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

**Case Reference** : **LON/00AZ/LSC/2013/0154**

**Property** : **Flats 2-9 Angel Court, 9-11  
Loampart Hill, London SE13 7TH**

**Applicant** : **Freehold Managers (Nominees)  
Limited**

**Representative** : **Mr S Allison Counsel – instructed  
by JB Leitch LLP Solicitors**

**Respondent** : **Mr G A Levy and other Lessees of  
Flats 2 – 9 Angel Court, 9-11  
Loampart Hill, London SE13 7TH**

**Representative** : **Mr M Stapleton (Chartered  
Surveyor)  
Mr G A Levy (Flats 4 & 5) in person**

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

**Tribunal Members** : **Mr S Carrott LLB  
Mr S A Manson FRICS**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **29 July 2013**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines as follows -
- (2) that the sum of £500 for electricity is reasonable and is payable.
- (3) The sum of £2000 for general repairs is reasonable and payable.
- (4) The sum of £2,550 in respect of managing agents' fees is reasonable and payable.
- (5) The sum of £500 in respect of accountancy fees is reasonable and payable;
- (6) The sum allowed in respect of cleaning is £875 and is reasonable and payable.
- (7) The sum allowed in respect of health and safety assessments is £800 and this sum is reasonable and payable.
- (8) The sum of £2500 for health and safety repairs is neither reasonable nor payable and the sum is disallowed in its entirety.
- (9) The sum of £1000 in respect of the sinking fund is reasonable and payable.
- (10) The sums referred to in (1) to (9) above are total figures and will need to be apportioned in accordance with the terms of the lease.
- (11) The Respondents are not liable to reimburse the Applicant with the hearing or Tribunal fees.

### **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 Applicant in respect of the service charge year ending 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. Mr S Allison of Counsel represented the Applicant. Although the tenants had originally instructed Mr M Stapleton, Chartered Surveyor, the Tribunal received a letter from Mr Stapleton on the day of the hearing explaining the reasons why he would not be appearing. Mr G A Levy of Flats 4 and 5 appeared in person.

### **The background**

4. The Applicant is the freehold owner of the subject property.
5. The Management Company for the premises went into liquidation and therefore the services charges for 2012 were credited to the account and the budget for the 2013 service charges were drawn up and demanded of the tenants by the new managing agents, Montalt Management.
6. The leases of the various flats are in common form and the Tribunal was provided with a specimen lease in respect of Flat 7.

### **The issues**

7. At the start of the hearing the parties identified the relevant items of service charge as follows:
  - (i) Cost of electricity for common parts £500.00
  - (ii) General repairs £2000.
  - (iii) Management fees £2,550.00
  - (iv) Accountancy charges £500.
  - (v) Cleaning £1500
  - (vi) Health and Safety Risk Assessments £1000.
  - (vii) Immediate Health and Safety Repairs £2,500.
  - (viii) Sinking Fund £1000.

### **The Hearing**

8. Mr Harden on behalf of the Applicant at pages 92 to 131 of the bundle set out the Applicant's case for the estimated service charges in his

written witness statement dated 12 April 2013. He also elaborated upon certain points in his oral evidence.

9. Following the hearing, Mr Harden sent to the Tribunal by fax a copy of the written agreement between the managing agents and the Applicant. That agreement confirmed the scale of charges and in addition also confirmed the various duties of the managing agents as outlined to the Tribunal.
10. Mr Levy, although initially objecting to the cost of electricity, accepted that the sum of £500 was a reasonable estimate and therefore concentrated on the other items of service charge.
11. Mr Levy considered that the sum of £2000 for general repairs was excessive. He told the Tribunal that the tenants had spent £1000 the previous year on general repairs. He pointed out that the development was a new build and in fairly good condition with little in the way of communal arrears.
12. As regards the management fee Mr Levy said that the tenants wanted to self manage and he considered the sum to be excessive bearing in mind that proper sum for upkeep of the building was approximately £200.
13. As regards the accountancy fees of £500, once again he considered that this sum was excessive bearing in mind that the tenants wished to self manage.
14. He told the Tribunal that the tenants had already paid for cleaning at the rate of £125 per month thus far. The managing agents did not object to using the same cleaners providing the firm had the necessary public liability insurance. Bearing in mind that the tenants had already paid for part of the year the Tribunal considered the sum of £875 was reasonable.
15. As to the health and safety assessments, Mr Levy said that since Angel Court was built in 2005, there was no need for an asbestos survey bearing in mind that the building conformed with the building regulations and had the necessary NHBC certificates.
16. Mr Levy considered that the health and safety repairs were not necessary.
17. Mr Levy said that the sinking fund was not necessary because the only decorations ever required were to the one front gate and one cupboard door.

### **The tribunal's Determination**

18. There was no dispute so far as the electricity was concerned and indeed the Tribunal noted that based upon the actual costs for the preceding year the budgeted costs were slightly below. The sum of £500 was therefore reasonable.
19. The sum of £2000 for general repairs was both prudent and reasonable. It was a relatively modest sum in the circumstances.
20. The Tribunal considered that having regard to the duties to be performed by the managing agents, the sum of £2,550 was reasonable. The managing agents had demonstrated on the evidence that this was the sum that the landlord was obliged to pay and also that they were carrying out the duties which one would normally expect managing agents to carry out in accordance with the RICS code. There was therefore no basis for interfering with this figure.
21. The Tribunal considered that the accountancy fees in the sum of £500 were reasonable. It was both prudent and necessary given the previous difficulties with the Management Company that accounts should be obtained.
22. Mr Levy was however to correct to criticise the amount of £1000 in respect of health and safety risk assessments. It was clear that given the date of the development that this was not a case where there was likely to be any asbestos present in the property and it appeared to the Tribunal that in any event given that this was a recent development the sum of £1000 was not reasonable. An appropriate sum in the circumstances would be £800.00.
23. With regard to health and safety repairs the Tribunal considered that this item was in reality a duplication of items (2) general repairs and (6) health and safety. Given the £2000 had been allowed for general repairs and £800 for health and safety risk assessments, the additional sum of £2500 was not reasonable. This amount would therefore be disallowed.
24. Notwithstanding the development was recent, the Tribunal considered that the sum of £1000 for the sinking fund was reasonable.

### **Application under s.20C and refund of fees**

25. It was unnecessary to consider section 20C of the Landlord and Tenant Act 1985 because the lease did not allow the landlord to recover the legal fees. Had it been necessary then the Tribunal would have made an order under section 20C.

26. Moreover with regard to the refund of fees the Tribunal considered that although it was necessary for the landlord to make the present application the tenants had succeeded in part and therefore it would not be appropriate to order that the tenants should reimburse the landlord with the application and hearing fees. In addition the difficulties stemmed in the main from the fact that the Management Company had gone into liquidation.

**Name:** S Carrott LLB

**Date:** 29 July 2013

## **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 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.