this had been done every week as there were occasions when Ms Leba was away. In any event, there were only 43 weeks between the commencement of the accounting period and the date of the invoice. Mr Avent conceded that the building was not cleaned when Ms Leba was on holiday.

41. The Tribunal is satisfied that this is not a qualifying long term agreement. It can be cancelled at any time. We are satisfied that one hour a week is the minimum that could be paid for a cleaner and that £12 per hour is reasonable. We note that Ms Leba uses her own equipment and cleaning materials. However, we are not satisfied that the building has been cleaned every week. We would allow a total of 40 hours over this 49 week accounting period. We therefore reduce the

budgeted sum from £600 to £480, reducing the Applicant's contribution to £108.00.

Issue 6: Tree Cutting/Clearance - £112.50 (£500.00); Garden Clearance: £119.25 (£530.00); Front Fence and Gates - £216.00 (£960.00)

42. The Applicant first asks the Tribunal to consider whether these are a single set of "qualifying works" for the purposes of Section 20 of the Act. There are two issues for us to determine:

(i) do these works constitute a single set of works for the purposes of Section 20?

(ii) If they do, it is accepted that the Respondent has failed to comply with the statutory requirements. We must therefore consider whether it would be reasonable to dispense with the requirements.

The total cost of these works is £1,990 of which the Applicant's contribution is £447.75. If they are qualifying works, and we decline to grant dispensation, the tenant's contribution will be restricted to £250.

43. In *Francis v Phillips* [2014] EWCA Civ 1395; [2015] HLR 3, the Court of Appeal gave guidance on the test to be applied in determining whether works constitute a single set of works. Lord Dyson MR (at [36]) stated:

> "It is not in issue that the question of what a single set of qualifying works comprises is one of fact. It is a multi-factorial question the answer to which should be determined in a commonsense way taking into account all relevant circumstances. Relevant factors are likely to include (i) where the items of work are to be carried out (whether they are contiguous to or physically far removed from each other); (ii) whether they are the subject of the same contract; (iii) whether they are to be done at more or less the same time or at different times; and (iv) whether the items of work are different in character from, or have no connection with, each other. I emphasise that this is not intended to be an exhaustive list of factors which are likely to be relevant."

44. In *Daejan Investment Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854, the Supreme Court gave guidance on the discretion to grant dispensation. The Court noted that Section 19 is intended to ensure that tenants are not required: (i) to pay for works which are unnecessary or provided to a defective standard; or (ii) to pay more than they should for works which are necessary and which are carried out to an acceptable standard. The requirements of Section 20 and the Service

Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) are intended to reinforce and give practical effect to Section 19. Given the purpose of the consultation requirements, a tribunal should, on an application by a landlord for dispensation focus on the extent (if any) to which the tenants have been prejudiced by the landlord's failure to comply with those requirements.

45. Mr Avent argues that one-off work was carried out on three different occasions spanning a two month period carried out by different contractors at the request of different tenants. He refers us to an e-mail which he sent to the Applicant, dated 27 October 2015 (at p.121) in which he refers to "getting garden upgraded" when the loft conversion is "out of the way". There was no reference to this proposed works when the interim service charge was demanded 13 March 2016. Neither did he discuss these works with the Applicant in 2016.

46. There are three invoices:

(ii) On 16 May (at p.166), Garden Services SW London ("Garden Services) submitted an invoice of £530 for mowing the front and rear lawns and clearing away weeds and brambles. It would seem that they quoted £450 for this work on 5 May. The work was executed on 15 May.

(ii) On 17 May (at p.172), Garden Services submitted an invoice for removal of the overgrown top branch of a hedge and removal of a composted pile of rubbish at a cost of £500. This was to be paid when the job was completed on 4 June.

(iii) On 19 May (at p.173), Ian Kavanagh quoted £960 for works to the garden fence and gates. Mr Avent states that this work was completed on 18 June. Mr Kavanagh is the tenant of Flat 4.

47. Mr Avent states that he had previously obtained a quotations for the gardening works from (i) Noel d'Abo in the sum of £1,065 (14 April) and (ii) Surrey Trees and Gardens in the sum of £860 (5 May).

48. The Tribunal is satisfied that these works have been executed to a reasonable standard. However, we are also satisfied that they should be treated as a single set of works. All the works related to the garden. The works were executed over a 6 week period between early May and Mid-June 2016. Garden Services carried out two of the contracts.

49. The Respondent should have served a Notice of Intention to execute the works so that the Applicant could have commented on the scope of works that were required to the garden. On 13 March, 2016, the landlord had demanded an interim service charge. This included an item for maintenance, which extended to gardening. Had more extensive works been proposed, these should have been identified. It is

also significant that these works were executed after 6 April, when the Applicant had given Mr Avent notice of her proposed application to this Tribunal (see p.188). On 20 April, the Applicant issued her application. The substance of her complaint was that Mr Avent was not managing the building in the best interests of all the tenants.

50. The Tribunal is further satisfied that this is not a case where the Tribunal should dispense with the consultation requirements. The applicant has suffered prejudice in being unable to comment on either the scope of the works or the persons who should execute the works. These are works which the tenants could have decided to execute themselves. It is significant that the tenant of Flat 4 was paid for carrying out the fencing works. The Tribunal therefore restricts the Applicant's contribution to these items of work to £250.

Issue 10: Management Fee: 15%

51. The Tribunal is satisfied that the Respondent is entitled to charge a management fee of 15% pursuant to Clause 6 of the lease.

Application under s.20C and refund of fees

52. The Applicant has made an application for a refund of the fees that she has paid, namely an issue fee of £125 and a hearing fee of £190, a total of £315. Whilst sympathetic to Avent's desire to manage the building himself, we have a number of concerns about the manner in which he has managed the building. He did not prepare a proper budget to justify an interim service charge, as a result of which he issued a revised demand. There has not been the degree of transparency that is required, particularly when Mr Avent was paying himself, his partner, and another tenant for providing the services. The Applicant has succeeded on a number of points. The Tribunal therefore orders the Respondent to reimburse the Applicant 50% of the fees that she has paid pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). The Tribunal orders the Respondent to refund the Applicant the sum of £157.50 within 28 days of the date of this decision.

53. The Applicant also applies for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass on more than 50% of its costs incurred in connection with the proceedings before the Tribunal through the service charge. The Tribunal makes no finding as to whether the Respondent has a legal right to pass on its costs through the service charge or as to what some would be reasonable.

54. In its Statement of Case, the Respondent complains that the Applicant wrongly gave Anthony Gold, its solicitor, as have authority to receive correspondence on its behalf in these proceedings. This error was rectified on 31 May. The Respondent suggests that the Applicant did this to cause it to lose the application by default or to incur unnecessary legal fees. The Tribunal accepts that the Applicant made an error in believing that Anthony Gold were acting for the Respondent in this matter. It is not unreasonable conduct justifying a penal costs order under Rule 13(1)(b) of the Tribunal Rules.

Judge Robert Latham

23 August 2016

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

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 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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

13. (1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b)if a person has acted unreasonably in bringing, defending or conducting proceedings in ... a residential property case.....

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.