10957

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/LSC/2014/0651**
Property	:	**30 Priory Court, 1 Cheltenham Road, London SE15 3BG**
Applicant	:	**London Borough of Southwark (landlord)**
Representative	:	**Mr J. Egboche (solicitor) with Mr S. Habib (major works officer) and Mr T. Bigley (surveyor)**
Respondent	:	**Mr B. Spencer (leaseholder)**
Representative	:	**-**
Type of application	:	**Application under section 27A of the Landlord and Tenant Act 1985 to determine the liability to pay a service charge following the transfer of proceedings from the Lambeth County Court.**
Tribunal members	:	**Professor James Driscoll (Judge) , Mr Mel Cairns and Mr Paul Clabburn**
Date and venue of paper determination	:	**30 April 2015 at 10 Alfred Place, London, WC1E 7LR**
Date of decision	:	**18 June, 2015**

DECISION

The Decision summarised

1. The recoverable service charge payable by the leaseholder to the landlord is the sum of £12,709.60.

2. No order is made under section 20C of the Act limiting the landlord's costs in connection with this application as a service charge. The landlord's solicitor told us at the hearing of the application on 30 April 2015 that they would not seek to recover any legal or other professional costs as a service charge.

Background

3. This application concerns a dispute over the payability of service charges following major works to the premises containing the flat. It is brought by the applicants who are the owners of the freehold and the landlords under a long lease of the flat which is held by the respondent leaseholder. We will refer to the parties as the 'landlord' and the 'leaseholder' respectively.

4. County court proceedings were started by the landlord in 2014 claiming the sum of £12,709.49 plus interest and costs in relation to service charges. As the leaseholder notified the court that he disputed the claim, the court transferred the claim to this tribunal to make a determination of the sums owing. In an order dated 10 December 2014 the Lambeth County Court directed the transfer of the claim to the tribunal.

5. A case management conference was held at the tribunal on 15 January 2015 when directions were given. The landlord was represented by Mr Egboche, their solicitor, and the leaseholder also attended though he was not represented.

6. The leaseholder's flat is a one-bedroom flat on the first floor of a three storey block which contains 72 flats. Most of the flats are let to secure tenants and some are held on long leases where the occupier (or a predecessor in title) has exercised the statutory right to buy. (Both the position on secure tenancies and the right to buy are contained in the Housing Act 1985). At the hearing on 30 April, 2015 we were told that there are twenty-five leaseholders and that the remainder of the occupiers of the flats are secure tenants.

7. Clearly the landlord's are responsible for that proportion of the costs that benefit the secure tenants. However, the position of those who own their flats leasehold is different as under their leases they covenant to pay a

contribution to the landlord's costs of discharging its covenants to repair and maintain the premises. They pay these contributions through service charges.

8. Service charges are only payable for the costs properly incurred under the covenants in the lease. Under the Act they may not be recovered in full if they are 'unreasonable' (see section 27A of the Act) or if the landlord failed to consult with the leaseholder as required by section 20 of the Act.

The hearing and the reasons for our decision

9. The hearing took place on 30 April 2015 when the landlord was represented by Mr Egboche their solicitor. He was assisted by Mr Habib (who supervises major works) and Mr Bigley, a quantity surveyor.

10. The leaseholder was not represented. He was accompanied by Ms Kuallo, a friend of his. He told us that he does not live in the flat which he rents out on an assured shorthold tenancy (currently at a rent of £850 per calendar month).

11. We were also told by him that he did not receive the original consultation documents. By the time he received them the time had passed for him to send comments on the proposed works. Most of the works, he argues do not benefit him directly. He also argues that the works were funded under the 'Decent Homes' initiative and this funding should be deducted from the charges.

12. Mr Egboche told us that he wished to tender a statement made by Mr Bigley. We adjourned to enable the leaseholder to study the statement. The leaseholder told us that he did not object to the statement being tendered so late in the proceedings.

13. The claim relates to a major works programme to the building. The works included the removal and replacement of the main roof to the building, drainage repairs, replacement of the windows, replacement of front doors to the flats, the repair and renewal of balconies, walkways and stairwells, the removal of asbestos and other works to the tenanted properties in the building (these charges are not included in the service charge demands to the leaseholders).

14. As to the consultation requirements mandated by section 20 of the Act, the landlord had entered into a long-term qualifying agreement with a

company called A & E Elkins. The total projected costs was the sum of £1,885,149.24.Originally the landlord told the leaseholder that his likely contribution to these costs would be the sum of £21,263.60.

15. We were told that the works started on 20 January 2014 and finished on 19 December 2014. Defects were to be corrected by 18 December 2015. In the event the leaseholder was charged the sum of £12,709.60. The landlord expected to issue the final bills in June 2016.

16. The leaseholder resists the claim as he claims that he did not receive the consultation documents and for the reasons we summarise in paragraph 11 above.

17. The relevant provisions of the lease as they affect service charges are reasonably clear. Under clause 2(1) of the third schedule the landlord is to provide an estimate of charges and leaseholders are required to pay the sums claimed in four payments. Clause 6 of that schedule requires leaseholders to contribute to the landlord's costs of repairing and maintaining the building and its common parts.

18. As to the apportionment of the charges amongst the leaseholders the landlord may 'adopt any reasonable method of ascertaining the proportion payable by leaseholders' (clause 5(2) of the third schedule to the lease). In this case the landlord uses what it calls the 'bed-weighting' method. Each flat is allocated four units and an additional unit for any additional room. As the leaseholder's flat has one bedroom its 'bed-weighting' is five.

19. The next step is to work out the total number of units for the block which in this case is 230 units. The leaseholder's contribution is therefore 5/230.

20. Turning to the consultation, Mr Habib told us that he is employed by the landlord as their capital works officer and that he personally delivered a copy of the consultation documents into each flat which is owned by a leaseholder. He delivered a copy to the leaseholder's address on 11 September 2013.

21. Mr Bigley told us that he is a quantity surveyor and that he has worked for the landlord since 2001. As to these works he says that the contract was awarded following a competitive tendering exercise. The person who was most closely associated with the works in this case is a Mr Spiller but for personal reasons he was unable to attend the hearing. This also explained the late appearance of Mr Bigley's statement.

22. We were also told by those representing the landlord that the capping on the recovery of service charges in sections 219 and 220 of the Housing Act 1996 (and regulations made under these provisions) were applied to works that started after these works started. In any event only leaseholders who occupy their flats are entitled to benefit.

23. We have a good deal of sympathy for the leaseholder who faces a very large service charge claim for works to the block containing his flat where only a minority of occupiers are required to contribute to the costs of major works. The leaseholder's view, that he really only benefited from the replacement of the front door and windows to his flat, is both understandable but a misunderstanding of his obligations under his lease. Although the leaseholder did not concede the point there can be little doubt that the works, including the redecoration works, will have benefitted the leaseholder's flat.

24. There appears to be no dispute over the scope of the landlord's repairing covenants and the leaseholder's obligation to contribute to the landlord's costs in discharging its obligations. The leaseholder did not challenge the basis on which the charges are apportioned. As to the consultation, on the balance of probabilities we find that the leaseholder was properly consulted.

25. He did not raise any challenges based on poor quality works. To summarise, as the landlord was entitled in principle to carry out the works, that the leaseholder is in principle required to contribute to the costs , in the absence of complaints over the quality of the works, we find, with one exception that the costs are recoverable from the leaseholder.

26. In summary, the leaseholder has not raised any substantive challenges to the sums demanded for these major works. As a result the charges are recoverable in full from him under the terms of his lease. This is by any standards a very large service charge demand for a modest property. We were told by the landlord's representatives at the hearing that there are various ways in which such a huge bill can be paid. These payment options include placing a charge on the property, a low interest rate loan or by an increase in the current mortgage.

27. Finally, there is the issue of costs and the restrictions over the landlord's costs in proceedings in this tribunal. This is governed by section 20C of the 1985 Act and the leaseholder urged us to make such an order.

However, Mr Egboche informed us that the landlord did not propose to include any legal or other professional charges in any future service charge. In these circumstances we did not need to make an order under section 20C of the 1985 Act.

James Driscoll, Mel Cairns and Paul Clabburn
18 June, 2015

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.