

12578



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

**Case Reference** : LON/00AT/LSC/2017/0325

**Property** : Camellia House, Tilley Road,  
Feltham, Middlesex, TW13 4GJ

**Applicant** : Miss Amandip Kaur (Flat 55)  
Mr François Barbier (Flat 66)

**Representative** : -

**Respondent** : A2 Dominion Group

**Representative** : Ms A Matraxia - Solicitor

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

**Tribunal Members** : P M J Casey MRICS  
M Mathews FRICS

**Date and venue of  
Hearing** : 21 November 2017  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 1 December 2017

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that none of the sum of £12,534.59 is payable by the Applicants in respect of the service charges for the year 1<sup>st</sup> April 2015 to 31 March 2016.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal makes 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 lessees through any service charge.
- (4) The tribunal determines that the Respondent shall pay the Applicants £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

### **The application**

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") payable by the Applicants in respect of the service charge years 2015/16.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicants appeared in person at the hearing and the Respondent was represented by Ms A Matraxia, a solicitor employed by them.

### **The background**

4. The properties which are the subject of this application are purpose built flats in a block of 30, one and two bedroomed flats.
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 Applicants hold a long leases of the properties which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

## **The issues**

7. On the application form the Applicants identified the relevant issues for determination as follows:

The payability and/or reasonableness of service charges for 2015/16 relating to communal repairs being £8,997.84 for roof tiling, £3,500.22 for roof guttering and £36.50 for a replacement metal strip in a lift.

8. Prior to the hearing the Respondent had conceded in a letter to the Applicants that it would no longer seek to recover through the service charge the cost of the roof tiling repairs and at the start of the hearing Ms Matraxia advised the tribunal that A2 Dominion would not now seek to recover any of the disputed sums from the Applicants through the service charge provisions of the leases. The decision not to do so was taken on commercial grounds and did not amount to agreement with the Applicants contention that the repairs to tiling and guttering were required as a consequence of storm damage and that the cost should have been met by a claim on the insurance policy.
9. The result of this concession is that none of the items challenged by the Applicants are disputed by the Respondent and the tribunal accordingly determines that none of the sums involved are payable as part of any service charge.

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

10. In the application form, the Applicants made an application for a refund of the fees that they had paid in respect of the application/hearing<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 Applicants within 28 days of the date of this decision.
11. Also in the application form the Applicants applied for an order under section 20C of the 1985 Act. Although the landlord 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 Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** P M J Casey

**Date:** 1 December 2017

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

## **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

- (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).