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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LSC/2013/0552**
Property	:	**5 Ashburnham Mansions, Ashburnham Road, London SW10 0PA**
Applicant tenant	:	**Raymond Widdicombe**
Representative	:	**In person**
Respondent landlord	:	**Ashburnham Mansions Ltd**
Representative	:	**Mr Christopher Harniman of Managed Properties Ltd, the managing agent**
Type of Application	:	**Liability to pay service charges**
Tribunal Members	:	**Judge Adrian Jack, Professional Member Trevor Sennett MA FCIEH**
Date and venue of determination	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**11th December 2013**

DECISION

Background

1. By an application dated 7th August 2013 the tenant sought determination of the amounts to be paid for certain works in the service charge year 2011-12. The service charge year runs Christmas to 24th December.

2. The Tribunal gave directions on 29th August 2013. There was poor compliance with these by the landlord, but in the event the hearing on 11th December 2013 was able to proceed.

3. The tenant holds under a lease of 999 years from Christmas 1969. It contains the usual service charge provisions. The tenant's portion is 1.727 per cent of the total expenditure.

THE DISPUTE

4. There were four heads of disputed charges:

   - Fire alarm and emergency lighting works, where the landlord sought to recover £36,929. The tenant said that a consultation under section 20 of the Landlord and Tenant Act 1985 should have been carried out. The landlord conceded that none was carried out, but said that none was required. The tenant submitted that if a consultation was not required, the amount should be limited to £23,000.

   - Balcony repair works, where the landlord sought to recover £50,815. The tenant said that the landlord had failed to obtain tenders in accordance with the requirements of section 20. His secondary case was that the works should only have cost £14,500.

   - Water damage claimed at £8,790. The landlord paid for repairs following leaks in the block where the cost of the repairs was less than the insurance excess of £750 or sometimes, just over, where the cost of claiming against the insurers and the effect on the properties' claims history did not warrant making a claim. The tenant submitted that the landlord should be claiming against individual tenants liable for leaks.

   - Managing agent's fees for major works amounting to £6480. It was common ground that the agent had billed this to the landlord on 21st December 2011 and been paid the same day. The expenditure thus fell in the 2010-11 service charge year not the 2011-12 year. The tenant submitted that section 20B of the 1985 Act prevented the landlord recovering this sum. The landlord's case was that these monies had been paid from the reserve fund.

DISCUSSION

5. The property has already been the subject of a number of Tribunal cases. The most recent between the current protagonists was decided by a Tribunal consisting of Lady Wilson, Mr Banfield FRICS and Mr Miller in a decision dated 24th March 2013 under references LON/00AW/LSC/2012/ 0408 and 0598. We gratefully adopt the description of the premises in that decision.

6. In respect of the fire alarm and emergency lighting works, the landlord sought to argue that these were separate works, as were some ancillary works. Split into three, Mr Harniman argued, the works fell below the £250 cap, which is the threshold requiring a section 20 consultation.

7. We disagree. The landlord discovered that emergency lighting works, which had been carried out some years before, were defective. The repairs needed to be done at the same time as the fire alarm works, because the electrical trunking (which had improperly been run in the lift shaft) needed relaying. The electrics were needed for both the emergency lighting and the new fire alarm system. The ancillary works were just that: ancillary to the installation of the lighting and alarm system.

8. In our judgment this was one contract for one set of works. It is not proper to divide the works up, so as to bring three sets of works under the £250 cap. Accordingly in our judgment this figure is capped at £250. We do not need to determine whether the cost of the works should have been only £23,000: the tenant was content to have a determination of £250 against himself.

9. In respect of the balcony works, the landlord carried out a stage 1 consultation on 1st March 2012. At that stage the landlord had already obtained quotes for the day rate of various tradesmen from three firms: Paul Adams & Co, Beeches Builders Ltd and VG Construction. The landlord had previously in 2010 obtained a specification drawn up by a structural engineer, Mr Alan Rigby. That specification had been the subject of a quotation dated 15th July 2010 from D Bastow Ltd for £87,196.53 plus VAT. The three firms who gave day rates did not provide quotations based on Mr Rigby's specification.

10. The stage 2 consultation is dated 25th May 2012. It says that the landlord is minded to accept the offer from VG Construction, which is the trading name of Mr Vic Bennett. On 9th June 2012, VG Construction provided a tender based on Mr Rigby's specification of £37,840 with no VAT payable because Mr Bennett was not registered for VAT. Mr Harniman accepted that the tender was not based on the day rates previously quoted in the stage 1 consultation.

11. Part II of Schedule 4 to the Service Charges (Consultation etc) Regulations 2003 requires the landlord to obtain estimates for the works. In the current case, we are doubtful whether obtaining day rates is sufficient for this purpose, because of course the amount of time

which a contractor will need for the works is a key factor in assessing the cost and competitiveness of a contractor tendering for the work. However, in fact the landlord never obtained estimates from anyone for the specification, except from D Bastow Ltd (who were not considered for the work) and from Mr Bennett. Mr Bennett, however, only tendered based on the specification after the consultation concluded.

12. In our judgment, the landlord's failure to obtain proper estimates based on Mr Rigby's specification was a major breach of the consultation requirements. Accordingly for these works too, the cap of £250 applies.

13. The Tribunal notes that the landlord has throughout been well aware that it could apply for dispensation from the consultation requirements under section 20ZA of the 1985 Act, but has made a deliberate decision not to do so. The Tribunal expresses no view on whether such an application might have succeeded or whether it can properly now be made. That will be a matter (if the landlord changes its mind) for another Tribunal to decide.

14. In relation to water damage, we accept Mr Harniman's evidence that the building has old lead pipes and there are numerous leaks which cannot be blamed on individual tenants. The issues of principle in our judgment have been determined by Lady Wilson's Tribunal's decision at paragraphs 7 to 11. We respectfully agree with the determination and reasoning of that Tribunal. We disallow nothing under this head.

15. In relation to the fees invoiced and paid on 21st December 2011, these fell in the 2010-11 service charge year. The monies were paid out of the reserve fund on that date. Accordingly in our judgment section 20B has no application.

COSTS

16. The tenant sought recovery of the fees payable to the Tribunal in the sum of £280 and the cost of his expert in the sum of £735. The Tribunal has a general discretion as to which party should pay the fees payable to itself. In relation to other costs, such as the expert's fees, the Tribunal can only make an order if one party has acted unreasonably: see rule 13(1)(b) of the Tribunals' Rules of Procedure 2013.

17. In our judgment the tenant has won overall, but not on everything, but the landlord has not acted unreasonably. Accordingly, we consider the landlord should reimburse the tenant £210 in respect of the fees. In relation to the other costs, the Tribunal (having found that the landlord did not act unreasonably) has no jurisdiction to award costs and therefore does not do so.

PERMISSION TO APPEAL

18. After the Tribunal told the parties what its determination was, Mr Harniman asked for permission to appeal. Under rule 52 of the Rules of Procedure such an application should be in writing, but the tenant

waived the point and the Tribunal applying the Overriding Objective considered it appropriate to deal with Mr Harniman's oral application.

19. In our judgment the proposed appeal has no reasonable prospect of success and there is no other reason to give permission to appeal. Accordingly we refuse permission to appeal. We have considered whether to review our decision (see rules 53 and 55), but see no reason or in this case power to do so.

DECISION

(a) In the service charge year 2011-12, the tenant's obligation to contribute to the fire alarm and emergency lighting works is £250 and his obligation to contribute to the balcony works is £250.

(b) The Tribunal disallows nothing in respect of the claim in respect of leaks.

(c) The managing agent's fees for major works amounting to £6480 invoiced and paid on 21st December 2011 fell in the 2010-11 service charge year not the 2011-12 year. Section 20B of the 1985 Act does not prevent the landlord recovering this sum, which was paid on 21st December 2011 from the reserve fund.

(d) The landlord shall pay the tenant £210 in respect of the fees payable to the Tribunal. The Tribunal makes otherwise no order for costs.

(e) Permission to appeal is refused to the landlord.

Name: Adrian Jack **Date:** 11th December 2013

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.