

12094



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

Case Reference : **LON/00AZ/LSC/2016/0322**

Property : **269 & 275 Downham Way,
Bromley, Kent BR1 5EN**

Applicants : **Hannah Robinson (1)
Kelly Brown (2)
Mark Finch (3)**

Representative : **Ms Robinson and Ms Brown
appeared in person**

Respondent : **Phoenix Community Housing
Association**

Representative : **Mr Richard Parker**

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

Tribunal Members : **Judge N Hawkes
Mr F Coffey FRICS**

**Date and venue of
Hearing** : **12th December 2016, 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **16th December 2016**

DECISION

Decisions of the Tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, by consent, so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The applicants seek 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 applicants in respect of the service charge year 2014/15.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The three applicants were represented by Ms Robinson and Ms Brown in person at the hearing and the respondent was represented by Mr Parker who is a Leasehold Consultant Advisor.

The background

4. The properties which are the subject of this application are flats situated within a purpose built, two storey block ("the Flats").
5. Photographs of the block 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 applicants hold long leases of the Flats which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

The issues

7. The relevant issues for determination are as follows:
 - (i) the reasonableness and payability of the service charge items for the year 2014/15 which have been listed by the parties in the Scott Schedule;

- (ii) whether an order under section 20C of the 1985 Act should be made;
 - (iii) whether an order for the reimbursement of application/hearing fees should be made.
8. The items which have been listed by the parties in the Scott Schedule concern roof repairs/replacement; external plumbing/guttering; the communal doors and entry system; internal decorations; access equipment; the provision of communal television aerials; estate work; project overheads; and head office overheads and profit.
 9. The Tribunal was informed that there are additional items of service charge expenditure for the year 2014/15 which have never been in dispute and which therefore do not appear in the Scott Schedule.
 10. At a directions hearing which took place on 4th October 2016, the Tribunal granted the applicants permission to rely upon an expert report dated 4th July 2014 which was prepared by Mr Michael J Redmond BSc (Hons) MRICS following an inspection which took place on 6th June 2014. The major works which form the subject of this dispute were carried out in the summer of 2014 following Mr Redmond's inspection.
 11. During the course of the hearing, the parties reached an agreement in respect of some of the items listed in the Scott Schedule, as recorded below.
 12. The Tribunal's determinations in respect of the items remaining in dispute were reached upon hearing evidence and submissions from the parties and upon considering all of the documents which were referred to during the course of the hearing.
 13. The parties' Scott Schedule sets out the relevant block costs and, accordingly, the determinations below also refer to the block costs.

Roof repairs/replacement

14. During the course of the hearing, the parties agreed that, of the sum of £14,898.10 originally claimed by the respondent, the sum of £802.50 is payable under this heading.

External plumbing/guttering

15. During the course of the hearing, the parties agreed that, of the sum of £2,004.20 originally claimed by the respondent, the sum of £450 is payable under this heading.

Communal doors and entry system

16. In 2014, the respondent installed a GDX Entry Phone System and an explanation for the choice of this entry phone system has been given by the respondent in the Scott Schedule.
17. The applicants, sensibly in the view of the Tribunal, did not seek to argue that on the evidence it was unreasonable to for the respondent to have installed the GDX Entry Phone System. Accordingly, the sole issue in dispute under this heading is whether or not it was reasonable for the respondent to have replaced the communal entrance doors as part of the installation work.
18. Ms Laura Howard, a Project Manager employed by the respondent, gave evidence on behalf of the respondent on this issue.
19. Ms Howard explained that the original doors would not have been compatible with the GDX Entry Phone System. She stated that, whereas the original doors had handles and latches, the new system requires doors with magnetic locks.
20. Ms Howard gave evidence that the respondent had considered the possibility of overhauling the original doors (it is common ground that they required overhaul) and then carrying out alterations to make them compatible with the new system but that it had proved to be more cost effective to replace the doors. She was not able to refer the Tribunal to the relevant documents because they had not been included in the bundle.
21. Mr Redmond's report deals with the cost of overhauling the doors but does not address the potential cost of carrying out alterations to the doors to render them compatible with the GDX Entry Phone System. Accordingly, the applicants have not produced evidence which contradicts Ms Howard's oral evidence.
22. Whilst it would have been preferable for the relevant documents to have been included in the hearing bundle, the Tribunal, with some reluctance, accepts Ms Howard's evidence and finds that the sum of £5,304 which is claimed under this heading is reasonable and payable.

Internal decorations

23. During the course of the hearing, the parties agreed that, of the sum of £1,210 originally claimed by the respondent, the sum of £450 is payable under this heading.

Access equipment

24. It is the respondent's case that full scaffolding was needed both to enable the substantive works to be attended to, and also to enable a survey to be carried out to the block, in order to ascertain what further works might be required and to ensure that the work which was subsequently carried out to the block was carried out in accordance with the relevant health and safety legislation.
25. It is the applicants' case that they should not be required to pay for the cost of full scaffolding because it has been agreed that they are not required to pay for certain work which was carried out to the mansard roof and Mr Redmond stated that no significant works were required to the chimney stacks.
26. Having considered all of the evidence, Tribunal finds that it was reasonable for the respondent to erect full scaffolding in order enable the chimney stacks to be safely inspected. It is not possible to see the entirety of the chimney stacks from the photographs which were taken by Mr Redmond from a neighbouring property and it would not have been possible to determine without a full inspection whether or not works to the remainder of the chimney stacks were required.

The provision of communal television aerials

27. During the course of the hearing, the applicants asked the Tribunal to make no determination on a potential counterclaim for breach of covenant (on the grounds that the respondent should have supplied the applicants with communal television aerial 8 years ago but failed to do so). The Tribunal notes that the applicants have served no evidence which would enable any loss to be quantified.
28. The applicants agreed that the sum of £1,500 claimed by the respondents is payable under this heading.

Estate Works

29. The applicants were initially concerned that the charge under this heading might be a charge for the replacement of two steps when, on their evidence, that the steps had not in fact been replaced. After having heard the respondent's explanation that the sum claimed under this heading relates to the repair rather than to the replacement of the steps in question, the applicants agreed that the sum of £273.68 which has been claimed under this heading is payable.

Project overheads, head office overhead and profit

30. During the course of the hearing, the parties agreed that the sums claimed under this heading need to be recalculated in order to take account of the matters agreed and the matters determined during the course of these proceedings but that they are otherwise payable.
31. The Tribunal has carried out the recalculation and finds that the sum of £3,035.78 in respect of project overheads and the sum of £492.29 in respect of head office overheads and profit fall to be deducted from the sums otherwise payable as a service charge, by reason of the matters agreed and determined during the course of these proceedings.

Application under s.20C and refund of fees

32. At the end of the hearing, the respondent agreed that an order under section 20C of the 1985 Act may be made by consent in order that the respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. Accordingly, the Tribunal makes an order under section 20C of the 1985 Act.
33. At the end of the hearing, the applicants agreed not to seek any order for the reimbursement of application and/or hearing fees. Accordingly, the Tribunal makes no such order.

Name: Judge N Hawkes

Date: 16th December 2016

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.

4. 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.

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.