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

Case reference : **LON/00AY/LSC/2016/0084**

Property : **Flat 11, Weymouth Court, 55 – 57
Upper Tulse Hill, London SW2 2SH**

Applicant : **Oakfern Properties Limited**

Representative : **SLC Solicitors**

Respondent : **Ms L Barber**

Representative : **N/A**

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

Tribunal members : **Judge Carr
Mr Mike Taylor FRICS**

**Date and venue of
hearing** : **31st May 2016 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **5th July 2016**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the service charges as set out in the corrected Scot Schedule submitted by the Applicant are payable by the Respondent in respect of the service charges for the years 2013- 14 and 2014 – 15.
- (2) The tribunal determines that no monies are payable in connection with the reserve fund or in connection with administration charges demanded as late payment fees. The tribunal also determines that although the Respondent is liable for fire safety charges that these were incorrectly calculated in the claim to the County Court.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision
- (4) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (5) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Lambeth County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years
2. Proceedings were originally issued in the County Court under claim no. B95Y M314. The claim was transferred to the County Court at Lambeth and then in turn transferred to this tribunal, by order of District Judge Zimmels on 22nd February 2016.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Sinclair of Counsel at the hearing. Mr Szaran, from the Applicant’s managing agents Bowoods, attended and gave evidence for the Applicant as did Mr Davies who is employed by the freeholder, Oakfern Properties Limited. The Respondent appeared in person and represented herself. Three other lessees attended in support of the Respondent, Mr Whittaker (Flat 7), Mr Courtney (Flat 12), and Ms Oedra (Flat 17).

The background

5. The property, which is the subject of this application, is a one bedroom flat in a 3-storey block, which is one of two blocks within a development comprising two residential blocks and a number of garages. Each of the two blocks comprises 12 flats split into two entrances of 6 flats each. The garages are not demised to the lessees but rented on separate contracts.
6. Service charges relating to the block are divided between the 12 lessees of the block. The service charges relating to the development are divided between the 24 lessees of the development.
7. During the hearing the parties produced photographs of the buildings and the grounds and a plan of the development. 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.
8. 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. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

9. The Directions issued at the Case Management Conference identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for service charge years ending 30th September 2014 and 2015 in particular the Respondent challenges the reasonableness and payability of charges relating to
 - a. Cleaning
 - b. Rubbish removal costs demanded in 2015
 - c. Gardening
 - d. General repairs and maintenance
 - e. Fire safety
 - f. Management fees

g. Costs of installation of the entry phone in 2014

10. The Respondent also raised the payability of reserve fund payments. The Applicant conceded during the hearing that there was no power in the lease to demand reserve fund contributions and that money has been deducted from the claim.
11. The Respondent raised the issues of charges levied by the freeholder for parking on the development. As the lease specifically excludes any right to park such a matter falls outside of the jurisdiction of the tribunal.
12. During the hearing the Tribunal noted that the claim made at the County Court included two administration charges. It was explained that these were late payment charges. As all matters relating to the lease were transferred to the Tribunal the Tribunal also made a determination on the payability of these charges.
13. 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

14. Mr Sinclair for the Applicant took the Tribunal through the relevant clauses of the lease. No issue was raised in connection with the terms of the lease by the Applicant other than the reserve fund issue which has been dealt with at paragraph 10 above.
15. The Tribunal raised issues about the payability of the administration charges which are dealt with at paragraph 69 below.

Cleaning

16. The Respondent complains that the cleaning to the common parts of the property is not carried out to a satisfactory standard considering the sums demanded. She asserts that on occasions no work is carried out, that the cleaner cleans his own car during the times he should be cleaning the common parts.
17. Mr Szaran explained that the cleaning company used by the Applicant, Chequers, is a reputable company which operates independently of the managing agents.
18. He was aware only of one complaint that he passed onto the company.

19. He pointed out that the cleaning charges are very low. The charges are not based on an hourly rate but cover the cost of a weekly visit. Basically the company charges £44 plus VAT per visit during which time the four entrances to the two blocks are cleaned along with the bin store and any litter is removed from the area.

The tribunal's decision

20. The tribunal determines that the amount payable in respect of cleaning for the years in dispute is reasonable and payable.

Reasons for the tribunal's decision

21. The managing agent provides, via an independent company, a minimal service for a very low charge.
22. There is no evidence to substantiate complaints. The photograph provided by the Respondent of the cleaner cleaning his car is not substantial evidence. There is no evidence from the Respondent that a better service could be provided by another company at a similar charge.
23. The tribunal was concerned that the lessees present at the hearing expressed dissatisfaction with the service and a feeling that the managing agents did not take their concerns seriously. It may be that the managing agents should consider developing a better system for conveying the complaints and concerns of the lessees to the cleaning company.

Rubbish removal

24. The Respondents complaint is that excessive charges were levied for the removal of rubbish from the site during 2014 - 15. The Respondent pointed out that she does not dump rubbish, that she tries hard to keep the site clean and that it seems unfair that she is required to pay the costs of removing the rubbish.
25. She was also concerned that the managing agents demonstrate that all the invoices were genuine.
26. Mr Davies, for the freeholder, explained that there was a particular problem with fly tipping at the development, largely as a result of its layout and the fact that some of the garages are let to commercial companies and not residents of the flats so they lack a sense of communal responsibility.

27. The freeholder has installed gates to the garage area to stop fly tipping. He has also started charging the tenants of the garages service charges for the upkeep of the development. The managing agent suggested that, as a result of these measures, rubbish removal fees should be lower in the coming years.
28. The freeholder explained that he tries to ensure that payment for rubbish removal is made by those responsible, but that this is very difficult, particularly as only about one third of the properties are owner-occupied.

The tribunal's decision

29. The tribunal determines that the amount payable in respect of rubbish removal charges in the service charge year ending September 2015 is reasonable and payable.

Reasons for the tribunal's decision

30. There was no evidence to substantiate allegations that the invoices were not genuine.
31. The Applicant appears to have taken reasonable steps to reduce the amount of fly tipping.
32. The tribunal notes that the lessees have some suggestions as to how fly tipping could be further reduced and suggests that there may be opportunities for constructive dialogue between the parties on this matter which would be in the best interests of all concerned.

Gardening

33. The Respondent considers that the gardens at Weymouth Court have gradually deteriorated since Bowoods took over as Managing Agents who appointed a gardening company called Fine Gardens.
34. The Respondent considers that work, for instance relating to the removal of shingle, has been duplicated and that no attention is paid to the wishes of the lessees.
35. The Applicant states that it has employed a reputable firm 'Fine Gardens' to carry out the work on the site. The firm is independent of the Applicant. The Applicant uses the firm at other properties where residents have been very pleased with the services provided.

36. Mr Szaran said that there was a poor atmosphere between the gardeners and the lessses such that the gardening firm is unwilling to take on a general maintenance role, but only carries out specific tasks.
37. Mr Szaran rejects the allegations that work is duplicated or of a poor quality.

The tribunal's decision

38. The tribunal determines that the amount payable in respect of gardening for the years in dispute is reasonable and payable.

Reasons for the tribunal's decision

39. There was no evidence to substantiate the Respondent's argument.
40. The tribunal notes that the Applicant has indicated a willingness to appoint gardeners nominated by the lessees if it considered them to be suitable, and established.

General repairs and maintenance

41. The Respondent has some concerns about general repairs and maintenance charges, in particular that there seems to be some duplication of the relaying of slabs and that charges have been raised in connection with doors locks and keys.
42. The Applicant points to the invoices demonstrating that the monies have been spent on works.

The tribunal's decision

43. The tribunal determines that the amount payable in respect of general repairs and maintenance for the years in dispute is reasonable and payable.

Reasons for the tribunal's decision

44. There was no evidence to substantiate the Respondent's argument.

Fire safety

45. The Respondent asked for an explanation of the fire safety expenditure.
46. The Applicant commissioned a fire safety report and carried out works in accordance with its recommendations.

47. When the Applicant examined the figures more closely it became clear that the charges had not been correctly apportioned.
48. The Applicant has produced the correct figures to the tribunal and to the Respondent.

The tribunal's decision

49. The tribunal determines that the amount payable in respect of fire safety for the years in dispute is reasonable and payable now that it has been apportioned correctly.

Reasons for the tribunal's decision

50. The lease allows for the expenditure and it is a legal requirement.
51. The Respondent has produced no evidence to demonstrate that the monies spent is unreasonable.

Management fees

52. The Respondent considers that the management fees charged by the agent are expensive for the works carried out. She suggests a fee based on a percentage of works carried out.
53. The Respondent had no evidence of charges levied in similar blocks.
54. The Applicant explained that the RICS code recommended a unit cost rather than a percentage of works.
55. Management Fees for 2015 were £300 per unit + VAT , and £290 + VAT in 2014.

The tribunal's decision

56. The tribunal determines that the amount payable in respect of the management fee for the years in dispute is reasonable and payable

Reasons for the tribunal's decision

57. Although the fee is relatively high for one bedroomed flats there are a number of reasons why a fee at the higher end of the range is justifiable.
58. These reasons include the small number of units, the complexities of the site, including the large proportion of buy to let units, the fact that the company draws no commission on the services it provides, and that

its services include a broad range of duties including consultation procedures.

59. The tribunal notes the lack of evidence of management fees in comparable developments.

The charges relating to the entry phone.

60. The Respondent was not aware that any work had been carried out to the entry phone to her block.
61. The Applicant explained the works that had been carried out replacing the system at the entrance to flats 1 – 6 and the annual maintenance contract charge. A letter had been sent to the lessees explaining this in December 2013.
62. The Respondent appeared satisfied with these explanations.

The tribunal's decision

63. The tribunal determines that the amount payable in respect of entry phones is reasonable and payable

Reasons for the tribunal's decision

64. The tribunal accepts the evidence of the Applicant.

Administration charges

65. The tribunal noted that the claim to the County Court included administration charges and asked the Applicant for an explanation of these so that it could be sure that it had deal with all issues transferred to it by the County Court.
66. The Applicant indicated that these charges related to late payment fees.
67. The tribunal asked the Applicant to indicate where the lease authorised such payments.
68. The Applicant pointed to the standard s.146 clause at 3(i)(d) of the lease.
69. The Applicant was not able to produce correspondence indicating that the charge was levied as a precursor to forfeiture proceedings.

The tribunal's decision

70. The tribunal determines that the administration charges levied as late payment fees are not payable under the lease.

Reasons for the tribunal's decision

71. The clause enables costs to be claimed as part of forfeiture proceedings. There is no indication that the late payment fees were levied as a precursor to forfeiture and therefore the monies are not payable.

Application under s.20C and refund of fees

72. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines not to make such an order. However it also determines that any charge for attendance at the hearing must be payable under the lease and be limited to £500.

The next steps

73. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Lambeth County Court.

Name: Judge Carr

Date: 5th July 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 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).