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

Case reference : **LON/00AZ/LSC/2015/0137**

Property : **Flat 12, Curlew House, St Norbert
Road, London, SE4 2QG**

Applicant : **Mr Zayd Al-Jawad**

Representative : **In person**

Respondent : **Lewisham Homes Ltd**

Representative : **Leasehold Servies**

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

Tribunal members : **Judge I Mohabir
Mr N Martindale FRICS**

**Date and venue of
hearing** : **14 May 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **14 May 2015**

DECISION

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of his liability to pay actual housing management charges incurred by the Respondent for the years 2009/10 and 2011/12 to 2014/15 inclusive.
2. The Applicant is the leaseholder of the subject property pursuant to a lease dated 31 May 2004 granted by the London Borough of Lewisham to Olufunmilayo Raimi (“the lease”). Apparently, the Applicant took an assignment of the lease on 27 February 2007. The only issue raised by the Applicant is whether he is contractually liable to pay the sums in issue under the terms of his lease. There is no issue about the reasonableness of the disputed charges.
3. The combined sums in issue for resident involvement and anti-social behaviour are:

2009/10	£35.75
2011/12	£36.31
2012/13	£26.88
2013/14	£25.80
2014/15	£42.41 (estimated individual contribution)
Total	£167.15
4. Apparently, the housing management charge is comprised of 4 elements of cost, namely, resident involvement, anti-social behaviour, customer services and leasehold management costs. Specifically, the Applicant challenges the recoverability of the charges for resident involvement and anti-social behaviour, but he accepts the charges for customer services and leasehold management.

Relevant Law

5. This is set out in the Appendix annexed hereto.

Decision

6. Pursuant to the Tribunal’s Directions, the Tribunal’s determination took place on 13 May 2015 and was based solely on the statement of case and documentary evidence before it. There was no oral hearing.
7. In the context of this case, it is important to set out how the Applicants contractual liability arises under the terms of his lease.

8. The lessee's covenant to pay a service charge contribution to the lessor is contained in clause 5(1) of the lease and is payable in respect of those costs set out in Parts I and II of the Tenth Schedule.
9. Part I of the Tenth Schedule defines "service charges" as being those costs incurred or to be incurred by the lessor in performing or complying with the covenants on the part of the lessor in accordance with the Schedule. The lessor's covenant to "*manage and conduct the management of the Estate and Building in a proper manner*" is found at paragraph 8 of the Tenth Schedule.
10. Paragraph 5.16 of the Tenth Schedule allows the costs of managing the *Building or Estate* (our emphasis) to be recovered as part of the lessee's overall service charge liability.
11. In other words, paragraph 8 of the Tenth Schedule limits the lessor's contractual liability to recover management charges in relation to the costs incurred or to be incurred in relation to the estate or building only. Similarly, paragraph 5.16 of the same schedule only obliges the lessee to pay a service charge contribution in relation to costs so incurred or to be incurred.
12. The explanation given by the Respondent about how the various elements that comprise the housing management charge were incurred is set out at paragraphs 13 to 16 of its statement of case.
13. On the Respondent's own case, it is clear that the elements of cost that relate to resident involvement and anti-social behaviour are borough wide costs that have been apportioned as between the Respondent's properties managed by Lewisham Homes.
14. In other words, they are not costs that relate to this estate or building. Therefore, whilst the Tribunal finds that the overall management cost is recoverable *per se* under paragraph 8 of the Tenth Schedule as part of the Respondent's management costs it finds that the costs relating to resident involvement and anti-social behaviour are not because they are not costs that are attributable to this estate or building. The Tribunal makes no finding on the charge for customer services or for leasehold management as neither element was challenged by the applicant.
15. The Tribunal finds that the total sum of £167.15 is disallowed.

Fees

17. As the Applicant has succeeded in this case, the Tribunal orders the Respondent to reimburse him the fee of £65 he has paid to the Tribunal

to have this application issued within 28 days of the date of this decision.

18. No application was made by the Applicant under section 20C of the Act in relation any costs incurred by the Respondent in responding to this application.

Judge I Mohabir

14 May 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).