9128

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LSC/2013/0046**
Property	:	**14 Webheath, Netherwood Street, Kilburn, London NW6 2JR**
Applicant	:	**Miss Bharti Vaja**
Representative	:	**In person**
Respondent	:	**London Borought of Camden**
Representative	:	**Ms Maries Maloney, court officer**
Type of Application	:	**Service charges**
Tribunal Members	:	**Judge Adrian Jack, chairman, Mr W Richard Shaw FRICS, Mr Paul Clabburn**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**1 July 2013**

DECISION

Procedural

1. By an application dated 14th January 2013 the tenant sought determination of her liability in respect of service charges for the service charge years 2007-08, to 2011-12 as well as the budgeted figures claimed on account for 2012-13. The service charge year runs from 1st

April. In addition she sought an order under section 20C of the Landlord and Tenant Act 1985 restricting the landlord's ability to recover the costs of the current proceedings through the service charge account.

2. The tenant is grievously unwell, so the matter had and has urgency. During the hearing it was necessary to take frequent breaks in order for the tenant to be able to take her medication.

3. The Tribunal held a pre-hearing review on 13th February 2013. The Tribunal gave directions, including a direction for the parties to prepare a Scott Schedule. The landlord failed to complete its part of the Scott Schedule. Instead (without applying for any variation of the Tribunal's directions) on 17th April 2013, it served a statement of case. This did not deal with the tenant's points with any degree of specificity. Instead the landlord made general points in its statement of case. This approach of the landlord seriously hampered the Tribunal's handling of the case and the tenant's ability to respond to the landlord's case, but the tenant's state of health meant that any adjournment was out of the question, since it was likely that any delay would result in a further decline in the tenant's already extremely vulnerable condition.

4. In addition, the landlord failed to call as a witness anyone with any knowledge of the block or the estate. On the second day of the hearing, despite not having served any witness statement in accordance with the Tribunal's directions, the landlord called Mr Cooper, who dealt with the accounts. Without objection from the tenant, he was able to give some information about the arrangements for the supply of gas. However, neither he nor Ms Moloney had ever visited the block or the estate. Accordingly the landlord had no evidence to answer the tenant's points in relation to the block and the estate.

5. The Tribunal wishes to make it clear that it does not expect enormous numbers of witness to be called by a local authority landlord, as sometimes occurs. Nonetheless, the failure to call anyone with knowledge of the estate, the services provided and the problems on it is striking. In consequence, even elementary questions like the number of units in the block remains in issue.

6. The Tribunal notes that the procedural and evidential problems with the landlord's case appear to have arisen from the inexperience of Ms Moloney, who told us frankly that this was her first case before the Tribunal. It is true that for the first half hour or so of the first day of the hearing, Ms Moloney was accompanied by Ms Bush, a solicitor and experienced court officer for the landlord. However, thereafter she had no support. Indeed it appears that, even overnight, when it would have been apparent to her that there were grave problems which had been identified with the landlord's case, there was no support available for

her. The Tribunal does not therefore feel that Ms Moloney is personally to blame for the landlord's difficulties.

7. After the conclusion of the hearing and indeed after the Tribunal had privately considered its decision, Ms Moloney sent additional documents to the Tribunal. The Tribunal has not considered these documents in making its decision. Natural justice would require that the matter be listed for a further hearing, if the landlord were to be permitted to rely on such further documents. No request for a further hearing was made by the landlord and in any event in view of the matters outlined above the Tribunal would have refused such a request.

8. Atlthough at page 85 of the bundle the tenant appeared to request an inspection, at the hearing neither party requested an inspection and none took place.

The block and the estate

9. The lease in clause 1.1 defines the "block" as being: "The building or part of the building in which the Flat is situated together with any other building or buildings on the Estate which are physically linked for the prose of the provision of services." The estate is defined as: "The property known as 1-207 Webheath Estate and shown edged with heavy black line of Plan 2 together with all buildings thereon and thereover and including the Common Parts." The plan attached to the lease, sealed with the landlord's wafer, says: "The ordinance survey extract defines the block known as 1-84 & 197-207 (cons) Webheath outlined in heavy black."

10. In fact individual parts of Webheath have been named after various trees, although the numbering remains the same as when all the blocks were known as Webheath. The block comprises Willow House (Nos 56-84), Ash House (Nos 1-24), Beech House (Nos 25-33), Elm House (Nos 197-200) and Cedar House (201-207).

11. This numbering refers solely to residential units. In the block there are also 17 commercial units which post-date the building of the estate. These commercial units are conversions made in about 1978-1981 of parts of what had been basement car parking. Thirteen of these commercial units were under Ash, Willow and Beech Houses. No details of the rateable value of the commercial units was available, either as to the current value or the value as at 31st March 1989.

12. Paragraph 4 of the Fourth Schedule to the lease provides:

"The annual amount of the Service Cost payable by the Tenant... shall be the Specified Proportion calculated either by:

4.1 dividing the aggregate of the expenses and outgoings incurred in respect of the Items of Expenditure by the Landlord in the Specified Annual Period to which the certificate relates by the aggregate of the rateable values (in force at the end of such period) of all the property within the Block and then multiplying the resultant amount by the rateable value (in force at the 31st March 1989) of the Property PROVIDED ALWAYS that in the event of the abolition or disuse of the rateable value system for properties the references to rateable values herein shall be substituted by reference to the floor areas of all the property in the Block or on the estate (where applicable) and apportioned accordingly or

4.2 in the case of those items for which the Landlord's expenses extend to the Estate or other Estates then a fair and reasonable proportion of the costs thereof attributable to the Property such proportion to be determined by the Landlord's Finance Officer whose decision shall be final and binding or

4.3 such other method as the Landlord shall specify acting fairly and reasonably in the circumstances and from time to time and at any time (including but without prejudice to the generality thereof any combination of methods)."

13. In fact the landlord has for various items used a method of allocation by units. We deal with this under individual heads.

The major works in 2007-08

14. The tenant purchased her flat under the Right-to-Buy legislation. She holds for a term of 125 years from 7th February 2007. Under the legislation, a purchaser is told of the likely service charges which will fall due in the near future. Her liability is then capped at that figure. In the current case, the landlord was intending to replace the lifts at the block and her estimated liability was £3,700.47.

15. It is unclear when the major works were in fact carried out. The tenant says that they were carried out before her purchase completed and denies her liability accordingly. Paragraph 1 of the Fourth Schedule to the lease provides for the landlord's finance officer to give a certificate of expenditure annually. This is a condition precedent to recovery of the service charge from the tenant. In the current case, the only certificate for 2007-08 produced is that at page 258 of the bundle. This relates only to "ordinary" service charge items, not to any major works.

16. Nearly identical provisions of such a lease were considered by this Tribunal in *Woelke v Southwark LBC* LON/00BE/LSC/2011/0519 (apparently currently under appeal) and the Tribunal's approach in that

case appears to have been accepted by the Upper Tribunal in *Jean-Paul v Southwark LBC* LRX/133/2011. The effect is that a landlord can provide more than one certificate and can correct certificates, but that a certificate for major works must be in respect of one service charge year only.

17. In the current case, the landlord has failed to produce any certificate in respect of the major works (whether *Woelke* compliant or not). Accordingly nothing is owing in respect of the major works.

18. We should add that, even if the landlord had produced a certificate in respect of the major works, there would still have been an issue as to allocation, because the landlord only sought to divide the cost of these works among the units in Willow House and Ash House, whereas the "block" for the purpose of the lease was larger (see above). Moreover we have no evidence of the relevant rateable values, which was the basis of division.

The other disputed items and decision on those items

19. The tenant prepared a Scott Schedule setting out the items of dispute. The Scott Schedule appears at pages 138 to 161 of the bundle. Rather than deal with each year individually, it is sensible to deal with each head of complaint, since the objections are generally the same from year to year.

20. **Lighting maintenance** is a small item and the maintenance was done. The block costs totalled £90.44 and the estate costs £316.64 in 2007-08. Allocation was by unit. The landlord treated the estate as 224 units (which is uncontroversial) and the block as 75 units, comprising 24 in Ash, 29 in Willow, 9 in Beach and 13 commercial. The calculation of the number of units in the block is wrong It should be 112 units, comprising 24 Ash, 9 Beech, 21 Cedar, 12 Elm, 29 Willow and 17 commercial. However, in fact the misallocation is likely to make no difference to the amount payable by the tenant. The reason is that block costs for the 75 units are likely to be proportionately smaller than the block costs for 112 units. No evidence was adduced to contradict this. Accordingly despite the misallocation we disallow nothing.

21. **Grounds maintenance** was an estate charge. The tenant complained that there had been vandalisation which rendered some of the work of little value, but in our judgment that cannot be a ground for the landlord not recovering the cost of works which were properly done. More problematic is the justification of the costs. As noted above, the landlord adduced no evidence to support the amounts claimed. These varied substantially from year to year, particularly as between work to trees and other works.

22. In 2007-08 £4,182.57 out of £6,358.90 spent on the estate was for work to the trees. The tenant's uncontradicted evidence was that there were only three or four trees on the estate, so the figure for trees was extremely high and required justification. In the absence of any details whatsoever of the work on the trees in this year, we disallowed that element of the service charge, amounting to £18.67.

23. In 2008-09 the split was £1,501.20 for trees and £4,868.78 for other ground works. Again no explanation of what work was done and why the amount of other grounds works was so much greater than in the previous year. Some work was done, but the landlord failed to show what. We allow £15.

24. In 2009-10 the claim was for £11.01. Again since some work was done, we allow this figure. In 2010-11 £31.52 was claimed, but the same problems as above arose. We allow £15. In 2011-12 £7.13 was claimed. For the same reasons we allow this in full. In 2012-13, the figures are budgeted. £34.10 is claimed, but we consider in the light of the previous years that this is unreasonable even as a budgeted item. We allow £15.

25. **Insurance** was a recurring item. The landlord sought to recover £1.85 per £1,000 of insurance value. From our own knowledge, this is a reasonable rate. The £250 excess is also reasonable. The landlord adduced no evidence about the calculation of the rebuilding value placed on the property. The premium charged the tenant in 2007-08 was £380.44, which implied a rebuilding value of £205,865, which is high for a flat, even in central London.

26. In 2008-09, however, there appears to have been a revaluation. The premium dropped to £253.77 on the same rate. This shows that the rebuilding cost had been reduced at the reassessment. No evidence was adduced or explanation given by the landlord as to why the rebuilding value in 2007-08 was so much higher, although it would have been easy for the landlord to produce the relevant survey which assessed the rebuilding cost. In the absence of this material, we conclude that the declared rebuilding value in 2007-08 was too high. We therefore allow only £250 in 2007-08.

27. So far as the subsequent years are concerned, they show a modest increase, no doubt in line with indexation. From 2008-09 onwards, we disallow nothing.

28. **Heating and hot** water comprise a substantial item. The estate itself has a communal boiler system, but the communal system does not and never has supplied hot water to the tenant's part of the estate. Instead those flats such as the tenant's were supplied with unmetered gas. The tenant had her own boiler and hob. The landlord is part of the Kent County Council scheme for the purchase of gas. Under this, various

local authorities combine to purchase gas at the "spot" price on the market. The Tribunal has in many decisions found that this is a reasonable procedure, which in general ensures that gas is cheaper than if it is purchased under an ordinary contract from one of the big energy suppliers.

29. The tenant has a contract for maintenance with British Gas for her own installations. The landlord failed to show how it accounted for the cost of the maintenance of the communal boiler system. Ms Moloney called Mr Cooper to explain how the costs were calculated, but his explanation was hopelessly confused. We are satisfied that the landlord did provide gas, but the evidence also suggests that the landlord was seeking to charge the cost of maintaining the communal boiler to the tenant. Under the terms of the lease this cost could not be recovered from the tenant (see paragraph 2 of the Fifth Schedule to the lease). Doing the best we can, we deduct £200 in each year in question.

30. The tenant accepted that there were **caretakers** but complained that the caretakers did not do any cleaning and were generally very expensive. The landlord adduced no evidence to show what the caretakers did do. Its sole evidence was the breakdown of costs which resulted in the amount being charged to the tenant in 2007-08 being £243.71. The tenant made contemporaneous complaints: see bundle pages 226 and 246. Doing the best we can and given that the tenant accepts that there were caretakers, we disallow half of the amount claimed in this year.

31. In 2008-09, there was a change in supplier. From 1st January 2009 Veolia took over the contract from the in-house supplier. Ms Moloney conceded that this was a long term agreement and that there had been no consultation. This would limit recoverability to £100 per flat per annum. This restriction does not apply to the period before 1st January 2009. Ms Moloney said that pre-Veolia 5 hours per week were done on the block (treated as 75 units) and 10.04 hours allocated in respect of the estate. The landlord made no attempt to justify the hourly rate. In this unsatisfactory situation, we allow £135.20, comprising £13 per hour x 15 hours x 52/75.

32. From 2009-10 the amount in respect of caretaking is necessarily limited to £100 per annum. From 2010-11, the caretaking was divided into two heads, one for the block and one for the estate. Ms Moloney conceded that there was only one contract for both, thus the £100 cap applies to the total.

33. The amounts claimed in respect of the **TV aerial** were abandoned by the landlord.

34. The **door entry systems**, the tenant said, never worked properly. There was no secure door on Willow House, so anyone could enter

Willow and walk over to Ash House. The landlord initially abandoned at least part of its claim under this head, but its abandonment became some equivocal. We find that the tenant obtained no benefit from the door entry system and that nothing is owing.

35. The **lift maintenance charges** (which include electricity) are a recurring item. The tenant complains that the lifts are frequently vandalised, but that it is not in our judgment the landlord's fault. The cost incurred is borne out by the accounts produced by the landlord. In our judgment, however, under the terms of the lease, the cost of lift maintenance is a block charge. It is true that the lifts only service Ash and Willow Houses, so that there is some justice in only allocating the cost among the 75 units in those houses, however, the lease makes this a block charge, so that the cost stands to be shared among the 112 units. (No argument on or evidence as to any election under paragraph 4.3 of the Fourth Schedule was made to us.) The effect is to reduce the amount demanded in 2007-08 from £27.32 to £18.29. A proportionate deduction stands to be made in the subsequent years.

36. The landlord sought to recover £29.07 in respect of **rubbish collection** in 2007-08 and similar sums in subsequent years. The tenant said that there was duplication with the sums claimed under caretaking. Ordinary rubbish collection was carried out by the local authority acting as such. This rubbish collection was paid for by the council tax. This figure in the service charge accounts could not therefore be for that service. Ms Moloney said that the amount charged in 2007-08 comprised £2,180.01 divided between 75 units. This figure comprised £220.16 for bin hire, £1,903 for collection, £34.50 support services and £22.15 salaries. Subsequent years are similar.

37. The division by 75 is technically incorrect, but for the reasons outlined before there is no evidence this results in the tenant paying more. The tenant, however, complains that there is double-counting, in that fly-tipping is a charge which appears (as it does) under the caretaking head. No explanation was given as to why it was necessary to hire bins. In the absence of any explanation whatsoever from the landlord, we disallow this head in this and subsequent years.

38. **Repairs and maintenance** are a repeat item. The tenant complains that there were repeat visits in respect of the same complaint and that some items such as unblocking drain and rubbish chutes should be charged to individual tenants. In our judgment the landlord has established that it has expended the sums claimed. There is no evidence that works were carried out inappropriately. With regards to drain and chute blockages it is notoriously difficult to establish precisely who is responsible. In these circumstances we disallow nothing.

39. The landlord sought to recover the cost of employing a **mobile security patrol**. Ms Moloney conceded that there was no provision of the lease allowing the landlord to recharge this to the tenant. Accordingly she abandoned this head of claim.

40. **Fire protection equipment** was a small but recurrent item. There was a suggestion that this was for dry risers, but that would not be a recurrent item. In the absence of any adequate explanation, we disallow this head.

41. **Electricity charges** on the block were charged by division by 75, but for the reasons given this causes no injustice to the tenant. The electricity charges are justified by the accounts produced by the landlord. We disallow nothing in any of the years.

42. The landlord charged £3.36 in respect of **mechanical equipment and ventilation** in 2007-08 and similar sums in subsequent years. This is a baffling item, for there is no ventilation in the block, nor does there seem to be any mechanical equipment. Again this is an item, where if the landlord had called anyone with knowledge of the block, may have been capable of ready explanation, but in the absence of that assistance, the Tribunal can only disallow the item in all the relevant years.

43. **HOS Management Cost** is the description given by the landlord to the administration costs, in other words the equivalent of a managing agent's fee. The landlord charges a flat 10 per cent on the other costs. The tenant submitted that 5 per cent would be reasonable. We disagree. 10 per cent produces a sum which is substantially less than most managing agents would charge. Accordingly we do not reduce the percentage. The actual amount payable will, however, stand to be reduced to reflect the reduced amounts otherwise payable pursuant to this decision.

44. **The budgeted figures for 2012-13** are in general reasonable. Apart from the disallowances set out above we allow the amounts claimed in full. The tenant makes the point that some items, such as accounting and auditing, are new and would previously have been included under other heads, such as HOS Management costs. It will in due course be for the landlord to justify the amounts if they claim them as part of the final accounts. As budgeted items, however, it is in our judgment a matter for the landlord how it seeks to apportion costs.

Costs

45. In the current case no fees were payable to the Tribunal, so the Tribunal needs to exercise no discretion as to these. The tenant seeks an order under section 20C of the Landlord and Tenant Act 1985. In our

judgment the tenant has substantially won and it would be unjust not to make an order. Accordingly we made such an order.

DETERMINATION

1. The tenant owes the landlord the sums set out on the schedule hereto.

2. The Tribunal makes no order for costs, save that there be an order under section 20C of the Landlord and Tenant Act 1985 preventing the landlord recovering the costs of the current proceedings from the tenant through the service charge.

Adrian Jack, Chairman 1st July 2013

ANNEX: The law

The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

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, improvement 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 of 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 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 provision 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 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 charges 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 charges 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 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 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."

Sections 47 and 48 of the Landlord and Tenant Act 1987 require a landlord to give his name and address and to give an address for the service of notices by the tenant on him. The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 requires a landlord to serve a summary of tenants' rights and obligations with any demand for service charges on pain of irrecoverability of the service charges demanded.

SCHEDULE

Items in dispute	Payable 2007-8	Payable 2008-9	Payable 2009-10	Payable 2010-11	Payable 2011-12	Payable 2012-13
Major works	£0.00	N/A	N/A	N/A	N/A	
Lighting Maintenance	£2.62	£4.31	£3.25	£3.16	£3.15	As budget
Grounds Maintenance	£9.72	£15.00	£11.01	£15.00	£7.13	£15.00
Insurance	£250.00	£253.77	£270.51	£270.51	£298.07	As budget
Heating, Hot Water and Gas supply	£353.72	£245.27	£320.13	£409.20	£441.73	£670.78*
Caretaking	£121.86	£135.20	£100.00	£100.00	£100.00	£100.00
TV Aerial	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Door Entry System	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Lift maintenance	£18.29	£28.59	£24.23	£68.34	£88.49	£60.14**
Rubbisn Collection	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Repairs and Maintenance	£110.03	£491.24	£333.96	£149.61	£89.30	As budget
Mobile Security Patrol	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Fire Protection Equipment	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Electricity Charges	£20.85	£24.49	£24.13	£25.42	£35.41	As budget
Mechanical Equipment and Ventilation	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
HOS Management	10%	10%	10%	10%	10%	10%

*This is budget amount less £200.00

**Based on budget amount