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

Case Reference : LON/00BB/LSC/2013/0240

Property : 3 Maplin Road London E16 3EJ

Applicant : Holding and Management
(Solitaire) Ltd

Representative : Mrs M Khan

Respondent : Mr N K O Y Aggrey

Representative : In person

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

Tribunal Members : Mrs E Flint DMS FRICS IRRV
Mr F Coffey FRICS
Mr L G Packer

**Date and venue of
Hearing** : 5 August 2013
10 Alfred Place, London WC1E 7LR

Date of Decision : 4 September 2013

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £1,382.22 is payable by the Respondent in respect of service charges for 2010, 2011 and the first instalment for 2012 (see schedule attached). The demand for the second instalment was not made until after proceedings were issued and should not have formed part of the county court claim.
- (2) Contractual costs of £3,373.40 had not been demanded and therefore could not be payable and should not have formed part of the county court claim.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision
- (4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (5) Since the tribunal has no jurisdiction over county court costs and fees, the matter of such costs and fees should now be referred back to the Bow County Court.

The application

1. Proceedings were originally issued in the Northampton County Court under claim no. 2QT62669. The claim was transferred to the Bow County Court and then in turn transferred to this tribunal, by order of District Judge Dixon on 12 March 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Mrs M Khan an in-house solicitor, Mrs S Brandelli, a Regional Property Manager with OM Property Management Ltd and Mr T Danso an in-house accountant. The Respondent appeared in person accompanied by Mr A Giwa the lessee of 1 Widgeon Close.
4. During the hearing the Applicant handed in further documents, namely an up to date statement of the Respondent's account and a breakdown of the credit made in December 2012 relating to the decision of the previous LVT. There was a short adjournment while the tribunal and the Respondent considered these new documents.

The property and the lease

5. The property which is the subject of this application is a one bedroom flat situated on the first floor of a purpose built two storey block. There is a one bedroom flat on the ground floor known as 1 Widgeon Close because the entrance is on the opposite side of the building to the subject premises.
6. The estate was developed in the 1990's by Barratt Homes in conjunction with LB Newham. The applicant owns ten units spread over five blocks on the estate which are all managed by OM Property Management Co. Ltd. Both the Applicant and the managing agents are part of the Peverel Group.
7. Neither party requested an inspection and the tribunal did not consider that one was necessary in view of the nature of the issues in dispute.
8. The lease is dated 25 June 1993 and was made between LB Newham (the landlord), Barratt London Ltd (the Developer), Arnold John Court and Kay Marguerite (the lessee) and Holding and Management (Solitaire) Ltd (the Company). The lease provided that upon completion of the last maisonette on the estate the landlord would transfer to the Company the freehold interest in the block.
9. The lease is for a term of 125 years from 25 March 1992 at £25 pa. The service charge proportion is one half of the costs calculated in accordance with the provisions of Part 11 of the Fourth Schedule.
10. The service charge year runs from 1 January to 31 December. A service charge budget is to be prepared in advance of each year. The lessee's share is to be paid by two equal instalments on 1 January and 1 July. After the end of each year the accounts are to be audited and a certificate issued of the actual costs incurred. Any balancing debit is to be paid on demand and any balancing credit is to be credited to the lessee's account.
11. The Company may include in the service charge "*an appropriate amount as a reserve for or towards those of the matters mentioned in the Fifth Schedule as are likely to give rise to expenditure after such Maintenance Year being matters which are likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year ... including ...decorating the exterior of the Block and the repair of the structure thereof and the repair of drains*"
12. The lessee's covenants are set out in the Third Schedule. Under 8.1 the Lessee is to pay interest on late paid sums at 4% above the base rate of Barclays Bank plc and at 8.2 to pay the Company on a full indemnity basis all costs incurred by the Company in connection with proceedings

taken against the Lessee to recover any rent, service charge or other monies payable under the terms of the lease.

The background

13. Proceedings were issued in The Northampton County Court on 6 June 2012. The sums claimed were: £6,353.40 service charges/ground rent/interest, an unspecified sum for contractual interest and £780 legal costs to date.
14. In reply to the Respondent's defence that £2,543.50 had not been refunded following a previous LVT hearing in 2010 it was admitted that £1,469.35 which was part of the earlier claim had been included in the present claim in error.
15. By an order dated 26 July the claim was allocated to the small claims track. On 1 October the court refused to transfer the matter to this tribunal and gave directions for a hearing on 12 March 2012. At the hearing on 12 March an order was made transferring the disputed amount of service charges of £2,368.49 and contractual costs of £3,373.40 to this tribunal.
16. A pre-trial hearing was held on 7 May when it was conceded that the costs of £3,373.40 had not been demanded and therefore could not be payable and should not form part of the county court claim.
17. At the commencement of the hearing the tribunal asked for further clarification regarding the service charges being claimed. Mrs Khan confirmed that service charges of £996.50 (2010) and £996(2011) and £500.75 as the 1st instalment for 2012 were to be considered. She accepted that the 2nd instalment for 2012 had been incorrectly included in the claim as it had not been demanded until after proceedings were issued. The amount of the claim, following adjustments for various credits, was £1,857.34.

The issues

18. At the start of the hearing the parties identified the relevant issues for determination as follows:
19. The payability and/or reasonableness of service charges for 2010, 2011 and 2012 relating to a Health and Safety inspection in 2010, and management fees and insurance premiums in respect of all three years.
20. Having heard the evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Management fees

21. Mrs Khan said that in view of the management fees determined by the LVT in 2010 the company were prepared to reduce the management fees to the 2009 fee of £160 + VAT per unit as determined by the LVT + 3% pa for inflation, on which basis the 2010 fee would be reduced from £287 to £193.64; the 2011 fee would be reduced from £301.80 to £203.68; and the 2012 fee would be reduced from £313.56 to £209.79 per unit, all inclusive of VAT.

22. Mr Aggrey said that he would accept the revised management charges.

The tribunal's decision

23. The tribunal has no jurisdiction to make a determination following this agreement but records the figures to assist the county court in making its order.

Health and Safety Inspection £51.70

24. Mrs Khan referred to the report in the bundle which related only to pathways insofar as it related to the subject premises.

25. Mr Aggrey said that in view of the small amount he would no longer dispute the sum since his share was £25.85.

The tribunal's decision

26. The tribunal has no jurisdiction to make a determination following this agreement but records the figures to assist the county court in making its order.

Insurance

27. Mrs Khan said the market was tested every three years through external insurance brokers. The premiums were not unreasonable.

28. Mr Aggrey said that the cost was too high; he had not seen any insurance documents since 2010. He had researched the cost on the internet but agreed that he was not aware of the claims history of the building. In view of the information provided he agreed to accept the premiums for the block of £412.15 (2010), £331.01(2011) and £339.58 (2012), of which his share is one half.

The tribunal's decision

29. The tribunal has no jurisdiction to make a determination following this agreement but records the figures to assist the county court in making its order.

Reserve fund

30. Mrs Khan explained that the amounts shown in the reserve fund did not completely match the amounts collected, as interest was included in the inflow figures. The contributions to the reserve fund for the block were £480 in 2010 and £600 in both 2011 and 2012. There had been no expenditure since 2009 and in 2012 there was £2,686.54 in the fund for the block.
31. Mrs S Brandelli ARICS MIRPM a Regional Manager with OM Property Management Ltd explained that each year the property manager for the block would review a programme of planned works for the block and advise on the appropriate contribution which should be made to the reserve fund. She agreed that if the sum of £1,825.95 had been restored to the fund in accordance with the decision of the LVT in 2010, which had not yet happened, the amounts to be collected in 2011 and 2012 would not necessarily have been at their present levels. She undertook to review the amount for 2013 which had been set at £1,500 for the block. She understood that the block would be scheduled for external decoration in 2014.
32. Mr Aggrey said that there had been no works for at least 4 years and that the reserve fund should have been credited with £1,825.95 in accordance with the previous decision of the LVT. He was concerned that the funds were building up to a level in excess of what is required. He confirmed that he understood the purpose of a reserve fund and considered that the fund was too large.
33. Mrs Khan, Mrs Bandelli and Mr T Danso were unable to explain why the LVT decision had not been complied with.

The Tribunal's decision

34. The Tribunal determines that the contribution to the reserve fund in 2010 was reasonable and is payable, the reserve fund contributions for 2011 and 2012 are not reasonable and not payable.

Reasons for the Tribunal's decision

35. The property is small, recently built, has PVCu windows, and calls for only a modest reserve. The Tribunal is satisfied that the decision to

build the reserve to its present level of some £2,680 was reasonable, but notes that this would have been achieved without the demands in 2011 and 2012, if the Company had restored the amounts taken out of reserves for works which were not actually undertaken, in accordance with the LVT decision dated 29 November 2010, consequently the balance of funds would have been in excess of the actual balances as at 31 December 2011 and 2012.

36. The Tribunal welcomes the Applicant's undertaking to reconsider the 2013 demand of £1,500 for the reserve.

Application under s.20C

37. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, although the landlord indicated that no costs relating to the hearing before this Tribunal would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The next steps

38. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the Bow County Court.

Name: Evelyn Flint

Date: 4 September 2013

Schedule of service charge costs

2010

Insurance	£ 412.15
Repairs	£ 1.18
Management fees	£ 387.28
Accountancy	£ 44.94
Health and Safety	£ 51.70
Reserve	<u>£ 480.00</u>
Total	<u>£1377.25</u>

Half share £688.62

2011

Insurance	£331.01
Repairs	£ 2.45
Management fees	£407.36
Accountancy	<u>£ 44.94</u>
Total	<u>£785.76</u>

Half Share £392.88

2012

Insurance	£ 339.58
Repairs	£ 386.45
Management fees	£ 419.58
Accountancy	£ 40.78
Health and Safety	<u>£ 16.36</u>
Total	<u>£1202.88</u>

Half Share £601.44 1st instalment £300.72

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).