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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/LSC/2016/0013**
Property	:	**128a Belgrave Road, London SW1V 2BL**
Applicant	:	**128 Belgrave Road Management Limited**
Representative	:	**Jo Gates, Belcher Frost Solicitors**
Respondent	:	**Marcus Mann**
Representative	:	**In person**
Type of Application	:	**For the determination of the liability to pay a service charge**
Tribunal Members	:	**Judge P Korn** **Mr SA Manson FRICS** **Mrs L Hart**
Date and venue of Hearing	:	**21st March 2016 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**30th April 2016**

DECISION

Decisions of the Tribunal

(1) The service charges which form the subject of this application are all payable in full.

(2) The Tribunal makes no cost orders.

Introduction

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of certain service charges charged to the Respondent in the service charge years 2009/10 to 2013/14 inclusive.

2. The items in issue are as follows (the sums being the total for the building in each case):-

2009/10

Insurance	*£3,483.93*
Fire precautions	*£445.78*
Cleaning	*£866.00*
External repairs	*£420.75*
Accountancy fees	*£644.38*
Professional fees	*£376.25*
Management/Administration	*£3,122.50*

2010/11

Insurance	*£4,422.13*
Cleaning	*£910.50*
Gutters and drainpipes	*£212.75*
Fire & Smoke Detection System	*£11,656.18*

Accountancy fees	*£387.82*
Out of hours emergency line	*£200.93*
Management/Administration	*£3,306.50*

2011/12

Insurance	*£4,067.06*
Cleaning	*£993.50*
External repairs	*£2,060.80*
Accountancy fees	*£494.00*
Out of hours emergency line	*£25.20*
Management/Administration	*£3,552.00*

2012/13

Insurance	*£2,926.54*
Cleaning	*£1,048.00*
External repairs	*£228.00*
Accountancy fees	*£500.00*
Out of hours emergency line	*£25.20*
Management/Administration	*£3,678.00*

2013/14

Insurance	*£3,869.08*

Cleaning	*£1,140.00*
External repairs	*£464.00*
Accountancy fees	*£1,200.00*
Out of hours emergency line	*£25.00*
Management/Administration	*£3,804.50.*

3. The relevant statutory provisions are set out in the Appendix to this decision. The Respondent's lease ("**the Lease**") is dated 22nd January 1988 and was originally made between Henderson & Pearson (Enterprises) Limited (1) John Simon Bills, Sarah Louise Howard-Glydon and Christopher Howard-Glydon (2) and the Applicant (3). The Respondent is the current leaseholder and the Applicant is the management company under the Lease. Under the Lease the tenant covenants to pay service charges to the management company and the management company covenants to provide certain services to the tenant.

4. The management company is owned jointly by the leaseholders.

Applicant's case

Generally

5. In its written statement of case the Applicant sets out the various Lease provisions on which it is relying to recover the various heads of charge which are the subject of this application. It also states that service charge demands were sent to all leaseholders for each of the relevant years.

6. In addition, it states that in or around 2009 it carried out various internal maintenance works and installed/updated the fire safety system. It undertook a section 20 consultation process and tenders were sought and obtained. A risk assessment relating to the fire alarm system is included in the hearing bundle.

7. The Applicant also states that nowhere in his interim case statement or completed Scott Schedule does the Respondent dispute the necessity of any of the general maintenance works (including the fire protection works) or criticise the standard of work or argue that the Applicant failed to comply with its consultation obligations under section 20 of the 1985 Act.

8. At the hearing it was noted that there are three different categories of service charge. Cleaning costs are shared equally between all 7 flats. Costs which are categorised as "internal" are shared equally between 6 of the flats excluding the Respondent's flat on the basis that his flat does not benefit from these services. Costs which are categorised as "external" are shared between all 7 flats but each flat pays a different percentage. At the hearing the Applicant's solicitor referred the Tribunal to clause 3(e) of the Lease which sets out how the service charge is to be apportioned.

Utility works

9. In its written statement the Applicant notes that these 2011 works to repair shared services were charged as internal works and that therefore the Respondent did not have to contribute towards the cost. However, it noted that the Respondent wanted these works to be characterised as external so that he would be entitled to be consulted in relation to them, even though it would mean that he would then have to pay a contribution.

10. At the hearing the Applicant's solicitor conceded that it was not entirely clear whether these works had been correctly classified.

Fire protection works

11. In its written statement the Applicant notes the Respondent's objection to these being charged as external works, but it states that the works concerned – the installation and maintenance of the fire alarm system – were works that the Applicant was obliged to carry out under the Lease.

12. At the hearing the Applicant's solicitor referred the Tribunal to the risk assessment report which had been commissioned in April 2007. In the Applicant's submission, the cost was recoverable under paragraph 4(a) of Part V of the Schedule to the Lease, which essentially related to compliance with the statutory requirements, and/or indirectly pursuant to the landlord's obligation to insure the building under clause 4(d) of the Lease. It was also submitted that the risk assessment report was clearly put together on the basis that the works would benefit the whole building including the Respondent's flat, not just the other parts of the building.

Vault works

13. The Applicant notes in written submissions that the Respondent has stated that these works – as detailed in section 5 of the tender from Style Property Maintenance in the hearing bundle – were carried out without his consent. The Applicant adds that it is not aware of any

objection having been made before the works were carried out and that the Applicant went through a full section 20 consultation process.

14. At the hearing the Applicant's solicitor said that these works were carried out to the common parts, including the gate to the vaults, in order to address the lack of ventilation. At the time the vaults were believed to form part of the common parts but it was now accepted that they did not. Whilst it was accepted that this had been a mistake, it was one shared by the Respondent as he also believed the vaults to be part of the common parts at the time. In any event, no part of the cost of these works had been charged to the Respondent, and the Respondent confirmed at the hearing that he did not wish to be charged.

Respondent's response

Categorisation of works

15. In his written statement the Respondent expresses the concern that the categorising of certain works as internal works meant that he was excluded from being entitled to be consulted about them, since he did not pay for internal works on the basis that he did not receive any benefit from them.

Utility works

16. The Respondent states in his written statement that the utility works left pipes dripping and that a pipe had burst, flooding his vault.

17. At the hearing he stated that he initially understood these works to be ones which did not affect him but that subsequently there was "mission creep" and the works had affected his flat.

Vault works

18. The Respondent states in his written statement that he does not consider the vault works to have been completed to a reasonable standard.

Fire protection works

19. As regards the fire protection works, the Respondent states in written submissions that he already has an alarm system that meets the current requirements of the fire authority. The smoke alarms with heat detectors which the Applicant has had installed were only recommended and were not a legal requirement in his flat as he does not share any common parts. The Applicant failed to obtain his signed agreement to the works.

20. At the hearing he said that the fire alarm system was designed to serve the common parts and did not benefit him, and he added that that he did not feel that the system chosen protected his premises.

21. There was also an indication from his submissions that he felt misled into believing that the cost would not form part of the service charge.

Management

22. At the hearing the Respondent said that the Applicant's assumption that the vaults formed part of the common parts represented poor management. He also said that he was not happy with the standard of management generally. There were 6 bike racks for 7 flats, the door of the vault had been removed without his being informed and communication had been poor generally.

Other comments

23. At the hearing the Respondent said that he is not an equal shareholder and does not feel that he has much influence. One particular shareholder grouping is taking all of the decisions.

24. The Respondent has also raised certain other points in written and oral submissions which, whether or not they are valid, are not relevant to these proceedings.

Inspection

25. At the request of the Respondent the Tribunal inspected the relevant parts of the building/common parts. The Tribunal noted the condition of the inside of the vault, the gate to the vault, and some blistering on the ceiling of the Respondent's flat.

Tribunal's comments and determination

Payability under the Lease

26. The relevant Lease provisions are noted. Under clause 3(e)(i) of the Lease the tenant must pay one-seventh of the cost of cleaning, and this is correctly reflected in the actual apportionment of the cleaning charges. The Lease is specific as to the areas to which this cleaning charge relates, but the Respondent has not objected that there is a mismatch between the areas referred to in the Lease and those for which he has been charged.

27. Also under clause 3(e)(i) it is stated that the Respondent's flat is exempt from having to contribute towards the expense of redecorating,

maintaining, repairing, lighting and carpeting the common entrance hall, the common staircase and landings throughout the building and the entry-phone system and that the other flat owners each contribute one-sixth of the cost. Again, this is correctly reflected in the actual apportionment of these internal charges, the only question being whether any particular works or services have been incorrectly categorised.

28. All other service charge costs fall under clause 3(e)(ii). In respect of these costs, which the Applicant refers to in its Maintenance Account as 'external' costs, the tenant must pay a rateable proportion. The Applicant has calculated the Respondent's rateable proportion as 10.21% and the Respondent has not sought to challenge this calculation.

29. As regards whether the various heads of charge to which the application relates are all covered by the service charge payment provisions in the Lease, in our view – on the basis of the information that we have – they are. The Respondent has not made any substantive challenge on the grounds that a particular category of charge is not covered by the Lease, although there is a possible question in relation to the fire protection works which has been addressed by the Applicant at the hearing. The evidence indicates that the works comprised the installation and maintenance of a fire alarm system following recommendations contained in a fire risk assessment report commissioned by the Applicant. Whilst we consider that it is stretching matters to argue that the carrying out of these works falls within the landlord's covenant to insure the building, commissioning a fire risk assessment report and complying with its recommendations in our view falls within the obligation in paragraph 4(a) of Part V of the Schedule to the Lease to *"do and execute ... all such works as under or by virtue of any Act or Acts of Parliament ... or any regulations or orders made pursuant thereto ... are or shall be directed or necessary to be done or executed upon or in respect of the Building or any part thereof other than the Flat ...".*

Building insurance premiums

30. The Respondent's has not challenged the reasonableness of these, and in our view – in the absence of any comparable evidence demonstrating otherwise – we consider the premiums to be reasonable in amount and payable in full.

Cleaning

31. There has been no challenge to the standard of cleaning nor to the cost, and again in our view the cost seems reasonable. Therefore, the cleaning costs were reasonably incurred and are payable in full.

External repairs / gutters and drainpipes

32. The Respondent has not questioned these charges and has not questioned the standard of work. Whilst we do not have much information in relation to these, this is understandable given that the Respondent has raised no issues. On the basis of the limited information that we have we consider these costs to have been reasonably incurred and to be payable in full.

Accountancy fees

33. Again there has been no substantive challenge to these charges from the Respondent. It is clear that some accountancy work will have been required each year and the amount does not seem unreasonable in the absence of any evidence or other information to the contrary. Therefore, on the basis of the available information, these fees have been reasonably incurred and are payable in full.

Out of hours emergency line

34. These charges have not been questioned by the Respondent and seem reasonable on the basis of the available information. They are therefore payable in full.

Management fees

35. The Respondent has challenged the quality of the management. However, whilst he has given evidence of a couple of specific concerns, he has not succeeded in convincing us that the overall standard of management has been poor such that a reduction in the management fee is warranted. We accept that he feels aggrieved and would stress that we are not suggesting that his feeling is anything other than sincere. However, whilst he has argued that the management was sub-standard generally, he has offered very little by way of objective evidence to support this. It was open to him, for example, to enter into detailed correspondence with the Applicant and to produce copies of that correspondence and the Applicant's replies as part of his case. Alternatively, if he felt that there were specific management failings which had a significant effect on services it was open to him to provide detailed evidence as to what the precise failings were, why they constituted management failings and what the precise effect of such failings had been.

36. As to the reasonableness of the charges themselves, whilst we consider them to be at the higher end of the spectrum of reasonable charges we do not consider them to be so high as to justify a determination that they have not been reasonably incurred for the purposes of section 19 of the 1985 Act.

37. In conclusion, the management fees were reasonably incurred and the standard of management was reasonable on the basis of the available information and evidence, and accordingly they are payable in full.

Fire protection works

38. The evidence indicates that the Applicant carried out these works in reliance on the fire assessment report, and in our view it was entitled to do so. The Respondent is not an expert on fire safety or alarm systems and has provided no evidence from someone who is an expert in these areas nor any other evidence to back up his submissions. Whilst it is arguable that the minutes of a particular meeting were slightly ambiguous in part, we do not accept that the Respondent was misled by the Applicant into believing that he would not have to contribute towards the cost of the works, and he was sent a very clear section 20 notice in relation to these works on 17th December 2009.

39. The Respondent has not questioned the reasonableness of the cost itself. Accordingly, on the basis of the available evidence and information, the cost of these works is payable in full.

Utility works

40. These have not been charged to the Respondent, but nevertheless he wishes to pay a contribution towards the cost. It is open to the parties to agree something between them on this point but it is outside the jurisdiction of this Tribunal to order the Applicant to add to the Respondent's service charge bill an item which has not been charged.

Vault works

41. It was established at the hearing that the Respondent has not been required to pay a contribution towards the cost of these works and the Respondent confirmed that he did not wish to. Therefore, there is no dispute on cost in relation to this item and consequently no decision on this point is required.

Professional fees

42. The Respondent has not questioned these and we do not consider that we have any basis for disallowing them. Therefore, they are payable in full.

Other issues

43. In relation to the other issues raised by the Respondent, these are not issues over which this Tribunal has any jurisdiction in the context of an

application for a determination pursuant to section 27A of the 1985 Act as to the reasonableness and payability of service charges.

Cost Applications

44. The Respondent has made a section 20C application.

45. The section 20C application is an application for an order that none (or not all) of the costs incurred by the Applicant in connection with these proceedings may be added to the service charge. The Applicant has succeeded on all issues, and we also consider, to the extent that this is relevant to section 20C, that the Applicant has conducted itself properly in connection with these proceedings. Accordingly, we do not consider it appropriate to make a section 20C order.

46. No other cost applications have been made.

Name: Judge P Korn **Date:** 30th April 2016

RIGHTS OF APPEAL

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

B. 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.

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

D. 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.