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

Case Reference : LON/00AT/LSC/2015/0371

Property : 107 Wooldridge Close Feltham
Middlesex TW14 8BH

Applicant : Azure Management Company
Limited

Representatives : Mr Craig Newell MRICS of Craig
Sheehan Block Management
Limited

Respondent : Ms Xin Wang

Representative : In person

Type of Application : Reasonableness of and liability for
service charges and administration
charges under the Landlord and
Tenant Act 1985 (Section
27A)/Commonhold and Leasehold
Reform Act 2002 (Schedule 11)

Tribunal Members : Prof Robert M. Abbey (Solicitor)
Mr Trevor Johnson (FRICS)

**Date and venue of
Hearing** : 22nd March 2016 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 30 March 2016

DECISION

Decisions of the tribunal

1. The tribunal determines that as at the date when the county court proceedings were issued by the applicant there was payable by the respondent to the applicant all such service charges listed in the claim, (or as may have been varied by agreement between the parties,) save as maybe reduced as mentioned below. Thus, all service charges are approved by the tribunal unless specifically disallowed or reduced as below. For ease of reference please see paragraph 3 of this decision for the explanation of the numbers in square brackets:

Service charges

- [50], £97.09 service charge year end adjustment 01/10/2012 to 30/09/2013
 - [50], £324.94 estate service charges 01/10/2014 to 30/09/2015
 - [50], £1254.44 block service charges 01/10/2014 to 30/09/2015
 - [50], £117.50 car park service charges 01/10/2014 to 30/09/2015 (reduced from £133.34)
 - [50], £279.60 water service charges 01/10/2014 to 30/09/2015
 - [50], £180 administration fee (reduced from £264)
2. The file shall be returned to the County Court at Staines for the determination of the following claims which this tribunal does not have jurisdiction to determine:
 - Court fee and
 - Costs and interest
 3. The reasons for our decisions are set out below. Later, (or earlier), reference in this decision to a number in square brackets ([]) is a reference to the page number of the hearing bundle/file provided to the tribunal for use at the hearing.

The application and procedural background

4. In the early part of 2015 the applicant landlord commenced legal proceedings against the respondent as proprietor of a long lease [2] of the subject property.
5. The applicant's claim concerning the determination of service charges referenced BOQZ74H5 was transferred to this Tribunal by order of District Judge Trigg from the County Court at Staines. The date of the order was 17 August 2015. The claim made in the County court was for unpaid service charges and the administration costs of their collection.

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

The hearing

1. The applicant was represented at the hearing by Mr Craig Newell from the management company serving the block and the respondent in person but was supported by her husband.
2. The tribunal had before it an agreed bundle of documents prepared by the applicant as well as a bundle from the respondent.
3. At the hearing the Tribunal had the benefit of hearing evidence from both parties and it centred around the Scott Schedule [50] that set out the claim and the comments of the Applicant and the respondent on the disputed service charge items. There were other witness statements from non-attending parties (mostly supporting the respondent) and in these circumstances the tribunal could only give such weight to those as may be appropriate for a party not giving oral evidence and thus not tested in cross examination.

The background

4. The property which is the subject of this application is one of 177 leasehold units within a block of flats or maisonettes. The respondent occupies flat 107, and this is described in the lease [2] as being a fourth floor flat. Each lessee is liable for a due proportion of the total service charge expenditure incurred by the landlord. The lease sets out the percentage liability for the tenant as follows[6]

Estate charges 0.31% being the charges for services supplied to the whole estate.

Building charges 0.66% being the charges for services supplied to the block in which the property is situate.

Parking charges 0.56% being the charges for services supplied to the car parking facilities.

Domestic cold water charges 0.39% being the charges for services supplied in connection with the water supply.

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.

6. The respondent 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.
7. The landlord applicant claimed arrears of service charges for 2012/2013 and estimated charges for 2014-2015. The amounts claimed were particularised on the county court claim forms but at the time of the hearing the figures were now agreed at the amounts set out in the Scott Schedule or as more particularly set out above in paragraph 1 of this decision.
8. The items in dispute at the hearing were identified as being for a whole range of service charge activities including caretaking, repairs and maintenance charges and sweeping and cleaning as well as property insurance. The applicant says these service charges are properly payable and the respondent says they have not been reasonably incurred.

The service charges claimed

9. Dealing first with the charge of £97.09 being the service charge year end adjustment 01/10/2012 to 30/09/2013 the tribunal could not find anything in the evidence from the respondent that could in any way amount to a serious challenge to the documentary evidence submitted for the applicant. Essentially the amount claimed was a year-end balancing charge and the figure was based on the actual expenditure against what had previously been estimated.
10. Secondly, with regard to the charge of £324.94 being the estate service charges for the period from 01/10/2014 to 30/09/2015 the tribunal could not find anything in the evidence from the respondent that could in any way amount to a serious challenge to the otherwise comprehensive and detailed evidence submitted for the applicant and which was supported by relevant estimates and invoices. On considering the listed figures the tribunal noted a substantial increase in public liability insurance as well as caretaking services. However, in both cases the agents were able to clarify and justify these larger increases. For example after the insurers inspected the premises they indicated that due to the nature of the building that the insurance would have to be increased significantly.
11. Dealing with the third element of the claim, £1254.44 for block service charges for the period 01/10/2014 to 30/09/2015 once again the tribunal could not find anything in the evidence from the respondent that could in any way amount to a serious challenge to the otherwise comprehensive and detailed evidence submitted for the applicant. Again, on considering the estimated figures the tribunal noted a substantial increase in the block insurance insurance as well as repairs and maintenance. Once again however, in both examples the agents

were able to clarify and justify these larger increases. As was said in the previous paragraph after the insurers inspected the premises they indicated that due to the nature of the building that the insurance would have to be increased significantly. The managing agents confirmed that when seeking to renew the insurance after the inspection they sought three different premium quotations from three reputable insurance companies and selected the lowest premium. (Notwithstanding this process the premium effectively increased over 300% from 2013-14 to 2014-15, presumably due to the nature of the building as discovered by the insurer on inspection). As for the repairs and maintenance this item was supported with detailed invoices and covered such items as lift repairs and drainage works and it was said that the estimates were generally in line with expenditure.

12. The fourth element of the claim was for £133.34 representing car park service charges for the period 01/10/2014 to 30/09/2015. In that regard and after a close examination of the estimated charges for car parking the tribunal was not satisfied that the amount listed for insurance was allowable or reasonable. The tribunal asked Mr Newell to check on this as it occurred to the members of the tribunal that this insurance would be part of the insurance charge that fell within the charge for the building. It subsequently transpired that this was the case. Accordingly the tribunal disallowed the amount attributable to the tenant for the insurance element under the car parking charge. This worked out at a reduction (at the percentage of 0.56%) of £16.24 giving a reduced charge for the car park service charges of £117.10.
13. In regard to the sum of £279.60 being the water service charges for the period 01/10/2014 to 30/09/2015 we again were able to approve this sum as charged by the applicant as there was little or no relevant evidence presented by the respondent that might persuade us otherwise. We were able to see invoices and supporting documentation for these charges and indeed the other charges mentioned above. It seemed to the tribunal that the evidence presented by the applicant was clear and detailed and showed precisely what was paid and done and what was charged.
14. With regard to the final amount claimed, being a £264 administration fee, Mr Newell explained that this was an administration charge that is applied to any leaseholder who does not pay the service charge or agree a payment plan within a due date, the managing agents having sent out a demand and one reminder. The charge is to cover the cost of the additional administration that is required to prepare the case before it passes to an external agency.
15. In his oral evidence he explained the administration fee covered the issue of two letters. The charges were for £110 plus vat (£22) and had been charged twice by the agents. On careful consideration of this charge the tribunal felt that for the work involved it was unreasonably

high. The tribunal was of the view that a reasonable charge would be £75 plus VAT (£15) make a charge of £90 and for two instances that makes a total of £180. This sum is to be substituted for the amount originally claimed.

Transfer back to the county court

16. There were some claims made in the court proceedings which we do not have jurisdiction to determine. We have therefore transferred the file back to the county court so that these claims may be pursued if the applicant wishes to do so.

Name: Judge Professor Robert
M. Abbey

Date: 30.March.2016

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

Schedule 11

Administration charges

Part 1 Reasonableness of administration charges

Meaning of “administration charge”

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.

Reasonableness of administration charges

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

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to pay administration charges

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 subparagraph (1).