



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

Case reference : **LON/00AW/LSC/2017/0451**

Property : **47 Cathcart Road, London SW10
9JE**

Applicant : **47 Cathcart Road (No 2) RTM
Company Ltd**

Representative : **Mr R Fry and Ms L Swycher of Fry
& Co , managing agent for the
Applicant**

Respondent : **The leaseholders of the Property
being Mr G & Mrs I Crisci, Olecrose
Ltd, Ms A & Mr J Durack, Dr A
Froushan and Mr E Bartlett**

Representative : **Not present or represented**

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

Tribunal members : **Mr A Harris LLM FRICS FCI Arb
Ms S Coughlin MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **3 May 2018**

Date of decision : **18 May 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £27,762.17 inclusive of VAT is payable by the Respondents for major works in the service charge year to September.
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge

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 Respondent in respect of major works to be included in the accounts for the service charge year ending September 2018.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. A hearing was held on 3 May 2018 at 10 Alfred Place London. The Applicant was represented by Mr Fry and Ms Swycher at the hearing and the Respondents did not appear and were not represented.
4. As none of the respondents appeared and none were represented, before commencing the hearing the tribunal checked the administrative file to confirm that directions had been sent to all parties. In response to a question from the tribunal the Applicants Representative confirmed that copies of the hearing bundle had been supplied to all the respondents. The tribunal therefore considered it appropriate to continue with the hearing.

The background

5. The property which is the subject of this application is a five-storey property converted to five flats over basement and ground to third floors.
6. 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.

7. The Respondents each hold a long lease of a flat in 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

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and reasonableness of service charges for the year ending in September 2018 relating to external works carried out following a consultation process.
 - (ii) What proportion, if any, of the cost of scaffolding should be charged to the leaseholders of flats 1, 2, and 4.
9. Having heard evidence and submissions from the parties and considered all the documents provided, the tribunal has made determinations on the various issues as follows.

External works costing £24,578.40 including VAT less recovery of a proportion of scaffolding cost of £419.86

The tribunal's decision

10. The tribunal determines that the amount payable in respect of external works is £24,158.54 including VAT after deduction of scaffolding costs of £419.86.

Reasons for the tribunal's decision

11. The five leases in the block are in similar form and provide that the landlord is responsible for external repairs and decoration except for the doors, door frames, windows and window frames which are the responsibility of the individual leaseholders.
12. The applicant Right To Manage Company proposed carrying out external works of repair and decoration and carried out a consultation exercise under section 20 of the Landlord and Tenant Act 1985. Further works were then identified at roof level and by a decision dated 8 January 2018 under case reference LON/00AW/LDC/2017/0132a differently constituted tribunal granted dispensation from the consultation requirements for additional works totalling £4,189 plus VAT.

13. The bundle before the tribunal has been prepared by the applicants and includes some email correspondence relating to the works from the leaseholder of flat five. The correspondence appears to contain objections to the cost of the works and to the fact that some leaseholders, who may be directors of the RTM company, will gain a private benefit from using the scaffolding to carry out external decorations of their windows. None of these objections are made in the form of a witness statement or statement of case and are not argued before the tribunal.
14. The tribunal places no weight on these arguments but nevertheless required the applicant to justify the claim.
15. Having looked at the papers and questioned the applicant's representatives the tribunal is satisfied that the section 20 consultation process was carried out correctly and that dispensation has been given from the consultation requirements by the tribunal in respect of part of the works.
16. The tribunal has looked at the invoices for the works and is satisfied that the leaseholders of flats 1, 2 and 4 and for have been separately charged for the cost of decorating their windows and that the cost of this work is not included in the external works charge which is the subject of this application. Copies of the supervising surveyor's payment certificate and the invoices for this work are included in the bundle.
17. The tribunal also questioned the applicant's representatives over the method of apportionment of the cost of the scaffolding. This has been calculated by assessing the proportion of the total contract cost net of VAT which is accounted for by the scaffolding total which comes to 15.87% ($\text{£}3250/\text{£}20482 \times 100 = 15.87\%$). The applicant then applies 15.87% to the cost of the external decorating works totalling £2,205 which gives a total for scaffolding of £349.88 plus VAT. This figure is then deducted from the contract sum to give a total amount chargeable to the service charge of £20,132.12 plus VAT. The calculation is set below.

item		SC net cost	vat	gross cost		lessee
cost of work excl scaffold		£17,232.00	£3,446.40	£20,678.40		
scaffold		£ 3,250.00	£ 650.00	£ 3,900.00		
contract sum		£20,482.00		£24,578.40		
scaffold proportion	15.87%					
window painting per flat						
easing						£ 216.00
dryflex						£ 283.00
painting						£ 236.00
total per flat						£ 735.00
3 flats						3.00
						£2,205.00
						15.87%
Apportioned cost of scaffold						£ 349.88
scaffold						
less lessee proportion		£ 349.88	£ 69.98	£ 419.86		£ 139.95 per flat
chargeable to service charge		£20,132.12	£4,026.42	£24,158.54		

18. No alternative method of calculation is before the tribunal and having considered the matter the tribunal is satisfied that this is a reasonable approach.
19. The tribunal is satisfied it is a reasonable position for the RTM company to allow individual leaseholders to make use of scaffolding already erected at the property as having the windows in question redecorated improves the general appearance of the block and avoids the need for scaffolding to be taken down and then re-erected to allow for external decoration to take place.
20. There is no evidence before the tribunal challenging the quality of work carried out.
21. The tribunal is satisfied that the sum of £24,158.54 including VAT is properly chargeable to the service charge for the external works.

Building surveyors and Managing agent's fees totalling £3002.02 plus VAT

22. In addition to the contractor's costs, contract supervision fees of 11% of the contract value before the scaffold re-charge (£20482.00) are claimed totalling £2253.02 plus VAT. No challenge is made to this amount and the tribunal is satisfied this is an appropriate level.
23. Finally managing agent's fees for administering the works in a total sum of £750 plus VAT are claimed. This figure is also not challenged,

and the tribunal is satisfied this is appropriate. The calculation is set below

chargeable to service charge		£20,132.12
Cost of works before scaffold recharge	£ 20,482.00	
Supervision fees	11%	
		£ 2,253.02
Agents fees		£ 750.00
		£23,135.14
VAT		£ 4,627.03
		£23,135.14

Application under s.20C and refund of fees

24. No application has been made for an order under section 20 C of the 1985 Act.

Name: Mr A Harris LLM FRICS FCI Arb
Valuer Chair

Date: 18 May
2018

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.

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).