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

Case Reference : LON/00AU/LSC/2013/0318

Property : Flat 4, 9 Hillmarton Road, London
N7 9JE

Applicant : 9 Hillmarton Road (Freehold)
Limited

Representative : Mr S Stone, Grangeview Management
Limited – Managing Agent

Respondent : Ms Carol Cameron
(as the Administrator of the Estate
of the late Mrs Georgina Statham
deceased)

Representatives : Ms A Sharraff and Ms S Shayegan,
University of Law Legal Advice
Centre

Type of Application : Section 27A Landlord and Tenant
Act 1985 – determination of service
charges payable

Tribunal Members : Judge John Hewitt Chairman
Mr K M Cartwright JP FRICS
Ms Sue Wilby

**Date and venue of
Hearing** : 25 July 2013
10 Alfred Place, London WC1E 7LR

Date of Decision : 12 August 2013

DECISION

Decisions of the Tribunal

1. The Tribunal determines that:
 - 1.1 The service charges payable by the Respondent to the Applicant are as follows:

2011	£14,250.71	(includes a provision for major works)
2012	£ 504.70	
2013	£ 1,733.54	(estimated sum on account)

A breakdown of these sums is set out in the Schedule attached to this Decision;
 - 1.2 The Respondent's application that an order be made pursuant to section 20C Landlord and Tenant Act 1985 (the Act) in respect of any costs which the Applicant might incur in connection with these proceedings be refused; and
 - 1.3 The Respondent shall by **5pm Friday 6 September 2013** reimburse the Applicant the sum of £500 being the fees paid by the Applicant in connection with these proceedings
2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. On 2 May 2013 the Applicant made an application pursuant to section 27A of the Act. The Applicant sought a determination of the service charges payable by the Respondent. The sums claimed to be payable are set out in column 1 of the Schedule to this Decision.
4. Directions were given on 30 May 2013 [1].
5. The application was originally made to the Leasehold Valuation Tribunal. By virtue of the Transfer of Tribunal Functions Order 2013 SI 2013 No.1036 the functions of the Leasehold Valuation Tribunal for areas in England were transferred to the First-tier Tribunal (Property Chamber) with effect on 1 July 2013.
6. The proceedings are now subject to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules), save to the extent that the Tribunal may dis-apply all or any of the Rules in favour of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (the Previous Rules).
7. The application came before us for hearing on Thursday 25 July 2013.

The Applicant was represented by Mr S Stone FCA of Grangeview Management Limited, the Applicant's managing agents. Mr Stone was

accompanied by Dr & Mrs Montgomery and Dr L Brown who are directors of the Applicant and who live in other flats within the development known as 9 Hillmarton Road.

The Respondent's administrator (Ms Cameron) was present at the hearing. The Respondent was represented by Ms Sharraff and Ms Shayegan, both of whom are trainee lawyers. They presented the case on behalf of the Respondent under the supervision of Mr Colin Egemonye, a solicitor with the University of Law Legal Advice Centre.

Evidence was given by Mr Stone on some aspects within his personal knowledge and by Mr Harold John True MRICS FBEng, the surveyor who has stewardship of the proposed major works project which we shall describe in more detail shortly. We are grateful to Mr True for attending the hearing at short notice. His evidence was compelling and most helpful to us.

We are also grateful to Mr Stone and Ms Sharraff and Ms Shayegan for the patient, measured and courteous way in which they presented their respective client's cases and which added to the good natured way in which the proceedings were conducted.

Background matters not in dispute

8. 9 Hillmarton Road is a late Victorian or Edwardian family house subsequently converted into four self-contained flats. The four flats have been sold off on long leases.
9. By a lease dated 6 January 1981, flat No 4 which is laid out on the 1st and 2nd floors of the building was demised to the Respondent, Ms Cameron's mother, the late Mrs Georgina Statham (Mrs Statham). On 21 January 1982 Mrs Statham was registered at Land Registry as the proprietor of the lease and remains so registered. The flat was acquired as a home for Mrs Statham and Ms Cameron and they lived there together. Ms Cameron continues reside in the flat.
10. Mrs Statham acquired the freehold interest in the property and on 9 June 1987 Mrs Statham was registered at Land Registry as the proprietor. Mrs Statham thus became the landlord and responsible for compliance with the landlord's covenants set out in the four leases. Evidently Mrs Statham dealt with day to day management matters herself with assistance from Ms Cameron but without the benefit of professional managing agents.
11. Mrs Statham died in 1995. Letters of administration were granted to Ms Cameron. Evidently the estate has not yet been fully administered. According to Ms Cameron there have been difficulties with siblings who have not been cooperative.
12. The lessees of the remaining three flats have exercised the right to collective enfranchisement. By a transfer dated 18 October 2010 most of the freehold interest was transferred by Mrs Statham (acting by her

administrator, Ms Cameron) to the Applicant. An undated and unexecuted copy of draft transfer of part is at [46]. Thus it is that Mrs Statham remains the registered proprietor of the retained land. This comprises a small parcel of land adjacent to the frontage with Hillmarton Road and a larger parcel of land at the rear garden which may have some future development potential. Of course, as mentioned above, Mrs Statham also remains the registered proprietor of the lease of Flat 4.

The lease

13. The lease of Flat 4 is at [196].
14. The material terms of the lease were not in dispute.
15. The lease demised the flat and a portion of the garden for a term of 125 years from 29 September 1981 at a ground rent of £60 pa payable by equal payments in advance on 25 March and 29 September in every year.

By clause 4 the tenant covenanted with the landlord to observe and perform the covenants set forth in the Fourth Schedule to the lease.

By clause 5 the landlord covenanted with the tenant to observe and perform the covenants set forth in the Fifth Schedule to the lease.

16. The service charge regime is set out in paragraph 21 of the Fourth Schedule. In summary the tenant is to pay 35% of the total costs, expenses and outgoings and VAT incurred by the landlord in the repair, maintenance, renewal and insurance of the building as set out in the Sixth Schedule. The annual amount payable is to be ascertained and certified by a certificate signed by the landlord's auditors, accountants or managing agents at the discretion of the landlord. The certificate is to contain a summary of the expenses and outgoings incurred. By subparagraph 21(e) the expression 'the expenses and outgoings incurred or chargeable by the landlord' shall be deemed to include not only those expenses and outgoings actually disbursed or incurred but also such reasonable part of all such expenses as are of a periodically recurring (whether at regular or irregular periods) including a sum by way of reasonable provision for anticipated expenditure in respect thereof as the landlord or its managing agents may in their discretion allocate to the year in question as being fair and reasonable in the circumstances.
17. Subparagraph 21(f) of the Fourth Schedule provides that the tenant shall if and when required by the landlord pay to the landlord such sum in advance and on account of the service charge as the landlord may in his discretion specify to be a fair and reasonable interim payment. Subparagraph 21(g) make provisions for a balancing debit or credit as the case may be which arises following the issue of the certificate setting out the actual amount payable for the accounting year in question.

Service charges in dispute

18. The service charges in dispute were identified as being:

2011

Management fees	£ 783.75
Provision for major works	£39,548.57

2012

Repointing of wall	£ 410.00
Additional fees major works	£ 240.00
Management fees	£ 792.00

2013 (Estimate)

Health and safety expenditure	£ 300.00
General repairs	£ 800.00
Management fees	£ 792.00
Damp remedial works	£ 3,060.97

Major works

19. It is convenient to take major works first. It is also by far the most expensive item.
20. Evidently in the period when the freehold was vested in Mrs Statham the Property was not subject of a cyclical planned maintenance programme. It appears that Mrs Statham, and then more latterly, Ms Cameron, effected repairs and redecorations ad hoc as and when considered needed. By way of example Ms Cameron told us that exterior redecoration had taken place twice since 1973. It also appears that alleged years of neglect spurred the lessees of flats 1, 2 and 3 to exercise the right to collective enfranchisement so that they might take control and procure necessary works to be carried out.
21. In February 2011 a detailed specification of works was drawn up by Mr Harold John True. He is the principal of True Associates. True Associates is independent of the Applicant and its managing agents, Grangeview. True Associates has been engaged as contract administrator.

At [83] is a copy of the specification priced by Garvey Bros Builders;
At [95] is a copy of the specification priced by Cardinal Decorators; and
At [117] is a copy of the specification priced by Cowen Builders

Mr Stone took us through the section 20 consultation documents. The exercise was partly undertaken twice. Evidently this was out of an abundance of caution as the first exercise addressed documents to Ms Cameron personally. The second set was addressed to Ms Cameron as Administrator of the late Mrs Statham.

It was admitted that the section 20 consultation process had been correctly followed.

22. Mr True's tender report is at [80]. His further report is at [21a].
23. Mr True gave evidence. He was cross-examined at some length. He explained the nature of his role and his independence. He also explained the specification of works and the way in which such projects were usually managed. He said that generally scaffolding costs were a significant component of such projects and that it was generally sensible to use the scaffolding to best advantage and to carry as many tasks that required scaffolding as was possible. In particular he explained the concept of provisional sums necessary to ensure that tenders can be compared on a like for like basis, and that as the project got underway and as opening works or scaffold access enabled a more accurate assessment of what precise works were required he would give the necessary instruction to the contractor. Inevitably the nature and extent of additions and omissions as the project went forward would have an impact on the final account. Thus at this stage the estimated cost of the project is still only indicative.
24. Mr True also explained that when the project got underway he would make a further assessment of the extent of brickwork pointing required and the work carried out would be limited to that which in his professional opinion was strictly necessary.
25. Mr True also explained why the cost of CDM Supervision was necessary and how professional and management fees arose on projects of this type.
26. Mr True said that in May 2012 the total cost of the project was estimated to be £41,087.22. However following representations and clarification it was decided to remove garden paving costs of £1,100 from the project so that the estimate was revised down to £39,549.42. The Respondent's share of that at 35% amounts to £13,842.30. A breakdown is at [82].
27. The gist of the case for Ms Cameron was that it was not necessary for all of the works to be carried out at this time. It was said that the works should be phased over a period. Ms Cameron said that small works were undertaken by a managing agent as part of his management duties. She said that if the project was broken down into such smaller projects all or some of the professional fees could be saved. It was also submitted on behalf of Ms Cameron that it was not until evidence was given during the hearing that she was able to fully appreciate what was to be done and what it was she was being asked to pay for.

Findings

28. Mr True gave his evidence in a careful and caring manner. He was honest and open. We found him to be a witness upon whom we could rely with confidence. His evidence also struck a chord with the accumulated experience and expertise of the members of the Tribunal.

29. We find that given the years of neglect the scope and specification of works is reasonable and within the range of a landlord acting reasonably circumstanced as the Applicant is. We find that the Applicant has taken appropriate professional advice and that the project has been put into capable hands, such that Ms Cameron can rely upon Mr True to supervise the proposed works carefully. We find that the works have been subjected to competitive tender and that the tenders have been carefully scrutinised by Mr True.
30. The resulting estimated cost of the major works is £39,548.57 after the removal of paving works. We find that it is a reasonable for the Applicant to allocate a provision of £39,548.57 for these works. Thus we find that the Respondent is obliged to contribute 35% to this provision.

Management fees

31. Mr Stone gave evidence on this subject. He said that there was no written contract in place. He said he had orally agreed a unit fee of £165 + VAT and this would apply to all three years in issue.
32. Mr Stone explained that he would usually seek a unit fee of between £185-£200 but took a view that the amount of management work required for the subject development would be minimal so that a lower fee was acceptable to him.
33. In cross-examination Mr Stone described the menu of services that the basic unit fee covered.
34. The gist of the case for Ms Cameron was that she did not understand what the managing agent did for the money claimed and that despite numerous letters and calls seeking an explanation Mr Stone and his staff were unable to give one that satisfied her. Ms Cameron was also concerned about a failure to properly supervise an electrical contractor who apparently billed for some work which either was not done or was mis-described. In the event Ms Cameron's complaint was upheld and her account was credited with £180. Whilst Ms Cameron acknowledged the credit she was at pains to point out the unsatisfactory way in which the matter had been dealt with and what she believed to be wrong and conflicting explanations given to her.

Findings

34. The episode of the issue around the electrical works and the credit of £180 has plainly become a major issue for Ms Cameron and one she does not seem able to forgive or forget. Mistakes do sometimes happen sometimes a mistake is compounded when mis-information is given accidentally. We are satisfied that the Respondent has not been charged for electrical works not carried out.
35. We find that Ms Cameron's scepticism and her inexperience of the nature and role of managing agents and the market rate fees which they

routinely charge has coloured her view of the reasonableness of the management fees charged in this case.

36. We accept the evidence of Mr Stone. It strikes a chord with the members of the Tribunal. Drawing on the evidence and our accumulated experience we are satisfied that unit fees of £165 for a small four flat building in north London is within the range to be expected and thus we find the fees are reasonable in amount.

Repointing of wall

37. It was not in dispute that this sum had been expended. Ms Cameron challenged it on the basis that it seemed to her it was included in the proposed major works. Ms Cameron 'wondered' if it was necessary work and she also considered that it could have been done more cheaply.
38. Mr Stone said that the work was necessary being a small routine repair that required to be undertaken. At the time it was carried out it was not known when the proposed major works would be carried out.
39. Mr True also gave evidence about this and sought to assure Ms Cameron that when the major works are carried out he will look at the subject wall carefully and if the repair is fine he will adjust the instruction to the contractor to ensure there is no duplication or carrying out of unnecessary work.

Findings

40. On the evidence before us we find that the expense was reasonably incurred and is reasonable in amount. We are also satisfied with the evidence of Mr True that there will be no unnecessary duplication of work when the major works are carried out.

Additional fees

41. The major works consultation process generated an enormous amount of correspondence from Ms Cameron. Mr Stone said that her queries were answered fully and openly, both by his office and by Mr True. However it appeared that Ms Cameron was unable or unwilling to accept the replies given and the same questions were raised over and over.
42. The amount of work this generated was of concern to Mr Stone. He discussed this with the directors of the Applicant and they authorised him to reply to a number of letters and that his fee for doing so should be £200 + VAT which amounts to a total of £240.00. Evidently it was arrived at broadly a time charge of £50 per hour. Of the total sum the Respondent's share at 35% amounts to £84.00. The balance of £156.00 has been shared amongst the other three lessees, all of whom are directors of the Applicant.
43. The gist of Ms Cameron's challenge was that this is an unfair burden and was an attempt to bully her into not asking legitimate questions.

Findings

44. We have considered carefully whether the expense was reasonably incurred. It is a rather unusual expense but this is a rather unusual case in some respects.
45. Although we did not study all of the correspondence in detail it became clear to us that it went well beyond the typical correspondence generated by a section 20 consultation. There were a number of options open to the Applicant. They could have instructed Mr Stone to simply ignore the letters and not respond to them. They could have instructed Mr Stone to notify Ms Cameron that he would only reply to the letters if she bore the cost of doing so in full. In the event they instructed him to reply to the letters on the basis that the cost of doing so was to be shared amongst all four lessees.
46. In the circumstances we find that the costs were reasonably incurred. They were incurred to provide replies to letters to Ms Cameron about issues that were plainly of concern to her. With the benefit of hindsight some might say that a more robust approach should have been taken at an earlier time. However, here four lessees all live in a building and doubtless meet or pass each other regularly, the other three lessees had just taken over the freehold of the building and had decided to embark on their first major works project. The costs were not insignificant and Ms Cameron's share at 35% was the largest of all four of them. Against this background we cannot say that the decision to incur the costs of the replies to Ms Cameron's letters was an unreasonable one. In arriving at this decision we bear in mind also that if we disallow this expense the effect is that the whole of the cost of replying to Ms Cameron's letters will fall on the other three lessees.
47. Going forward we suggest it may be helpful if the Applicant makes it clear where the line is on correspondence and gives prior notice when the line might be crossed so as to trigger additional costs being incurred to the service charge account.

Damp proof works to Flat 2

48. This expense of £3,606.97 is detailed at [148]. The lease of flat 2 changed hands. The new lessees' surveyor drew attention to a damp problem. This was investigated. Estimates were obtained. These were reviewed by Mr True who recommended the work be carried out. The issue was the subject of a section 20 consultation. The works have been carried out. The relevant supporting documents are at [141- 174].
49. The gist of Ms Cameron's challenge was that Mr True is not a damp expert and she simply does not know whether it was reasonable to incur the cost. Ms Cameron also queried whether the cost was reasonable in amount.

Findings

50. Having considered the documents and the evidence carefully we are satisfied that that it was reasonable to carry out the works. We

acknowledge that Mr True is not a damp expert but he is an experienced building surveyor and we are satisfied that given his general experience and knowledge of the subject development it was reasonable of the Applicant to seek and act on his advice.

51. The works were the subject of a section 20 consultation to which no objections were taken. The works were the subject of a competitive tender. We are also satisfied that the cost of works did not include any making good or redecorating, so that no overcharging or betterment arises. In the event on the evidence before us we are satisfied that the cost of the works was reasonable in amount.

Section 20C application

52. The Respondent made an application for an order pursuant to section 20C of the Act as regards any costs which the Applicant might incur in connection with these proceedings.
53. The application was opposed by Mr Stone. Mr Stone asserted that the costs of the proceedings were recoverable as service charge expenditure within the meaning of paragraph 6 of the Sixth Schedule to the lease [212]. He said the proceedings were necessary to obtain a determination, particularly in connection with the proposed major works before they were undertaken so that the Applicant knew where it stood. He submitted that it was fair that the costs be shared amongst all the lessees, not just three of them.
54. On behalf of the Respondent it was submitted that Ms Cameron had tried to resolve matters amicably and that the hearing was due to lack of communication on the part of the Applicant and its advisers.
55. Although Mr Stone's interpretation of paragraph 6 might be a bit of a stretch, on this application we are not required to construe the lease and we do not do so. We are simply required to determine whether it is just and equitable in the circumstances to make an order.
56. Despite the eloquence of the submissions made on behalf of the Respondent we have to reject them. We were not persuaded that Ms Cameron had sought to resolve matters amicably and find that that was no lack of communication on the part of the Applicant. Indeed one of the issues we have determined is the cost of additional correspondence and it might be said that one of the problems here was too much communication, not too little. All of the challenges made by the Respondent have failed. We do not consider it just and equitable to deprive the Applicant of the opportunity to pass the costs through the service charge account if the lease entitles it to do so.
57. If the Applicant does pass its costs of these proceedings through the service charge account for 2013 it will be open to the Respondent to challenge them on all fronts, including the proper interpretation of the lease, whether the costs were reasonably incurred and whether they are reasonable in amount, should she wish to do so.

Reimbursement of fees

58. The Applicant made an application that we require the Respondent to reimburse fees of £500 paid by the Applicant to the Tribunal in connection with these proceedings.
59. The application was opposed. The rival submissions made to us were much the same as those that had been made in connection with the section 20C application.
60. For much the same reasons we find that it is just and equitable that the Respondent reimburses those fees. We find that the Applicant has acted reasonably in bringing the application. If the Respondent had taken advice sooner a different course may have followed and all or some of the fees may have been saved. We reiterate that all of the Respondents challenges have failed.
61. For the purposes of considering this application we have dis-applied Rule 13 and applied Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 because it is in the interests of justice to do so. The application was made under the Previous Rules which governed the extent to which a party was at risk of costs. That risk may have caused a party to pursue a certain line which might not otherwise have been followed if a different costs regime were in place. Thus in fairness to both parties we consider the previous costs regime should apply to these proceedings.

Relevant law

62. Relevant law we have taken into account in arriving at our decision is set out in the Schedule below.

Judge John Hewitt
12 August 2013

The Schedule

Landlord and Tenant Act 1985

- 18(1)** Provides that, for the purposes of relevant parts of the Act 'service charges' 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.

19(1) Provides that 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 provision of services or the carrying out of works, only if the services are of a reasonable standard;
and the amount payable shall be limited accordingly.

(2) Provides that 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 of subsequent charges or otherwise.

20(1) Where this section applies to any qualifying works...the relevant contributions of tenants are limited in accordance with subsection (6)... unless the consultation requirements have been either:
(a) complied with in relation to the works, or
(b) dispensed with in relation to the works...by (or on appeal from) a tribunal.

(2) In this section “relevant contribution”, in relation to a tenant and any works ...is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to the relevant costs incurred on carrying out the works...

(3) This section applies to qualifying works if the relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) ...

(5) An appropriate amount is an amount set by regulations made by the Secretary of State.

NB The regulations duly made are The Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003 No.1987) (as amended). Regulation 6 specifies the appropriate amount to be an amount which results in the relevant contribution of any tenant being more than £250.

(6) Where an appropriate amount is set by virtue of subsection 5, the amount of the relevant costs incurred on carrying out the works...which may be taken into account in determining the relevant contribution of tenants is limited to the appropriate amount.

(7) ...

NB The material consultation requirements in relation to the subject works are those set out in Schedule 4 Part 2 of the 2003 Regulations.

20C(1) Provides that 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 tribunal 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.

20C(3) Provides that the tribunal may make such order on the application as it considers just and equitable in the circumstances.

27A Provides that an application may be made to a 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.

27A(3) Provides that an application may also be made to a tribunal for a determination whether, if costs were incurred for services or repairs, a service would be payable for the costs 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9(1) provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

Regulation 9(2) provides that a Tribunal shall not require a party to make such reimbursement if, at the time when the Tribunal is considering whether or not to do so, it is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

NB Regulation 8(1) makes reference to a number of benefits/allowances including, but not limited to, income support, housing benefit, jobseekers allowance, tax credits, state pension credits and disability related allowances.