

9276



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

Case Reference : LON/OOBE/LSC/2013/0230

Property : 5 Dunstons Road, London, SE22
OHQ

Applicant : Chamber Estates Ltd.

Representative : Circle Residential Management
Ltd.

Respondent : Ms S J Kennedy-Todd (Flat A)
Ms K J K Orr (Flat B)
Mr S J Williamson (Flat C)

Representative : None notified

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

Tribunal Members : Judge Goulden
Mr H Geddes JP RIBA MRTPI

**Date and venue of
Hearing** : Tuesday 27 August 2013 at 10
Alfred Place, London WC1E 7LR

Date of Decision : 27 August 2013

DECISION

Decisions of the Tribunal

The Tribunal determines that the cost in relation to the sum of £185 would be payable by the Respondents in respect of the works to the downpipe and remedial works to cracked masonry in accordance with the estimate from B McGuinness Decorators and Maintenance dated 6 February 2013.

The Tribunal determines that those parts of the consultation requirements provided for by Section 20 of the 1985 Act which have not been complied with are to be dispensed with.

The applications

1. The Applicant seeks a determination pursuant to s.27A (3) of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges in respect of external repairs to be paid by the Respondents if such work was to be carried out in the service charge year 2013. The application was dated 15 March 2013.

2. The Applicant also seeks a determination pursuant to S20ZA of the 1985 Act for the dispensation of all or any of the consultation requirements provided for by Section 20 of the 1985 Act. The application was dated 15 March 2013.

3. Directions of the Tribunal were issued on 2 May 2013. These Directions stated, inter alia, "*the tribunal in particular notes the following:*

a. it is not apparent that any dispute has yet been raised by the 3 leaseholders in this building. Even though the tribunal has no jurisdiction in relation to a matter which is agreed or admitted by a tenant (s27A(4) of the Act), the landlord's representatives confirmed that the leaseholders had not been asked to agree this expenditure

b. the cost of the proceedings (which may ultimately fall upon the leaseholders depending on the terms of the lease and the determination of any application by the tenants under s20C of the Act) will be wholly disproportionate to the amount in question.

c. If the landlord's approach is to be repeated throughout the service charge year in respect of any further expenditure, there may be numerous such LVT proceedings in each and every year.

d. the tribunal would need to be persuaded in reaching a determination on the s20ZA application that the particular circumstances which led to the decision in Phillips v Francis [2012] EWHC 3650 (Ch) are pertinent to these applications and that the statutory consultation procedure is engaged.

e. even if statutory consultation is engaged, the tribunal will need to be persuaded that separate applications need to be made in respect of each item.

4. Further Directions of the Tribunal were issued on 23 July 2013 which related to the S20ZA application only. The relevant legal provisions are set out in the Appendix to this decision.
5. Forms for completion by the tenants in respect of the S20ZA application were sent to the 3 Respondents. One form was not returned. The tenant of Flat A supported the landlord's application for dispensation. The tenant of Flat C did not support the landlord's application for dispensation and, in addition stated "*I have no objection to £185 being paid for the work. I do object to additional fees being incurred with the application to the Tribunal*". The Tribunal has accepted this as an application under S20C of the 1985 Act.

The hearing

6. The Applicant had initially requested an oral hearing but, after the issue of the Tribunal's Directions of 23 July 2013 which indicated that in the view of the Tribunal, at paragraph 7, the cost of an oral hearing would be disproportionate, the matter was listed for a paper determination. No application was received from or on behalf of either the Applicant or any of the Respondents for an oral hearing.
7. The matter was determined by way of a paper hearing which took place on Tuesday 27 August 2013.

The background

8. 5 Dunstons Road, London, SE22 OHQ ("the property") which is the subject of this application is described in the application as an end of terrace converted house comprising lower ground, upper ground and first floor flats (3 flats in total). No photographs were supplied of the property or its elevations.
9. Neither side 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. A copy of the long lease of Flat A at the property had been supplied to the Tribunal within the hearing bundle. Copies of the leases of Flat B and C also appeared in the case file. This lease required the landlord to provide services and each tenant to contribute towards the costs by way of a variable service charge.

The issues

11. The issues are as set out in paragraphs 1 and 2 above.

The submissions

12. Written submissions dated 30 May 2013 were received from Ms C Nelson MIRPM of Circle Residential Management Ltd., the Applicant's managing agents.
13. The Applicant contended, inter alia, that the lease terms placed an obligation on the Applicant landlord to undertake maintenance works and proposed to undertake certain drainage works. Indeed it is understood that the works have now been carried out.
14. In respect of the S20ZA consultation, it appeared from the hearing bundle that a Notice of Intention to carry out work was sent to the Respondents on 5 February 2013 together with a letter dated 30 May 2013 inviting the Respondents to agree that the cost of the works was reasonable. The Tribunal has not had sight of any responses to the letter of 30 May 2013 from or on behalf of any of the Respondents. It was contended that the works were urgent due to water ingress into the lower ground floor flat.
15. No written representations were received from or on behalf of any of the Respondents.

Reasons for the Tribunal's decisions

16. As a general point in respect of both applications, the Tribunal deprecates the amount of paperwork which has been submitted for this simple matter. The Applicant's representatives provided a Pre Trial Review bundle (although this had never been requested) together with a hearing bundle of some 141 pages. This is considered wholly disproportionate.

The S20ZA application

17. S 18(1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this

case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

18. Dispensation is dealt with by S 20ZA of the Act which provides:-

“Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements”

19. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(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) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord’s estimated expenditure**
- (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period;**

and

- (iii) the period on which the relevant period ends.**

2(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.

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

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

20. The scheme of the provisions is designed to protect the interests of tenants, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
21. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately foot the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
22. One Respondent had challenged the consultation process. No written submissions have been received from or on behalf of any of the Respondents
23. The Tribunal is satisfied that, in the particular circumstances of this case, the Respondents are not unduly prejudiced and it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with. It should be noted that as a condition of dispensation, no costs in respect of the application under S20ZA are to be added to the service charge account (see also paragraph 33 below)

The S27A application

24. The Tribunal has had sight of a quotation from B McGuinness Decorators & Maintenance dated 6 February 2013 in the sum of £185, of 6 February 2013 in the sum of £185.00. The work was described as *To re-direct the down pipe on right hand side of property. Rake out and fill any cracks in the masonry at the side of the building*” It appears from his estimate that this contractor is not registered for VAT.

One other quotation, from A Haywood Property Services, in the sum of £200 (also without VAT) dated 6 February 2013 was also provided, together with an (undated) photograph of guttering.

25. Under Clause 6 5(a)(i) of the lease, the landlords covenants “subject to an conditional upon payment being made by the Lessee of the Interim Charge and the Service Charge at the times and in the manner hereinbefore provided” to maintain and keeping good and substantial repair and condition “ the main structure of the Building including the principal internal timbers and the exterior walls and the foundations and the roof thereof with its main water tanks main drains gutters and rain water pipes and all other installations (other than those included in this demise or in the demise of any other flat in the Building)”
26. Under Clause 5 (4) of the lease, the tenant covenants to “Pay the Interim Charge and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto both such charges to be recoverable in default as rent in arrears and to pay the sum of Three hundred and fifty pounds on account of Service Charge at the date hereof”.
27. The Applicant has entered into some part of the consultation with the tenants in accordance with S20 of the Act and Service Charges (Consultation Requirements) (England) Regulations 2003.
28. B McGuiness Decorators & Maintenance quotation of 6 February 2013 was the lowest of two estimates. The amount requested by way of service charge contributions in relation to this matter from each of the Respondents is modest
29. The Tribunal is satisfied that the proposed works fall within the Applicant’s repairing obligations under the lease terms and that the Respondents are obliged to contribute towards the costs of such proposed works under the lease terms.
30. The Tribunal determines that the Applicant is entitled to recover service charges in respect of the proposed works from the Respondents in the sum of £185, and such sum is relevant and reasonably incurred and properly chargeable to the service charge account. There are no sums provided for either VAT or proposed provision for contingencies and professional/administration fees and therefore only £185 is to be incurred.
31. The Tribunal makes no comment in respect of the standard of works, which cannot be assessed until the works have been completed. There is no bar to any of the tenants making an application to the Tribunal if such works are not, in their view, carried out to a reasonable standard or, indeed, if the cost of the works should exceed those approved above.

S20C application

32. As stated in paragraph 5 above the Tribunal will entertain a S20C application from the Respondents.
33. For the reasons as set out in the body of this Decision, the Tribunal determines that the costs of proceedings before this Tribunal are not to be regarded as relevant costs in determining any service charge payable.

Name: J Goulden

Date: 27 August 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 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) a leasehold valuation 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.

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.