

9058



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

Case Reference : **LON/OOAJ/LSC/2013/O383**

Properties : **Flats 2 and 3, 28 Birch Grove,
Acton, London W3 9SS**

Applicants : **Lucy Neil (Flat 2)
Patricia Thompson (Flat 3)**

Representative : **None**

Respondent : **Hardeep Singh**

Representative : **None**

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

Tribunal Members : **Judge Goulden
Mr P M J Casey MRICS**

**Date and venue of
Hearing** : **29 July 2013 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **29 July 2013**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £250 is payable by each Applicant in respect of the service charge year relating to the roof repairs at Flat 5 carried out in 2013.
- (2) No handling charges are payable under the terms of the lease.
- (3) The Tribunal makes the determinations as set out under the various headings in this Decision

The application

1. The Applicants seek 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 Applicants in respect of the service charge year relating to roof repairs at Flat 5 carried out in 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. No hearing was requested by either side. This matter was therefore determined by way of a Paper Hearing which took place on Monday 29 July 2013. Directions of the Tribunal for the conduct of the matter were issued on 12 June 2013.
4. Both sides submitted written representations.

The background

5. The properties which are the subject of this application are described in the application as two flats in an Edwardian house in a conservation area. The house had been divided into five flats.
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 Applicants hold long leases of the properties which require the landlord Respondent to provide services and the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the leases (which are in similar form) will be referred to below, where appropriate.

The issues

8. The Tribunal's Directions of 12 June 2013 identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for 2013 relating to repairs to the dormer roof at Flat 5.
 - (ii) Handling charge of 10% in respect of the above, assumed by the Tribunal to be a management charge.
9. Having considered the documentation provided by the parties, the Tribunal has made determinations on the various issues as follows.

Service charge item & amount claimed

10. £409.26 charged to each Applicant (being 19% contribution) plus a "handling charge" of £40.93 charged to each Applicant (being a 10% contribution)

Reasons for the Tribunal's decision

11. In respect of the works for the repairs to the dormer roof at Flat 5, the Applicants, in their submissions, contended that this expenditure is not recoverable through the service charge. The Applicants' view was that the dormer had been constructed without planning consent after the original conversion of the house into 5 flats and their liability to contribute to the landlord's costs of fulfilling his repairing obligation is limited to the original building only, and that the liability for the repair costs of this dormer must be the responsibility of the owner of Flat 5. The Applicants also stated that the landlord had failed to properly consult with them about the works and the argument which he had put forward that the works were urgent was dismissed by them since the need for such works arose from wear and tear (which is why the insurers refused to pay).
12. The Applicants also disputed the Respondent's right to add "handling charges" of 10% to the matters referred to paragraph 13 above, and to other items of service charge expenditure eg insurance premiums and electricity bills.
13. The Respondent, in his submissions, contended that the works fell within the definition of the Landlord's obligations under the lease and, because they had to be carried out urgently, he had not complied with consultation requirements, but the Applicants had been informed of the

need for the works on 11 March 2013 and had sent 3 estimates to them, shortly before the works were carried out in April 2013. He said that the extension was not illegal, and the Applicants had contributed to their share of works to it in the past. In respect of the "handling charge", the Respondent said that this should be increased by the Tribunal to 15% ("*the industry standard*").

14. The landlord's repairing obligations are set out in the lease at Clause 5 (1)(b) which states, inter alia, "**To maintain in good and substantial repairs and condition.....the exterior of the Building..... and the roofs.....**" The Particulars to the lease at paragraph 5 refer to the Building as "**the Building known as 28 Birch Grove W3**".
15. The tenants' covenants to contribute are set out in the lease at paragraph 9, 9 of the Particulars, Clause 4 (4) and the Fifth Schedule. Each Applicant is required to contribute 19% of the landlord's costs of carrying out the obligations under Clause 5(1).
16. Whilst the Applicants' comments are noted, the dormer roof at Flat 5, and indeed the rear extension at Flat 2 (both of which were apparently erected many years ago) now form part of "**the Building**". From the lease, it is clear that the landlord Respondent must repair and the tenant Applicants must contribute to the cost of such repairs.
17. However, the landlord Respondent has not consulted with the tenants as he is required to do under the consultation requirements as set down in S20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003. No dispensation from these requirements has been sought by the Respondent.
18. The Tribunal determines that the Applicants' contribution to the cost of the dormer roof repairs is limited to £250 per lessee, as the maximum sum recoverable.
19. In respect of the handling charge, the Fifth Schedule to the lease at paragraph 1(1) states, inter alia: "**Total Expenditure**" means the **total expenditure incurred by the Lessor in any Accounting Period in carrying out his obligations under Clause 5(1) of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing (a) the cost of employing Managing Agents (b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder**"

20. No managing agents appear to have employed by the Respondent in connection with the issues before the Tribunal, but the Respondent appears to add a percentage called a “handling charge” to all items of service charge expenditure. In the absence of employing managing agents, the lease would appear, at most, to allow the addition of **“any other costs and expenses reasonably and properly incurred in connection with the Building”**. The lease does not allow for the addition of a fixed percentage sum.

21. The Tribunal is not persuaded that the “handling charge” in this case can be said to fall with the definition as set out in paragraph 19 above, and that therefore, no such “handling charges” can be added to any item of service charge expenditure including the costs of the dormer roof repairs.

Name: J Goulden

Date: 29 July 2013

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 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.

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.

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 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.