1 12964

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BA/LSC/2018/0196**
Property	:	**5 The Keir, Westside Common, London SW19 4UQ**
Applicant	:	**Miss Vivien Reuter**
Representative	:	**In person**
Respondent	:	**Keir Properties Limited**
Representative	:	**Non attendance**
Type of Application	:	**Application for determination pursuant to section 27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr S F Mason BSc FRICS FCIArb** **Mrs J Dalal**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 3rd September 2018**
Date of Decision	:	**20th September 2018**

DECISION

DECISION

1. **The Tribunal makes the determinations in respect of the various matters as set out below.**
2. **The Tribunal orders the Respondents to refund to the Applicant the application and hearing fee of £300 within 28 days.**
3. **The Tribunal makes an order under section 20C considering it just and equitable to do so in the circumstances of the case as set out below.**

BACKGROUND

1. This was an application by Miss Reuter seeking a determination in respect of service charge matters arising under the terms of her lease under the provisions of s27A Landlord and Tenant Act 1985 (the Act). The hearing of the application was fixed for 3rd September 2018 when Miss Reuter attended. Nobody from the Respondent company attended. Indeed we were told that the two directors had recently resigned and were not intending to take any part in the proceedings. Prior to that resignation the company had not dealt with the directions as ordered.

2. We were provided with a substantial bundle of documents much of which was historic and not of great assistance to us.

3. Within the bundle was a Scott Schedule which Miss Reuter had prepared but to which there had been no response by the Respondents. Considering the schedule, it seemed that there were the following issues for us to determine:

   - For the year 2012/13 onwards an allegation that because Margaret Murray the lessee of Flat 3 had not been contributing towards the service charge monies for some time, that in effect Miss Reuter had been paying over and above her 19.8% liability in the lease. She calculated that in fact it was 24.7% which meant that in the year 2012/13 she had paid on her calculation £945 too much. In the year 2013/14 this rose to £981, in the following year £1,103, in the year 2015/16 £775, in the year 2016/17 £676 and finally in the year 2017/18 £909.
   - In respect of the years 2013/14 the dispute centred around an allegation that the lessees of Flat 6 had somehow connected into the communal heating system which was providing gas to run their private heating and hot water, which in effect meant that he had heating for the whole year, unlike the other residents. This allegation ran through all the years that we were required to consider until 2018/19 which we will return to in due course.
   - The next item that Miss Reuter challenged was the communal electricity alleging that the company secretary had been connecting his electric car to the communal supply but had not in her view paid an appropriate contribution in respect thereof.
   - In the year 2017/18 she challenged the costs of £4,992 in respect of parapet wall repair for which no section 20 consultation had taken place.
   - Also in that year she disputed the cost of treatment of Japanese knotweed which appeared to consist of regular dowsing with Roundup by one of the

directors. It was the cost of this Roundup estimated at £99 that she sought to recover.

- Finally in the year 2018/19 a claim is made in respect of potential costs for the replacement of the communal boiler system. This work has not yet taken place nor does it seem any section 20 consultation has occurred.

4. We considered the documents in the bundle insofar as they were relevant to the matter before us. There were historic papers relating to previous appointments of managers which had proved to be unsuccessful as well as somewhat vitriolic correspondence.

5. It would seem that Miss Murray, who is apparently legally qualified had in the past sought to appoint managers through the Tribunal but these had not proved successful. It seems that as the management company, which is run by the owners, in particular two directors, was not following the provisions of the Act either in respect of demands for service charges or in respect of consultation under section 20. Miss Murray had taken the view that these failings should not require her to make service charge contributions. Our colleagues in previous decisions had commented on this and it is unclear whether she has now made some contributions towards gas, electricity and insurance.

6. It is this "failure" by Miss Murray which has prompted Miss Reuter to bring this application.

7. The law applicable to this case is set out below.

HEARING

8. Alleged Overpayments - The first matter that we dealt with was the question of the alleged the over payment by Miss Reuter towards the service charge costs as a result of the apparent lack of contributions from Miss Murray. There is a paucity of documentary evidence in this regard. We have what purports to be accounts from the year 2006 onwards showing estimated and actual costs but there are no formal accounts and within the papers and no demands that clearly showed what had been requested of Miss Reuter. We should say at this stage that after the hearing she wrote a further letter seeking to explain the documentation but in truth it did not really provide assistance to us and in any event arrived after we had reached out decision although before these reasons were issued. We do not think it is appropriate to take this additional late submission into account.

9. Accordingly insofar as the over-charging is concerned, there is no evidence to show that Miss Reuter actually paid more than the 19.8%, which she accepts is her contribution under the terms of her lease. All we have are accounts showing the amounts which have been demanded but as a result to a large extent of the non-involvement of the Respondents, we cannot really take this any further. That is perhaps unfair on Miss Reuter but if we are going to make any awards repaying to her service charges that she has settled in the past, we need to know exactly what amounts have been demanded and to see that she has been asked to pay more than the 19.8% which her lease provides for. In the papers provided we found no service charge demands. In these circumstances we are unable to make any award to her as sought on the terms of the Scott Schedule.

10. Gas charges - The next matter that we deal with is allegation that gas has been used by the lessees of flat 6 and that this is not being charged to them. It appears that the property has the benefit of a communal system which provides hot water throughout the year and heating during certain periods. It appears that some way in the past Flat 6 has somehow been able to join into the communal system to provide a gas supply to that flat which enables them to have heating all year round. It is accepted that the owners of Flat 6 do contribute to the cost of the communal gas supply system and accordingly on that basis the only item which might be susceptible to challenge is any increased gas that may have been utilised providing for the heating of this property during the summer months. It appears that there is a check meter in place but it is not clear whether this has ever been read and if it has been what impact this has had on the contribution towards the gas costs. This was apparently installed in 2011.

11. Unfortunately we have no evidence before us to show what extra amount of gas may have been used by the owners of Flat 6. In any event, it would seem to us to be a matter between the Respondents and the owners of Flat 6 to resolve this. Accordingly it is impossible for us to make any finding as to an amount which might be repaid to her in respect of this matter.

12. Electricity - The next matter relates to the use of communal electricity, apparently by the former company secretary, to charge his car. We have seen photographs showing an electricity point that has been installed close to the front door. The person having the use of this point appears to have indicated in emails that he is making a contribution towards the electricity but there is no clear indication as to what that may be or how often that happens. It seems to us that this should not be happening and that the simple way forward would be to include some form of check meter which this supply could then be recorded and a bill rendered accordingly. However, again we have no evidence to show what the cost is relating to the charging of this vehicle and are therefore unable to provide any assistance to Miss Reuter in this regard.

13. Parapet wall repair - The next matter relates to the repair shown as a flank wall but in fact a parapet wall. The invoice from Voytex Construction Limited refers to work to the parapet wall and a total cost of £4,992 which was paid on 22nd January 2018. We are told that there was no section 20 consultation under the Act although funds from the service charge were used to pay this. There has been no application under section 20ZA of the Act seeking dispensation. In those circumstances we find that the maximum amount that Miss Reuter should be required to pay in respect of this item of work is £250. Applying her percentage to the total bill of £4,992 it would appear to indicate her liability was £988.42. After deducting the £250 contribution she would be required to make under section 20, we find that there should be a refund to Miss Reuter of £738.42 such refund to be made within 28 days. If there is any doubt about this we refer to a letter or rather email at page 266 of the bundle from Mr Brian Barkes to the residents in which he says as follows: *"Dear All I am advised that I should consult you all regarding the attached invoice and correspondence concerning repairs to the roof area.*

If anyone feels that this work should not have been instructed, please give me a ring." That in our mind is a clear indication that no consultation has taken place and accordingly Miss Reuter is entitled to raise this issue and to be recompensed.

14. Gardening - The next matter we need to consider is the question of gardening. It appears that there has been Japanese knotweed at the property for some considerable time, perhaps as long ago as 2015. Steps had been taken to remove it but unsuccessfully so far. It now appears that the directors consider that pouring Roundup on a regular basis should do the trick. It is not clear that it is successful and it would seem appropriate that proper gardening contractors are asked to return and remove the offending plant.

15. Although Miss Reuter sought to recover the cost of the Roundup she was not able to tell us what that may be nor how often it was used. The amount that she sought on the Scott Schedule was only £99 but it is not wholly clear how she had reached this figure. She did say that generally she was happy with the gardening standards and cost. In those circumstances and in the lack of evidence we are not able to make any award to her in this regard.

16. Anticipated Boiler work - The final item was the boiler repair/replacement. To date there has been no section 20 consultation nor any attempt to amend the leases to provide for the removal of this service. On the face of it, therefore, there is nothing in place to enable this matter to be pursued. We understand that reports have been obtained as to the feasibility of this project but have not been disclosed. It seems to us, therefore, that there is no basis upon which the removal of the communal system can proceed at this moment in time. Under those circumstances it does not seem there is any need for us to make any specific finding in this regard because if the matter is to progress there will need to be steps taken to both consult as well as to satisfy the lessees that this is a course of action which should be taken.

17. We are disenchanted with the lack of involvement by the Respondent company. The two directors one of whom we think was Mr Barkes have only just resigned. However, these directions were issued some time ago, as was the application, and they have taken no involvement whatsoever in the proceedings before the Tribunal. It now appears that if both directors have resigned that the company is no longer legally constituted. This could cause severe difficulties for the residents and needs to be resolved as soon as possible. We will leave it to Miss Reuter to consider what steps she may take to bring the management of this property into good order. There is no doubt that there have been problems for many years past. The first application for the appointment of a manager was dealt with in 2002 and this rumbled on into 2006 when a further appointment was made. None of these appointments appear to have resolved the difficulties and it would seem to us that this is not a block, with the present personalities involved, which is capable of being managed without the assistance of a qualified and experienced managing agent. Whether such managing agent is appointed through the Tribunal or by the lessees is a matter for them to consider but to be frank it does not seem to us that the present arrangements can continue.

18. In the light of the failings by the Respondents to engage, we order that they should refund to Miss Reuter the application and hearing fee totalling £300

within 28 days. Further it seems to us only right and proper that an order should be made under section 20C of the Act preventing the Respondents from seeking to recover any charges associated with this matter through the service charge regime. Indeed it is difficult to know what charge there could be given their total failure to engage.

Judge: Andrew Dutton

A A Dutton

Date: 20th September 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 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 to 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 (ie 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 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) a leasehold valuation 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 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.