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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BK/LSC/2016/0178**
Property	:	**55A Essendine Mansions, Essendine Road, London W9 2LZ**
Applicant	:	**53-59 Essendine Mansions Limited**
Representative	:	**Simon Purkis instructed by PDC Legal**
Respondent	:	**Anna Kravtsova**
Representative	:	**N/A**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Hargreaves** **Laurelie Walter**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR** **30th June 2016**
Date of decision	:	**4th July 2016**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that in respect of the year ending 24th March 2014 the Respondent's share of the service charge is £415.62 and for the year ending 24th March 2015 her share is £536.96.

(2) The sum of £150 claimed as an administration charge is not payable.

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

(4) The Tribunal makes an order (if required and for the avoidance of doubt) under section 20C of the Landlord and Tenant Act 1985 so that none of the Landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

(5) Any other costs issues will have to be referred to the county court.

REASONS

The application

1. Page references are to those in the trial bundle.

2. On a date before 17th November 2015 (the date at the bottom of the Particulars of Claim), the Applicant issued proceedings in the county court against the Respondent for the sum of £2078. Stripped of the court fee (£115) and costs (£80) the amount claimed is £1883.44. The details provided in the Particulars state that the arrears of service charge are set out in exhibit YG3 attached, plus £150 administration charge and not less than £720 in respect of costs. YG3 itself (p44-46) produces a figure of £1013.44 for service charges, plus £150 administration charges and £720 additional costs (totalling £1883.44). It is the figure of £1013.44 plus the administration charge of £150 which is at the core of this decision.

3. The proceedings were referred to the Tribunal by DDJ Dray on 8th April 2016 (p54).

4. The Respondent's property is one of five flats in a large converted house. A site visit was not, on the basis of the issues before the Tribunal, required. There was a welter of evidence and some of it photographic. In addition we heard oral evidence from the Respondent and a limited amount of oral evidence when required for clarification from the managing agent, Mr Atkinson (whose statement is at p480).

5. A combination of county court requirements and Tribunal directions produced a series of pleadings which were, taken as a whole, not as useful as one might have hoped in terms of reducing and clarifying the main issues and disputes. The Particulars of Claim are at p3. The Respondent's Defence is at p47. She took the following points: there were no proper service charge demands; there was no service charge certificate; there was no service charge surplus, and the Applicant was charging for items outside the scope of the contractual service obligations. The Respondent took advice from Westminster City Council on the application of *s21 LTA 1985* and we would have to observe that the ensuing correspondence about the requirements of *s21* have arguably diverted the parties from concentrating on the main issues, and the evidence and paper generated tended to obscure rather than clarify the important and essential points which both parties needed to make. The bundle exceeds 500 pages – even with unnecessary repetition of lengthy documents such as the Lease and various emails, there was a welter of information which was not easy to follow in the order in which it was presented, particularly where it was duplicated.

6. After the proceedings were referred to the Tribunal, the Applicant produced a further statement of case in accordance with directions dated 29th April (p256), on 10th May, at p55. This deals in some detail with the arguments raised by the Respondent in her county court Defence and produces substantial documentation in support. The Respondent's reply is at p259. She seeks in that document to raise a new claim about the condition of the building: we had no jurisdiction to consider that (and in any event it was raised far too late) but have concluded that some of the arguments she makes in that context are relevant to some of the issues we have to decide in any event. That pleading was followed by a further Reply by the Applicant (p475).

7. The hearing was characterised by (i) the Applicant's inability to support its case by reference to the most relevant documents speedily during the hearing (ii) the confusion caused by a typographical error in the pleadings which took some time to clarify (see below) and (iii) the Respondent's reluctance to give ground on any point (such as the allocation of the two payments of £200). A good example of (i) is the fact that the Applicant produced one un-paginated file of copy invoices relating to the first relevant service charge year of the two in issue, and none for the second year. The parties were given ample time to agree figures and make progress during the day out of the hearing room. After they were unable to make progress in the morning, we proceeded to hear the issues in the afternoon. After we gave a decision orally on the items we allowed or not, the parties still could not agree a final figure after having further time to see if agreement could be reached, and we indicated at 5.15pm that we would have to provide a decision.

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

The lease

9. There is a copy of the 125 year lease at p12. The Respondent is liable for 8% of the charges due under the *Fifth Schedule* (see *clause 4(4)*) by way of *interim charge* and *service charge*. The *Accounting Period* is 25th March-24th March. If the interim charge exceeds the service charge, it must be re-credited to the tenant. Accounts are to be certified by the landlord or its managing agents as soon as possible after each accounting period, to determine the *service charge*. Interim charges are determined and payable in advance on 25th March and 29th September.

10. YG3 is a service charge statement which starts on p46 (dated 29th July 2015). By 24th March 2014 the Respondent was in arrears to the sum of £634.88 taking into account her arrears of service charge for the year 2012-2013 (£343.60), the interim charge for March and September 2013 (£363.84 x 2)[1] and 2 payments made of £218.20. (For the purposes of understanding the pleading, it is necessary to disregard the references to a sum of £334.88.) It can be compared with a statement of ground rents due as at August 2015 (p163) and an August 2015 service charge statement showing the £1013.44 more clearly (p160-162).

11. Then it is necessary to turn to p45 which brings forward at March 2014 the arrears of £634.88 and adds 2 further payments required of £339.28 for the interim demands for March and September 2014. That produces a total of £1313.44.[2] On 11th March 2015 the Respondent paid £300, reducing the arrears to £1013.44 as at 24th March 2015. It is that figure, outlined in a box on p44 (wrongly dated March 2014) which is the subject of the county court claim referred to the Tribunal. Save as to the arrears figures, the further demands in the bundle at p126 and p130, are irrelevant.

12. The sums pleaded in the county court are therefore based on the interim amounts demanded in March and September 2013 and March and September 2014, subject to mathematical adjustment for amounts paid. Having looked at the demands as exhibited in the bundle, they are valid demands.

13. Having read and considered the documentation in the bundle, to the extent to which *s21 LTA 1985* is still relevant

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[1] See the service charge demand dated 28th March 2013 at p108-114, and the service charge demand dated 12th November 2013 at p115-116 which gives the Respondent credit for £215.20. Helpfully, the March 2013 letter contains a list of service charge estimates at p110 for the year ending March 2014 from which the Respondent's 8% share is calculated correctly.

[2] See the March 2014 demand at p120 and the September 2014 demand at p124. Again, the relevant list of anticipated charges is at p119.

14. The critical documents are therefore the schedule of estimates at p110 and p119. But due to the passage of time these can now be considered with a certified summary of costs for the year ending March 2014 (p155) and more critically, service charge financial statements for the years ending 24th March 2014 at p338 (signed off April 2015) and for 2015 at p352 (signed off October 2015). As the hearing developed, it became an investigation of the Respondent's objections to payment of the items for 2014 and 2015 by reference to p352, because that provided a format for analysing her points of principled objection by reference to a list of items certified, rather than estimated, for each year in question. Although it was apparent to us that the Respondent's distrust of the Applicant is such that it extends to the accuracy of the service charge fund accounts prepared by the agents and signed off by independent auditors, we should emphasise that there was nothing in the accounts as presented to the Tribunal to suggest that from an accounting point of view, they could be criticised.

15. We have therefore approached the case from working out what share of the service charge is owed by the Respondent to the Applicant for the years ending 2013 and 2014. We have the full picture and to do otherwise would probably have wasted further time after this hearing, due to the extent of the Respondent's distrust: the question by the time the matter came to court ie were the budgets reasonable (to which the answer with some exceptions would be a general "yes") had been overtaken and yet there were no easily itemised balancing charges in evidence for us to consider. Given the time spent encouraging the parties to agree figures, it seems to us that the least we can do is to provide a firm mathematical conclusion as a basis for hopefully moving forward. This approach does not prejudice either party mathematically: we could have approved the budget figures as reasonable only for the respondent to challenge the balancing charges as unreasonable in further proceedings.

16. **Utilities:** the Respondent was prepared to accept the figures of £122 and £118 for 2014 and 2015 as reasonable for electricity for the common parts, and that is plainly sensible. Each figure was less than the £130 estimated, also reasonable.

17. **Bank charges and sundries:** the Respondent accepted the figure of £129 for 2014 because she agreed the evidence. She did not accept £170 for 2015 in the absence of supporting evidence; taking a broad approach based on the £129, the increase of £41 to £170 for 2015 is not in our opinion unreasonable. In any event it was a certified figure ascertainable from the bank statements. We allow the £170. The estimated figure for 2015 is £120, the figure for 2014 not easy to discern.

18. **Cleaning:** estimated at £750 for 2014 and £648 for 2015, the actual figures amount to £702 and £773. The evidence suggests that Anyclean

Ltd was charging £9 per hour plus VAT in 2013 and doing 2.5 hours every other week. Whilst the Respondent expressed dissatisfaction with timekeeping (ie it was overstated) and quality, we have concluded that the figures are overall reasonable. The Respondent suggested £550 but based on no comparable evidence. We consider the figures reasonable and payable.

19. **Gardening:** the estimated amounts are £300 for 2014 and 2015. The Respondent accepts these figures and the actual figures of £225 (2014) and £300 (2015).

20. **Repairs and maintenance:** estimated at £1300 (2014) and £1000 (2015), the actual figures are £441 (2014) and £1188 (2015). Of the £441 (made up of three invoices for £74.31[3] and £252[4] and £114.91[5]) we disallow the invoice for £114.96: the work should have been invoiced to the individual leaseholder only and is not a service charge expense. So the figure allowed for 2014 is £326.31.

21. Of the figure for repairs etc for 2015, the sum of £1188 is made up of several items. First, the invoice at p283 is for £777 for installing a new fire door. The Respondent was highly critical of the standard of workmanship and produced photographs to support her case, eg that no new handle had been fitted. The workmanship looks unsatisfactory. We consider £500 to be reasonable. Second, we disallow the costs of £210 incurred in respect of a damp survey for flat 53 on the grounds that there simply no evidence before us to enable us to conclude that it was properly or reasonably incurred: the Applicant was in default of directions to bring the evidence to the Tribunal and the result is that this item, as to which there was no clear case made by the Applicant, is disallowed. Third, we allow the cost of the asbestos survey at £222 (p230); whatever the Respondent says about the presence or otherwise of asbestos and its location in the roof space, this is a matter for the agents and Mr Atkinson's evidence as its necessity, is accepted, and the price reasonable. The figure allowed for 2015 is £722.

22. **Insurance: cost of reinstatement valuation:** contrary to the Respondent's case the sum of £438 for the BCP report at p219 was only charged once in 2014, and is reasonable and allowed.

23. **Insurance: directors' and officers' insurance:** the sums of £170 and £169 for 2014 and 2015 are disallowed entirely as being non-service charge items, and wholly related to the Applicant's company status.

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[3] Fire appliance report and testing

[4] Health and safety and fire risk assessment

[5] Testing TV aerial at Flat 55

24. **Insurance:** the Respondent's complaints that the premiums for 2014 (£1753) and 2015 (£2629) are unreasonable are rejected. Contrary to her submissions, we conclude that the directors of the Applicant's personal items are not insured, there is no evidence that the Applicant or managing agent received commission, and the rise in the premium was due to the increase in the value of the building. Any dispute which the Respondent has due to the increase in the size of a flat owned by a director is not a matter for the Tribunal, which considers the premium to be reasonable on the evidence before us. The Respondent, despite some experience in insurance, did not bring any comparables to the hearing for consideration.

25. **Accountancy:** we substitute the figure of £600 as reasonable (2015).

26. **Management fee:** we allow £1500 for 2014 and 2015 as Mr Atkinson's evidence was that they charge £375 per quarter including VAT, which is reasonable. It follows that the few extra pounds charged could not be properly accounted for and were not reasonable.

27. **The total:** for 2014 the figure recalculated on the basis of our findings is £5195.31 of which 8% is £415.62, and for 2015 the figure is £6712 of which 8% is £536.96.

28. **s20C LTA 1985:** neither party was ready to make relevant submissions (contrary to the directions) but we indicated that we would proceed on the basis that the Respondent made an application, consistent with her determination to reduce the amount of service charges she might have to pay the Applicant, and decide the matter ourselves. Given that she made some gains, which should have been conceded by the Applicant on the basis of our findings above, some of which go to yearly charges which is significant over time (eg the directors' insurance policies which was plainly wrong), we consider that it would be just and equitable to make an order so that the Applicant's costs of the proceedings are not passed on to the Respondent by way of a service charge. In addition the Applicant failed to produce the 2015 evidence, which did little to allay the Respondent's concerns.

29. **The administration charge of £150:** The Applicant relies on clause 3(10) which provides that the Respondent shall pay *"to pay to the Lessors all costs charges and expenses ..... at any time during the said term incurred by the Lessors in or in contemplation of any proceedings in respect of this Lease under ss146 and 147 LPA 1925 .... notwithstanding that forfeiture is avoided otherwise than by relief granted by the court."* The Respondent's obligation under clause 4(4) is to pay the service charge *"as rent in arrear"*. Paragraph 1(1) of the Fifth Schedule defines *Total Expenditure* for the purpose of calculating the service charge as including *"all costs and expenses reasonably and properly incurred in connection with the reserved property .."* See also paragraphs 5 and 7 of Part 2 of the Fifth Schedule, which in our opinion

allows the Applicant to instruct debt collectors to collect the rents. The administration charge is therefore recoverable as a matter of construction of the lease.

30. However so far as this case is concerned, the administration charge is governed by the provisions of the *CLRA 2002, Schedule 11*. There are restrictions on the recoverability of variable administration charges, including that the demand must comply with the requirements of *Schedule 11* and *ss47-48 LTA 1987* (see Tanfield Chambers, *Service Charges and Management,* 3rd ed, chapter 197). Page 44 does not comply so far as the PDC fee is concerned and there is no evidence that a proper demand has been made elsewhere in the bundle.

31. So far as *s21 LTA 1985* is concerned, even if there is a breach, the current state of the legislation is that there is no provision enabling the tenant to withhold payment.

Judge Hargreaves

Laurelie Walter

4th 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).