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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00AZ/LSC/2013/0581
Property	:	Flat 3, 17 Eastdown Park, London SE13 5HU
Applicant	:	Powell & Co Property Limited
Representative	:	Mr Sean Powell, Director, Powell & Co Limited
Respondents	:	Mr Nathaniel and Mrs Motumrayo Adojutelegan
Representative	:	Mr Adojutelegan
Type of Application	:	Determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Mr Robert Latham Mr Luis Jarero BSc FRICS Mr John Francis QPM
Date and venue of Hearing	:	6 December 2013 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	24 December 2013

DECISION

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(1) The Tribunal determines that the sum of £11,587.40 is payable by the Respondents in respect of an advance service charge to fund works to the property.

(2) The Tribunal reduces from £184.31 to £30.49 the shortfall due in respect of the service charge for 2012.

(3) The Tribunal determines that the Respondents shall pay the Applicant £440 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Respondents.

2. On 24 April 2013, the Applicant issued proceedings in the Northampton County Court under Claim No.3QT5444 (at Tab 9 of the Hearing Bundle). It claimed £12,433.99 in relation to a Section 20 Notice Invoice, a service charge deficit invoice and related costs. The claim relates to two matters:

   (i) On 19 April 2013, the Applicant issued a demand for £11,889.68, reflecting 25% of "the cost of Section 20 works" in the sum of £10,076.00 and a 15% management fee (+ VAT) of £1,813.68 (Tab 5).

   (ii) On 17 January 2013, the Applicant issued a demand for £184.31 described as the shortfall relating to the period 1 March to 31 December 2012 (Tab 5).

3. On 30 April, the Respondents filed a Defence (Tab 9):

   (i) They complain of flaws in the consultation process. They contend that they should only be liable for 16.7% of the works as the lessees of Flats 5 and 6 also make use of the common parts.

   (ii) They dispute the right of the Applicant to charge a flat rate of £250 per flat for managing agents. They contend that the lease restricts the landlord to a fixed sum of £25 per annum or 15% of total of the total expenditure, whichever is the greater.

4. On 17 May, the claim was transferred to the Dartford County Court. On 8 August, District Judge Bruce stayed these proceedings, pending a determination by the LVT of:

   (i) whether the landlord has complied with the consultation requirements under Section 20 of the Act;

   (ii) whether the service charges are reasonable and payable; and

   (iii) whether the sums claimed are properly due from the Respondents pursuant to the lease, dated 13 October 1989.

5. On 12 August 2013, the Applicant issued his current application to this Tribunal (at Tab 8). The Applicant raises the same issues as in the County Court proceedings, namely the Respondent's contribution to the major works and the shortfall of £184.31 for the period 1 March to 31 December 2012.

6. On 24 September, the Tribunal gave Directions (at Tab 8). The Tribunal identified the following issues to be determined:

(i) whether the service charges are reasonable and payable;

(ii) whether the landlord has complied with the consultation requirements under Section 20 of the Act;

(iii) whether the sums claimed are properly due from the Respondents pursuant to the lease;

(iv) whether an order should be made under Section 20C of the 1985 Act.

7. On 30 September 2013, the Applicant filed its Statement of Case (at Tab 8). On 8 October, the Respondents filed their Case (Tab 2). On 22 October, the Applicant filed a Response (Tab 1).

8. We are satisfied that there are three matters for our to determine:

(i) the payability and reasonableness of a service charge demand issued by the landlord on 30 April 2013 for the sum of £11,585.40. This demand is at Tab 5. It amends the demand which had previously been demanded on 19 April 2013. The landlord concedes that the original demand was wrongly computed. The sum relates to £10,076.00 in respect of the works and an additional 15% + VAT as a management charge. This is a demand for a payment in advance in respect of major repairs to the premises. We must consider whether this sum is payable under the terms of the lease, whether the landlord has complied with the consultation requirements and whether the sum demanded is reasonable. The landlord has not yet commenced the works or appointed a contractor. When the works are completed, it will still be open to any lessee to challenge to final bill on grounds of reasonableness.

(ii) the payability and reasonableness of the sum of £184.31 demanded on 17 January 2013 for the difference between actual, as against estimated expenditure for the period 1 March and 31 December 2013. A service charge on account had been demanded and paid in the sum of £650. When the actual expenditure was assessed against the budget, there was a deficit of £737.24, namely £184.31 per flat. The significant item of unbudgeted expenditure was a Surveyor's Report from GEM

Associates Ltd ("GEM") in the sum of £960. The accounts included a management fee of £1,000.

(iii) whether an order should be made under Section 20C of the 1985 Act.

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

Our Previous Decision

10. On 29 November 2012, this Tribunal determined an earlier application (LON/00AZ/LSC/2012/0496) brought by Mrs Adojutelegan, the tenant, against the landlord. The current application arises from our previous decision. We determined that the sum of £8,259.30 which the landlord proposed to charge the tenants as an advance service charge for major works had not been reasonably incurred and was not payable. The Tribunal was satisfied that the consultation process had been flawed. In particular, the landlord had failed to adequately describe the works that it intended to execute prior to serving the Stage 1 "Notice of Intention to Do Works". Because the works had not been specified with sufficient precision, when the builders were asked to quote, they were not providing estimates on a "like-for-like" basis.

11. We reached this decision with some misgiving:

(i) We were satisfied that Mr Powell adopted an informal approach with the intention of minimising the costs which would be passed on to the lessees.

(ii) It was quite apparent to the Tribunal that urgent works are required both externally and to the internal common parts.

(iii) We were satisfied that the tenant had failed to cooperate with her landlord by failing to engage with the consultation process. We were further satisfied that neither of the estimates which the tenant had submitted to the Tribunal were adequate for the scope of the works which were required to the property.

12. We also considered the unsatisfactory position pertaining to the property:

(i) The leases of Flats 1 to 4 were all granted between 1989 and 1990 for terms of 125 years. At this time, 17 Eastdown Park was a substantial four floor detached house. The garden flat (Flat 1) had its own entrance to the side of the property. The other lessees gained access to their flats through a communal hallway on the upper ground floor. A staircase led

to the first floor where there were doors to the first and second floor flats (Flats 3 and 4). The lessees of the garden and ground floor flats (Flats 1 and 2) each enjoyed a small garden to the rear of the premises. All the leases have similar terms relating to service charges. The leases specify the percentage contribution that the lessee is required to contribute. In respect of the other leases, a figure of 25% has been inserted. No figure had been inserted in respect of the first floor flat (Flat 3).

(ii) In about 1996, the freeholder acquired the land between Nos. 17 and 19 Eastdown Park and built two flats at first and second floor levels between in this space. In 1995, leases were granted in respect of these flats, Flats 5 and 6. The flats are built on brick piers. Access to these flats is gained through the front door and communal hallway at 17 Eastdown Park. At the previous hearing, we had been provided with a copy of the lease dated 12 May 1995 in respect of the Flat 5, described as the "Hall Floor Flat". We noted that the "lessor's premises" are described as "land on the East side of Eastdown Park, London SE13 together with the building erected above ground floor level thereon as the same comprises two flats two parking spaces and a driveway". It is a curious document. It does not purport to grant any easement through 17 Eastdown Park to enable the lessee to gain access to the flat, albeit that the lessee has sought to exercise such a right. Neither does it require the lessee to make any contribution to the cost of maintaining the common parts at 17 Eastdown Park.

(iii) Normally, one would have expected the lessees of Flats 5 and 6 to contribute to the cost of repairing and maintaining the common parts at 17 Eastdown Road through which they have the only means of access to their flats. Whether they would pay an equal share of the cost, which would benefit the lessees of Flats 1 to 4, or merely the additional cost occasioned by their use of the common parts, would be for the landlord to define when granting the leases. What would be wholly unreasonable, would be for the lessees of Flats 1 to 4 to have to pay the additional cost occasioned by the landlord's speculative development. If the lessees of Flats 5 and 6 were not to be required by the landlord to contribute this additional cost, it should be borne by the landlord himself. However, one would not expect these lessees to contribute to the cost of repairs to the structure and exterior of 17 Eastdown Road, as this does not form part of the structure or exterior of their flats.

13. The current tenants acquired their leases after Flats 5 and 6 had been added. Anette Bartha acquired Flat 4 in December 1996 (Tab 10). Matthew Whitson acquired Flat 1 in June 2001. This has now been acquired by Linda Thackray (see Tab 13). The Respondents acquired their flat in September 2011, their leasehold interest being registered on 6 October 2011 (Tab 10). At the previous hearing we were given to understand that Mrs Adojutelegan was the sole lessee and that she had acquired her leasehold interest in September 2010.

14. Thus the principle of Caveat Emptor (Purchaser Beware) applied. All the lessees knew, or ought to have known, that they were obliged to pay their 25% share of the service charge albeit that two additional tenants were using the staircase. Indeed, the lessee of Flat 1 was required to contribute to the maintenance of the communal hallway albeit that this flat had a separate entrance and the lessee had no reason to use it. Both Respondents state that they are lawyers.

15. The Applicant successfully bid for three properties at auction in July 2010. This included Nos. 17 and 19 Eastdown Park, but not the flying freehold in respect of the land between these properties in which Flats 5 and 6 are located. The Applicant was fully aware of the defects in title as his interest was not registered until 15 March 2012, the sale having been completed on 1 March 2012 (see Tab 11). The Proprietorship Register records that he paid £10,000.

16. Nothing has been done to regularise the situation since the last hearing. Mr Powell has written to the owners of the flying freehold offering to buy the same (see Tab 12). Mr Bharma, who granted the leases in 1995, has no inclination to sell. In our previous decision, we noted that it might be open to any of the parties to apply to vary the terms of the leases in respect of Flats 1 to 4 pursuant to section 35 of the Landlord and Tenant Act. No one has taken the opportunity to do so. The problem is that there is no contractual relationship between the Applicant and the lessees at Flats 5 and 6. We understand that these flats are currently occupied by assured shorthold tenants.

The Inspection

17. The Tribunal inspected the property on the morning of the hearing. Mr Patrick Goubel was present on behalf of the landlord and Mrs Adojutelegan on behalf of herself and her husband. The Respondents do not occupy their flat. They are buy-to-let landlords.

18. The Tribunal had previously inspected the premises on 29 November 2012 when it determined the previous application. No external works have been carried out since our previous inspection. Ms Thackray and Ms Bartha (at Tab 13) assert that no works have been carried out to the property for some 13 years. We remain satisfied that this property is in urgent need of repairs.

19. The only work which had been carried out was a new light which had been installed at the top of the stairs. We understand that this is operated from the supply of one of the tenants who had been disconnecting the light.

20. We paid particular attention to the extent to which the tenants to Flats 5 and 6 make use of the common parts. The staircase to the first floor

leads to separate entrance doors to Flats 3, 4 and 6. The entrance to Flat 5 is at a lower level. The electricity meters for the six flats are in the communal hallway. The trunking is falling apart. The decorations are poor. We noted that the carpet was not in too bad a condition.

21. The gas meters for the six flats are all set externally on the flank wall. However, the meters for Flats 5 and 6 lie further back from the other meters.

22. We remain satisfied (as we noted in our last decision) that works are also required to the internal common parts. These include decorations, new carpeting, a fire/smoke alarm and an intercom system for the four flats within the property. This will not extend to Flats 5 and 6. All six electrical meters need to be boxed in.

The Hearing

23. Mr Sean Powell appeared on behalf of the Applicant. He is the director of Powell & Co Property Limited. The property is managed by Powell & Co Management Ltd ("Powell & Co).

24. Mr Adojutelegan appeared on behalf of himself and his wife. Both are Solicitors. Mr Adojutelegan stated that he had not received the copy of the Bundle which the Applicant stated he had sent to his address on 24 October. We provided him with a copy. We were referred to a number of documents and it was apparent that Mr Adojutelegan had copies in his own files. We heard evidence from both Mr Powell and Mr Adojutelegan. We raised concerns as to whether the lease permitted the landlord to demand a payment for the major works in advance, and we afforded the parties a short adjournment to consider this point.

25. 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.

The Lease

26. The lease is at Tab 11. It is dated 13 October 1989 and grants a term of 125 years from that date. A rent of £100 is reserved for the first 30 years which is payable in advance on the usual quarter days.

27. In interpreting the lease, we have regard to the guidance recently given by the Vice President, Martin Rodger QC, in *Southwark LBC v Woelke [2013] UKUT 0349 (LC)*:

> "40. Where a contract lays down a process giving one party the right to trigger a liability of the other party, such as the payment of a sum of money in response to a demand, it is a question of construction of the

> contract whether the steps in the process are essential to the creation of the liability, or whether the process may unilaterally be varied or departed from without invalidating the demand. Where issues such as those in this appeal arise, it is necessary to identify the minimum requirements laid down by the lease before the obligation to pay the service charge will be created, and then to consider whether the circumstances of the case satisfy those minimum requirements. In considering each of those matters it is not appropriate to adopt a technical or legalistic approach. The service charge provisions of leases are practical arrangements which should be interpreted and applied in a businesslike way. On the other hand, precisely because the payment of service charges is a matter of routine, a businesslike approach to construction is unlikely to permit very much deviation from the relatively simple and readily understandable structure of annual accounting, regular payments on account and final balancing calculations with which residential leaseholders are very familiar. When entering into long residential leases the parties must be taken to intend that the service charge will be operated in accordance with the terms they have agreed. Leaseholders should be able to work out for themselves whether a sum is due to be paid by reading the lease and comparing the process it describes with the information provided in support of the demand by the landlord, without the involvement of lawyers or other advisers.

28. Clause 4 imposes the normal repairing and maintenance covenants on the lessor, subject to the lessees paying their service charge in respect of the same. The lessor covenants "so often as is reasonably required and in any event at intervals of not less than five years" to decorate the exterior of the property and the internal common parts (Clause 4(vii)).

29. Clause 3 specifies the service charge regime. In our previous decision, we noted that the lessees' contribution to the service charge has been left blank through a clerical error. We have now been provided with the four leases. This confirms our view that that this lessee was also intended to contribute 25%, all lessees contributing a similar proportion. No alternative interpretation was suggested.

30. We summarise the provisions for collecting the service charge:

(i) The service charge year is the calendar year (para a);

(ii) As soon as possible after the 31 December, the landlord is to determine the service charge for the year ahead including an estimate of any expenditure which is likely to be incurred (para f);

(iii) At the same time, the landlord is required to prepare a statement of the actual expenditure over the previous year (para e).

(iv) These sums are to be certified by the landlord's managing agents and a copy supplied to the tenant (para a and b)

(v) As soon as these accounts have been prepared, the landlord is to notify the tenant of the service charge to be paid for the year in question, including any adjustment to be made in respect of any surplus or deficit arising from the previous year (para f).

31. Clause 3(e) reads as follows:

"The lessee shall whenever required by the lessor with every payment of rent reserved hereunder pay to the lessor such sum in advance and on account of the service charge as the Lessor or its managing Agents shall specify at their absolute discretion to be a fair and reasonable interim payment".

32. We are satisfied that this provision entitles the landlord to demand the payment of an advance service charge in respect of any major works. However, whilst the landlord is entitled to demand the payment of the annual service charge at any time (albeit as soon as practical after the 31 December), the landlord is only entitled to demand the payment of an additional advance service charge to be paid on one of the normal quarter days when the reserved rent is due.

33. The Fifth Schedule specifies the landlord's expenses to which the tenant is required to contribute. Paragraph 6 permits the landlord to recoup the fees of its managing agents. However, this is restricted to £25 pa or 15% of the total expenditure under the schedule, whichever is the greater.

Issue 1 – The Payment on Account in Respect of the Works

The Law

34. The Consultation procedures required by Section 20 of the Act are complex. In the current case, they are to be found in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003 No.1987) ("the Regulations"). The relevant provisions are set out in Part 2 of Schedule 4 ("Consultation Requirements for Qualifying Works for which Public Notice is not Required").

35. The consultation requirements have been helpfully summarised by Lord Neuberger in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

Stage 1: Notice of intention to do the works

Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent,

allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates

The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notices about estimates

The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons

Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

The Facts

36. On 29 November 2012, we gave judgment in our previous decision. We concluded that the previous consultation process had been flawed and identified the matters which had led us to this conclusion.

37. Stage 1 - Notice of Intention to Carry out Works: On 30 November 2012, Powell & Co served a further Notice of Intention to Carry out Works (at Tab 3). The Notice described the proposed work. These included both works to the common parts and to the exterior of the property. The landlord stated that he intended to instruct a surveyor to draw up a full schedule of works. The external works included works to the roof, including the dormer roof. The works would include a contingency to cover the cost of any unforeseen problems. The Notice described why the works were considered necessary. The tenants were invited to make written observations on the works by 30 December. The tenants were invited to nominate a person from whom an estimate might be sought.

38. Thereafter, there a number of e-mails passed between Mr and Mrs Adojutelegan and Powell & Co. These are at Tab 6 of the Bundle. On 5 December (at 6.51), Mr Powell explained why the notice had been served, and that a surveyor had not yet been instructed as the cost might exceed £1,000. Mr Adojutelegan responded (at 6.49) that it was important for Flats 5 and 6 to make a fair contribution. He contended that it was not possible to install an intercom system for only Flats 1-4.

A copy of the specification was requested. Mr Adojutelegan (at 6.44) suggested that the consultation would be defective if these matters were not resolved. Ideal Properties Limited ("Ideal Properties") was nominated as a firm from whom an estimate should be sought.

39. On 6 December 2012, Powell & Co arranged for the property to be inspected by GEM, Surveyors. Their report is at Tab 4. It is written in a somewhat idiosyncratic style. However, it identifies a range of items of disrepair and illustrates these with photographs. The report annexes a Schedule of Works ("Action Required"). The Surveyor had not inspected the roof and the need to do so was highlighted.

40. In January 2013, Powell & Co arranged for a Schedule of Works to be prepared by Landivar Architects (at Tab 3). Mr Powell described how he had not been entirely happy with the services provided by GEM and considered that there Schedule of Works was not sufficiently detailed. The Specification prepared by Landivar Architects on the other hand extends to 32 pages. However, pages 1-30 relate to preliminaries. The Schedule of Works is set out at p.30-32. Somewhat surprisingly, there is no reference to any works to the roof or for a contingency. It is unclear whether the Architects were provided with a copy of the report from GEM. On 23 January (at 6.27), Powell & Co sent a copy of the report to Mrs Adojutelegan.

41. Stage 2 – Estimates: Powell & Co then obtained estimates from two builders, Ideal Properties (nominated by the Respondents) and Greenserve Maintenance Ltd ("Greenserve"). On 1 February, Ideal Properties provided an estimate in the sum of £31,300 (at Tab 3). No VAT was included. Separate prices were quoted for each item of work. On 24 February, Greenserve provided a quote in the sum of £33,106.67 + VAT (also at Tab 3).

42. Stage 3 – Notices about Estimates: On 11 March, Powell & Co served their Statement of Estimates (at Tab 3). The estimates were attached to the Notice. This caused a flurry of e-mails between the tenants. On 17 March (at 7.31), Ms Bartha expressed a preference for Greenserve. On the same day, Ms Thackray (at 7.30) expressed concern that Ideal Properties Ltd had not quoted VAT. On 9 April (at 6.26), Mrs Adojutelegan complained to Powell & Co that the Greenserve quote was defective because it had not broken down their estimate.

43. On 19 April (at Tab 5), Powell & Co issued a demand for £11,889.68. This included a management fee of 15%. Immediate payment was demanded. Powell & Co (at 6.24) e-mailed Mrs Adojutelegan noting that all the other tenants wanted it to use Greenserve. The difference in price largely reflected VAT. The landlord considered that Greenserve were the better option as it had experience of the quality of their work. The landlord disputed her criticism of the Greenserve estimate. It emphasised that it wanted to start the work as soon as possible. It could

not do so unless the tenants agreed to all the tenants agreed to pay for the works.

44. On 30 April (at Tab 5) reissued the demand correcting the figure to £11,587.40. Powell & Co (at 6.13) apologised for the error in computing their management fee.

45. The Tribunal was advised that the current position is that two of the tenants have paid the sum demanded; the third is paying by instalments. The Respondents have not paid. Powell & Co have agreed to use Ideal Property Ltd if this would resolve the situation. The Respondents have rejected this. Until the Respondents have agreed to pay for the works, the Applicant is not willing to move to the next stage of entering a contract with either of the builders. It awaits the decision of this Tribunal. Its preference is to use Greenserve.

Our Determination

46. The Tribunal is satisfied that the sum of £11,587.40 is payable by the Applicant:

(i) The landlord has complied with the Stage 1 Consultation requirements.

(ii) The landlord intends to install an intercom system for Flats 1-4. Whilst the six electrical meters in the hallway are to be boxed in, the additional cost of doing this for 6 rather than 4 meters is insignificant. If any works are to be executed for the sole benefit of Flats 5 or 6, the cost must either be borne by these tenants or the landlord. When the works have been executed and the final bill has been submitted, it will be open to the tenants to challenge it on the basis that the cost of any item should either be borne by the landlord or these tenants. Under their leases, each tenant of Flat 1-4 is obliged to pay 25% of the cost of the works. This is currently the basis of division, subject to the tenants being able to establish that additional costs have been incurred in respect of Flats 5 and 6 for which they should not be liable.

(iii) The landlord has complied with both Stages 2 and 3 of the Consultation requirements. The requisite number of estimates has been obtained, including one from the builder nominated by the Respondents. No tenant made any relevant written observations on the scope of the works during the 30 day consultation period.

(iv) The estimate from Greenserve is not invalidated by the failure of the builder to break down their estimate between the individual items for which they have provided an estimate.

(v) The Tribunal note that the sum quoted by Greenserve of £33,106.657 is the same that they had quoted on 24 February 2012. On that occasion, it may have quoted for somewhat different works. However, that does not affect the current quote that they have provided.

(vi) The Respondents suggest that the Applicant and Greenserve are related. Mr Powell denies this. There is no evidence to support the Respondents' contention.

(vii) The Applicant has yet to make a final decision as to whether to contract with Greenserve or Ideal Properties.. We are satisfied that the landlord is entitled to demand an advance service charge on the basis of the estimate that it was minded to accept.

(viii) The lease permits the landlord to demand an advance service charge. Strictly, Clause 3(e) only permits the landlord to make such a demand with a demand for rent due on one of the normal quarter days. The demand was made prematurely. However, we are satisfied that this did not nullify the demand. Rather, the sum would only become payable on the next quarter day.

Issue 2 – The Demand for £184.23

47. On 1 March 2012, the Applicant acquired the freehold interest which was registered on 15 March (see Tab 10). It paid £10,000,. At the last hearing, we were told that the Applicant had successfully bid for the property at an auction in July 2010. There was a significant delay in completing the purchase because of the defects in title. It would seem that there was no effective management of the property during this period.

48. Thereafter. Powell & Co prepared a budget for the period 1 March to 31 December 2012 (at Tab 5). This totalled £2,600. This includes a modest contribution of £200 towards a reserve fund. £650 was demanded from each tenant and these sums were paid.

49. In January 2013, Powell & Co reconciled the actual expenditure against the estimate. This had been £3,337.24 (at Tab 5). The significant variation was the survey from GEM which had cost of £960. On about 17 January 2013, the landlord made a demand for the shortfall of £184.31. This is the sum in dispute.

50. The Respondents dispute one item, namely the management charge of £1,000, including VAT. They contend that this is more than permitted by the lease. Paragraph 6 of the Fifth Schedule restricts the landlord to charging £25 or 15% of total expenditure, whichever is the greater (see para 33 above). We agree.

51. The Tribunal therefore determines that the maximum management fee which the landlord is entitled to charge is £384.70. This is 15% of the total expenditure of £2,137.24, namely £320.59 + VAT of 20%. We therefore reduce the sum of £1,000 by £615.3. This reduces the liability of each tenant by £163.82. The shortfall for the year for each tenant is therefore £30.49, rather than £184.31.

Application under s.20C and Refund of Fees

52. The Directions of 24 September 2013 noted that the tenants are making an application for an order under section 20C of the 1985 Act. Mr Powell informed the Tribunal that the landlord does not intend to pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. An Order would therefore be academic. Had we been asked to make an order, we would have declined to do so. The landlord has been successful on the main issue in dispute, namely the advance service charge payable in respect of the major works that are urgently required to this property. Those repairs are still outstanding because of the intransigent position adopted by the Respondents.

53. At the end of the hearing, the Applicant made an application under Regulation 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for a refund of the fees that he has paid in respect of the application/hearing, namely £440 (£250 + £190). Having heard the submissions from the parties and taking into account the determinations above, the Tribunal makes an order that the Respondents refund the fees paid by the Applicant.

54. Either party has the right to appeal to the Upper Tribunal (Lands Chamber) (s.175 Commonhold and Leasehold Reform Act 2002). Permission to appeal is required which should initially be sought from this Tribunal.

Robert Latham

Tribunal Judge

24 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 20 - Consultation Requirements

(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 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 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 leasehold valuation 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 a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

The Service Charges (Consultation Requirements) (England) Regulations 2003

These Regulations have been made pursuant to sections 20(4) and (5) of the Landlord and Tenant Act 1985. By Regulation 7(4)(b) the relevant consultation requirements are set out in Part 2 of the Schedule 4.

Schedule 4, Part 2

Paragraph 1 – Notice of Intention

(1) The landlord shall give notice in writing of his intention to carry out qualifying works:

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall:

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify:

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Paragraph 2 - Inspection of description of proposed works

(1) Where a notice under paragraph 1 specifies a place and hours for inspection:

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Paragraph 3 - Duty to have regard to observations in relation to proposed works

Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Paragraph 4 - Estimates and response to observations

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate"

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate:

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9):

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out:

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord–

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by:

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any):

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify–

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Paragraph 5 - Duty to have regard to observations in relation to estimates

Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Paragraph 6 - Duty on entering into contract

(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any):

> (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
>
> (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Regulation 13

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.