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

Case Reference : **LON/00AU/LSC/2014/0523**

Property : **32 Strang House, Britannia Row,
London N1 8QE**

Applicant : **Mrs F K Wong**

Representative : **Miss P Napier**

Respondent : **The Mayor and Burgesses of the
London Borough of Islington**

Representative : **Mr S Bhatia**

Type of Application : **Payability of service charges**

Tribunal Members : **Judge Tagliavini
Mr J Barlow, JP FRICS
Mr A Ring**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR
20th & 21st April 2015**

Date of Decision : **27 May 2015**

DECISION

1. The Tribunal makes the determinations as set out under the various headings in this Decision.
 - (i) The Tribunal determines that the sum of £7,449.04 demanded by the Respondent of the Applicant in respect of the 2010 major works including the set-up costs, site costs, scaffolding and professional fees are payable by the Applicant.
 - (ii) The Tribunal determines that the roof leaks occurring after the completion of the major (roof) works were unrelated to the major works carried out.
 - (iii) The Tribunal determines that section 20 consultations were properly carried out.
 - (iv) The Tribunal determines that all payable sums in respect of the major works were demanded in a timely fashion and within 18 months of having been incurred.
 - (v) The Tribunal determines that the Estate clearance charges for 2009-14 totalling £87.55 are payable by the Applicant to the extent of her share.
 - (vi) The Tribunal notes that the manhole cover repair cost incurred in 2011, attributable to the Applicant in the sum of £2.00 is to be re-credited to her account by the Respondent.
 - (vii) The Tribunal determines that the cost of the car park lighting incurred in 2012/2013 as an Estate Repair is reasonable and payable by the Applicant in her contribution of £1.57.
 - (viii) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
 - (ix) The Tribunal determines that the Respondent shall not pay the Applicant any sums in respect of the reimbursement of the Tribunal fees paid by the Applicant.
 - (x) The Tribunal determines that the Applicant should pay the sum of £1,500 towards the Respondent's costs of this litigation as "wasted costs."

The application

2. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as her liability to pay service charges in respect of the service charge years 2009-2014. The Tribunal notes that the Applicant does not seek to dispute the reasonableness of these costs, only to assert that she has no liability to pay them. However, the Applicant does seek to challenge both the cost of, and her liability to pay for the major (roof) works carried out in 2010. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. Miss Napier represented the Applicant at the hearing. Mr Bhatia represented the Respondent. The Tribunal was provided with extensive documentary submissions and evidence from both parties.

The background

4. The property, which is the subject of this application, is a flat in a purpose built block of flats on an estate of similar properties. The major works were carried out under the Strategic Framework Agreement Relating to Building Works dated 23 March 2004 and subsequently entered into by the Respondent. Apollo Property Services Limited carried out the relevant major works, during the period 26 May 2010 to 30 September 2010.
5. 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, as the most substantial items in dispute were carried out several years previously in 2010.
6. The Applicant holds a long lease of the property dated 15 November 1999, 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

7. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The reasonableness of the costs relating to major (roof) works carried out in 2010, including the set up costs, the site costs and the cost of scaffolding and subsequent works to repair roof leaks.

- (ii) Estate (bulk) waste clearance.
- (iii) Whether the payment demands for the major works is subject to section 20B of the Landlord and Tenant Act 1985.

Having heard evidence and submissions from the parties and considered the extensive documentation provided, the Tribunal has made determinations on the various issues raised as follows.

Roof works - The Tribunal's decision

- 8. The Tribunal determines that the full cost of the major works, comprising roof renewal, fire compartments to roof void, gutter cleaning and works to lateral risers carried out as part of Contract 41, and in the contribution attributable to the Applicant of £7449.04 is reasonable and payable.

Reasons for the Tribunal's decision

- 9. The Tribunal accepts the written and oral evidence of Mr Garrett McEntee, Technical Services Manager for the Respondent, that the roof works were required, as the roof of Strang House (among others) was coming to an end of its useful life. Although the roof could have been repaired, it would have required replacement within seven years. The Tribunal notes the evidence of the Respondent that repairs to the roof of Strang House identified in the Budget Check report dated October 2007, would total in the region of £54,000. The Applicant asserted that it was sufficient to have carried out these works to the roof, and that the replacement of the roof was unnecessary and unreasonable.
- 10. However, the Tribunal preferred the oral and documentary evidence of Mr McEntee on this point to that of the Applicant, that although the Budget Check Report identified repairs could be carried out, the more detailed Condition Report dated July 2008, identified the need for roof renewal works. The Condition Report differed from the Budget Check Report as it was more detailed and prepared for the purpose of identifying major works that were likely to be required in the near future, particularly as the roof was coming to an end of its life, being the original roof on this 1950's block of flats. The Tribunal accepted the Respondent's evidence that it was more cost effective to replace the roof rather than seek to carry out patch repairs, only to have to replace it after 7 years in any event.
- 11. The Tribunal finds that the roof leaks reported after the completion of the works are not related to the works carried out. The Tribunal accepts the oral and documentary evidence of Mr Daniel Betts, Building Surveyor for the Respondent.

Scaffolding - The Tribunal's decision

12. The Tribunal determines that the full amount claimed by the Respondent from the Applicant is reasonable and payable.

Reasons for the Tribunal's decision

13. The Tribunal accepted the oral and documentary evidence of Mr Hassan Nahal, Clerk of Works for the Respondent and accepts his evidence that although the scaffolding was up for longer than had been anticipated and budgeted for, there was no additional cost charged.
14. The Tribunal accepts that the scaffolding used for the major works project was in situ for longer than had been originally anticipated. The Tribunal does not accept the evidence of the Applicant, shouted out from the back of the hearing room and translated by her daughter, that the scaffolding was in situ for only 6 weeks, a statement unsupported by any diary or photographic evidence or signed witness statement. The Tribunal accepts that the scaffolding was in situ for 18 weeks as it was required as stated in the oral evidence of Mr Hussain Nahal, that the scaffolding was required for the creation of dormer points of access at Strang House, in order to install the firewalls between sections of the roof. The Tribunal finds it wholly implausible that the scaffolding at Strang House was "struck" after just 6 weeks as asserted by the Applicant.

Site costs – the Tribunal's decision

15. The Tribunal finds that these are reasonable and payable in full by the Applicant in the sum charged to her under the terms of her lease.

Reasons for the Tribunal's decision

16. The Tribunal accepted the oral and documentary evidence of Mr Christian Clarke, Senior Quantity Surveyor for the Respondent, who it found to be a knowledgeable and credible witness that the site costs, including the use of containers for canteens and accommodation, telephone lines and microwaves are reasonable together with the other associated site costs. The Tribunal finds that these set up costs associated with the carrying out these major works. The Tribunal accepts Mr Clarke's oral and documentary evidence that these costs were properly rechargeable to the landlord by the relevant contractor carrying out the major works under the terms of the Framework Arrangement and that Volume 6, must be read in conjunction with Volume 2, and allows these costs to be re-charged to the freeholder as part of the major works costs and then apportioned among the lessees.

The Tribunal finds that the Applicant has fundamentally misunderstood and not properly applied the terms of The Framework Agreement by referring only to Volume 2 and not additionally Volume 6.

Set-up/preliminary costs – The Tribunal’s decision and reasons

17. The Tribunal accepts the Respondent’s evidence that the costs of the earlier feasibility study and pre-contract reports were not charged to the Applicant and do not appear in the Final Account.

Professional fees – the Tribunal decision and reasons.

18. The Tribunal determines that the Respondent is entitled charge for and the Applicant is liable to pay for the charges incurred by professional in respect of these major works. Although, some of those persons overseeing these works are or were in the employment of the Respondent, the Tribunal considers it appropriate to have their costs offset by the long leaseholders that have benefitted from these works, in the same way that any other “private” individual would be expected to meet these costs.

Section 20B – major works costs

19. The tribunal noted the oral and documentary background evidence and information Mr Richard Powell, Special Projects Officer in respect of the major works project where a Qualifying Long-Term agreement (QLTA) is in place. The Tribunal accepts the oral and documentary evidence of Mr Powell. The Tribunal determines that the cost of the major works were properly notified by way of an estimate major works invoice dated 21 January 2011, in the sum of £7,449.04 and demanded in the invoice dated 14 November 2012. A letter dated 22 September 2011 notified the Applicant pursuant to section 20B of the costs incurred by the Respondent of these major works. The Tribunal notes that it is the estimated cost of the works notified to the Applicant that has been charged and not the slightly higher final costs figure of £7,504.90.

Estate clearance – the Tribunal’s decision

20. The Tribunal finds that the costs incurred in respect of the clearance of bulky items of waste from the Estate, are reasonable and payable by the Applicant.

Reasons for the Tribunal’s decision

21. It was common ground between the parties that large items of bulky waste are dumped on the Estate, which need to be cleared away. The Tribunal accepts the Respondent's evidence that on many occasions the person dumping the items does not make any prior arrangement for it to be collected "free of charge" by the Respondent but simply leaves it on the Estate to be collected. Consequently, the removal of such items attracts a charge, which is properly passed onto the leaseholder and is over and above the items included and payable by way of council tax.

Estate (car park) lighting – the Tribunal's decision

22. The Tribunal finds that these sums are reasonable and payable by the Applicant.

Reasons for the Tribunal's decision

23. The Tribunal finds that these costs form part of the Estate charges to which the lessee is obligated to contribute under the terms of her lease. The Tribunal finds that the costs are reasonable and that the £1.57 contribution required from the Applicant cannot be regarded as unreasonable or excessive.

Manhole cover – the Tribunal's decision and reasons

24. The Respondent conceded on this issue and therefore the Tribunal makes no determination on it.

Section 20 consultation – the Tribunal's decision and reasons

25. Although initially, this appeared to be a point of contention, the Applicant did not vigorously pursue this issue. The Tribunal finds that the appropriate section 20 procedures were followed and included the section 20 notice dated 22 December 2009.
26. The Tribunal finds the evidence of the Applicant to be unpersuasive. There was no witness statement provided either from the Applicant, or on her behalf. There was no opportunity afforded to the Respondent or to the Tribunal to ask the Applicant questions directly, despite the Tribunal's directions dated 18 November 2014.
27. The Applicant made a very large number of assertions in her statement amplifying her application including a failure by the Respondent to follow the best tendering process for Contract 41, the choice of Apollo as the contractor and a failure to deliver "best Value." However, the Applicant did not seek pursue or support with argument or evidence any of these submissions at the hearing of this application.

28. The Tribunal was also asked to consider an application pursuant to section 20C of the Landlord and Tenant Act 1985. It was submitted on behalf of the Applicant that because answers to her questions were not forthcoming, she had no alternative but to make this application. In response, The Respondent submitted that this application was ill prepared and unsupported by evidence.
29. Having carefully considered this matter the Tribunal is satisfied that the lease allows for the recovery of costs and declines, to make an order pursuant to section 20C. The Tribunal accepts the Respondent's submission that this application has been ill prepared with little focus on the substantive issues and the evidence needed to support them. Although there were many submissions made as to why certain items such as site costs, provision of equipment/uniforms were considered unreasonable the applicant made no attempt to obtain any independent evidence as to what was considered to be industry standard practices or safe working procedure. Having admitted to having no specialist knowledge, the tribunal was left throughout to rely both on the Respondent's evidence and its own expertise in order to reach its own determinations. Further, the Tribunal noted that the Respondent answered the majority of the extensive requests for information, by the Applicant, in lengthy and detailed correspondence. However, the Applicant nevertheless chose to discount these explanations without seeking to obtain her own evidence to support her continuing assertions of unreasonable costs. In light of the Tribunal's findings the Tribunal declines to exercise its discretion and therefore does not make an order under section 20C.
30. The Respondent also makes an application for costs against the Applicant pursuant to Rule 13(5) to the First-tier Tribunal (Property Chamber) Rules 2013. It is submitted that the conduct of the Applicant in bringing and pursuing these proceedings is unreasonable. The Respondent submitted that despite having been supplied with full and detailed answers to the questions raised in correspondence, the Applicant has persisted with this application without any persuasive evidence to support her case. This included a lack of witness statements, including from the Applicant herself, or any other lessees, a lack of documentary, diary or photographic evidence to support her claims that the scaffolding had been taken down after 6 weeks or that the site amenities were too extensive.
31. The Applicant opposed this application.
32. In considering whether to make a costs order the Tribunal has regard to the provisions of Rule 13(5) and the case law that prevails in respect of such applications and determinations. The Tribunal does consider the manner in which the Applicant has chosen to make and pursue this application has been unreasonable. Numerous issues raised in the initial application, which despite having been raised and answered in

correspondence were not expressly abandoned. Issues that were pursued, were supported by little evidence and the Tribunal did not receive any explanation as to why the Applicant provided no witness statement(s) in support of her application. The Tribunal also noted that the Applicant was not new to the procedures of the Tribunal, having brought an application some time previously.

33. In conclusion, the Tribunal concluded that the Applicant's conduct of these proceedings had been unreasonable and that the likely costs of the Respondent are in excess of £5,000. Therefore, the Tribunal considers it appropriate, having regard to the usual "no costs" ethos of the Tribunal to summarily assess costs to be paid by the Applicant to the Respondent in the sum of £1,500 to reflect her unreasonable pursuance of this largely unmeritorious application.

Signed: Judge Tagliavini

Dated: 27 May 2015

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.