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		**FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**
Case Reference	:	**LON/OOBA/LSC/2013/0499**
Property	:	**Flat 2, Princess Road, 41 Church Street, Mitcham, Surrey CR4 3BF**
Applicant	:	**39/41 Church Road Management Company Limited (Management Company)**
Representative	:	**Mr Martens (of counsel) with Ms J. Birchmore, accounts manager and Mr M. McDonagh a director of the applicant company**
Respondent	:	**Ms T Riley (leaseholder)**
Representative	:	**Mr J. Harris of counsel**
Type of Application	:	**Determination of service and administration charges, (under the Landlord and Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002) following a transfer from the Croydon County Court (reference: 2YL22968)**
Tribunal Members	:	**Professor James Driscoll, solicitor, (Tribunal Judge), Mr Peter Roberts, DipArch RIBA and Mrs Lorraine Hart (Tribunal Members)**
Date and venue of Hearing	:	**The hearing took place on 21 October 2013 with additional written submissions which were received on 10 January 2014**
Date of Decision	:	**18 March 2014**

The decisions summarised

1. The Tribunal is satisfied that all the required service charge demands and statutory notices were given to the leaseholder.

2. We determine that all of the demands for advance payments of service and administration charges for the years 2011 and 2012 were reasonable and recoverable in full.

3. Information on service charges was given within the time required by section 20B of the 1985 Act.

4. No order restricting any professional costs in these proceedings under section 20C of the 1985 Act is made.

5. The application for an order that the respondent pays the applicant's costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules is dismissed.

6. The claim should be returned to the Croydon County Court for any further action that may be needed.

Background

7. The parties to this application are the management company (on which see below) and the leaseholder of one of the flats in the subject premises. There are other pending proceedings between the parties dealing with disputed service and administration charges. In one of these cases the Tribunal made various determinations in a decision dated 26 February 2014 (LON/00BA/LSC/2013/0726).

8. There is a tripartite lease and the three parties are the freeholders, 39 Church Road Management Company Limited (the management company formed under the terms of the tripartite lease) and the flat leaseholder. At one stage the management company was removed from the Companies Register but it has since been restored to the register. We were told that the freeholder has disappeared and is no longer trading. We were also told that the freeholder has played no active part in the management of the premises and its inaction may have led to the management company being removed from the Companies Register.

9. Simply for ease of reference we will refer to the management company (which deals with works, services, insurance and service charges under the lease) as the 'landlord'. We refer to the respondent as the 'leaseholder'.

10. It is common ground that the recoverability of the disputed service charges depends primarily on the terms of the lease of the subject flat and to the test of 'reasonableness' and the other statutory requirements in the 1985 Act. Administration charges are subject to the reasonableness test and the other requirements of the 2002 Act. Copies of the relevant statutory provisions are contained in the Appendix to this decision.

11. The leaseholder purchased her flat in 2009. It is a two bed-roomed flat which she sublets.

12. Under the terms of her lease she covenants to pay two interim demands for service charges each calendar year (see schedule 6, paragraph 2 of the lease). We were told that in practice leaseholders are billed each quarter. The lease allows for the company to vary the dates (see page 6 of the lease).

13. The charges that can be made include sums to deal with future anticipated expenditure (page 20 of the lease).

14. The landlord has appointed the firm of John Mortimer Property Management Limited as their managing agents. The leaseholder has appointed letting agents to manage the letting of her flat.

15. The disputed charges relate to the years 2011 and 2012 and to demands made for interim charges.

16. For ease of reference we will refer to the claimant as the 'landlord' (though it is the management company whose remit is to deal with the collection of service charges and other management duties) and the 'leaseholder'.

The County Court claim

17. The landlord commenced county court proceedings which are now within the jurisdiction of the Croydon County Court. In these proceedings they seek recovery of service charges and administration charges (and statutory interest and costs). It is common ground that under the terms of the lease the landlord must repair, maintain and insure and manage the premises and that the landlord's costs incurred in doing may be recovered as service charges. In this claim which was started in July 2012 the landlord claimed a total of £2,700.44 consisting of a claim for £2,525.44 for service and administration charges to which a court fee and standard solicitor's costs were added.

18. Judgement was obtained against the leaseholder on 3 September 2012 but this money judgement was set aside by an order dated 15 July 2013; the landlord was ordered to return the sum of £4,121.19 to the Bank of Ireland (the leaseholder's mortgage account); a 'stay of proceedings was ordered for

six months and the disputed service charges to be determined by this Tribunal. (It appears that the sum ordered to be returned included claims for service charge periods other than these two).

19. Directions were given at a case management conference held by the Tribunal on 6 August 2013 which neither party attended.

The Tribunal hearing

20. A hearing was held by the Tribunal on 21 October 2013. The landlord was represented by Mr Martens of counsel (instructed by PDC Legal, solicitors) . Mr McDonagh one of the directors of the landlord company also attended the hearing along with Mrs Birchmore the accounts manager of the managing agents. Mr Harris of counsel (instructed by Montas solicitors) appeared on behalf of the leaseholder who also attended the hearing.

21. A bundle of documents totalling 275 pages was prepared by those advising the landlords. These included a statement by Ms Everitt of PDC Legal and a statement made by Ms Walter of the managing agents. The bundle also included a copy of the lease, Land Registry office copy entries, numerous documents relating to the service and administration charges and copies of correspondence and emails.

22. Additional documents were produced by the leaseholder at the hearing. This consisted of her statement of case, an undated personal statement relating to her case, a statement of a Mr Campbell a manager of Abbey Homes her letting agents, a statement of a Mr Titus a registered gas engineer and a statement of the leaseholder's tenant Ms Majed.

23. At the start of the hearing we told the parties that we did not consider that it was necessary for us to carry out an inspection of the subject premises. The parties agreed that such an inspection was unnecessary in this case.

24. Mr Martens complained that he had not been served with a copy of the respondent's statements. Mr Harris was asked to make copies and we adjourned for him to do this and to give the landlords and their representatives the opportunity of reading this material. Mr Harris also told us that he has only just received the landlord's bundle though Mr Martens countered by telling us that PDC sent a copy to Montas, solicitors, as required by the directions. Mr Martens intimated that he would be making an application that the leaseholder pays the landlord's costs. Mr Harris countered by telling us that there are other pending proceedings and that we should adjourn hearing this case with a view to the two sets of proceedings being consolidated. We shared Mr Marten's concerns that the leaseholder's solicitors had failed to comply fully with the directions which were given on 6 August 2013 and that both the Tribunal and Mr Marten and his clients have been put to quite unnecessary trouble and expense.

25. In summary, the landlords claim (a) payment of advance demands for service charges for the years 2011 and 2012 and (b) administration charges

for the same periods representing the landlord's costs of seeking to recover the service charge contributions in advance. According to the leaseholder she has not received the service charge demands and in any event she considers that the charges are excessive. She also claims that the charges are irrecoverable as they were made outside the period required in section 20B of the Act.

26. It is common ground that the leaseholder covenants to contribute 8.33% of the landlord's expenses (as set out in Schedule Six of the lease) and that half-yearly demands can be made on 1 January and 1 July each year (or otherwise 21 days from any other demand). As noted above the lease also allows for charges to be sought on other dates during the relevant service charge period.

27. Mr McDonagh told us that he is a director of the company (i.e. The landlord as we call it in this decision) and a leaseholder of one of the flats in the building. He and other leaseholders took action when they discovered that through inaction by the freeholder the management company had been removed from the Companies Register. Together they managed to restore the company. He and other leaseholders are members of the company and they decided to appoint the current managing agents. He also told us that he and others have contributed funds, in addition to paying their share of the service charges, so that the managing agents can manage and arrange for the insurance of the premises.

28. On the service of notice issue the landlords told us that they send statements and demands to the address of the flat concerned unless they are notified of a different address by the leaseholder concerned. No such notification was received from the leaseholder. In any event, the lease provides that service can be validly effected by posting the document at the address of the flat unless notified of a different address.

29. Under the terms of the lease 'service charge payment dates' mean 1 January and 1 July each year (lease paragraph 1). The leaseholder's share is defined as 8.333% of the costs of insuring, repairing and maintaining the building. She covenants to pay service charges by two half-yearly instalments as explained in paragraph 26.

30. The details of the claim for unpaid service charges and administration charges are set out in a statement of case prepared by the landlord's solicitors and a copy was contained in the bundle. This was pleaded in the County Court claim and in these proceedings they are detailed in a statement of case prepared by their solicitors dated 14 August 2013 with various exhibits to the statement containing a copy of the respondent's lease, the service charge demands, accounts and other documents (on pages 178 to 261).

31. For the year 2011 the landlord demanded two payments of £500 each. Similarly two payments of £500 were sought for 2012. In addition administration charges of £108 were made for late payment. We were told that each service charge demand is accompanied by a statement of the

leaseholder's rights on the back of each statement. This is the information required by section 21A of the 1985 Act (see page 233 of the bundle).

32. In addition the accounts for each financial year have been prepared by Kirk Rice LLP the landlord's accountants. Copies of letters sent seeking recovery to the leaseholder by Property Debt Collection Limited dated 26 March 2012 and 28 March 2012 are also included in the bundle. Also included are accounts showing the budgets and statements of the actual expenditure for the periods in question.

33. In an undated statement the leaseholder makes several points disputing the charges. In particular she complains that she was not served with the service and administration charge demands, nor the letters seeking recovery of these charges and the County Court proceedings. She also makes several criticisms of the appointed managing agents and she questions the validity of the landlord company. These points are repeated in a statement made by the leaseholder herself. We were handed an undated copy at the hearing. In addition she alleges that her subtenant has been harassed by the appointed managing agents. She also asked the tribunal to consider a statement made by Robert Campbell her letting agent stating that his company has not received any information from the managing agents. She also relies on statements made by Christopher Titus who says he was present when the managing agent attended the premises and spoke to the subtenant Liliana Majed who also signed a statement. The leaseholder also complains of water penetration into the flat which she says the landlord failed to deal with.

Reasons for our determination on the service of documents point

34. We deal first with the service point. On the basis of the full documentary evidence produced on behalf of the landlord we find as a fact that the service and administration charges were sent to the address of the subject property. We do not understand why the leaseholder failed to notify the landlord of her personal address, nor why her tenant (or her letting agents) failed to forward correspondence to the leaseholder. The leaseholder did not seem to us to seriously challenge that the documents were sent. Her case is that she did not receive them. However, as her lease provides that service may be affected by service at the address of the subject premises unless the landlord is notified of a different address, the documents including the service charge demands and related notices were validly given.

Reasons for our decision on the section 20B point

35. Turning to the section 20B (of the 1985 Act) point, this was raised as an issue in the final part of the hearing by counsel for the leaseholder who referred to the case of *Paddington Walk v Governors (to use counsel's form of citation)* [2009] 2 EGLR 123 although he did not have a copy of that decision with him. Counsel for the landlord complained, justifiably in our

view, of this point being taken so late in the course of the proceedings. On 10 January 2014 the tribunal received written representations prepared by Mr Harris. We have sent a copy to the landlord's solicitors.

36. In summary, section 20B provides that no costs can be taken into account if they were incurred more than 18 months before a demand is made.

37. With respect to Mr Harris we consider that his argument is misconceived. The landlord is relying on the demands for advance payments made on the basis of the written demands which we find were validly served. These demands clearly informed the leaseholder that payments were required in advance of incurring charges and she was also given statements explaining how the monies were being spent. We conclude that in this case section 20B (2) does not prevent recovery of the charges.

Our determinations on the charges claimed

38. The landlord has claimed four advance payments of service charges totalling £2,000. It is entitled to do so under the lease. These are the sums that it asserts the leaseholder has failed to pay. The leaseholder claims that not only did she not receive the demands for these interim payments but that for various reasons the landlord is not entitled to the charges.

39. Quite a lot of time was taken up at the hearing poring over various charges including the costs of insurance but we do not think that it is necessary to make any determinations on these points. To repeat, the landlord is entitled to claim interim charges or monies on account of its expenditure. We do not consider the amounts claimed (four lots of £500) can be said to be unreasonable and we determine that they are recoverable in full from the leaseholder. As the accounts for both the periods for which the advance demands were made support the level of the charges we are satisfied that the sums demanded as advance charges were reasonable. The leaseholder complains that these are in effect demands for payments into a reserve fund. We do not agree. Any well-run block of flats necessitates the landlord or its manager to collect contributions in advance of expenditure. This was done in this case and it was supported by budgets showing the proposed expenditure. Mrs Birchmore told us at the hearing that it holds a fund with Barclays Bank to keep the leaseholder's monies which are held in advance of expenditure. This is not the same as a 'reserve fund' as contended on behalf of the leaseholder. Besides as we noted above the landlord is empowered under the lease to include in a service charge amounts to cover anticipated future expenditure. Whilst we had some qualms as to the amounts spent as administration charges, the landlord was in our view justified in taking steps to recover the monies.

40. To summarise, we determine that both the service and the administration charges which have been transferred to this Tribunal are reasonable, charged in accordance with the lease and properly charged to the leaseholder.

Costs

Application under section 20C of the 1985 Act

41. We were asked to make an order under section 20C of the 1985 Act in relation to any costs incurred in the conduct of these proceedings and limiting or prohibiting their recovery as a future service charge. However, we do not consider it appropriate to make such an order in this case. We have found in favour of the applicant landlord who was fully justified in bringing these proceedings.

42. No order is made under section 20C of the 1985 Act limiting recovery of any professional charges or related costs occasioned in the course of the proceedings before this tribunal. However, any issues relating to the recoverability of such costs under the terms of the lease, or their reasonableness are not affected by this determination. In other words, any leaseholder could challenge such charges if they are included in a future service charge.

Application under rule 13 of the 2013 rules

43. As mentioned above counsel for the applicants made an application for an order that the leaseholder pay the applicant's costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chambers) Rules 2013. Where such an application is made and if this Tribunal is satisfied that the party against whom the application is made has behaved unreasonably, it may make such a costs order. These rules came into force on 1 July 2013. As they do not apply to cases started before that date, no such order can be made. (See: Transfer of Tribunal Functions Order 2013, schedule 3, paragraph 3(7)).

Conclusion

44. Finally, this matter is now to be transferred back to the Croydon London County Court for any further action that may be needed. We express the hope that in light of our determinations that the charges are recoverable that the parties may now reach agreement over the payment of the service charges to avoid any further costs or delays. We emphasise that these demands were for sums in advance of service charge expenditure for the two service charge years in question. These have to be reasonable (under section 27A(3) in the actual amounts demanded. We determine that they were.

Professor James Driscoll
Solicitor and Tribunal Judge

Appendix of the 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
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.
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.
But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

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

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
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.

Schedule 11, Commonhold and Leasehold Reform Act 2002

Meaning of "administration charge"

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.

Reasonableness of administration charges

2

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

3

(1)

Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

(a)

any administration charge specified in the lease is unreasonable, or

(b)

any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2)

If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3)

The variation specified in the order may be—

(a)

the variation specified in the application, or

(b)

such other variation as the tribunal thinks fit.

(4)

The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5)

The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6)

Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

4

(1)

A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2)

The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3)

A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4)

Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to pay administration charges

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).

Interpretation

6

(1)

This paragraph applies for the purposes of this Part of this Schedule.

(2)

"Tenant" includes a statutory tenant.

(3)

"Dwelling" and "statutory tenant" (and "landlord" in relation to a statutory tenant) have the same meanings as in the 1985 Act.

(4)

"Post-dispute arbitration agreement", in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen.

(5)

"Arbitration agreement" and "arbitral tribunal" have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).