10896

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LBC/2014/0282** **LON/00AY/LBC/2014/0319**
Property	:	**Flat 3, Granville Court, North Finchley, London N12 OHL**
Applicant	:	**Majestic Wine Warehouse Limited**
Representative	:	**Mr J Sandham -Counsel instructed by Brethertons Solicitors** **Ms A McGrandles – Senior Property Manager of Burlington Estates London Ltd** **Ellen Peters -Majestic Property Administration**
Respondent	:	**Minamax Limited**
Representative	:	**Mr A Walker – Consultant** **Mr H Peracha – Director and agent for the Respondent**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge: Ms Haria** **Valuer: Mrs J Davies FRICS** **Lay member: Mrs L West**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**18th November 2014**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £4,678.24 is payable by the Respondent in respect of the service charges for the years from 2008 to 2010 as detailed in the demand dated 23 September 2011 [588] which are the subject of the consolidated County Court Proceedings under Claim Numbers 3YL56592 and 3YS22088.

(2) The tribunal determines that the Respondent is liable for the payment of the balancing charge of £512.57 for the service charge year ending 31 May 2013, as per the demand dated 10 March 2014 [615].

(3) The tribunal makes the determinations as set out under the various headings in this Decision.

(4) The tribunal makes no order in respect of the reimbursement of the tribunal fees paid by the Applicant.

(5) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Central London County Court.

The applications

1. The tribunal had before it two applications. The first under case number **LON/00AY/LBC/2014/0282** is a consolidated case transferred from the Central London County Court relating to two separate claims under Claim Numbers 3YL56592 and 3y522088. On the 18 May 2014 Claim Number 3YL56592 was transferred to the tribunal by order of District Judge Langley. On the 3 July 2014 Claim Number 3YS22088 was consolidated with Claim Number 3YL56592 under a consent order before Deputy District Judge Skalskyj-reynolds and transferred to the tribunal. The application before the tribunal relates to a claim by the Applicant for the payment by the Respondent of outstanding service charges in the sum of £4,678.24 being the balancing demand for the year ending 2010 and comprising service charges raised in the service charge years 2008 to 2012.

2. The second is an application under case number **LON/00AY/LBC/2014/0319** relating to a balancing charge of £512.57 for the service charge year ending 31 May 2013 and the sum of £230.10 in relation to the building insurance for 2014. Mr Walker on behalf of the Respondent confirmed in his witness statement dated 4 September 2014 that the Respondent admitted and accepted liability for the sum of £230.10 in relation to the building insurance for 2014 as the Applicant had now produced invoices relating to the insurance premium. Accordingly, the issue of the balancing charge for the service

charge year ending 31 May 2013 of £512.57 remained to be determined by the tribunal.

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

The County Court Claims

4. On or about the 8 May 2103, the Applicant issued a money claim against the Respondent for arrears of service charge of £6,431.52, under Claim Number 3YL56592. On 12 June 2013 the Applicant entered a judgement in default for £7,810.43 including costs, this was set aside on the 22 November 2013. The Respondent filed a full defence on 3 December 2013 questioning the reasonableness of the service charge and the Claim was stayed and transferred to the tribunal 18 May 2014.

5. On or about the 10 October 2013, the Applicant issued a second money claim against the Respondent for arrears of service charge of £2,368.44 under Claim Number 3YS22088. On the 18 November the Applicant obtained judgement in default for £2,755.50 including costs. The judgement was set aside on an application by the Respondent and the Claim consolidated with Claim Number 3YL56592 and transferred to the tribunal 3 July 2014.

The hearing

6. The Applicant and the Respondent were represented at the hearing by the persons named on the front of this decision.

The background

7. The property which is the subject of this application is a flat on the first and second floors of a building known as Granville Court, 6 Granville Road, Finchley London N12 0HL. Granville Court comprises a commercial unit on the ground floor with four residential flats above. The flats are accessed via an external stairway. There are balconies to the front and rear of the flats. The commercial unit is used for retail purposes as a wine warehouse.

8. Photographs of the building were provided in the hearing bundle. The tribunal did not consider an inspection was necessary, nor would it have been proportionate to the issues in dispute.

9. 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 will be referred to below, where appropriate.

10. The Applicant's freehold title is registered under title number MX319494 at the HM Land Registry. The Respondent's leasehold title is registered under title number NGL96426. The lease is dated 29 January 1969 and made between J.M Hill & Sons Ltd (1) and Julien Glazier (2) ("the Lease"). The Respondent acquired the leasehold interest in the property in 2002.

11. The Applicant is the proprietor and operator of the ground floor commercial unit.

12. The Respondent is the leaseholder of Flat 3.

The issues

13. In relation to Case Number **LON/00AY/LBC/2014/0282** the County Court Orders transferring the County Court claims require a determination as to whether:

    (i) the decision making process concerning the service charges was reasonable, and

    (ii) the sum to be charged is reasonable in the light of market evidence.

14. In relation to Case Number **LON/00AY/LBC/2014/0319**, at the start of the hearing the parties identified the relevant issue for determination to be the reasonableness of the balancing charge of £512.57.

The property

15. The building is described in the Building Survey Report dated January 2008 by Rapleys LLP ("the Rapley Survey") as built circa 1960 of a reinforced concrete podium type of construction with brickwork and concrete clad external walls all beneath a mixture of asphalt covered flat and tiled pitched roofs. There are solid walls between the maisonettes, which continue to the underside of the pitched roof covering. The other internal walls, floors and roof structure are traditional timber construction.

16. The accommodation at ground floor level previously comprised a garage/service area but is now a retail outlet for the Wine Warehouse. There are four self contained maisonettes at the first and second floor levels.

17. The front of the site comprises a parking area fronting Ballards Lane and the rear has a block of three garages and a single garage. The entrance to the garages and the maisonettes is via Granville Road. The maisonettes are accessed at first floor level via concrete steps to the rear of the main building.

Lease

18. The development is defined in the First Schedule of the Lease as being the land at the rear of 204 and 206 Ballards Lane North Finchley London N3 with the four garages and including the four maisonettes at first and second floor level above the ground floor including the whole of the slab forming the roof of the ground floor property and the foundations of the maisonettes.

19. The reserved property so far as is relevant for these proceedings is defined in the Second Schedule of the Lease as all the common parts including access ways, garage forecourt, the access balcony, all boundary walls and fences as well as the main structural parts of the building including the roofs and the external of the roofs and the slab (constituting the roof of the adjoining property and the foundations of the maisonettes) and all the shared pipes, cables etc.

20. The property so far as is relevant for these proceedings is defined in the Third Schedule of the Lease as the Maisonette being Number 3 Granville Court, 6 Granville Road North Finchley and garage Number 3 and the general store numbered 3 situated on the access balcony excepting and reserving from the demise the main structural parts of the building including the roof and external parts of the building but not the glass of the windows.

21. The Seventh Schedule includes covenants by the Lessor to insure, repair and maintain the main structure of the buildings on the development. Under paragraph 5 of the Seventh Schedule the Lessor covenants to keep the reserved property and all fixtures and fittings in a good and tenantable state of repair, decoration and condition (including the renewal and replacement of all worn or damaged parts). The Lessor covenants under Clause 4 of the Lease to observe and perform the covenants and obligations set out in the Seventh Schedule.

22. The Respondent covenants pursuant to Clause 27 (i) of the Sixth Schedule to the Lease to pay the service charge as follows:

"...pay to the Lessor or its agents by equal quarterly payments in advance on the usual quarter days the annual sum of £20.0.0.(sic) on account of its contribution to the Lessor's Expenses as provided in the preceding paragraph 26 hereof In the event of the total proportion of the Lessor's Expenses payable by the Lessee under the provisions of

the preceding paragraph 26(1) amounting to less than £20.0.0(sic) in any year of the term hereby granted after making a transfer of such an amount to a reserve fund in respect of future anticipated expenditure as the Lessor or is Managing Agents shall think necessary the Lessee shall be entitled to be credited with his due proportion as aforesaid of such excess paid by the Lessee as the Lessor or its Managing Agent and Chartered Accountants for this time being shall decide and certify and un the event of the total proportion of the Lessor's expenses payable by the Lessee amounting to more than £20.0.0 in any year of the term hereby granted the Lessee shall forthwith on demand pay to the Lessor a further sum calculated on the basis aforesaid of such excess sum so certified by the Lessor or its Managing Agents and Chartered Accountant whose decisions shall be final and binding on the Lessee".

23. Clause 27 in summary provides for the payment of an annual interim service charge of £20 on the usual quarter day i.e £5 per quarter and the rest of the service charge by way of a balancing charge.

24. Under Clause 26(1) the Respondent covenants to " *..pay to the lessor and indemnify and keep the Lessor indemnified from and against (a) one quarter of all costs charges expenses and matters of whatsoever nature incurred by the Lessor in carrying out its obligations contained in paragraphs 2 4 5 and 7 in the Seventh Schedule hereto and any matters referred to in paragraph 15 of this Schedule and in the Eighth Schedule hereto as respect such regulations (herein collectively called "the Lessor's Expenses") and shall be paid in the manner hereinafter appearing*".

25. The parties confirmed that they were satisfied that the Lease provided the service charge mechanism requiring the Applicant to insure, repair and maintain the development including the main structure of the building and to charge the Respondent a service charge for the costs incurred.

LON/00AC/LSC/2014/0282 - £4,678.24

26. The parties agreed that the sum of £4,678.29 relates to external repairs and maintenance works.

The Applicant's Case

27. The Applicant relied on the witness statement of Ms McGrandles who is a Senior Property Manager in the employment of Burlington Estates, the Applicant's Managing Agent. Mr Sandham of Counsel made submissions on behalf of the Applicant and the tribunal heard evidence from Ms McGrandles.

28. The Applicant purchased the Freehold interest in the building in March 2008. Prior to the purchase of the building the Applicant commissioned the Rapley Survey. The Applicant relied on the Rapley Survey Report as showing the condition of the building in March 2008. The Rapley Survey Report stated that the building was in "*a dilapidated state and in need of refurbishment works externally and internally throughout*". The Rapley Survey recommended further investigations to inspect the single garage to the rear and a drainage survey and any repairs. In addition the Rapley Survey recommended that the following works be carried out as soon as possible:

(i) repair of the flat roof areas including upstands, and

(ii) repair of the damaged brickwork.

29. The Applicant commenced a consultation process for the works but unfortunately the chosen contractor Thirteen Twenty went into administration and the consultation process was abandoned and no costs had been incurred.

30. During 2009, the Applicant carried out urgent remedial works in line with the recommendations in the Rapley Survey including patchwork repairs to the roof. Since the Applicant had not undertaken full consultation in respect of these works, the Respondent was only charged £250 for the works.

31. On 12 October 2009 the Applicant recommenced the abandoned consultation process by serving a Notice of Intention with the intention of carrying out cyclical external repairs and decorations, including roof repairs, balcony repaid, window repaid and maintenance of the communal driveway. The works were carried out between 12 April 2010 and 3 May 2010 by Paul Smith & Co at a cost of £47,936.73. The Applicant produced a copy of the Architects' Instructions detailing the works [486] and a copy of the invoice relating to the lessee's proportion of the costs in the sum of £17,328.20 was produced at the hearing.

32. Ms McGrandles stated that the works undertaken in 2010 were different to the works undertaken in 2009 as the works undertaken in 2009 were roof repairs which were not undertaken again in 2010. The Applicant produced photos of the building taken before and after the works had been undertaken [491-509]. In addition the Applicant submitted that the Respondent did not make any comments or raise any issue in respect of these works during the Consultation process.

33. Around 23 December 2013 the building began to suffer from water ingress, and water was dripping into the commercial unit. The problem was reported by the Applicant to the Managing Agent and they instructed Montagu Maintenance ("Montagu") to attend the building.

Montagu took photographs when they attended and these show the balconies, the parapet brickwork and the asphalt to be in a poor condition. Montagu cleaned off and undertook temporary remedial repairs to the roof, asphalt, flashings and brickwork. Unfortunately, the leak continued into the commercial unit.

34. In February 2014 the Applicant appointed Gradient Consultants Limited to prepare a Defect Analysis Report, together with an outline specification for remedial works in order to address various outbreaks of water ingress into the ground floor commercial unit. The Applicant served Notice of Intention of works. On 9 April 2014 the Applicant obtained dispensation from the consultation requirements in relation to the costs associated with

    (i) instructing a surveyor

    (ii) carrying out investigation works, and

    (iii) preparing the works specification.

35. Statements of estimates were served on the Respondent and all the other leaseholders confirming that Palmer Woods Limited had been selected as the contractor, but the works have not yet commenced.

36. The Applicant confirmed that the Respondent had not been charged for the frosted screen.

The Respondent's case

37. The Respondent relied on the witness statements of Mr Walker, and the tribunal heard from Mr Walker.

38. In relation to the service charge year ending 31st May 2009 the Respondent disputes liability for the External Repairs and Maintenance in the sum of £1000, and a further charge of £1000 for the Routine Repair and Maintenance. The Respondent admits that the sums may be chargeable under the Lease but refutes that the charges are reasonable in quantum, and that the standard of works were adequate or that the Applicant consulted the Respondent. The Respondent submits that the works costs were abortive and did not remedy the issue of water ingress into the commercial unit and that the works were a duplication of previous works.

39. In relation to the service charge year ending the 31st May 2010, the Respondent admitted that s.20 Consultation was undertaken and on the 2 March 2010 statements of estimates were served proposing Paul Smith & Co. as contractors. The works were carried out incurring the

sum of £17,328.20. The service charge account for the year ending 31 May 2010 was in deficit in the sum of £18,709.57 and so the sum of £4,678.24 was demanded by the Applicant from the Respondent under the provisions of Clause 27(1) of the Lease.

40. The Respondent admitted that the said sum may be chargeable under the Lease provisions but refutes that the charge of £4678.24 is reasonable in quantum and that the standard of works was adequate or satisfactory. The Respondent submitted that the works were neither appropriate nor necessary and that no adequate or prudent investigations were carried out prior to proceeding with the works hence the works failed to remedy the issue of water ingress into the commercial unit and in any event were a duplication of the previous works. The Respondent submitted that the disputed charges comprised part of the catalogue of historical repairs undertaken, all of which failed to resolve the issues relating to water ingress.

41. The Respondent asserted that the cyclical external repairs carried out in 2010 included roof and balcony repair works which were primarily for the benefit of the commercial lessee and not the building as a whole, nor the residential lessees. The Respondent contended that some of these works were a duplication of works undertaken previously. The Respondent submitted that the issue of water ingress into the ground floor commercial unit has been an established problem over the last 14 years and during this time three sets of previous works have been undertaken all without any exploratory investigation as to the cause which in turn led to duplication and overlap of the works and the issues remaining unresolved. The Respondent claimed that the previous landlords (Total and Tesco) carried out the works at their own cost and without requiring any financial contribution from the Respondent.

42. The Respondent drew attention to the installation of the large frosted screen directly above the commercial unit as evidence that the works and repairs have been carried out solely to improve the cosmetic appearance of the Wine Warehouse despite the screen obscuring views from the balconies and patios of the maisonettes.

43. The External Repairs and Maintenance undertaken and charged in the service charge year ending 31 May 2009 included patch repairs to the asphalt of the flat roof and checking the balconies for leaks and fitting metal flashing. The cost of the emergency roof works was £2157.04 including VAT and the cost of routine maintenance £1400.42 including VAT. The Respondent produced a letter dated 24 July 2009 from the previous managing agents Marr-Johnson & Stevens in support of the cost of the works and the works undertaken.

44. The Respondent submits that three sets of works to the roof of Granville Court have been carried out and all without any exploratory investigation as to the cause of the water ingress. This has led to

duplication and overlap, and the issues remaining unresolved with repeated financial burden falling upon the lessees including the Respondent.

45. The previous Managing Agents Marr–Johnson & Stevens LLP in a letter dated 29 March 2011 had confirmed to the lessees that the Applicant believed that the building *"had fallen into disrepair and had not been managed correctly"* and that *"they intended to adhere to the terms of the lease says and put the building into repair"*. This was despite the works and external repairs and maintenance having been carried out in 2009.

46. The Respondent claimed that the Managing Agents had failed to secure appropriate warranties or guarantees with respect to the previous works for repairs, all of which involved the same or similar replacement of asphalt and flashing of the flat roof and, despite being extensive, did not resolve the issue of water ingress.

47. The Respondent referred to the report produced by Mr Duncan Tibbetts MRICS, the associated Building Surveyor of Gradient Consultants, and the letter of 10 July 2014 to the Managing Agents in which they recommended "*undertaking reactive repairs when they are required, monitor the shop that ingress, and undertake the major repairs if necessary when the next major works project is undertaken to achieve savings" and .....If the isolated reactive repairs completely address all the water ingress, the remainder of the works may not need to be undertaken, achieving cost savings.*"

48. The Respondent submitted that it has suffered unreasonable and unnecessary demands of service charges associated with major works and repairs and maintenance which were duplications and repetitions of previous works and which were commenced without the most rudimentary investigations. The Respondent further submitted that the works and repairs have neither effected temporary nor permanent benefit nor have they resolved the issue of water ingress into the commercial unit. In addition the Respondent submitted that the Managing Agents have further failed to mitigate loss through not seeking to obtain warranties or guarantees for works or repairs previously carried out. Accordingly, the Respondent asserted that it should not be liable for service charges in the sum disputed.

49. 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 tribunal's decision

34. The tribunal determines that the sum of £4,678.24 is payable by the Respondent in respect of the service charges for the years from 2008 to 2010 as detailed in the demand dated 23 September 2011.

Reasons for the tribunal's decision

35. The tribunal considered the Rapley Survey provided an accurate description of the condition of the building prior to the works in 2009. The Rapley Survey was produced after an inspection of the building on the 29 November 2007. The Rapley Survey describes the building as being "*generally in a poor state of condition with items of disrepair in several locations.*" Some of the main problems identified include the following:

External – main building

- Areas of cracked and defective concrete roof tiles
- Defective upstands to the main flat roof
- Defective upstands to the felt covered flat roofs
- Random spalled bricks to the parapets.

Internal - Ground Floor

- Extensive water penetration interval areas

36. The survey stated that there is evidence internally at ground floor level of leaking roofs above. It's stated that this is primarily due to defective upstands and detailing and recommended that all the upstands and defective flat areas are repaired and the entire covering recoated with a new elastomeric coating to prevent further water penetration and prolong the life of the roof.

37. The tribunal considered that it was entirely reasonable for the then Managing Agents Marr - Johnson & Stevens to rely upon and act on a survey carried out by experts and to undertake the works in 2009. Although Ms McGrandles was not able to confirm the precise detail of the works undertaken in 2009 (as this was in the period when the building was not managed by her or her employer), she pointed out the specification for the works used in the aborted s20 Consultation. On a balance of probabilities the tribunal concluded that the works were in accordance with those specified in the estimate provided by Thirteen Twenty Electrical. These works included the following items:

(i) Cut back ivy and vegetation to walls and flat roof (front and rear elevations)

(ii) Overhaul felt roof to garage, reform upstands and fit pressed metal flashings

(iii) Overhaul and repair felt roof two cupboards

(iv) Overhaul canopies to 4nr entrance doors stop repair and make good felt roofing and pressed metal cover flashing

(v) Check 2nr roof gutters to flat roof and make good

(vi) Make good asphalt up stand to perimeter of roof and fit pressed metal flashing

(vii) Patch repair asphalt to flat roof areas and redecorate in silver reflective paint.

38. The letter dated 24 July 2009 from Marr - Johnson & Stevens LLP produced by the Respondent at the hearing states: "*Over the service charge year, work has been carried out to Granville Court which you were partly liable for. These works have included:*

(i) patch repairs to the asphalt of the flat roof

(ii) checking the balconies for leaks and fitting metal flashings

(iii) clearing the roof outlets and rainwater pipes

(iv) cutting back of the iv to the walls, front and rear elevations

The total cost of the routine maintenance works was £14000.42 (inc VAT) and the emergency roof works £2157.04 (inc.VAT). However you had only been charged £250 (25% £ 1,000) for each of these jobs".

39. The Respondent was charged the sum of £250 in relation to these works as the Applicant admits that although it attempted to consult the lessees, for the reasons given, it failed to fully consult the lessees before undertaking the works.

40. The Respondent was consulted in relation to the works which commenced on 12 April 2010 and completed on 3 May 2010. It is notable that the Respondent made no observations or comments in relation to these works during the consultation period. The contract was awarded after a competitive tendering process to Paul Smith & Co who provided the lowest quote for the works. The Respondent did not produce any alternative quotes, expert evidence or any other evidence to show that the quote was unreasonably high or that the works were unnecessary or unreasonable.

41. The Applicant has produced a copy of the Architect's Instruction dated 28 April 2010 [486] showing the amount of the contract sum to be £42,875. In addition the Applicant produced a further Architect's Instruction dated 30 April 2010 incorporating the following additional works," *Existing asphalt is left in situ, remove the existing up stands, new layer of 20 mm thick mastic asphalt felt on sheathing felt underlay to BS6925 type R988P25 laid in 2 coats, build up new skirting to the perimeter edge up to 300 mm laid in 3 coats build up magic asphalt to restraint blocks to handrails, work new mastic asphalt to 5 existing rainwater outlets provide protection to new handrail, clear site on completion, replace damaged ceiling tiles with new, all in accordance with quotation emailed on 30 July 2010(14:56) provide 10 years warranty."*

42. The Applicant produced a Final Certificate issued by the Architect Ormerod Design Ltd dated 27 March 2012 showing the total contract sum to be £47,936.73. [480].

43. The tribunal finds that the works undertaken in 2009 and 2010 were not one and the same. Although there may have been some overlap in the works as they both involved works to the roof areas, the works were different in nature as shown by the descriptions of the two sets of works.

44. The tribunal noted that a 10 year warranty was provided in relation to the works undertaken in 2010.

45. The tribunal noted that despite the works undertaken in 2009 and 2010 there is an ongoing problem with water ingress as identified in the Defect Analysis Report and Recommendations for Remedial Work produced by Gradient Consultants Limited [532] following a survey carried out on the 28 January 2014. The report identifies the most likely cause of the water ingress to be as follows:

    (i) the absence of any damp proof course in the low and high level garden walls and surrounding parapet walls allowing water to enter the slab below via the brickwork

(ii) the asphalt up stands and flashing detailing, together with the lack of effective drip detail the render and detailing around the opening sis allowing water to penetrate beneath

(iii) the repaid carried out are temporary and short term solutions and now need to be made more permanent

(iv) the main asphalt covering appears sound, but should be monitored and a regular coat of solar reflective paint applied.

46. The report from Gradient Consultants supports the fact that there is a problem with water ingress. The Applicant is obliged as landlord under the terms of the Lease to repair and maintain the roof. The fact that the repairs in 2009 and 2010 have not totally eradicated the problem of water ingress does not render the works undertaken in 2009 and 2010 to be of an unreasonable standard, or the costs unreasonably incurred or the amount unreasonable.

47. The rent demand produced at the hearing by the Applicant dated 30 May 2010 from the Applicant to Marr – Johnson and Stevens LLP shows that the lessees were required to contribute £17,328.20 towards the costs of the work undertaken in 2010. The Applicant produced a detailed specification at the hearing with items highlighted in grey to show the items for which the costs were passed on to the lessees. The tribunal heard from Ms McGrandles that it seemed to her that the Applicant had apportioned the costs of these works so the costs of works relating to items such as the front facade, balconies and front forecourt which benefit and relate to the commercial unit alone are excluded from the costs passed on to be lessees but items such as the rear facade were charged to the lessees.

48. The terms of the Lease entitle the Applicant to recover the total cost of the works from the lessees, including any costs for works undertaken for the benefit of the commercial unit. The tribunal noted that nevertheless the Applicant had acted in a fair and reasonable manner in apportioning the costs so that the lessees were not required to contribute towards costs which related to the commercial unit. The total cost of the works (which were the subject of a competitive tendering process) were £47,936.73. Given the explanation as to the way in which these costs had been apportioned to the lessees, the tribunal considered the sum of £17,328.20 charged to the lessees to be reasonable.

49. <u>LON/00AY/LBC/2014/0319 - £512.57</u>

The Applicant's case:

50. The Applicant submitted that the accounts for the year ending 31 May 2013 were prepared in January 2014. A demand of expenditure/deficit of £2050.26 was identified [642] and that was apportioned between the lessees. On 8 January 2014, balancing demands were raised for each lessee in the sum of £512 .57 in accordance with schedule 6 paragraph 27(i) of the Lease. The Applicant produced a copy of the service charge accounts for the year ending 2013 [642]. The Applicant submitted that the expenditure during the year was greater than that initially envisaged so a balancing charge had to be demanded from all the lessees. The expenditure during this time was greater because there was water ingress from the external wall into Flat 4 which required re-pointing. The Applicant produced a copy of the invoice in support in the sum of £774.00 [676]

The Respondent's case

51. The Respondent had submitted that no explanation or breakdown for substantiation has been provided with respect to this sum disputed nor to its quantum or the methodology by which it is calculated. The Respondent was unable to ascertain whether the sum is chargeable,whether it is reasonable in amount or standard or correctly demanded. Mr Walker confirmed at the hearing that he accepted the explanation given by the Applicant, in relation to this charge now that the matter had been clarified.

54. **The tribunal's decision**

37. The tribunal determines that the Respondent is liable for the payment of the balancing charge of £512.57 for the service charge year ending 31 May 2013.

Reasons for the tribunal's decision

38. The Lease provides for payment of a balancing charge. The Applicant has produced certified service charge accounts which have been certified by an accountant for the year ending 31 May 2013. The Applicant has given a credible explanation of the balancing charge. The Respondent did not raise specific queries in relation to specific service charge items shown on the certified account. The amounts charged seemed to the tribunal to be within the normal range for works and services of the type specified in the service charge account relating to the age and character of such a property. Mr Walker had accepted the explanation given by the Applicant.

Application under s.20C and refund of fees

39. At the end of the hearing, the Applicant made an application for a refund of the fees paid in respect of the application and hearing[1]. The Respondent opposed the application. The tribunal considered that the Respondent had acted reasonably in contesting liability. There had been a lack of communication between the parties that had resulted in a genuine concern on the part of the Respondent in relation to the sums in issue. The Respondent had gracefully conceded points when the information it sought had been produced. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant.

40. In the statement of case, the Respondent applied for an order under section 20C of the 1985 Act. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The next steps

41. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Central London County Court.

Name: N Haria **Date:** 18 November 2014

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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 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).