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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AQ/LSC/2013/0151**
Property	:	**FLAT 3 CHESTER COURT SHEEPCOTE ROAD HARROW HA1 2LJ**
Applicant	:	**CHESTER COURT RESIDENTS ASSOCIATION LIMITED**
Representative	:	**Mrs E Kravitz & Mrs E Zaeni, directors (24th June 2013)** **Mrs E Kravitz & Mr B Johnson, managing agent (16th July 2013)**
Respondent	:	**MRS T BASHIR**
Representative	:	**Mr H Bashir**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Mrs T I Rabin JP** **Mr T Johnson FRICS** **Mrs R Turner JP**
Date and venue of Hearing	:	**24th June & 16th July 2013 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**29th July 2013**

DECISION

The application

1. The Applicant seeks 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 the Applicant in respect of the service charge years 2009/10 to 2012/13.

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

The hearing

3. The Applicant was represented by two directors, Mrs E Kravitz and Mrs E Zaeni at the hearing on 24th June 2013 and by Mrs E Kravitz and Mr B Johnson, newly appointed managing agent at the adjourned hearing on 16th July 2013. The Respondent appeared in person and was assisted by her son Mr H Bashir

4. The case was initially set down for hearing on 24th June 2013 but due to a lack of clarity in the Tribunal's directions and the fact the Applicant was not professionally advised, the information before the Tribunal was such that the matter could not proceed so further directions were given and a fresh bundle prepared and served in readiness for the adjourned hearing on 16th July 2013. The Respondent had submitted a bundle for the first hearing and served a further bundle for the adjourned hearing. The Applicant was represented at the second hearing by Mr Johnson of the current managing agents who had prepared a bundle designed to show the history of the service charge payments from 2009 to 2012.

The background

5. The property the subject of this application is Flat 3 Chester Court Sheepcote Lane Harrow HA1 2LJ ("the Flat"). It is one of fourteen flats in a block known as Chester Court Sheepcote Road aforesaid ("the Building"). The leases under which the flats are held provide for the freeholder to transfer the management functions to the Applicant, a tenant owned company where each of the flat owners has a share

6. The Building was managed by a firm of managing agents until 2009 when the Applicant learned that there was serious mismanagement of a project relating to roof repairs. The Applicant dismissed the managing agents and a board of directors undertook the management of the Building until July 2013 when Sebright Property Management Ltd were appointed managing agents.

7. 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 specific provisions of the lease will be referred to below, where appropriate.

8. The Building has a lift that is only used by the occupants of Flats 5-14 and the leases of Flats 5-14 include an obligation to contribute towards the cost of the lift. This obligation is not included in the leases of Flats 1-4.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) Whether the Respondent is entitled to reduce her contribution to the service charges during the service charge years in question by £50 per quarter

   (ii) Whether the Respondent has been asked to contribute towards the cost of the lift in the Building

   (iii) Whether the arrears of service charge amounting to £878.30 are reasonable and payable by the Respondent

10. 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.

£50 per quarter contribution to the service charges

11. The Applicant's evidence was that until 31st March 2009 the service charge contributions for the lift maintenance were only collected from Flats 5-14. This was in accordance with the terms of the leases.

12. On 1st February 2009, after the previous managing agents' contract had been terminated, the Applicant held a meeting where tenants of 11 of the 14 flats were represented, including the Respondent. It was reported that the previous managing agents had failed to pay bills due from service providers and the meeting resolved to pay the creditors but to instruct the gardeners and cleaners to cease attending until they had been paid to date.

13. A lift report had been obtained and it was evident that substantial work was needed to bring the lift up to standard. Following a lengthy discussion it was resolved that there would be no separate apportionment for the cost of the lift and that a general contingency fund would be set up to be used for the upkeep of all communal items, including the lift. There would be a 2.5% per annum increase in the service charges in line with the rate of inflation. This would be

retrospective from March 2009. The Respondent did not agree to pay the sum of £50 towards the upkeep of the lift and has withheld this sum from her quarterly payments since then.

14. In 2012 the leases were reviewed and it became apparent that the long leaseholders of Flats 1-4 had no obligation to contribute towards the lift costs. The money collected had been used for the general service charges, including some payments for the lift, and had been spent mainly in paying outstanding bills.

15. The Applicant's bundle included invoices showing payments for lift maintenance in 2009/10 of £320, for 2010/11 of £1,106 and 2011/12 of £336, making a total of £1,762 for the period when the lift expenses were included in the service charges. The long leaseholders of Flats 5-14 were each liable for £176 each and this sum was paid by each of them and shown in the Applicant's bank account. Once the error had been discovered, all future lift costs were paid as and when they arose by the ten long leaseholders affected and none of the service charge funds was utilised. Full details of the dates of payment of these sums was produced as well as a letter from the Applicant's accountants confirming that the lift costs had been reimbursed and were now charged only to the long leaseholders of Flats 5-14. They are not invoiced to the long leaseholders of Flats 1-4.

16. Mr Bashir stated that the Respondent had lived at the Flat for 40 years and that the lift was never the responsibility of Flats 1-4. Although the 2009 minutes of the Annual General Meeting of the Applicant indicated that there was unanimous agreement to all the maintenance costs of the common parts being shared between all long leaseholders, in fact the Respondent did not agree. He also pointed out that there had been a 10% increase in the on account service charge as well as a £50 contribution each quarter for the lift expenses and referred the Tribunal to a demand dated 29th April 2009 in the Respondent's bundle.

17. Mr Bashir accepted that there was an error in interpretation of the leases and this was not noted between 2009 and 2012. Once the error had been identified, there was no reduction of £50 per quarter in the quarterly service charge payable by Flats 5-14. He referred to the schedule of service charges payable in 2011 and 2012 in the Respondent's bundle from which it was evident that the service charges remained unchanged, even though the error in charging had been identified in January 2012, prior to the service charges being assessed. The only differences in the amounts payable related to the sizes of the individual flats. In his view, the amounts payable by Flats 1-4 should be £50 per quarter less than the remaining flats. He submitted that the Applicant could not alter the method of charging or what the money was used for retrospectively.

18. Mr Bashir stated that there had always been a difference between the service charges levied for Flats 1-4 and those levied for Flat 5-14 and that this had been to reflect the lack of liability for the lift by Flats 1-4. He again referred to the schedule of service charges which made it clear that there was no difference in the amounts charged. He said that the Respondent was persuaded that she had been asked to contribute to the lift and had no liability under the terms of the lease. He pointed out that the Respondent had always paid monies properly due under the terms of her lease without complaint and would continue to pay monies properly due, which did not include the £50 per quarter levy demanded.

The tribunal's decision

19. The Tribunal determines that the Respondent is liable to pay £50 per quarter towards the service charges from 2009-2012 in the sum of **£752.45.** This sum is made up by £878.30, being the amount outstanding, less one fourteenth of the lift expenditure of £1,762.20 amounting to £125.85.

Reasons for the tribunal's decision

20. The Tribunal notes that there was a period of time between 2009 and 2012 when the directors of the Applicant attempted to manage the Building without the benefit of professional managing agents thereby hoping to minimise service charge costs. It was during this period that the error in interpreting the leases was made and the additional £50 contribution to the lifts was added to the quarterly service charge.

21. The Tribunal has heard evidence that the Building was poorly managed by the previous managing agents, leading to the decision to dismiss them. This poor management led to the Applicant being left with a number of outstanding accounts which they had to deal with. The minutes of the 2009 AGM indicate that the decision was made to withdraw gardening and cleaning services until the bills had been met.

22. The outstanding liabilities were effectively the responsibility of all the long leaseholders since, as well as being long leaseholders, they were shareholders in the Applicant. Once the Directors had identified the expenses, they determined that the service charge collected should be applied to reducing the liabilities, rather than embarking on a costly refurbishment of the lift. Accordingly, only essential expenses were paid for the lift and no sums were set aside to refurbish the lift, even though a report had been obtained strongly recommending this.

23. Once the error in interpretation of the leases was identified, the Directors determined what sums had been spent between 2009 and 2012 on the lift. This has been shown in the Applicant's second bundle by way of invoices and accounts. The total payment was £1,762.20 and the schedule on page 121 of the Applicant's second bundle shows the dates of payments for the lift and cross-references these to the accounts. Each of the long leaseholders of Flats 5-14 was required to pay one tenth, namely £176.20. The schedule also shows that sums paid by each of the long leaseholders of Flats 5-14 and there are cross-references to the Applicant's bank account showing receipt. Since 2012, all payments for the lift have been paid by the long leaseholders of Flats 5-14 in equal shares as and when such costs arise. Nothing has been paid by the long leaseholders of Flats 1-4.

24. The Tribunal has considered the terms of the lease under which the Respondent holds the Flat. Clause 8 allows the Applicant to charge the Respondent such sum on account of service charges that the Directors consider to reflect the amount required to maintain the Building in any year as well as a sum for reserve. This means that the Directors were entitled to demand as much as they considered they needed. In simple terms, the amount demanded each year is at the discretion of the Directors so long as they comply with the Articles of Association of the Applicant.

25. The Directors of the Applicant have done their best to deal with the problems left by the previous managing agents and to maintain a low service charge. However they have failed to prepare annual budgets and reconciliations at the end of each year in accordance with the RICS Code of Practice. Although the Tribunal notes that the Directors did keep the long leaseholders fully informed of what was happening, the lack of reconciliation of the figures meant that the Respondent was not able to see what any expenditure related to and see that there was minimal charge for the lift.

26. The Respondent has a fixed notion that the money collected was for the lift. Her confusion was understandable as the documentation was not as clear as it should have been. However, the Tribunal has carefully considered the evidence before it and is satisfied that the Respondent has not been required to contribute towards the costs of the lift and that a new procedure has been put into place to ensure that the long leaseholders of Flats 5-14 pay all costs related to the lift outside the service charge. The result is that all the long leaseholders pay service charges based on the expenditure for the Building, excluding the lift.

27. The Respondent should appreciate that her co- long leaseholders have not acted unfairly towards her. The Directors were trying to deal with the problems they faced after the dismissal of the former managing agents. Each and every one of the long leaseholders are in the same position – they want the Building run efficiently and economically and to be given

full information and the opportunity for a democratic vote. This appears to have been done as there were meetings and the majority, if not all, of the long leaseholders, approved decisions. Although total agreement would be desirable, this is not always possible and decisions approved by the majority are fairest.

28. The Tribunal is pleased to note that a managing agent has been appointed. The Respondent can expect an improvement in the level of information provided with budgets and reconciliations. The Tribunal find that the Building has not been managed in accordance with best practice but, be that as it may, the Respondent has not been charged for any part of the lift expenditure.

29. The long leaseholders are all shareholders in the Applicant and are responsible for the Building. They have to co-operate if future harmony is to be achieved and the Tribunal hopes that the Respondent will find herself able to co-operate with her fellow shareholders so that relationships will be improved in the future.

Application under s.20C and refund of fees

30. There was no formal application for an order under Section 20C of the 1985 Act. Such an order would state that the costs of these proceedings would not be proper costs to include in the service charges. This would mean that the Respondent would not be responsible for any part of those costs that were included in the service charges.

31. In the Tribunal's view there is no power under the lease under which the Flat is held for the Applicant to recover the costs of these proceedings. In any event, the Tribunal does not consider it appropriate for such an order to be made in the light of the outcome of these proceedings

Name: **Date:** 29th July 2013

Tamara Rabin
Judge of the First Tier Tribunal

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 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).