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

Case Reference : **LON/00AZ/LSC/2013/0296**

Property : **14 Faversham Road, London SE6
4XF**

Applicant : **Navy Properties Limited**

Representative : **Circle Residential Management
Limited (Managing Agents)**

Respondent : **Ms O M Ogunubi (Flat A)**

Representative : **None**

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

Tribunal Members : **Mr Jeremy Donegan – Tribunal
Judge
Mr John Francis – Lay Member**

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

Date of Decision : **21 October 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £4,894.40 is payable by the Respondent in respect of interim (advance) service charges for the year ending 24 December 2013.
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

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 Respondent in respect of the service charge year 2012/13.
2. The tribunal received the application on 22 April 2013. The application named only one leaseholder as a Respondent (Mrs L Louth – Flat C). Ms Ogunubi (Flat A) and Mr R Silcott (Flat B) were added as Respondents on 09 July 2013.
3. The Applicant’s representative (“Circle”) wrote to the tribunal on 24 July 2013, seeking to withdraw the application against Mrs Louth upon her having paid the subject service charges.
4. Directions were issued at a pre-trial review on 25 July 2013, which provided that Mrs Louth was no longer a party to the proceedings.
5. The application against Mr Silcott was withdrawn on 08 October 2013, following receipt of a letter from Circle to the tribunal dated 01 October 2012, advising that Mr Silcott had paid the subject service charges.
6. The decision dated 01 October 2013 provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this or requested an oral hearing. The paper determination took place on 21 October 2013.
7. The relevant legal provisions are set out in the Appendix to this decision.

The background

8. The property which is the subject of this application is 14 Faversham Road, London SE6 4XF (“the Building”) and comprises of three flats. The Respondent is the leaseholder of Flat A at the Building (“the Flat”).

September 2004. It provides for payment of an "Interim Charge" on 24 June and 25 December in each year [clause 5 (3) and paragraph 3 of the third schedule.

14. The service charge is based on "Total Expenditure", is defined in paragraph 1 of the fifth schedule to the lease and means "*..total expenditure incurred by the Lessor in any Accounting Period in carrying out his obligation under Clause 6 (5) 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 costs of employing managing agents (b) the costs of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder*".
15. The Applicant's obligations, as set out in clause 6 (5) include the maintenance and repair of the structure of the Building and the common parts [sub clause (a)] and the insurance of the Building [sub clause (m)].
16. Having studied the evidence and submissions from the Applicant and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Interim service charges for the year ended 24 December 2013

17. The interim service charges demanded were:

25.12.13-23.06.13	£2,447.20
26.06.13-24.12.13	£2,447.20
TOTAL	£4,894.20

These charges were based upon a budget of anticipated expenditure for the Building, as set out below:

Building Repairs	£8,500.00
Health & Safety	£1,500.00
Buildings Insurance	£1,300.00
Year End Accounting	£180.00
Management Fee	£756.00

The tribunal did not consider that an inspection of the Building was necessary, nor would it have been proportionate to the issues in dispute.

9. The Respondent holds a long lease of the Flat. This requires the Applicant to provide services and the Respondent to contribute towards their costs by way of a variable service charge. The specific provisions of the lease are referred to below, where appropriate.

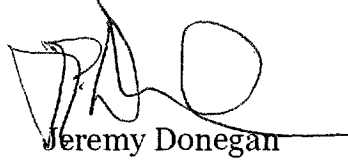
The issues

10. The directions dated 25 July 2013 identified the relevant issues for determination as follows:
 - (i) The reasonableness of a service charge estimate dated 24 May 2013.
 - (ii) Whether the Applicant has complied with the consultation requirements of section 20 of the 1985 Act and, if not, whether it is open to the Applicant to recover advance payment that exceeds the statutory limit.
 - (iii) Whether the works are within the Applicant's obligations under the lease/whether the cost of works are payable by the Respondent under the lease.
 - (iv) Whether the cost of the works are reasonable.
 - (v) Whether an order under section 20C of the 1985 Act should be made.
 - (vi) Whether an order for reimbursement of application/hearing fees should be made.
11. The Applicant served a detailed statement of case and bundle of supporting documents in accordance with the directions. The Respondent has not served any statement of case or played any part in these proceedings.
12. The Applicant produced a hearing bundle that included copies of the leases, the service charge accounts and demands, the section 20 consultation notices and the estimates for the repairs.

The lease

13. The lease is dated 13 January 2005 and was made between Vendforce Limited (1) and the Respondent. It is for a term of 125 years from 29

26. There was no application for a refund of fees by the Applicant. It follows that the tribunal has no power to order a refund of these fees. The tribunal anticipates that the Applicant may seek to recover these fees from the service charge account for the Building, given that no section 20C order has been made.

A handwritten signature in black ink, appearing to be 'JD' with a flourish, written over a horizontal line.

Name:

Jeremy Donegan

Date:

21 October 2013

The tribunal's decision

18. The tribunal allows the interim service charges in full. It follows that the tribunal determines interim charges due from the Respondent for the year 2012/13 are £4,894.20 in total.

Reasons for the tribunal's decision

19. The Respondent has not challenged any of the anticipated expenditure detailed in the budget. The tribunal carefully considered each item of expenditure having regard to the documents in the hearing bundle and concluded that they were all reasonable.
20. The figure for planned building repairs included proposed major works to the Building that have been estimated to cost between £5,350 and £10,458. The section 20 consultation has been completed since the directions were issued. Copies of the consultation notices were included in the bundle. These have not been challenged by the Respondent and are valid.
21. The sum claimed for planned health and safety relates to minor repairs undertaken to the Building and include the replacement of handrails in the common ways and the installation of emergency lighting. The actual cost of this work was £990.
22. The buildings insurance figure is in line with the actual cost of insuring the Building in previous years and the sums claimed for accounting and management fees are standard for blocks of this size.
23. All of the anticipated expenditure claimed in the budget is recoverable as service charges under the terms of the lease.

Section 20C and refund of fees

24. The directions provided that the tribunal should consider whether to make a section 20c order and an order for a refund of fees ¹.
25. Taking into account the determination above it is not just and equitable for an order to be made under section 20C of the 1985 Act. The Applicant has been wholly successful and the application to the tribunal was entirely justified. It follows that the tribunal determines that there is no order under section 20c.

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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 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) the appropriate 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.

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 the appropriate 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 the appropriate 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).