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

Case Reference : **LON/OOAH/LSC/2013/0373**

Property : **70 Bungalow Road, London SE25
6JZ**

Applicant : **Navy Properties Ltd.**

Representative : **Circle Residential Management
Ltd.**

Respondent : **Mr H Chana, Mr J Khan, Mr K
Aceampong and Mr S Liliano**

Representative : **None**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Judge Goulden
Mr P M J Casey MRICS**

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

Date of Decision : **29 July 2013**

DECISION

Decisions of the tribunal

The Tribunal determines that the service charge contributions in relation to the sum of £4,820 would be payable by the Respondents in respect of the redecoration and recarpeting of common parts in accordance with the estimate from Dennis Moore dated 17 May 2012 if such work is carried out and carried out to a reasonable standard. To the sum of £4,820 should be added 10% in respect of a contingency sum, being £482 and 15% in respect of professional and administration fees plus VAT, being £867.50.

The application

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 redecoration and recarpeting of common parts to be payable by the Respondents if such work was to be carried out in the service charge year 2013. The application was dated 28 May 2013 and was received by the Tribunal on 30 May 2013.
2. Directions of the Tribunal were issued on 20 June 2013, following a Pre Trial Review which was held on the same date, but at which there were no appearances either for or on behalf of the Applicant or any of the Respondents.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant had requested a paper determination. No application was received from or on behalf of any of the Respondents for an oral hearing.
5. The matter was determined by way of a paper hearing which took place on Monday 29 July 2013.

The background

6. The property which is the subject of this application is described in the application as a purpose built block of 6 self contained flats, spread across 3 floors. A photograph of the property was provided within the hearing bundle.
7. 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.

8. The Respondents hold long leases of various flats in the property which require the landlord to provide services and each tenant to contribute towards the costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate. With no information to the contrary, it is assumed that all the leases were in essentially the same form.

The issues

9. The Tribunal had, in its Directions dated 20 June 2013, identified the relevant issues for determination as the payability and/or reasonableness of service charges to be incurred for the service charge year 2013 relating to redecoration and recarpeting of the common parts relying on an estimate of Dennis Moore dated 17 May 2012 in the sum of £4,820. It appears from his estimate that Mr Moore is not registered for VAT

The submissions

10. Written submissions were received from Ms C Nelson of Circle Residential Management Ltd., the Applicant's managing agents.
11. The Applicant contended that the lease terms placed an obligation on the Applicant landlord to undertake certain maintenance works and proposed to undertake internal redecoration and recarpeting works as per the quotation from Dennis Moore dated 17 May 2012 in the total sum of £4,820 (being £2,225 in respect of the redecoration works and £2,595 in respect of recarpeting works). The lease terms also placed an obligation on the Respondent tenants to contribute towards the cost of such proposed works.
12. The Applicant stated that it had undertaken consultation under the provisions of S20 of the Act and submitted, inter alia, copies of the Notice of Intention dated 26 April 2012 and Statement of Estimates dated 27 September 2012 in support, together with a response from the tenant of Flat 3 nominating Dennis Moore as the proposed contractor.
13. No written representations were received from or on behalf of any of the Respondents.

Reasons for the Tribunal's decision

14. Under Clauses 5.5.2.2 of the lease, the landlord covenants at least in every 5th year **“to paint varnish colour grain and whitewash such of the interior parts of the Building as have been or are usually painted papered coloured grained and whitewashed (other than those parts which are included in this demise or in the demise of any other flat in the Building)”**

15. Under Clause 5.5.3 of the lease, the landlord covenants at least in every 5th year **“to keep clean and where appropriate lighted the Common Parts and to keep clean the windows in the Common Parts and where appropriate to furnish the Common Parts in such style and manner as the Landlord from time to time in his absolute discretion think fit”**.
16. The service charge is identified in Clause 9 of the lease. Under the tenants’ obligations as set out in Clause 3.2.4 of the lease, the Respondents are liable to contribute towards the cost of such works.
17. The Applicant has entered into consultation with the tenants in accordance with S20 of the Act and Service Charges (Consultation Requirements) (England) Regulations 2003.
18. Dennis Moore, the proposed contractor, was nominated by the tenant of Flat 3. Mr Moore’s estimate was the lower of the two estimates notified to the Respondents in the Statement of Estimates sent to the Respondents on 27 September 2012.
19. None of the Respondents have engaged with the process of the Tribunal.
20. 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.
21. The Tribunal is satisfied that the consultation requirements under S20 and the Regulations have been complied with.
22. The Tribunal determines that the Applicant is entitled to recover service charges in respect of the proposed works from the Respondents based on the estimate of £4,820, which appears to be within an acceptable band, together with the proposed provision for contingencies and professional/administration fees.
23. 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 Respondents 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.

Name: J Goulden

Date: 29 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 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.