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

Case Reference : LON/00AH/OCE/2013/0484 &
LON/OOBD/LSC/2013/0375

Property : 13 Glenmore House, Richmond
Hill, Richmond, Surrey TW10 6BQ

Applicant : Glenmore House Limited

Representative : Mr Toby Bishop, counsel

Respondent : Ms Anne Olney

Representative : In person

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

Tribunal Members : Judge Tagliavini
Ms S Coughlin, professional
member
Mrs L Hart, lay member

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 25 November 2013

DECISION/Draft only

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 in respect of application LON/ooBD/LSC/2013/0484.
- (3) Application LON/ooBD/LSC/2013/0375 is remitted to the county court for any further determinations on costs and orders.
- (4) The respondent had also made an application for the appointment of a manager seeking the tribunal to appoint herself as a manager and dispense with the service of section 22 notice. The tribunal at the directions hearing held on 15 July 2013 declined to dispense with the service of the section 22 notice and therefore the application was not further considered by the tribunal.

The applications

3. Application LON/ooBD/LSC/2013/0375 concerns a transfer from the county court requiring the tribunal to determine the reasonableness and payability of service charge amounting to £13,294.42 as at the date of issue of proceedings.

Only this decision is to be re-referred to the county court for implementation although the issues of both applications are very much intertwined.

4. Application LON/ooBD/LSC/2013/0484 concerns Ms. Olney's application to the tribunal seeking a determination of the reasonableness and payability of service charges incurred in the service charge years ending 31/03/2008; 31/03/2009; 31/03/2010; 31/03/2011; 31/03/2012 and 31/03/2013 and 31/04/2014 (estimated).

NB: For ease Ms Olney will be referred throughout as the respondent although it is recognised that she is in fact the applicant in this application, which decision is not re-referred to the county court for implementation.

The hearing

5. The applicant was represented by Mr Bishop of counsel at the hearing. The Respondent acted in person.

6. Immediately prior to the hearing the parties handed in further documents, namely a chronology from counsel and witness statements of Mr Byrce dated 26/09/13 and Mr Haydon Jones dated 04/10/2013. Mr Bishop made applications seeking permission to rely on these statements and sought also to strike out the respondent's claims in respect of the 2008 major works issues. Mr. Bishop submitted that this part of the respondent's challenge to the liability of the window sills was an abuse of process as she had previously challenged this issue in an application to the tribunal and subsequently discontinued it. The applicant landlord had then proceeded to carry out the major works to the windows and sills.
7. The respondent did not object to the documents but felt that no reasonable excuse had been provided for their late submission. Having also heard the representations from the respondent, the tribunal determined that it was reasonable and appropriate to allow the applicant to rely on the witness statements of Mr Jones and Mr Byrce as the respondent was not prejudiced by their admission. Further, the tribunal determined that it was reasonable and appropriate to determine all the issues raised by the respondent in her application to the tribunal. The tribunal did not consider in all the circumstances that the respondent's withdrawal of an earlier application on a similar point gave rise to an abuse of process by bringing this second similar application, as the issues had yet to be determined and the applicant was not prejudiced by having to deal with these issues at this time.

The background

7. The property, which is the subject of this application, is a four bedroom flat in a 1930's purpose built block of flats.
8. Neither party requested an inspection and the tribunal did not consider that one was necessary.
9. 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 issues

10. At the start of the hearing the parties identified the relevant issues from the applications for determination as follows:

- (i) On which party does the obligation fall to repair/replace the window sills at the subject premises.
 - (ii) Were these works to the sills carried out to a reasonable standard?
 - (iii) Are the surveyor's fees for the 2008 major works reasonable?
 - (iv) Have the section 20 of the Landlord and Tenant Act 1985 requirements been complied with in relation to the major works in 2008?
 - (v) Is the collection/use of a reserve fund in compliance with the terms of the lease?
 - (vi) Is it reasonable to grant dispensation pursuant to section 20ZA for the major works expenditure to the boiler compensator and radiator thermostat works carried out in 2011?
 - (vii) Does the contract for the installation of the CCTV amount to a qualifying long-term agreement. Are the sums payable for this service reasonable?
11. The tribunal noted that the respondent sought in her application to have the tribunal determine the suitability of the Board of Directors of Glenmore House to have conduct of service charge matters. However, as the tribunal had earlier pointed out, this is not an application to appoint a Manager, but rather a challenge to the reasonableness of service charges, and therefore these were issues the tribunal could not consider until such time as a proper application was made, the previous application made by the respondent for the appointment of a manager having been found by the tribunal to be fundamentally defective. Having heard evidence and submissions from the parties and considered all of the numerous (5 lever arch files) documents provided, the tribunal has made determinations on the various issues as follows.

The window sills

12. The Tribunal determines that the obligation to repair/redecorate the respondent's windows sills falls on the applicant landlord and therefore the sums incurred are properly collectable in the service charge.

NB: The tribunal noted that by virtue of a Deed of Trust dated 31 March 1970, the Service Fund is to be paid, held and dealt with in accordance with the terms of the Trust and as varied by the Supplemental Deed of Trust dated 21 December 1971.

The surveyor's fees

13. The tribunal does not consider that the totality of the surveyor's fees can be considered unreasonable as works were carried out on this major works project to which the respondent has not objected. However, the tribunal considers that part of these fees are not reasonable in light of the inadequate advice given by the surveyor concerned in respect to the issue of the works to the window sills as challenged by the respondent and accepted by the applicant. Consequently, the tribunal considers a reduction to these fees are best represented by the reduction proposed by the applicant i.e. £14,400 (fees) divided by 15352.5 = 9.4%. However, the tribunal determined that the surveyor's fees in respect of the whole of the major works scheme amounting to £19,736 of which 9.4% = 1855.2. As the respondent's contribution towards these costs is 4.39039% the reduction amounts to approximately £81.56. The tribunal considers this figure should be rounded up to £85 thereby reducing the respondent's liability from £197.37 accordingly.

2008 Major works

14. The tribunal does not consider that the works to the window sills to have been carried out to a reasonable standard. The tribunal notes that this appears to have been accepted in the applicant's own report by an independent surveyor, Hallas & Co Surveyors. Consequently, applying the applicant's rough and ready calculation the tribunal makes a deduction of £500 plus VAT to the costs of the major works claimed from the respondent in order to reflect the cost of re-doing these works.

The consultation process re: 2008 major works

15. The tribunal finds that it was reasonable and appropriate to display the notices and accompanying documents in the caretaker's lodge. Although access hours were restricted, the Respondent was able to access the documents and consider them when she made a request to do so.

CCTV installation

16. The tribunal accepts the applicant's submission on this issue and finds that this item of service charge does not fall within the requirements of a long-term agreement as the charges incurred fall below the threshold of 100 per leaseholder. Further, the tribunal finds that the sums charged are reasonable as the presence of the cameras on the building have a general deterrent effect regardless of whether or not they are pointed directly at the respondent's property. Therefore the tribunal considers the costs of this item to be reasonable and payable in full.

Reserve Fund

17. The respondent agreed in principle that sums should be collected for the reserve fund. The applicant produced a 10-year schedule showing proposed works and their costs. The respondent stated she felt the sums being collected were too low and should be higher to meet the costs of the future proposed works.

Section 20ZA dispensation for works to boiler compensator and radiator valves

17. Although a separate application had not been made by the applicant in respect of this matter, the tribunal considered it appropriate and reasonable in all the circumstances to deal with this issue as part of these proceedings. The tribunal heard submissions from both parties on this issue. The respondent asserted that other cost saving measures such as draught proofing the windows could have been carried out to make more savings, rather than the works implemented by the applicant although did not object to their quality or their cost. Consequently, the tribunal determined that the respondent had failed to identify any loss or prejudice suffered as a result of the lack of the section 20 consultation procedures, as the suggestions made by the respondent were speculative and unsupported by any independent or objective evidence.

Application under s.20C and refund of fees

17. In her application the respondent applied 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 considers that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The costs of the application referred to the tribunal by the county court will be

determined there, as the tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the appropriate County Court.

Name: LM Tagliavini

Date: 3 December 2013

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 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) a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.