



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

Case Reference : LON/00AW/LSC/2013/0252

Property : Flats A-M, 1 & 2 Airlie Gardens, W8
7AJ

Applicant : Termcontrol Property Management
Limited

Representative : Douglas & Gordon

Respondents : The long leaseholders of 1 & 2 Airlie
Gardens

Representative : Ms J Nieuwland (flat K)

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

Tribunal Members : Mr M Martynski (Tribunal
Chairman)
Mr D Banfield FRICS

**Date and place of
consideration** : 10 Alfred Place, London WC1E 7LR
8 July 2013

Date of Decision : 8 July 2013

DECISION

Decisions of the tribunal

1. The tribunal determines that if the sum of £166,373.10 is incurred in the costs of the repairs and decoration, those costs will have been reasonably incurred and will be payable by the respondents.
2. The payments by the respondents in respect of the major works referred to above should be made by the respondents to those persons reasonably nominated by the applicant.
3. The costs claimed from the respondents in respect of the major works will be payable if those costs have been properly demanded in accordance with the terms of the lease and in accordance with statute.
4. The tribunal is unable to vary the percentage terms for the payment of service charges as set out in the respondents' leases.

The application

5. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 that the costs of major works of decoration and repair will be reasonably incurred and payable by the respondents.
6. The application was received by the tribunal on 5 April 2013. Directions on the application were made on 7 May 2013. At the directions hearing, Ms Nieuwland asked to raise an issue regarding the previous use of funds from a sinking fund. The Tribunal Judge dealing with that hearing considered this issue was not connected to the Applicant's application and would not be dealt with as part of this application.
7. A response to the application was made by just one respondent, Ms Gill Nieuwland. Ms Nieuwland did not challenge the cost of the major works or the terms of payment proposed for them. She submitted that the percentage contributions to the cost of the major works payable by the respondents should be as per a report prepared by Savills in 2005 rather than as per the terms of the leases and the deeds of variation in relation to them made in 1995.

The evidence

8. The tribunal considered the application, the response from Ms Nieuwland and four bundles of documents for the decision submitted by the applicant and a supplementary bundle submitted by Ms Nieuwland.

The tribunal's decision

9. Given Ms Nieuwland's agreement, and the absence of response from any other respondent, the tribunal concluded that the costs of the proposed major works will be reasonably incurred and will be payable by the respondents upon Service of a valid demand by or on behalf of the landlord. This decision does not prevent any challenge to the standard and quality of those works once they have been carried out.

10. As to the percentage contribution to costs of the major works, those percentage contributions are set out in the respondents' leases and in the deeds of variation to those leases. Regardless of any subsequent report or agreements between the respondents, the tribunal does not have the power to effectively amend the provisions of the lease and accordingly is not able to declare that the costs of the major works are payable in contributions other than as set out in the leases and the deeds of variation.

Signed: *Mark Martynski*

Date: 9 July 2013

Mark Martynski

Tribunal Chairman

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.