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

Case Reference : **LON/00BE/LSC/2013/0217**

Property : **89 Glengarry Road London SE22
8QA**

Applicant : **Crystal White Limited**

Representative : **Circle Residential Management
Limited**

Respondent : **Mr Cryar and Ms McGrath**

Representative : **N/A**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge and the
dispensation of all or any of the
consultation requirements**

Tribunal Members : **Judge Carr**

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

Date of Decision : **13th November 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines not to strike out the application.
- (2) The tribunal determines that the service charge demanded in connection with works to guttering totalling £130 is payable by the Respondent.
- (3) The tribunal determines not to grant the s.20ZA application made in connection with these works.
- (4) The tribunal makes the determinations as set out under the various headings in this Decision
- (5) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge

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 Respondent in respect of works carried out investigating and servicing of guttering.
2. The Applicant also seeks a determination pursuant to s.20ZA of the 1985 Act for the dispensation of all or any of the consultation requirements provided for by Section 20 of the 1985 Act.
3. The applications were dated 15th March 2013. At that time the Respondent was Mr C J Halcrow. Mr Halcrow assigned his interest in the property to Mr Cryar and Ms McGrath on 21st June 2013 who are therefore now the Respondent in this matter.
4. Directions of the Tribunal were issued on 2nd May 2013. Those directions indicated that the Tribunal had grave doubts as to the necessity of the application as the then Respondent had agreed the payment and the cost of the proceedings, if they were to fall upon the Respondent, were likely to be wholly disproportionate to the amount in question.
5. Further directions were issued on 23rd July 2013 which proposed that the proceedings should be struck out on the ground that the tribunal does not have jurisdiction in this matter.

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

The hearing

7. The matter was listed for a paper determination, as the Tribunal considered that the costs of an oral hearing would be disproportionate. No application was received from or on behalf of either the Applicant or the Respondent for an oral hearing and therefore the matter was determined by way of a paper hearing on Wednesday 13th November 2013.

The background

8. The property which is the subject of this application is a ground floor flat, one of two flats at 89 Glengarry Road.
9. 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.
10. The Respondent 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

11. The relevant issues for determination as follows:
 - (i) Whether the tribunal has jurisdiction to determine the application and if so,
 - (ii) The payability and/or reasonableness of service charges demanded in 2013 in connection with the investigation and servicing of down pipes
 - (iii) Whether the Applicant can dispense with the statutory consultation requirements in connection with the works due to their urgency
12. 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 question of jurisdiction

13. The Applicant argues that the works at issue are qualifying works as defined by s.20 of the Landlord and Tenant Act 1985, and therefore that the Tribunal not only has jurisdiction but an obligation to discharge such jurisdiction on application by the Lessor. The Applicant argues that the existence of an agreement between the parties is not relevant.

The tribunal's decision

14. The tribunal determines that in this particular instance it has jurisdiction notwithstanding any agreement about the payability of the charges for the works.

Reasons for the tribunal's decision

15. It is appropriate and to make a final determination of the matter.

Charge for works

16. The total charge for the works to the guttering is £130. The Respondent at the time of the directions hearing indicated that he was content to pay that sum.

The tribunal's decision

17. The tribunal determines that the amount payable in respect of [the guttering works is reasonable and payable.

Reasons for the tribunal's decision

18. In the experience of the Tribunal the costs demanded are reasonable and the Respondent is in agreement.

Application for dispensation from consultation requirements.

19. The Applicant argues that works were necessary because of problems with the guttering and down pipe. The works were urgent because of the need to prevent water ingress to the property.
20. The Applicant further argues that, although the works fall beneath the consultation threshold of £250, as a result of the decision in Phillips v Francis (No 2) 2012 EWHC 3650 (Ch) it is necessary for the Applicant, in order to protect its position, to apply for dispensation.

The tribunal's decision

21. The tribunal determines not to grant the application for dispensation.

Reasons for the tribunal's decision

22. The decision in *Philips v Francis* can be distinguished from the present application. The costs of the works in dispute in *Philips v Francis* were one part of a complete set of works which the lessor anticipated carrying out at the park home site. The work on the down pipe at Glengarry road was one isolated item of standard repairs and maintenance. Therefore there is no need for dispensation from consultation as no requirement to consult arises.
23. If the Tribunal is wrong on this matter, and it is found that there is a need for an application to dispense, then the Tribunal determines to grant the application on conditions, as it is entitled to do since the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14.
24. The conditions that the Tribunal imposes are that the Applicant must bear the entire costs of the Application and that the lessee is not to be charged either through the service charge account, as an administration charge, or through any other means.
25. These conditions are justified as the sole purpose of the Application is to protect the position of the Applicant, who already has the benefit of the agreement of the Respondent to the service charge cost.

Application under s.20C and refund of fees

26. Having read the application, the submissions and the attached documentation and taking into account the determinations above, the tribunal determines under section 20C of the 1985 Act, that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge Carr

Date: 13th November 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.

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

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 the appropriate 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 the appropriate 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).