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

Case Reference : LON/00BB/LSC/2013/0666 - Flat A
LON/00BB/LSC/2013/0324 - Flat B

Properties : Flats A & B
12 Johnstone Road
London E6 6JA

Applicant : Mr Harjit Singh

Representative : Brethertons Solicitors LLP

Respondents : Ms P Swaroop – Flat A
(First Respondent)
and
Ms C Chobbah – Flat B
(Second Respondent)

Representative : Both in person

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

Tribunal Members : Miss J E Guest (Judge)
Mrs R Turner BA JP (Lay member)
Mr S Mason BSc FRICS FCI Arb
(chartered surveyor)

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

Date of Decision : 03/12/2013

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £160.00 is payable by the each Respondent in respect of the service charges for the period 04/10/2011 to 31/03/2012.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) 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.
- (4) The tribunal determines that the First Respondent shall pay the Applicant £30.00 and that the Second Respondent shall pay the Applicant £32.00, such payments to be within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.
- (5) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Bow County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by each Respondent in respect of the service charges for the period from 04/10/2011 to 31/03/2012.
2. Proceedings were originally issued against each Respondent in the Northampton County Court under claim no. 2YN61096 in relation to the First Respondent and under claim no. 2YN65481 in relation to the Second Respondent. Each claim was transferred to Bow County Court and then in turn transferred to this tribunal, by order of District Judge Reeves on 12/09/2013 in relation to the First Respondent and by order of District Judge Dixon on 22/04/2013 in relation to the Second Respondent. On 02/10/2013, the tribunal directed that both applications be heard together on 28/11/2013.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms A Louis of Counsel. A caseworker employed by the Applicant's managing agents, Hexagon Property Co, Ms Z Altaf, also attended and she gave oral evidence. The Respondents both appeared in person and they each gave oral evidence.
5. In addition to the oral evidence, the tribunal also considered all the relevant documentary evidence contained in bundles prepared by the Applicants' solicitors and also one further document, namely a letter sent to the Respondent's by Hexagon on 10/10/2011.

The background

6. 12 Johnstone Road is a two storey terraced house that has been converted into two separate dwellings. Flat A is a two bedroom flat situated on the ground floor and Flat B is a two bedroom flat on the first floor. The communal areas consist of: (a) a ground floor hallway that the parties agreed measured approximately 1.0 x 1.0m; and (b) a small paved area to the front of the property.
7. 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.
8. Each Respondent holds a long lease of their respective flats granted on 03/10/2007 for a term of 99 years commencing on 25/03/2007. The leases are identical in terms. Each lease requires the landlord to provide services and the tenants to contribute 50% each towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.
9. The Respondents' leasehold interests were both registered on 13/12/2007 and each Respondent has occupied their respective flats as their homes. The Applicant later acquired the freehold interest, which was registered on 20/05/2008. On 04/10/2011, the Respondent's were notified that Hexagon had been appointed as the Applicant's new managing agents.

The issues

10. Each County Court claim includes a claim for service charges of £562.84 for the period from 04/10/2011 to 31/03/2012, an administration charge of £96.00, legal costs of £840.00 and interest.

11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Fire Risk Assessment £125.00 and Health & Safety Assessment £125.00

12. Ms Altaf informed the tribunal in her oral evidence that it was Hexagon's policy to undertake fire risk and health & safety assessments within the first year of taking over management of property. Both assessments had been undertaken by Adam Mukhtar. Ms Altaf said that he was qualified by NEBOSH (National Examination Board of Occupational Health and Safety) to undertake the assessments and that his inspection was limited to the communal parts. She informed the tribunal that Hexagon charged a fixed fee of £125.00 per assessment by Z A Associates Ltd.
13. Ms Altaf stated that no action had been taken as a result of the assessments nor had copies of the assessments been sent to the Respondents. Ms Louis of Counsel informed the tribunal that the costs of the assessments were recoverable under Clause 2(3)(i)(a) of the lease.
14. Both Respondents considered the assessments to be unnecessary and not payable. The First Respondent gave Mr Mukhtar access for his inspection. She informed the tribunal, amongst other things, that the visit lasted less than 10 minutes.

The tribunal's decision

15. The tribunal determines that the cost is not payable.

Reasons for the tribunal's decision

16. Clause 2(3)(i)(a) imposes specific obligations on the Applicant in relation to "*Repairing cleansing building and maintaining*", i.e. general repairs and maintenance. It does not extend to undertaking or passing on the costs of any risk assessments and there is no general 'sweeping up' clause in the lease by which such a cost may be payable.

Building insurance £318.00

17. The Applicant produced a certificate of insurance effective from 09/11/2011 for a period of 12 months. Ms Altaf informed the tribunal that the insurance was obtained directly by the Applicant through brokers who found the most competitive quote. It was acknowledged

by Ms Louis that the cost of the insurance should be charged on a pro rata basis so the cost for the period in question would be £159.00.

18. The Respondents' position was that they had taken out their own insurance policies but they raised no objections as to the actual cost of this item and they put forward no evidence of comparable costs.

The tribunal's decision

19. The tribunal determines that the amount payable in respect of building insurance is **£159.00**.

Reasons for the tribunal's decision

20. The Applicant is required to insure the building under Clause 3(3) of the lease. In the absence of any objections as to reasonableness, the tribunal allowed the cost in full.

Communal cleaning £77.67

21. Ms Altaf informed the tribunal that the cleaning was carried out on a monthly basis by a cleaning company called High Spec. During a short break, Ms Altaf made enquiries of the cleaning company and she established that they charged on the basis of the work undertaken and that their costs included materials, fuel, insurance, the cleaner's costs, profit and VAT. She said that the work included cleaning the front bay windows, sweeping the exterior area to the front and cleaning the internal hallway. The cleaning was arranged by Nadeen Ullah Consultancy. Ms Altaf was unable to give any information as to how much this third party charged for arranging the cleaning.
22. The First Respondent gave oral evidence regarding the cleaning as she has been at home when the work has been carried out. She said that the cleaning was carried out sporadically by one person taking less than 15 minutes. She informed the tribunal that there were no cleaning materials used, only the ground floor window was cleaned and that the carpet to the communal hallway was cleaned with just a dust pan and brush. Both Respondents considered the cleaning to be unnecessary.
23. Ms Louis stated that the Applicant was entitled to recover the cleaning costs under Clause 2(3)(i)(c). She conceded, however, that this clause did not explicitly refer to cleaning windows and that, in fact, Clause 2(21) placed an obligation on the lessee to clean windows. In view of this, Ms Louis invited the tribunal to reduce the cleaning costs to remove the element of window cleaning costs that she accepted should not have been included.

Tribunal's decision

24. The tribunal allowed the sum of **£36.00** in respect of this item.

Reasons for the tribunal's decision

25. The cleaning cost was reduced to remove the cost of the window cleaning, which it had been conceded had been wrongly included.
26. The tribunal also reduced the cost to remove an element of profit that would have been passed onto the Respondents due to the fact that Hexagon had not arranged the cleaning directly but through a third party.
27. Further, the tribunal considered that the cost was not reasonable given the two small areas involved.
28. Whilst the tribunal notes that the lease places an obligation on the Applicant to clean communal areas, the tribunal considers that the current arrangements should be reconsidered. It should be possible for an agreement to be reached with the Respondents that would provide a practical solution to the issue of cleaning these two small areas, such as the Respondents undertaking this themselves.

Accountancy fees £240.00

29. Ms Louis conceded that this item had wrongly been included in the period at issue. The accounts had been drawn up as at 31/03/2012 so it was very unlikely that the accountants had charged during the period from 04/10/2011 to 31/03/2012. Ms Louis, therefore, requested that this item be removed from the list of expenditure for this period.

Tribunal's decision

30. No decision was made on this item as it was removed from the costs for the period at issue.

Management fees £240.00

31. Ms Altaf informed the tribunal that Hexagon charge the Applicant a fixed fee for management of £240.00 per flat per year including VAT. She said that there was a written management agreement, although this had not been included in either hearing bundle. The tribunal was told that the contract was for a 12 month period and renewed each year. The role of the managing agents was to deal with such matters as the provision of services, insurance, the recovery of ground rent and service

charges, to arrange any works, deal with complaints and any insurance claims and to maintain a separate client account.

32. Ms Altaf was unable to give the tribunal any information about the building, the size of the flats, etc as she had never visited the properties. She could not offer any explanation as to why Hexagon's invoice amounted to £240.00 with no VAT and why the invoice did not state the VAT registration number.

Tribunal's decision

33. The tribunal allowed the sum of £125.00 per year per flat, i.e. a cost for the period in question of **£125.00**.
34. VAT can only be added to this cost if Hexagon provide confirmation that they were VAT registered during the period 04/10/2011 to 31/03/2012.

Reasons for the tribunal's decision

35. The tribunal decided that the cost of £240.00 per flat per year was not reasonable given the limited services provided and the size of the building and the communal areas. It was noted that the managing agent had very little knowledge of the building. Further, the managing agents were not involved in arranging the insurance or the cleaning.

Summary of tenant's rights and obligations

36. Ms Altaf informed the tribunal that the relevant summary produced by their solicitors was enclosed with service charge demands and administration charge demands. An example of such a summary was included in the bundle. Ms Altaf also referred to covering letters that specifically stated that a summary was enclosed.
37. The Respondents both informed the tribunal that the summaries were not provided.

Tribunal's decision

38. The tribunal decided that the relevant summary had been attached to the service charge and administration charge demands.

Reasons for the tribunal's decision

39. The summary included in the bundle was the correct version that applied at the time the demands were served.

40. The covering letters very clearly referred to a summary being enclosed. At no time had either Respondent requested this document, despite the fact that they had each separately requested various documents. The tribunal decided, on the balance of probabilities, that it was likely that this was because the demands had been accompanied by a summary.

Interest

41. Ms Louis contended that the Applicant was entitled to charge interest on service charges that remained unpaid for a period of 14 days in accordance with Clause 4 of the lease. Ms Louis stated that the Applicant was seeking to recover interest 14 days after 16/05/2012.
42. It was the Respondents' position that the sums demanded did not fall due as the demands were not accompanied by the summary of tenant's rights and obligations.

Tribunal's decision

43. Interest is payable under Clause 4 on the service charges unpaid from 30/05/2012.

Reasons for the tribunal's decision

44. Service charges are due since the tribunal made a finding of fact that the demands had been accompanied by the relevant summary. The Respondents could have protected their position by at least making some payment/s on account without admission of liability.

Administration charge £96.00 per flat

45. Two administration charges of £40.00 plus VAT were levied by the Applicant's managing agents on 14/03/2012 and again on 22/03/2012 in relation to letters that were sent demanding the unpaid service charges. Ms Louis' position was that these sums were recoverable under Clause 2(3)(i)(e) of the lease.

Tribunal's decision

46. The administration charges are not payable.

Reasons for the tribunal's decision

47. There is no provision in the lease that entitles the Applicant to make an administration charge. Clause 2(3)(i)(e) entitles that Applicant to employ managing agents to manage the building.

Legal costs £840.00

48. Ms Louis informed the tribunal that these costs were not being added to the service charges and that they were, therefore a matter for the County Court to determine. Ms Altaf informed the tribunal that there was no intention to bring any forfeiture proceedings.

Tribunal's decision

49. As the legal costs are not part of the service charges, this will be a matter for the County Court to determine.

Application under s.20C and refund of fees

50. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/hearing¹. The Applicant paid one hearing fee of £190.00 and the balance of application fee of £5.00 in respect of Flat B (the tribunal omitted to request the balance in relation to Flat A). The fees paid in relation to Flat A amounted to £75.00 and the fees for Flat B £80.00.
51. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the First Respondent to refund £19.00 and the Second Respondent to refund £20.00 to the Applicant within 28 days of the date of this decision. The Respondents succeeded in reducing the overall charges by 75% and, therefore, the tribunal apportioned the hearing fees accordingly.
52. At the hearing, each 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, the tribunal 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 estimated service charges demanded were substantially higher than the actual costs incurred. The tribunal considered that the estimated costs were inflated and directly attributed to the costs being disputed. Also, the tribunal considered it premature to issue county court proceedings for service charges after a period of only 6 months. This had resulted in accountancy fees being wrongly included. Some other charges had incorrectly been demanded, such as costs of window cleaning and administration charges.

The next steps

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

53. The tribunal has no jurisdiction over ground rent or county court costs. These matters should now be returned to the Bow County Court.

Name:

Miss J E Guest

Date:

03/12/2013

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 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).