12290

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

| | | |
|---|---|---|
| **Case Reference** | : | **LON/00BG/LSC/2017/0067** |
| **Property** | : | **Flat 12 Diamond House, 380 Roman Road, London E3 5QP** |
| **Applicants** | : | **Dennis Savage**<br>**Linda Savage** |
| **Representative** | : | **Not applicable** |
| **Respondent** | : | **Old Ford Housing Association** |
| **Representative** | : | **Not applicable** |
| **Type of Application** | : | **For the determination of the reasonableness of and the liability to pay a service charge** |
| **Tribunal Members** | : | **Judge Dickie**<br>**Mr M Cairns MCIEH**<br>**Mrs R Turner JP** |
| **Date and venue of Hearing** | : | **19 June 2017, 10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **27 July 2017** |

---

**DECISION**

---

**Decisions of the tribunal**

**(1)** The tribunal determines that charges for scaffolding should be reduced by 10%. Management charges, as 2.5% of total expenditure, must reduce proportionately. The application in relation to all other disputed service charges is dismissed.

**(2)** The tribunal determines that the respondent shall pay the applicants £200 within 28 days of this decision, in respect of the reimbursement of the tribunal hearing fee paid by the applicants.

## The application

1. The applicants seek 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 them in respect of major works service charges demanded in 2013. The relevant legal provisions are set out in the Appendix to this decision.

## The background

2. The respondent is the freeholder of the building known as Diamond House, 380 Roman Road, London E5 3QP, and is part of the Circle Housing group. The applicants hold 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.

3. The property which is the subject of this application is a self contained flat within a purpose built building comprising 20 flats arranged over four floors within two linked blocks. The tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

## The hearing

4. The applicants appeared in person. Three employees of the Circle Housing group attended the hearing on behalf of the respondent - Ms Rachael Morris (Commercial and Leasehold Officer), Mr Stephen Rhule (Project Surveyor) and Mr Bilal Hussain (Commercial and Leasehold Manager).

5. A case management conference had taken place on 14 March 2017, attended by the applicants only. Ms Morris said that there had been no attendance on behalf of the respondent as the letter from the tribunal giving notice of that date had not reached the right person within the organisation. The tribunal issued directions that day, in which it indicated that independent expert evidence was not required in this case.

6. Neither party had served any witness statements as required by the directions, though Mr Savage's statement of case referred to his own evidence, and to his 45 years working in the construction industry. He produced at the hearing his curriculum vitae. He had been employed since 2006 by TfL as a Construction Design and Management coordinator and since 2015 as Health and Safety Manager for large scale projects for the construction of road tunnels, bridges, and highway schemes. He had previously worked for many years for the London Borough of Tower Hamlets in various roles (including health and safety, technical support and building works manager) relating to

the maintenance and reburbishment of its housing stock. His certificated qualifications included two relating to Construction Industry Training Board courses concerning scaffolding safety. The respondent did not dispute Mr Savage's summary of his professional experience.

7. Mr Rhule had a Bsc in building conservation, a diploma in building construction, and was an incorporated member of the Chartered Institute of Building. It was explained for the respondent that all of the people associated with delivering the major works project in question had now left the respondent's employment. None of those present at the hearing on behalf of the respondent had first hand experience of the project. Their submissions at the hearing were based on an analysis of the Operations and Maintenance Manual still retained (which had apparently only been discovered in storage the week before the hearing). The respondent produced a number of previously undisclosed documents at the hearing. They included a 2012 drainage report with associated email correspondence, and documents supporting the specification of concrete repairs. The applicants were given time to consider these documents.

8. Both parties had failed to comply with directions, but the tribunal considered a postponement was not reasonable or proportionate. No objection was raised to the tribunal hearing opinion evidence from Mr Savage and from Mr Rhule and the tribunal decided it was just to take a pragmatic view by considering, and attaching appropriate weight to, the evidence for both parties where its non disclosure prior to the hearing caused no prejudice to the other party.

## The issues

9. In their application to the tribunal the applicants set out the disputed items of total expenditure, to which they contributed by way of a service charge:

| | | |
|---|---|---|
| i. | Scaffolding | £33,778.58 |
| ii. | Concrete / Brickwork repairs | £15,287.03 |
| iii. | Drainage | £1,917.50 |
| iv. | Improvements to boundary walls | £1,860.00 |
| v. | Mechanical ventilation | £14,083.22 |
| vi. | Communal flooring | £3,903.50 |

vii. Management on site AK fees £2090.00

*10.* According to the lease terms, the applicants covenant to pay 4.718% of the total service charge expenditure (which in the present case is £11,135.39). The final bill in this amount was dated 25 September 2013.

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

## Scaffolding

*12.* Mr Savage felt strongly that the scaffolding had been over specified. He said he had challenged the respondent about this from the beginning. He produced documents from the National Access & Scaffolding Confederation relating to the different load classes for scaffolding. He said it had five scaffolding boards on the outside (of the scaffolding frame adjacent to the building) and one board on the inside of that frame (that is, abutting the building), and that such extensive scaffolding (known as 3.5.1) was not necessary for brickwork and concrete repairs of this nature, as they had been minimal. Mr Savage said at the hearing that four boards on the outside and one board on the inside (3.4.1) would have been sufficient.

*13.* The scaffolding had been erected with four levels above ground (or "lifts"), but Mr Savage said the uppermost had not been necessary because there was a mechanical hoist to raise materials to the roof height, and edge protection would have been sufficient at that level. He considered that the excessive elements of the scaffolding would have increased the duration of the works by four to six weeks.

*14.* The respondent had produced a scaffolding specification prepared by RDG Engineering and dated 23 August 2012 but Mr Savage said that this was a standard document and not bespoke for this particular job. The respondent had explained that the reason for the scaffolding specified was health and safety. Mr Rhule argued that the landlord was entitled to rely on expert opinion (from RDG Engineering), who would have been provided with a schedule of works. At that stage the rough estimate was £40,000 for brickwork repairs (and this figure was included in the s.20 estimate). Subsequent to the RDG specification, in November 2012 Carter Clack Partnership Limited (structural engineers) carried out a survey of the brickwork repairs required totalling £28,300.15, subject to fine tuning on site, and the actual expenditure had been £15,287.03. Though the estimates included VAT, the actual charge did not (as the works came under a VAT exemption scheme).

*15.* Mr Rhule said that the project manager from Old Ford would have had the final say over whether three or four lifts were erected, and that the documentation was incomplete, in that the advice to the project manager was not available. The scaffolding he said was a fixed cost and not a weekly hire. The works were estimated for completion in May 2013 and they finished on time (practical completion took place on 16 May 2013). Mr Rhule observed that, as this was a mixed tenure block, the landlord also had to contribute to the cost of these works, and thus had an interest in keeping expenditure down.

*16.* The tribunal accepted that Mr Savage had made clear to the respondent early on that he objected to the scaffolding specification, but that a coherent explanation for the landlord's decision had not been provided before these proceedings. Broadly, the tribunal accepts Mr Savage's challenges to the scaffolding, based on his substantial experience. It appears that the brickwork repairs were initially overspecified. The landlord's evidence did not demonstrate why a 3.4.1 scaffolding would not have been sufficient or why there was a fourth lift. The tribunal rejects the suggestion that the works were delayed by virtue of the scaffolding specification.

*17.* However, lacking from Mr Savage's case were alternative quotations or any adequate evidence as to the effect on the cost that the scaffolding design would have made. In particular, the single additional board on each lift is unlikely to have had more than a minimal effect on cost, in the tribunal's view, and edge protection would have been necessary instead of a fourth lift. It does not seem safe in the tribunal's opinion to assume that the overall cost unreasonably incurred was as much as the 20% which Mr Savage sought. In the absence of any evidence the tribunal has taken a conservative view and determines it is appropriate to reduce the payable service charges by 10% for the scaffolding.

## Concrete and Brickwork repairs

*18.* The applicants sought a 20% reduction in concrete and brickwork repairs, which they thought were minimal. Mr Savage said he had asked the respondent several times to see the "as built" drawings but they had not been provided. His challenge was based on what he had observed from ground level, though Mr and Mrs Savage had not been there to observe the works each day. He did not dispute many items, but said he had never seen any jet washing, severe cracks, loose brickwork or erosion and spalling of mortar joints (which all formed the basis of charges). However, the tribunal did not consider that this was a reliable basis for discounting the expenditure as unreasonable.

*19.* The necessity for work could not be assessed from ground level and in any event Mr Savage produced no photographs to support his case. The respondent could not provide a list of the concrete and brickwork repairs that were actually carried out. However, the work had been

specified by appropriate professionals, and the scope much reduced thereafter. It appears to the tribunal likely that the respondent carried out a proportion of the work so specified, and other items identified as necessary while on site, and it sees insufficient reason to conclude that any of the charges were unreasonably incurred.

*20.* Mr Savage challenged a charge for removing redundant fixings and cavity ties and making good as he said the walls of the building (constructed in around 1972) were made of solid brick and cavity ties had not been present. However, Mr Rhule referred to small areas of the building which were likely to have had cavity walls and at £300 the charge was small and the tribunal on balance accepts it was incurred and reasonably so.

**Drainage**

*21.* Mr Savage had not had prior sight of any drainage reports (though he had asked for them). He had not seen evidence of any drainage works, but minutes of a Block Champions meeting in February 2013 which he had not attended recorded that the drainage survey had been received and that the main issue was that the drains diameter is reduced by years of scale. The report was shown at the next such meeting in March 2013, which again Mr Savage did not attend. Having seen the drainage report upon the CCTV inspection, and email estimates thereafter for £1237.50 plus VAT for the work to the drainage for the block, there being no evidence that the cost was unreasonable for investigation and then descaling, the tribunal is satisfied that inspections and work to the value of £1917.50 was carried out and that the cost is reasonable and payable as a service charge.

**Improvements to boundary walls**

*22.* It was confirmed for the respondent that there had been no work carried out, and no charge made, in respect of this estimated item.

**Mechanical ventilation**

*23.* Mr Savage believed that as there was no mechanical ventilation to his bathroom he should not be charged for this item. The mechanical fan is apparently situated on the roof and serves the bathrooms of a number of properties in the block. It was not disputed that it was in serious disrepair.

*24.* However, as was pointed out on behalf of the respondent, the applicants covenant in their lease to pay a service charge in respect of the respondent's expenditure in complying with its covenant (in Clause 5(a)) to maintain and keep the Building in good repair, and the Building is defined as the block known as 1-12 Diamond House. The

fact that the subject property may not have mechanical venilation is therefore not relevant to his obligation to pay this element of the service charge, which is payable.

## Communal flooring

*25.* Mr and Mrs Savage considered that the communal flooring had not needed replacement and as the work was not essential the cost was not reasonably incurred. A meeting between a number of leaseholders and the project manager and builder's site agent was held at which the necessity of this work was challenged. However, the applicants produced no photographs of the condition of the floor prior to renewal and the tribunal was shown contemporaneous emails explaining that though the flooring may be serviceable for another couple of years, in several places tiles did not meet and edges were vulnerable, and it would be replaced as it was letting down the look of the block once decorations had been completed.

*26.* Mr Rhule observed that the job could only have been left for another year or so before preparation for contracting would have had to begin in any event (according to its standards it could not plan to leave the floor in place for more than the length of its expected life). In the absence of photographs the tribunal could not ascertain its condition. The applicants did not show that the expenditure on replacing the floor coverings was unreasonably incurred and the tribunal accepts the respondent's explanation and finds it is payable as a reasonable service charge.

## Management

*27.* The applicants disputed "AK fees" of £2,290, which they assumed to be management fees. However it was explained on behalf of the respondent that these were the architect's fees, which the applicants did not then challenge. Mr Savage did not consider that the contract had been well managed. The Circle Housing group standard management charge of 2.5% had been applied. The Project Manager at Old Ford had been Clare Williams.

*28.* Mr Rhule emphasised that the works had been completed on time. The management included the work of the Project Manager at Old Ford (Clare Williams), and included newletters and Block Champions meetings. The tribunal agreed that Mr Savage's complaints about the management of the project were too general and that the low management costs are reasonable and payable. They will need minor adjustment to take into account the reduction to the cost of the scaffolding as determined by the tribunal.

## Application for refund of fees

***29.*** The applicants sought an order for recovery of the tribunal fees paid. They had not paid any of the disputed bill and said that the respondent had refused to negotiate.

***30.*** The applicants have largely been unsuccessful in their application. They declined to pay any of the service charge bill at all, even in respect of amounts that were not disputed. The tribunal makes no order for repayment of the application fee. The tribunal is critical however of the landlord's late preparation and disclosure, and its failure to attend the case management conference. These factors prevented Mr Savage from assessing the respondent's evidence and made settlement of this dispute impossible. The tribunal in the circumstances considers it appropriate that the landlord bear the cost of the hearing fee. It must be refunded to the applicants within 28 days.

**Name:** Judge Dickie **Date:** 27 July 2017

## Appendix of relevant legislation

### Landlord and Tenant Act 1985

### 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 a leasehold valuation 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 a leasehold valuation 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 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.