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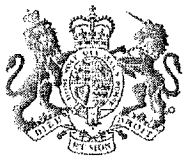

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AP/LSC/2017/0018**
Property	:	**63 Whitehall Street London N17 8BP**
Applicant	:	**Mary Powell**
Representative	:	**N/A**
Respondent	:	**London Borough of Haringey**
Representative	:	**Michael Bester Leasehold Services Manager with the Respondent**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Carr**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**22nd June 2017**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sums demanded in respect of internal cleaning and maintenance of the door entry system is payable by the Applicant in respect of the service charges for the years 2010 – 11 – 2015 – 16 inclusive.

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

The application

1. The Applicant seeks 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 Applicant in respect of the service charge years 2010 – 2011 – 2015 – 2016 inclusive.

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

The determination

3. At the Case Management Conference on 7th March 2017, the Tribunal determined that the application be determined without a hearing unless either party made a written request to be heard. No such request having been made the determination is made on the basis of the documents provided to it.

The background

4. The property which is the subject of this application is a three bedroom maisonette on the ground and first floor in a purpose built block of flats. The property has the benefit of direct entrance from the street. The Block within which the property is situated has four storeys, including the ground floor and comprises two layers of two-storey maisonettes.

5. 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 Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. At the CMC the Tribunal identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for the door entry system and internal cleaning when the tenant does not have a door fob for the entry system and has no access to the lobby area.

   (ii) Whether an order under section 20C of the Landlord and Tenant Act 1985 should be made.

8. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The argument of the Applicant

9. The claim concerns the charges for internal cleaning of stairwells and upper level walkways and the maintenance of the door entry system which controls access to the stairwells and upper level walkway of the Building.

10. The Applicant's argument in summary is that it is unreasonable to charge her for these matters when she has no access to the areas for which she is being charged cleaning charges, and she is being charged for the maintenance of the door entry system when she is not permitted to use it, and has not been provided with a door fob, and which prevents her accessing the aras subject to internal cleaning.

11. The Applicant raises issues with the demarcation of the Building in the plan appended to the lease. She points out that the bold line marks do not include the detached stairwells, or the raised walkways as part of the Building.

12. She also argues that it is unclear how the 'building' charges can reasonably be apportioned given the open plan nature of the stairwell and walkway access for residents of the upper level properties and their inaccessibility to the residents of the lower level properties.

13. The Applicant refers the Tribunal to particular clauses of the lease.

14. The First Schedule of the lease paragraph 1 states as follows: "Full right and liberty for the Tenant and all persons authorised by him (in common with all other persons entitled to the like right) at all times by day or by night to go pass and repass over and along the main entrance of the building and the common passages landings and staircases therof

and to use the passenger lift(if any) therein and the dustbin enclosures gardens forecourts roadways pathways (if any) on the Estate provided nevertheless that the Tenant shall not cause or permit the obstruction of any common parts of the building by furniture or otherwise" .

15. The Applicant argues that the clause does not set out that any restriction should apply to residents from the lower level properties accessing the upper level walkways or the detached stairwell.

16. Paragraph 9 of part 1 of the Third Schedule enables the Corporation to charge for the cost of installing a door entry system in the future which is 'capable of being used by the Tenant in common as aforesaid'. The Applicant reiterates that she cannot use the system and that despite requests for a fob this has not been issued.

The Respondent's argument

17. The Respondent refers to Clause 4(2) of the Lease by which the Applicant covenanted to pay "without any deduction by way of further or additional rent a proportionate part of the reasonable expenses and outgoings incurred by the Respondent in improvement repair maintenance renewal and insurance of the Building and the Estate and the provision of services therein and the other heads of expenditure as the same are set out in the Third Schedule hereto such further and additional rent (hereinafter called the 'Service Charge' being subject to the terms and provisions of the Fourth Schedule hereto".

18. The Building is described in the Particulars on page 1 of the Lease as '63 – 89 odd Whitehall Street'.

19. The Third Schedule to the Lease sets out those of the Respondent's expenses and outgoings which may be recovered by wy of service charge. This includes all costs incurred in the provision of services or carrying out of any 'improvement maintenance repairs renewals reinstatements rebuilding cleansing and decoration to or in relation to the Building and in particular but witout prejudice to the gernality of the foregoing all such costs charges and expenses in respect of the following:- The expenses of improving maintaining repairing redecoration and renewing amending cleaning re-pointing painting graining varnishing whitening or colouring the Building and all parts thereof and all appurtenances apparatus and other things thereto'.

20. The Respondent's case is that it is fully entitled to charge for the cost of the door entry system and the internal cleaning of the building as the flat is situated in the Building and the service charge provision entitles the Respondent to charge for the disputed items as part of the service charges.

21. The Respondent further argues that there is no 'means of benefit' test within the lease and that no degree of benefit can be imported into the lease to alter the apportionment provisions in the Fourth Schedule.

22. The Respondent argues that whilst this may initially appear unfair, the only alternative would be vastly more complex forms of lease and higher administrative costs.

23. The Respondent refers to a Court of Appeal case Billson v Tristen (CCRTE 1999/0851/82 which decided that although a leaseholder may not directly benefit from the service provided to their block they are sill required to pay their share of the costs as outline by the terms of the lease.

The tribunal's decision

24. The Tribunal determines that the amount payable in respect of maintenance of the door entry system and the internal cleaning are payable by the Applicant.

Reasons for the tribunal's decision

25. Whilst the Tribunal has sympathy for the position in which the Applicant finds herself, it accepts the argument of the Respondent that the lease entitles it to charge for the internal communal cleaning and the maintenance of the door entry system and that there is no requirement for the lessee to benefit from the services provided.

26. The definition of the Building is determined by the particulars in the Lease and not by the plan.

27. The Tribunal notes however that there may have been a breach of the terms of the lease in failing to allow the Applicant access to the common areas. The Tribunal is not the correct forum for a determination on the breach of a lease or the appropriate damages for any such breach. The correct forum would be the County Court. In these particular circumstances it may be that the parties wish to consider mediation in respect of any such claim.

Application under s.20C and refund of fees

28. In the statement of case, the Applicant made an application for a refund of the fees that she had paid in respect of the application.[1]Taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicant. The Applicant also refers to incidental expenses. The normal situation is that parties bear their own expenses and the Tribunal sees no reason to make an exception in the Applicant's case.

29. In the application form the Applicant applied for an order under section 20C of the 1985 Act. No submissions were received in connection with this. If the Respondent seeks to recover its costs via the Service Charge it is asked to make representations referring to relevant clauses of the lease within 21 days of the date of this decision.

Name: Judge Carr **Date:** 22nd June 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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).