FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LSC/2020/0062**
HMCTS code	**:**	**P: PAPERREMOTE**
Property	**:**	**Flat 6, Tedworth Square, London SW3 4DY**
Applicant	**:**	**TEDWORTH SQUARE MANAGEMENT LIMITED**
Representative	**:**	**D & G BLOCK MANAGEMENT LIMITED**
Respondent	**:**	**(1) MRS LYNNE MILLER** **(2) TEDWORTH SQUARE NORTH LIMITED**
Representative	**:**	**BRETHERTONS SOLICITORS**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**JUDGE SHAW** **MR K RIDGEWAY MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**6th January 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, given the Covid-19 pandemic. The documents referred to are in a bundle submitted to the tribunal for the purposes of the determination and the contents have been noted. The order made is described at the end of this Decision.

Introduction and Summary of Applicant's Case

1. This case involves an application by Tedworth North Management Limited ("the Applicant") in respect of Tedworth Square, London SW6 4DY ('the Property"). The Applicant seeks a determination of the reasonableness and payability of service charges, pursuant to section 27A of the Landlord and Tenant Act 1985 ('the Act") in relation to the installation of a computerised and fob-operated security system at the Property. The application is opposed by Mrs Lynne Miller ("the Respondent"), the leasehold owner of Flat 6 at the Property. The Second Respondent company has been joined for formal reasons only, relating to the operation of the relevant lease provisions, and plays no active part in the proceedings.

2. The application is dated 3rd February 2020, and has been submitted by D & G Management Limited, which is the managing agent for the Property. The application states that the block comprises 40 flats. The Respondent contends that there are 49 flats (and parking spaces) though nothing turns on this. It is further explained in the application that there is key entry to the 2 main entrances to the block, and to the gate leading to the rear of the Property and the car park. There is also a vehicle gate at the rear operated by a fob system and a side gate for those on foot, locked by a key.

3. The thrust of the application is that the current security system has operated since 1961 (the Respondent contends that the Property was built in 1981, but again, not much turns on this) and *"as far as we are aware"* "there are concerns over security. It is said that keys have been

retained by previous tenants and tradespersons. Guidance is sought from the Tribunal as to whether the installation of such a system would be recoverable under the terms of the lease, and it is suggested the cost when last requested by the agents was within a range of something between £10,000-£14000, plus VAT.

4. Directions were given by the Tribunal on 13th February 2020, and at paragraph 4 of those Directions, the Applicant was required to serve a Statement of Case and set out the particular provisions relating to service charges in the lease upon which it relies.

5. In purported compliance with that Direction, the Applicant's agents forwarded to the Tribunal a letter dated 13th March 2020, written to the leaseholders, but that letter essentially restates the material within the application. It was not in the form of either a Statement of Case or witness statement. It did not identify the provisions in the lease relied upon, much less any legal argument. Other than again stating that "*indicative costs*" were £10,000-£14,000 + VAT, it did not produce a specification of works nor a costed quotation, enabling the Respondent to obtain any alternative quotation on a like-for-like basis. In particular, it did not inform the Tribunal, or the Respondent, as to what service charge she would be required to pay, if these unidentified works were to proceed.

6. Although the application is stated on behalf of the Applicant "*overwhelmingly*" to be supported by the leaseholders, of the 40 or 49 leaseholders, none have produced witness statements and only 2 supportive unsigned copy e-mails are included with the letter of 13th March, with the names of the senders obscured.

7. These and other points were made by solicitors acting for the Respondent in a letter to the Tribunal (copied to the Applicant) dated 6th April 2020. Effectively the Applicant was invited to remedy these omissions, and to put its case in order. There was a further letter dated 12th June 2020, from the Tribunal to the Applicant similarly drawing the

Applicant's attention to the fact that it "*will need to argue its case for the benefit of the Tribunal*" – the letter went so far as to provide the Applicant with a list of organisations providing assistance in the preparation of these cases. There appears to have been a letter of the same date from the Applicant to the Tribunal, which has not been included in the bundle – but which supplied further information as to the works. However, so far as can be ascertained, there has been no Statement of Case, no Witness Statement in support, no calculation of what the Respondent is to be asked to pay, nor any argument as to the clauses under the lease entitling service charge recovery to be made in this case.

Summary of the Respondent's Case

8. The Respondent's case is as set out in a Statement of Case prepared by counsel, appearing at pages 56 to 84 of the bundle. The Statement repeats several of the issues relating to the lacunae in the Applicant's case referred to above. It identifies the clauses in the lease relied upon by the Applicant (presumably referred to in the Applicant's letter to the Tribunal dated 20th June) as being paragraphs 3 and 10 of the Fourth Schedule. It sets out the Respondent's argument for contending that upon their proper construction, and applying various authorities, these provisions do not avail the Applicant in seeking to make a charge a charge under the service charge provisions for recovery of the cost of the proposed new security system. It also deals with the Tribunal's discretionary powers, whether under the terms of the lease, or under the Act. Under this head, it deals with the evidential shortcomings in the Applicant's case, even assuming a legal peg can be found, upon which to hang the application.

Analysis and Decision of the Tribunal

9. It seems to the Tribunal that there is an evidential threshold for the Applicant to clear, before consideration of the contractual provisions

become necessary. The statutory provision under which this application is brought is section 27A of the Act. By virtue of section 27A of the Act:

"(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."

10. By virtue of section 19 of the Act, relevant costs shall be taken into account only to the extent that they are "*reasonably incurred*". In deciding, for the purposes of section 27A(3) whether there has been a "*reasonable*" incurring of costs, obviously the quantum of those costs is one relevant factor, but each case will generate its own catalogue of salient considerations. The Tribunal, having considered the evidence in the respect of such considerations can then make a determination as to proposed service charge, after also having considered payability under the lease or otherwise.

11. In this case, the Tribunal is not satisfied that it has before it the evidence necessary to make such a determination. Some of the reasons for that

conclusion have already been alluded to above, but for the benefit of the parties, the reasons are summarised below:

(i) in the view of the Tribunal, it is wholly inadequate to come before the Tribunal with an unsupported conjecture as to "*indicative costs*" and an allegation, again not properly supported by signed evidence, that "*as far as we are aware….there are concerns over security*." It is correct to say that late in the preparation of the application a quotation from Prestige Security Systems dated 15th March 2018 (2 years prior to the application) was produced, with a manuscript (authorship not provided) note suggesting a 10% 2020 uplift. There is otherwise no proper updated and itemised estimate. In addition, there is a quotation from Anchor Door Systems dated 12th March 2020, but this sets out a variety of different systems and options, leaving the reader guessing as to precisely what is being proposed, and what, in the case, of the Respondent, she would be asked to pay.

(ii) a suggestion in the application is made that there have been burglaries. It is vague and unspecific as to dates, frequency, how entry has been effected, and consequences in terms of losses or otherwise.

(iii) It is asserted that the front door and garage lock keys can easily be copied. If that is so, it does not follow that they are out of repair, nor, more forcefully, that better and more sophisticated security locks cannot be fitted.

(iv) the Applicant again asserts that the limited fob system has been altered with "*a temporary addition*". There is no suggestion that this has not proved effective.

(v) as observed by the Respondent, the Applicant itself indicates that if nothing were done "*the locks would work as they did in 1980*" which is suggestive of the fact that there is no disrepair in the existing system

(vi) unparticularised and unsupported assertions of security or insurance concerns, are vague and unhelpful

(vii) unsigned and unidentified e-mails in support from 2 leaseholders out of either 40 or 49 flats, does not suggest "*overwhelming support*" for the application

(viii) the Applicant has not addressed how the proposed fob system would preclude lessees allowing strangers into the Property, if this is a concern.

(ix) generally, there is no good evidence (as opposed to stated "*concerns*") that the current security arrangements are failing, and that the new proposed system is the correct and reasonable way for addressing such concerns

12. For the reasons indicated above, the Tribunal is not satisfied that the evidential threshold has been cleared by the Applicant in this case, and in the circumstances, it is unnecessary for the Tribunal to make further findings on the other issues raised in the Respondent's Statement of case.

The Application is dismissed.

Section 20 Application

13. The Respondent has requested an order that no part of the costs of this application should be charged back to her as part of her service charge. The application under section 20 has not been responded to by the Applicant. The Tribunal is satisfied that it is appropriate to make such an order in favour of the Respondent. The application has been unsuccessful through no fault on her part. Many of the shortcomings set out by the Tribunal were drawn attention to at an early stage, and not properly addressed. A section 20 order is made in favour of the Respondent.

Conclusion

14. This application is dismissed and a section 20 order is made to the effect that no part of the costs of the application should be recovered against the respondent as part of her service charge. The parties may wish to consider, once the Applicant is able to identify the exact system and up-to-date quantification of possible charges to the Respondent, whether a consensual arrangement can be reached – either directly between the parties, or alternative dispute resolution.

JUDGE SHAW 6th JANUARY 2021

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).