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

Case reference : **LON/00AE/LSC/2014/573**

Property : **Flat 3, 7 Bramshill Road, London
NW10 8AE**

Applicant : **Ms Rachel McKay**

Representative : **In person**

Respondent : **7 Bramshill Road Management
Company**

Representative : **Mr Alex Mastihi (no appearance)**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service
charge/administration charge**

Tribunal members : **Judge Tagliavini
Mr T Johnson FRICS**

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

Date of decision : **23 February 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £68.39 in respect of insurance premium for the service charge year 2013-2014 is payable by the Applicant.
- (2) The fees for major works in 2010/11 in the sum of £366.00 is capped at £250.00.
- (3) No fees are payable by the Applicant in respect of the lock works in the sum of £48.00 (pro rata) incurred in 2014-2015.
- (4) The excess premium in the sum of £250 is payable by the Applicant.
- (5) No late fees of £150.00 or interest is payable by the Applicant.
- (6) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") by the Applicant in respect of the service charge years 2010/11, 2013/14 and 2014/15 .
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person at the hearing. The Respondent was not represented.
4. Immediately prior to the hearing the Respondent's representative Mr. Mastihi was contacted by telephone in order to ascertain whether or not he intended to be present at the hearing. The tribunal was informed that Mr. Mastihi had forgotten to diarise the hearing date although it had been agreed by him with the Applicant at the CMC held on 4 December 2014 and notified to him in writing. As Mr. Mastihi did not seek an adjournment the tribunal formed the view that it was reasonable and appropriate to proceed in the Respondent's absence particularly as it was an error on Mr. Mastihi's part that had led to the Respondent's lack of representation. Ms. McKay handed to the

tribunal a bundle of documents and a number of photographs on which she relied. The tribunal was able to familiarise itself with their contents prior to the start of the hearing.

The background

5. The property which is the subject of this application is a Victorian house converted into floor flats.
6. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:

The payability and/or reasonableness of service charges for:

- (i) 2010/11 service charges of £366.00 for major building works.
 - (ii) The balance of insurance premium of £68.39 due in 2013/14.
 - (iii) "Late fees" of £150.00 incurred in 2013/14.
 - (iv) Share of excess on works of subsidence in the sum of £250.00.
 - (v) Locksmith's charges of £48.00 in 2014/15.
 - (vi) Whether an order should be made under section 20C.
 - (vii) Whether the application and hearing costs of £280 should be reimbursed.
9. Having heard evidence and submissions from the Applicant and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Major works in the sum of £366.00

10. The tribunal notes that it was conceded by Mr. Mastihi at the CMC on 4 December 2014 that no section 20 consultation had been undertaken in respect of these works. The tribunal also noted that no application for dispensation of these requirements had been made on behalf of the Respondent. Therefore, the tribunal caps the sum recoverable for these works at 250.00

Balance of insurance premium in the sum of £68.39 for 2013/14

10. The tribunal determines that the amount payable in respect of this item is £68.39. The Applicant accepted that although she had believed she had paid this sum it had not been paid.

Late fees in the sum of £150 for 2013/14

11. The tribunal does not find any provision in the lease which allows for the recovery of either late fees or interest. The tribunal treats these charges as administrative costs pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The tribunal has been given no explanation as to how these fees have been calculated and notes that the Respondent refers to these costs as “penalty” charges. The tribunal finds these sums unreasonable in all the circumstances particularly, in light of the lack of any explanation as to how they have been calculated and their excessive cost in relation to the sum outstanding.

£250 share of excess on buildings insurance in respect of subsidence works 2014/15

12. The tribunal finds that this sum is payable to the Respondent. The tribunal accepts that works have been carried out at the subject property in respect of subsidence and paid for by the buildings insurer. The tribunal accepts that this policy is subject to an excess of £1000 which is payable by the lessees.

Locksmiths charges of £192 (£48 applicant’s share) 2014/15

13. The Tribunal notes the invoices provided by the Applicant in respect of these works and notes that no materials were provided as recorded in the document of aspect.co.uk dated 12/02/2014. The tribunal accepts the Applicant’s oral evidence that since these works, her key continues to spin in the lock and does not operate properly. The tribunal also notes that it was this precise problem that the locksmith was called to remedy but has failed. Consequently, the tribunal finds the standard and costs of these works to be unreasonable and no sum is payable by the Applicant.

Application under s.20C

11. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the Applicant and taking into account the determinations above, the tribunal determines it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Judge Tagliavini

Date: 23 February 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
 - (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
 - (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

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

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).