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

Case Reference : **LON/OOBE/LSC/2013/0007**

Property : **Flat 98 Taplow House, Thurlow Street, London SE17 2UH**

Applicant : **Mr M Mahfoon**

Representative : **In person**

Respondent : **The London Borough of Southwark**

Representative : **Mr Brutton, Income Enforcement Officer**

Type of Application : **Section 27A of the Landlord and Tenant Act 1985**

Tribunal Members : **Judge LM Tagliavini
Mr A Ring**

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

Date of Decision : **7 July 2013**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the full sum demanded by the Respondent is payable by the Applicant in respect of the service charges for all years (2002-2012) including the three sets of major works carried out in that period.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 as the Respondent conceded that it did not seek its costs of the application.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2002-2012 (annual service charges) and three sets of major works included in that period (i) external works (ii) asbestos works and (iii) fire safety works. The Applicant also sought a determination as to whether the works are reasonable in particular in relation the nature of the works, the contract price and the supervision and management fee when the building is to be wholly evacuated and demolished or redeveloped in the foreseeable future. On further consideration, the Applicant decided that the items of annual service charge he wished to dispute comprised only of the (i) lifts and (ii) heating/hot water boiler. Mr Mahfoon also stated that he did not seek to argue with percentage charged but asserted he ought to be awarded a 10% reduction in the disputed charges to reflect the reduced service he had been provided with.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person. The Respondent was represented by Mr Brutton.
4. An issue arose at the outset of the hearing as to whether Mr Mahfoon was entitled to bring to the Tribunal for a determination all parts of his case as three county court judgments had been made against the appellant. The three judgements covered the following periods:
 - (i) 2008/09: - 1st two quarters of this service charge year only and judgement obtained for £1700.73.

- (ii) 2009/2010: 1st two quarters and judgement obtained for £1,876.89.
- (iii) 2010/2011: Judgement obtained for first three quarters of this service charge year.

The background

- 5. The property, which is the subject of this application, is a flat on the 8th floor of a purpose built 12 storey block of flats on a large estate scheduled for ongoing and further future redevelopment.
- 6. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
- 7. The Applicant holds a long lease of the property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

- 8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for 2002-2012 in respect of lift costs and heating and hot water system.
 - (ii) The payability and reasonableness of the costs of three major works projects for (i) external works, (ii) lift works and (iii) fire safety works.
- 9. 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.

Service charge item & amount claimed

- 10. All sums claimed in respect of the annual service charges for the lifts and the heating/hot water charges are reasonable and payable by the Applicant for the service charge years 2002 - 2012
- 11. All three projects of major works are reasonable and the sums claimed by the Respondent are payable by the Applicant.

Reasons for the Tribunal's decision

12. In reaching its decision the Tribunal took into careful consideration all the relevant documentary and oral evidence provided to it by the parties. Although Mr Mahfoon asserted that for long periods of time he had been without the use of the lifts or had been without heating or hot water in his flat, the Tribunal found his evidence on this point to be vague and imprecise. Despite saying he had kept a diary of every occasion he was without these services, Mr Mahfoon failed to present any such evidence to the Tribunal, although he had had an opportunity to bring the diaries with him to the second day of the hearing. Therefore, the Tribunal found the Applicant's evidence on this point could not be relied upon.
13. It was accepted by the Respondent that for a period in March 2011 the heating and hot water system had failed and compensation had been made to those affected in the sum of £50.00. Further, the Respondent produced sheets comprising notification of repairs and could find only four complaints for the period 1998 to date of complaints made about a lack of heating or hot water. The Tribunal was informed by Mr Brutton, that a compensation scheme was in place and the sum of £5.36 paid where the occupier had been without heating for two days.
14. The Tribunal accepted the Respondent's evidence as given by Mr Trevor Wellbeloved (capital works programme), Mr Gulam Dudhia (calculation of annual service charges), Ms Catherine Bate (redevelopment plans for Taplow House), Mr Gordon Hynes (heating), Mr Duncan Rimmer (asbestos management plan), Mr John Robey (Electrical works), Mr Des Millar (lifts), Cheryl Phillips (project manager for major works) and Mr Vince Edwards (major works contracts). The Tribunal accepts that notwithstanding the Respondent's plans to demolish Taplow House as part of a twenty-year development programme this does not permit the Respondent as lessor, to ignore their legal liabilities under the lease. The Tribunal accepts that to the Applicant that it must appear to be an unnecessary expense to carry out repairs or do major works in the circumstances of this proposed redevelopment, but the Tribunal finds that only limited works as are reasonably necessary have been commissioned and carried out to the subject building, and accepts that the reality of the situation requires a heating and hot water system to be repaired and maintained even if it is ultimately to be demolished on a as yet unascertained date.
15. Although the Tribunal accepts that all sums claimed by the Respondent are payable and therefore is not required to distinguish these sums from any periods where judgment has already been entered, the Tribunal was concerned to learn of the Respondent's habit of approaching Mr Mahfoon's mortgage lenders without recourse to the Applicant. The Tribunal was shown a number of letters addressed to the Applicant's mortgage lender which Mr Mahfoon had not seen before. Consequently, the service charges claimed by the Respondent

were paid directly by the Applicant's mortgage lender rather than being sought from the Applicant directly. This no doubt has had the effect of incurring Mr Mahfoon in further costs and interest charges added to his mortgage unknowingly and about which the Tribunal was told there on-going litigation in the County Court.

Application under s.20C and refund of fees

16. The Respondent indicated it would not seek to add costs of this litigation to the service charge and therefore the Tribunal was not required to consider an application pursuant to Section 20C

Judge: LM Tagliavini

Date: 12 July 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 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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.