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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AE/LSC/2013/0398**
Property	:	**10A Anson Road London NW2 3UT**
Applicant	:	**Anglefarm Ltd**
Representative	:	**Mr O Hinds of Counsel**
Respondent	:	**Mrs N Patel**
Representative	:	**Ms N Valencia student Rep BPP**
Type of Application	:	**S27A and s20C Landlord and Tenant Act 1985**
Tribunal Members	:	**Mrs F J Silverman Dip Fr LLM** **Mr H Geddes JP RIBA MRTPI** **Mr J Francis QPM**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR** **14 October 2013**
Date of Decision	:	**14 October 2013**

DECISION

The Tribunal determines that the Applicant landlord's claims for unpaid services charges for the service charge years 2007-2011 are unsubstantiated, fail and are dismissed.
The Tribunal makes an order under s20C Landlord and Tenant Act 1985.

REASONS

1 The Applicant is the landlord of the premises known as 10A Anson Road London NW2 3UT (the property) and the Respondent is the tenant of the property.

2 The Applicant issued proceedings against the Respondent in the Willesden County Court claiming arrears of ground rent, service charge and insurance premiums.

3 Those proceedings were transferred to the Tribunal on 29 May 2013 and Directions were issued by the Tribunal on 2 July 2013. The Applicant did not attend and was not represented at the Directions hearing but accepted that it had received a copy of the Directions made in its absence.

4 Shortly before the hearing scheduled for 14 October 2013 the Tribunal received a letter from the Applicant (dated 20 September 2013 but the Tribunal has no record of it having been received at that time) saying that it had not had sufficient time to prepare for the hearing and proposing an alternative timetable for preparation for the hearing. That letter was treated as an application for an adjournment and the adjournment was officially refused by the Tribunal who told the parties that the scheduled hearing would proceed and that the Applicant was to bring 4 copies of his statement of case to the hearing because he had neglected to comply with the Tribunal's Directions relating to disclosure and service of documents .

5 Neither party made a formal application for an adjournment at the commencement of the hearing on 14 October 2013. The Applicant did refer frequently to the prior decision made by a procedural chairman to refuse the Applicant's request for an adjournment and was told that the present Tribunal could not re-open a decision which had already been promulgated.

6 The Applicant accepted that the Tribunal has no jurisdiction to consider questions relating to ground rent.

7 In relation to service charges the Applicant was asking the Tribunal to consider the reasonableness of service charges and insurance payments demanded from the Respondent for the years 2006-2011 inclusive. In response to a question raised by the Tribunal the Applicant said that the service charge year ran from 25 March to 24 March in each following year. Neither the lease nor the service charge demands (no accounts were presented to the Tribunal) demonstrated that these dates were correct and no apportionment to reflect the date of the service charge year was shown on any service charge demand.

7 All of the demands save for the demand dated 27 February 2012 (itself a reiteration of previous years' demands) were defective in that they failed to comply with s166 Commonhold and Leasehold Reform Act 2002 (page 33-34).

8 **Insurance** : All the demands asked the Respondent to pay 28.33% of the insurance premium for the property. Under Clause 2(3)(a) of the lease the tenant is bound to pay a proportion of the insurance premium for the property calculated in accordance with the proportion by which the rateable values of the various flats within the premises bear to each other. The Respondent accepted that 28.33% was the correct percentage but objected to the demand because she had asked on several occasion to see the renewal documents and policy and the Applicant has not complied with her requests.

9 The Tribunal asked the Applicant to support its demand for payment by producing to the Tribunal copies of the relevant insurance policies,

demands for payment from the insurer and receipts showing that in each year the appropriate premium had been paid. The Applicant was only able to produce one copy demand from the insurer covering a period different from that in the demand made to the Respondent and the Tribunal considers this insufficient evidence to prove that the property has been insured and that the premiums have been paid as demanded in the service charge demands. These sums are therefore not recoverable . Similarly, the Respondent produced no evidence relating to the **insurance excess** demanded in the service charge demands for 2009 and 2010 (pages 23 and 25) which are also irrecoverable.

10 **Management fees**: In all demands sent to the Respondent the Applicant has included a management fee of 10% of the total bill (including the ground rent element of the bill). Although the lease (Clause 2 (3)(a)(vii)) permits the landlord to recover the fees of a managing agent the Applicant admitted that it did not employ a managing agent for this property. These fees are therefore not recoverable .

11 **Roof repair**: The demand dated 2 November 2007 included the sum of £33.96 for roof repairs. Although the lease does oblige the tenant to pay a proportion of repairs to the property (Clause 2(3)(a)(iii)-(v)) the only evidence of this repair produced by the Respondent was a copy of an invoice from a tradesman addressed to another tenant (not to the Respondent) which did not give details of the work done. The Tribunal considers this to be insufficient evidence of the expense claimed. This sum is therefore not recoverable . Similarly, no evidence was produced by the Respondent in relation to the claim for repairs to the front wall (Year 2011 page 23) which is also irrecoverable.

12 **Legal expenses** : The service charge demands for the years 2007-9 inclusive included sums in respect of legal expenses. Clauses 2 (22)(a) and (b) of the lease permit the landlord to recover legal expenses in certain specific circumstances (eg in relation to service of a notice under s146 Law of Property Act 1925) . It was clear from the solicitor's bills (pages 7-11) that none of the bills related to any of the items permitted by the lease and the Applicant conceded that these sums were irrecoverable.

13 No interest can be claimed by the Applicant since no sums demanded are recoverable .

14 The Respondent made an application under s20C Landlord and Tenant Act 1985. On the Respondent's behalf it was stated that the Respondent had requested information from the Applicant on several occasions and that the Applicant has simply failed to provide it; it was not a question of the Respondent being unwilling to pay, rather that she required some substantiation of the amounts demanded. For the Applicant, Counsel contended that his client has had insufficient time to prepare for the hearing because it was expecting to proceed with a mediation and that in the circumstances it would be unfair to penalise the Applicant by preventing him from recovering his costs. The Tribunal considered that the Applicant had had sufficient time from 2 July in which to prepare the case, and that it had blatantly failed to comply with the Directions issued by the Tribunal. The excuse relating to mediation was ill-founded because the Applicant would have had to produce almost identical evidence before a mediator as had been required by the Tribunal. The Applicant's own Counsel admitted that the case was weak and poorly prepared. The Tribunal considers that this a case where

it is therefore wholly appropriate to make an order under s20C Landlord and Tenant Act 1985.

15 The Applicant was reminded by the Tribunal that under new Tribunal rules any case which was heard by them in future could additionally penalise a defaulting party by making an order for costs against them. Additionally, the Applicant was reminded that the Tribunal expects a landlord to be aware of and comply with the RICS Codes relating to service charges and the management of property.

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

17 The Tribunal did not consider it necessary to inspect the property.

18 **The Law**

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.

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).

Judge F J Silverman as Chairman
Date 14 October 2013

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking