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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AG/LSC/2016/0220**
Property	:	**Flat 6, 133 West End Lane, West Hampstead, London NW6 2PH**
Applicant	:	**Blockventure Resident Management Ltd**
Representative	:	**Ms Brimah, property manager**
Respondent	:	**Mr Hatem Sellami**
Type of application	:	**1. For the determination of the reasonableness of and the liability to pay a service charge.** **2. The determination of an alleged breach of covenant.**
Tribunal members	:	**Ruth Wayte (Tribunal Judge)** **Alison Flynn MA MRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**9 September 2016**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent and a determination that the Respondent is in breach of his lease having failed to provide access to allow for the erection of scaffolding in his garden.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared was represented by Ms Brimah, accompanied by the Company Secretary Ms Munday. The Respondent appeared in person.

The background

4. The property which is the subject of this application is a self-contained lower ground floor flat in an end of terrace house which has been divided into six flats all let on long leases. The Applicant is a leasehold management company responsible in the lease for maintaining the property.

5. 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.

6. The Respondent holds a long lease of the property which requires the Applicant to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

7. As described in further detail below, it appears that the collection of service charges had previously been carried out informally and by agreement. That was mainly due to the fact that only limited work was required until about 2010. Unfortunately those works were carried out badly and the Respondent had refused to make further contributions to remedial works carried out in 2015 and other charges.

The issues

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

   (i) The payability and/or reasonableness of the cost of some of the building works carried out in 2015;

   (ii) The payability and/or reasonableness of the advance service charges sought for 2016/17;

   (iii) That the Respondent is in breach of his lease.

9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The Lease

10. It became apparent during the hearing that there was some confusion on both sides as to the correct basis for calculating the service charge. Ms Munday gave evidence that she was in the habit of demanding the service charge at the same time as the insurance policy was due for renewal, in or about August of each year. Contributions to the insurance were in varying amounts, based on the historic approach but the service charges had been demanded on the basis of an equal contribution of 1/6th.

11. The initial provisions in relation to the calculation of the service charge contribution are set out in clause 1 of the lease as follows:

   "(L) The expression "Maintenance Year" means every twelve monthly period ending on the twenty fifth day of March...

   (M) The expression "Maintenance Contribution" means a sum equal to such percentage proportion of the aggregate annual maintenance provisions for the whole of the Building (computed in accordance with the provisions of the Fourth Schedule hereto) as the rateable value of the Demised Premises bears to the aggregate of the rateable values of all the flats in the Building...".

12. It seems likely to the tribunal that the varying amounts of the contribution to the insurance are based on rateable values, with the Respondent bearing the largest amount as he has more bedrooms than the other flats, which vary in size, including two studio flats. That is the correct proportion and the Applicant needs to establish the rateable

values in order to ensure that future demands comply with the lease. The Freeholder may be able to assist with that exercise, as may Thames Water – water rates being based on rateable values.

13. Clause 4 of the Lease requires payment of the Maintenance Contribution in four equal instalments paid on 25 March, 24 June, 29 September and 25 December of each year (assuming the service charge year starts on 26 March as set out in paragraph 10 above).

14. The Fourth Schedule of the lease contains further detail, including the right to service charges on account of costs and a reserve fund contribution (paragraph 2(i) and (ii)). After the end of each Maintenance Year, the lease calls for the Surveyor to determine the final amount due and notify the leaseholder accordingly (paragraph 3). A certificate signed by the Surveyor is deemed to be conclusive of the amount due (paragraph 4). Copies of the accounts relating to the Maintenance Account should be made available for inspection at the surveyor's office for a limited period, the Lessee giving notice under the lease (paragraph 5).

15. There was nothing in front of the tribunal to determine whether these provisions had been complied with. Ms Munday confirmed that there were company accounts for the Applicant, although that is not the same as the accounts described above. It was clear that matters had proceeded informally to date but given the lack of agreement with the Respondent, the Applicant should now consider appointing professional managing agents who need to follow the terms of the lease to ensure there is no difficulty in recovering the charges through legal action, if necessary.

The Company

16. The Respondent objected to decisions being made on his behalf by the Director and the Secretary of the Maintenance Company, including their appointment of Ms Brimah to take over the administration of the service charge. Ms Brimah confirmed that she was not professionally qualified as a managing agent and performed more of an administrative role, charging £15 per hour.

17. The Respondent's bundles included a copy of the Articles of Association. Again, other evidence was limited but it would appear to the tribunal that the two Directors, the minimum required by the Articles, are Trevor Puckle, and Ms Munday. As Directors they have the power to run the company on behalf of the members, including the appointment of staff. In the circumstances the Respondent cannot insist on agreement with their decisions, although as a Member he does have the right to attend general meetings and vote on any matters raised at those meetings.

2015 Building works - £8,856.80

18. The Applicant had originally sought £2,103.12 from the Respondent in relation to building repairs carried out in 2015 but the only invoices in the bundle would not support that amount. The invoices in the bundle described the erection of scaffolding to the front and the side of the building, works to the roof and an invoice for £3,500 which was described by Ms Brimah as the cost of works to the render to the side of the building. Those invoices amounted to a total of £8,856.80.

19. The Respondent made no objection to the invoices apart from the invoice for £3,500. He acknowledged that work had been done to the rendering but disputed that it was worth the full amount, suggesting £1,000 was a more reasonable sum. He had no alternative quotations. His main objections were based on the fact that further work was required to the building and the defective works in 2011, as opposed to the actual quality of the work done in 2015.

20. In terms of payability, the Applicant relied on their letter dated 16 February 2016, sent by Mr Puckle. This was described as a final demand in the bundle and was effectively a letter before claim as opposed to a valid service charge demand.

The tribunal's decision

21. The Respondent's bundle included a large number of photographs which showed the extent of the rendering to the side wall, a large area covering the top two floors of the building. The tribunal also heard evidence that the top floor flat was uninhabitable due to the failure of the roof and notes the works invoiced for the roof at the side of the property. In light of the acceptance by the Respondent of the reasonableness of the other invoices and in the absence of other quotes indicating that the cost of the works was excessive, the tribunal determines that £8,856.80 is a reasonable amount for the works carried out in 2015.

22. That said, there was no evidence before the tribunal to support the Applicant's claim that this amount is payable. The tribunal has set out the relevant provisions of the lease above and the Applicant should obtain professional assistance if necessary to produce the surveyor's certificate, calculate the correct contribution due and ensure that any demand complies with the statutory requirements, absent any voluntary payment from the Respondent in light of his lack of objection to the majority of the works.

Service charges 2016/17 - £6,740.69

23. The Respondent made no objection to any of the items sought as an advance service charge, although he made it clear that he thought the property and the works should be professionally managed. Given the issues in the past, the tribunal has some sympathy with that approach but it is a matter for the Directors.

24. The demand dated 6 April 2016 requested a contribution from the Respondent of £1,1171, which does not appear to be calculated in accordance with the lease. In particular, the two studio flats are paying almost as much each, as opposed to the correct contribution based on their rateable values. Ms Brimah also commented that no charge had been made for communal electricity or cleaning, again this does not reflect the lease. Furthermore, the demand does not appear to comply with the Landlord and Tenant Act 1987 in terms of the information required.

The tribunal's decision

25. Given the lack of objection to any of the items and the description of each item in the demand, the tribunal determines that the total amount sought as an advance service charge for 2016/17 is reasonable. As before, in order to be payable, the Applicant needs to correctly calculate the Respondent's contribution and make a lawful demand in compliance with relevant landlord and tenant law.

Breach of covenant

26. The Applicant also applied for an order under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent had breached a covenant in his lease by refusing to allow scaffolding to be erected in his garden to allow access to the rear part of the roof. The relevant parts of the lease read as follows:

> "Clause 3(8) To permit the Maintenance Company...at reasonable hours in the daytime and after reasonable notice (except in the case of emergency) to enter upon the demised Premises for the purpose of cleansing and executing repairs and alterations to or upon any part of the Building...doing as little damage as may be to the Demised Premises and making good any damage occasioned to the Demised Premises thereby but making no compensation for any temporary inconvenience."

27. The Respondent accepted that he was under an obligation to allow access and did not dispute that notice had been given by the Applicant. His refusal was based on the fact that in 2010/11 the scaffolding had

prevented him from using his garden and had been left in place for an excessively long period, causing cracking to the garden walls.

The tribunal's decision

28. It would appear on the facts that the Respondent is in breach of his lease, however under the 2002 Act only the Landlord (defined as the Freeholder) can make an application for a determination to that effect, the application is therefore dismissed. That said, the Respondent did agree in the hearing that he would now allow access and the tribunal hopes that he will honour that agreement to avoid the need for any further proceedings. The Applicant will need to take account of the requirement to take care not to damage the Respondent's flat and to make good any damage.

Application under s.20C

29. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. In all the circumstances of the case the tribunal determines that it is appropriate to allow the costs of these proceedings to form part of the service charge. This reflects the fact that there is some element of mutual difficulty in the management of the property: the majority of the leaseholders have left management to the Directors who have failed to follow the provisions of the lease, hoping that matters can continue informally. For his part, the Respondent's objections were largely based on historical problems which were not the fault of the Directors or the leaseholders. The application to prevent the Applicant from passing any of its costs incurred in connection with the proceedings before the tribunal through the service charge is therefore dismissed.

30. The tribunal hopes that the parties can now reach agreement to avoid further proceedings and allow the property to be maintained for the good of all the leaseholders.

Name: Ruth Wayte **Date:** 9 September 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 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

Section 168

(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.