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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference		**LON/00AU/LSC/2017/0319**
Property		**25 Cowper Street, London EC2A 4AP**
Applicants	:	**Anthony James** **Haideh Oliver** **Kalin Trifomov**
Representative	:	**In Person**
Also in attendance	:	
Respondents	:	**The Trustees of Pinole Limited Remuneration Trust.**
Representative		**Mr Paul Cleaver, Urang Property Management**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge Daley** **Ms M Krisko FRICS**
Date and venue of Hearing	:	**29 November 2017 at 10 am 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**19 January 2018**

DECISION

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Decisions of the tribunal

The tribunal makes the determinations as set out under paragraphs 29 onward in this decision.

The application

1. The Applicants sought a determination under s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable.

2. Directions were given on 19 September 2017, at the case management conference Paragraph 4-8 of the Directions stated.-: "*...The issue raised by this application is the method whereby the service charges are apportioned between the lessees. The Applicant occupy their flat, pursuant to a lease dated 9 November 2007. This requires the tenant to pay to the landlord "by way of service charge a fair contribution (in the sole discretion of the landlord acting reasonably (Paragraph 1, Part 1 of the Fifth Schedule). The parties are agreed that not all service charges should be apportioned between the four flats as the flat is self-contained, whereas the three upper flats share a common entrance door, hallway and staircase. The landlord has agreed that the Applicants should not contribute to the cost of cleaning the common parts. The application raises two issues relating to the common parts, namely (i) 2012: a charge of £2001.60 in respect of redecoration of the common parts ;(ii) 2014: a charge of £694.96 for the repairs to the entry phone system.*

3. *The parties are agreed that the Applicants should not contribute to these costs. The respondent contends that they have not been charged...This is a matter of checking the records... The second issue relates to how the management charges have been apportioned for the years 2010 to 2016...The Respondent has... apportioned 40% of this to the demised flat at 20% to each of the upper flats... The Applicants contend that this is unreasonable. The cost of managing their flat is no more (and probably somewhat less given the absence of common parts) than that of other flats. The parties agree that on the basis of floor area, the demised flat should bear a 40% share...*"

4. The premises (25 Cowper Street) is a conversion of a Victorian building which comprises a two bedroom unit in the ground and lower ground floors with its own separate access and three one bedroom flats on the first, second and third floors, which share their own entrance door at street level and internal common parts which provide access to the flats.

5. The premises are subject to a lease dated 7 May 2007, which requires the Respondent to perform various obligations, and the Applicants to pay service charges. Details of the various covenants which are relevant to this matter are referred to below.

The Hearing

6. At the hearing the Applicants were represented by Mr James, also present was Mr Trifomov who asked to be joined to the application. The Respondents was represented by Mr Cleaver of Urang Managing agents

7. Mr James informed the Tribunal that they (Mr James and Ms Oliver) held the lease of a flat which occupied the ground and lower floor of the building and that he had occupied the premises since 2009. He stated that when they first moved into the premises they had not paid any management charges for the first two years as no charge had been demanded by the landlord. When charges were levied he stated that the charge had included sums for cleaning, and the electricity for the common parts, and that eventually the managing agents had agreed to refund this.

8. In his Statement of Case at paragraph 6 & 7 he stated-: *"...Our property is self-contained with its own access direct from the street. We have No " common parts" and have absolutely no access to the "common" parts...We checked the wording of our lease and found that we were not being charged a " fair and reasonable" contribution in that we were being charged 40% of the costs of cleaning , electrics, redecoration, general repairs etc. to an area to which we have no access and no use or benefit...We took this up with Urang and they consistently told us that the lease was being correctly administered, or more particularly we were simply ignored..."*

9. Mr Cleaver informed the Tribunal that his colleague had sat down with the Applicants in 2012 and that they had agreed the adjustments which should be made to the account and that accordingly the first issue concerning the payment for work to the common parts had been resolved in relation to redecorating of the common parts and the entry phone system.

10. Paragraphs 5 and 6 of the Respondent's Statement of Case, stated as follows-: *"... The adjustments for the costs relating to the internal common parts were credited to the Applicant in 2012 for the period 2008 to 2011. The total credit was £1,013.60. Service charges for 2012*

were apportioned in 2 Schedules: Schedule 1(whole property) as per the above percentages and Schedule 2 (Flats 1, 2 and 3) contributing equal % for the costs relating to the internal common parts." Accounts were produced for 2016 which were set out on that basis.

11. However Mr Jones did not confirm this. It was however agreed that the managing charges were still in issue.

12. Mr Cleaver stated that he could not make any adjustment to the management charges without it affecting the sums payable by the other leaseholders as a reduction in the percentage share for the applicant would necessitate and increase in the contribution payable by the other leaseholders.

13. The Applicant stated that originally the management fees had been fairly modest, and on his assessment the management charges should have been 25 % of the total sum and should have been as follows-:

- 2010- £183.30
- 2011-£187.20
- 2013-£187.20
- 2015-£302.40

14. Mr James stated that the current management fee was £488.10 this was 40% of the management fee, in his submission the charge for management should be no more than 25% which would be £305.50.

15. The Tribunal asked for details of the provisions in the lease which provided for the charge. Mr James clause 6.24 which stated as follows-: *"The tenant shall pay to the landlord by way of service charge a fair contribution (in the sole discretion of the landlord acting reasonably..."* Mr James stated that he had looked at the managing agent's website, and that the website stated that they made a charge per unit for their services.

16. In paragraph 11 of his Statement of Case he stated-: *"Urang have been apportioning fees, charges and all service costs on a proportional basis based on the owners floor area, we have no problem with this method of computation in terms of general costs for insurance, accountancy and items of service charge that affect the building as a whole... however it appears that although we require less management than the rest of the building (being self- contained) we*

are being asked to contribute 40% towards an management fee that is computed on a per flat basis...instead of 25% and thereby we are contributing to each of the 3 other flats cost of their management fee where they are paying 20% instead of an equal amount of 25%."

17. In reply Mr Cleaver stated that the total figure for management was £1222.00 for management fees for 2016. Mr Cleaver noted, that the reasonableness of the fee was not disputed by the Applicants. Mr Cleaver stated that although it was an industry standard to quote per unit in this case the total figure was split on the percentages that each person paid as provided for by the lease, which was *"a fair contribution".* In determining the share and what was fair and reasonable the floor area was used, the Applicant's property was over 2 floors, as a result, his share of the applicable expenses for his premises was 40%.

18. The Tribunal was informed that the provision in the lease which dealt with management fees was found at clause 11 which stated-: *"A reasonable management fee for the management and supervision of the building generally and the carrying out of the matters referred to in this Schedule and the ascertainment of the amount of cost of services and the apportionment of the purpose of calculating the Service Charge payable by the Tenant and the other tenants in the Building."*

19. Mr Cleaver stated that in relation to his understanding of the lease terms although the wording used was a "reasonable sum"; the reasonableness of that sum fell to be determined in relation to the overall sum, rather than an assessment of whether the sum charged to an individual unit was reasonable.

20. Mr Cleaver set out the total sums charged for the management of the premises since 2011 and how that sum was shared between the leaseholders.

Years	**Service Charges**	**Applicant**	**Other leaseholder**
2011	£1248.00	£499.20	£249.60
2012/13	£780.00	£312.00	£245.00
2014	1344.00	£537.00	£336.00
2015	£1440.00	£576.00	£360.00

2016	£1488.00	£595.20	£372.00

21. The Tribunal asked why the sums had increased from 2014 onwards. Mr Cleaver stated that the increase was due to the increase in the costs for items such as: staffing, health and safety, which were essential for the professional management of the property.

22. The Tribunal asked for further information on why the overall service charges for 2015 had increased. Mr Cleaver stated that in 2015 the common parts were redecorated and this costs £4404.00, there were also the costs of repairs and maintenance and insurance and management.

23. The Tribunal noted that the Respondent was in agreement that the charges for the common parts should not have been included in the applicant's share of the service charges. However the Respondent's representative stated that they had not charged the Applicant for this. The applicant did not accept that they had been refunded for any charge which had been accidentally levied. The Tribunal decided that it was appropriate for a brief adjournment for the parties to agree what the figures in issue should be for each of the years in question.

24. After the brief adjournment, when the parties returned the remaining issues identified were the 2012 service charges relation to major works and the costs relating to the entry phone. There was also a dispute concerning the Applicants' share for the major works in 2016.

25. Mr Cleaver stated that the internal works for 2012 was £5004.00. The Applicant stated that they had been charged 40% which had been levied in a half yearly service charge and then a balancing charge.

26. Mr Cleaver stated that the costs of the work were as follows £4404.00 for redecoration of the common parts, £600.00 for the management fee for the major works. These works had come about because of severe water leaking into the common parts. As a result the management company had made a claim against the insurance company and had received £1700.00. Accordingly the total costs to the leaseholders had been £3304.00. The upstairs flat had contributed £2700.00. The Applicant's share had been £1870.52. This charge had been made as works had been carried out which had also benefitted the Applicant's premises, in respect of the management of this work the management fee had been £600.00 and the Applicants had been charged their percentage share which was 40%, Mr Cleaver stated in his written response that in part this related to the extra work undertaken in administering the insurance pay out and arranging the work and that the Applicant had benefited from this work.

27. Mr James stated that the issue in relation to the costs of the entry phone and the repairs and maintenance of it. This had been charged at 40% of the total costs. The Applicants were not connected to the entry phone. Accordingly Mr James submitted that costs of this should not be paid by reference to his premises. This was accepted by Mr Cleaver who stated that these sums had been re-credited the Applicants.

28. In respect of the major works for 2016, Mr Cleaver stated that the Respondent accepted that £2,188.80 had been allocated to the wrong schedule that is, the Applicants' Schedule of Costs rather than the schedule relating to the flats which shared common part. Mr Cleaver stated that as the sums had come from the reserve account, the landlord had reimbursed this sum by re-crediting the reserve account

29. In relation to the overall reasonableness of the service charges, Mr Trifomov wanted to raise his concern that they were too high overall. However this issue was not before the Tribunal and accordingly the Tribunal noted that it was open to Mr Trifomov to raise this as an issue in separate proceedings should he chose.

The tribunal's decision

30. The tribunal having carefully considered the submissions of both parties and the documentary evidence.

31. The Tribunal noted that notwithstanding the Applicants challenge to the service charges the main if not only issue of contention was the apportionment of the management fee. In relation to the other matters, it appeared to the Tribunal that the Applicants wished to satisfy themselves that sums wrongly attributed to their service charge account had been re-credited. The Respondent shall within 28 days make arrangements to provide, or provide the means of inspecting accounts in relation to the reserve funds which show that the sum has been credited. In relation to the entry-phone, the Respondent shall also provide (unless it has already been done) a statement showing the adjustment to their service charges in respect of the entry phone system.

32. In relation to the apportionment of the management charges the Tribunal finds that the lease provides the landlord with absolute discretion subject only to the proviso that in respect of the service charges the sum should be "fair" and the landlord should act "reasonably". The Tribunal consider that as the charges are currently apportioned there does appear to the Tribunal to be an element of subsidising the other leaseholders. This issue however for the Tribunal is whether the charge is reasonable and payable under section 27A, and the starting point as such should always be whether the charge is permissible under the terms of the lease.

33. The lease states-: -: *"A reasonable management fee for the management and supervision of the building generally and the carrying out of the matters referred to in this Schedule and the ascertainment of the amount of cost of services and the apportionment of the purpose of calculating the Service Charge payable by the Tenant and the other tenants in the Building."*

34. The Tribunal finds that the landlord has not erred in the apportionment or acted unreasonably as the lease provides in paragraph 1 of part I of the fifth schedule that " The Tenant shall pay to the Landlord by way of service charge a fair contribution (in the sole discretion of the Landlord acting reasonably)..."in his assessment of what is reasonable, the landlord may adopt a number of different methods of calculation, one method which is commonly used is by calculating the floor space and dividing the charges in that way. As such the Tribunal finds that the method of apportionment by floor space is not unreasonable as a starting point for the apportionment of the service charges.

35. As the Tribunal finds that the landlord has complied with the lease in the method applied. The issue is the extent to which the charge is reasonable. The Tribunal noted that other than as mentioned by Mr Trifomov, The Applicants did not appear to take issue with the sums charged. Accordingly the Tribunal finds that the management fee is reasonable and payable.

36. The Tribunal has somewhat reluctantly reached this decision as the Tribunal has found that the landlord has other methods available to him on the wording of the lease. And as such notwithstanding the Tribunal's findings could apportion the management charges on each leaseholders overall share of the service charges or on the basis of 25% of the total management charge. This is something which the respondent may wish to consider going forward as it appears to the Tribunal that the conduct of the respondent and applicants throughout has been one of wishing to find a fair solution.

Application under s.20C and refund of fees

37. At the hearing, the respondent opposed an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that in all the circumstances, it is just and equitable for an order to be made under section 20C of the 1985 Act. At the date when the Application was made the Applicants had not been credited with the excess service charge contribution. There were a number of issues which needed to be determined in this matter and the Tribunal are satisfied that it was reasonable for these proceedings to be brought.

38. The Tribunal also considers that this application was in the interest of both parties and accordingly determines that the respondent should refund half the fees incurred in relation to the application and hearing fee.

Name: Judge Daley

Date: 19 January 2018

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.

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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 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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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.

<u>Schedule 11, paragraph 2</u>

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

<u>Schedule 11, paragraph 5</u>

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
   (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
   (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
   (a) £500, or
   (b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.