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

**Case Reference** : **LON/OOAH/LSC/2017/0056**

**Property** : **133A Harrington Road, London  
SE25 4NW**

**Applicant** : **Mr Christian Sawyer and Mrs  
Michelle Sawyer**

**Representative** : **Mr C Green**

**Respondent** : **Mr P Cooper**

**Representative** : **In person**

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

**Tribunal Members** : **Judge Abebrese, Trevor Sennet  
(Professional Member).**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **10 August 2017**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £500 is payable by the Respondent in respect of the service charges for the year 24 June 2015 to 23 June 2016.
- (2) The tribunal determines that the total sum claimable by the Applicants in respect of service charges for the years 24 June 2015 to June 2016 and 24 June 2016 to 23 June 2017 is £7788 (half of overall figure of £15,576) this is inclusive of the figure cited above in para (1). This figure also takes into consideration items which have been deducted or agreed by the parties.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision

The tribunal does not make an order 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 lessee through any service charge.

- (4) The tribunal determines that the Respondent shall pay the Applicant within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

### **The application**

1. The Applicant is the freeholder of 133 Harrington Road. A long lease of the upstairs flat, 133a was assigned to the Respondent on 12 March 2014. There is a charge over the property to Peter Borros dated 12 March 2014.
2. 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 payable by the Applicant in respect of the service charge years 24 June 2015 to 23 June 2016 and 24 June 2016 to 23 June 2017. The total value of the amount in dispute between the parties is stated within the application as £8,902.30.
3. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

4. The Applicant was represented by Mr Green at the hearing and the Respondent appeared in person.
5. The tribunal were provided with all the relevant documentations prior to the hearing of the application. Both parties accepted that major works were necessary but disagreed on the nature and the extent of those works. The insurance excess and the charges in relation to the report of the surveyor were also in dispute. The insurance premium was not in issue.
6. Mr Green directed the tribunal to clauses 1(5) and 2(5) of the lease. The former permits the Applicants to enter parts of the building to carry out works. Clause 2(5) forms the basis of the claims of the Applicants as it imposes a continuing obligation on the Respondent to contribute to service charges. Therefore he stated that the amounts being claimed should be allowed. He added further that the total amount of the cost of the major works is £16,400 and the Respondents share is £8,220.
7. The Applicants and the Respondent both summarised their cases and referred us to the relevant parts of the hearing bundle. At the hearing both parties were provided with the opportunity to elaborate on the contents of the Scott Schedule, outline of the major works and to bring to the attention of the tribunal areas where they had reached a consensus.
8. The Applicants rely on the terms of the lease and the clauses cited above whilst the Respondent claimed that the Applicants were not entitled to the insurance excess and that the report provided by Mr Flowers was not genuine and he was not in any event informed prior to the report being made the nature and extent of it.
9. As regards the major works he maintains that the consultation process under Section 20 has not been complied with and the scope of the works are also questionable.
10. The tribunal has also taken into the consideration oral evidence provided by the Mrs Sawyer in support of her case and Mrs Holmshaw and Mr Borros in support of the Respondent's case all of which have been taken into consideration by tribunal in making its decision.

### **The background**

11. The property which is the subject of this application is a two storey detached property situated on the junction of Harrington Road and Lonsdale Road. The property was originally a shop on the ground floor with accommodation over but has since been converted to provide two

self contained flats one on the ground floor and one on the first floor, both with separate access doors on Lonsdale Road. There are no internal communal parts.

12. The property is of traditional construction with solid brick walls under a pitched timber roof covered with clay tiles. There is a small enclosed yard to the rear of the property with double gates providing vehicular access onto Lonsdale Road. There is access from the ground floor flat directly into this yard. This yard is hard paved.
13. The tribunal inspected the property before the hearing in the presence of applicants, respondent and the applicant's representative.
14. 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 will be referred to below, where appropriate.

### **The issues**

15. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The payability and/or reasonableness of service charges for years 24 June 2015 to 23 June 2016 and 24 June 2016 to 23 June 2017.
  - (ii) The applicant seeks a determination as to whether the sum of £682.30 demanded on 1 August 2016 (actual charge) and whether the sum of £8,220 is payable for the service charge year ending 23 June 2017, following the service of an estimated service charge demand dated 22 June 2016 concerning the cost of anticipated major works to the Building.
  - (iii) The cost included in the demand dated 1 August 2016 consist of surveyors fees of £900 ; an insurance claim excess of £100 and building insurance amounting to the sum of £364.61. **The Tribunal noted that the Respondent accepted that the sum of £364.61(Respondents portion (£182.30) is payable on his part towards the cost of the building.** The Respondent maintains that despite asking for a breakdown of the surveyors cost none had been provided; a cheque of £250 which had been sent to the Applicants had been returned. He disputes that these costs have been reasonably incurred. The Respondent also disputes that he is liable for the payment of the insurance excess as he had offered to make good any damage caused by the leak and therefore no insurance claim was

necessary. As a builder he was well placed to undertake to carry out the works.

- (iv) Whether the cost demanded for the service charges for the year ending 23 June 2016 falls within the terms of the lease by way of service charges or as administration charges including whether they have been reasonably incurred.
  - (v) Whether the Applicants have complied with the consultation requirements Under Section 20 of the Landlord and Tenant Act 1985 in respect of the major works
  - (vi) Whether the major works are within the Applicant's obligations under the lease and whether the cost of the major works are payable by the Respondent under his lease. Whether the major works are reasonable, in particular in relation to the nature and extent of the proposed works and the contract price.
  - (vii) Whether an order under Section 20c should be made.
16. 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.
17. **The Lease :** The tribunal finds that the Applicants are in accordance with Clauses 1(5) of the lease which entitles the Applicant at reasonable times to enter other parts of the building for the purposes of executing repairs and alterations to the demised premises. Furthermore we also find that Clause 2 (5) is explicit in that the Respondent is under an obligation to make a contribution by way of service charges. We noted that a fixed sum of £25 is stated initially but the same clause provides that the sum may be that which is determined by the Applicant's surveyor and : "whose decision shall be final and binding on account of the costs, expenses and the outgoings".
18. The tribunal therefore on the basis of the wording and reasonable interpretation of the lease accept the claim of the Applicants regarding their right to rely on the abovementioned provisions of the lease. The amounts being claimed are therefore payable and are reasonable except for those instances highlighted below where the parties have agreed and the item is not being contested.

**Service charge demand ending 23 June 2016 sum of £682.30 is payable**

19. The cost included in this claim consisted of Surveyors fees of £900; an insurance claim excess of £100 and building insurance claim of £364(Respondents share £182.30)

### **The tribunal's decision**

20. The tribunal determines that the amount payable in respect of service charge items is £1,000 and that the Respondents share is £500. The building insurance was not in dispute at the hearing and has been accepted by the Respondent.

### **Reasons for the tribunal's decision**

21. The tribunal concluded that that on the basis of the wording of the Clause 2(5) of the lease, evidence and submissions of both parties that the sum is claimable for the following reasons. The provisions of the lease states that Applicant is under an obligation to make contributions towards reports of surveyor instructed by the Applicants and we did not hear any arguments from the Respondent during the course of the hearing to persuade us to deviate from the express terms of the lease.
22. The tribunal also finds that the report of Mr Flowers was required and necessary to ascertain the internal and external condition of the property. The cost of the report is also in the circumstances reasonable. We did not accept the arguments of the Respondent that Mr Flowers was instructed on a long term basis and that the facts suggested that he is instructed by the Applicants as and when he was required.
23. The excess claim of £100, the Respondents share of £50 is reasonable because it is not disputed that there was a leak on the premises and there is no obligation on the part of the Applicants to permit the Respondent to take steps to remedy the leak as this is the purpose for which the Applicants took out the insurance.

### **Service charge claim for major works for the year June 2016 to 23 June 2017**

24. The outline schedule of the works were prepared by the Surveyor John Flowers and are included in his report dated 7 April 2016. The tribunal accepts the submissions made by the Applicants that the items of the report that were not initially included by Mr Flowers have subsequently been included after consultation with the Respondent.
25. The tribunal noted the wording of Section 19(2) of the Landlord and Tenant Act 1985 which states that where the service charge being claimed is based on costs which are to be incurred the amount payable is that which is reasonable. Furthermore that at the relevant time there may be adjustments made to the amount that has already been paid by the tenant.

### The tribunal's decision

26. The tribunal determines that the amount payable in respect of the major works are in accordance with terms of the lease and are reasonable in the circumstances.

### Reasons for the tribunal's decision

27. The tribunal find that the Applicants have acted in accordance with the provisions of the lease and that the report and the cost of the works is allowable except for two items which are to be removed; these being cost in respect of the satellite dishes and front paved area of the building which is demised to the ground floor flat. Apart from these two items **all of the cost in respect of the works contained in the schedule provided by Mr Flowers is claimable by the Applicants.** The Applicants acted reasonably by providing estimates and choosing the most reasonable estimate.
28. The tribunal also finds that the Applicants complied with the consultation process under Section 20 in respect of the works. We find that the appointment of Mr Flowers was on an ad hoc basis and on the facts not indicative of a long term agreement as suggested by the Respondent.

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### Application under s.20C and refund of fees

29. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application<sup>1</sup>. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
30. Although the Applicants indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.
31. The Applicants made an application for cost under Rule 13 on the basis that the conduct of the Respondent in defending the application is

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

unreasonable. The Applicants have succeeded in respect of their claim but the Respondent did not act unreasonably in defending the application because he put forward an arguable case in respect of some aspects of the service charges and he also made concessions and at least two items on the schedule were struck out. The Applicants application is dismissed.

**Name:**  
**Judge**  
**Abebrese**

**Date: 10**  
**August**  
**2017.**



## **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).

Orders for costs, reimbursement of fees and interest on costs 13.—(1) The Tribunal may make an order in respect of costs only— (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs; (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in— (i) an agricultural land and drainage case, (ii) a residential property case, or (iii) a leasehold case; or (c) in a land registration case. (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor. (3) The Tribunal may make an order under this rule on an application or on its own initiative. (4) A person making an application for an order for costs— (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made.