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

Case Reference : **LON/OOBG/LOSC/2013/0364**

Property : **168 Stepney Way, London E1 3ED**

Applicant : **The London Borough of Tower Hamlets**

Representative : **Tower Hamlets Homes**

Respondents : **Liluba Begum**

Representative : **Mr Roof and Mr Manan**

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

Tribunal Members : **Ms N Hawkes
Mr F Coffey FRICS
Mrs L Hart**

Date and venue of Hearing : **20.11.13
10 Alfred Place, London WC1E 7LR**

Date of Decision : **16.12.13**

DECISION

Decisions of the tribunal

- (1) In County Court proceedings issued in the Northampton County Court, the Applicant has brought a claim against the Respondent in respect of alleged unpaid service charge in the sum of £4,020.94 plus interest pursuant to section 69 of the County Courts Act 1984 and costs. The Tribunal finds that, of the amount claimed in respect of unpaid service charge, the sum of £3,807.17 is reasonable and payable.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, by consent, so that none of the landlord's costs of the tribunal proceedings may be passed through any service charge.
- (3) Since the Tribunal has no jurisdiction over county court costs, county court interest or solicitors' costs, this matter should now be referred back to the County Court.

The matters transferred

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") that service charge in the sum of £4,020.94 claimed in county court proceedings is reasonable and payable.
2. The matter was transferred to the Tribunal by an order of the County Court dated 16th May 2013. The claim covers the sums demanded from the Respondent from 12th August 2004 to 21st September 2012, as set out in Schedule 2 to the Particulars of Claim.
3. The relevant legal provisions are referred to below and in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Akhigbe, solicitor, at the hearing and the Respondent was represented by Mr Roof and Mr Manan who are leaseholders of other flats in Stepney Way.
5. At the commencement of the hearing, the Applicant's solicitor requested that this matter be heard together with applications concerning numbers 170, 186 and 198 Stepney Way.
6. However, the Tribunal was informed that, on 14.3.13, a differently constituted Tribunal determined that the case concerning 168 Stepney

Way was to be heard as a stand-alone case. The Tribunal was also informed that there had been no appeal against this decision.

7. The Tribunal has not seen a copy of the decision of 14.3.13. However, it was of the view that were it open to the Tribunal to reach a decision to hear the applications concerning numbers 170, 186 and 198 Stepney Way together with this matter, such a decision would necessitate an adjournment in order to give the parties to those cases proper notice of the hearing. The parties agreed that they did not wish this matter to be adjourned.
8. For all these reasons, the Tribunal found that it would not be appropriate, on the first morning of the hearing, to list any other applications to be heard together with this application concerning 168 Stepney Way.
9. Immediately prior to the start of the hearing and during the course of the hearing both of the parties handed in further documents.
10. The documents which were handed in by the Applicant comprised correspondence; a document headed "Stepney Way – Services & Maintenance Provided – Estimated & Actual Amounts – 2006/07 to 2011/12 for 168 Stepney Way"; statements of account; an extract from an Audit Commission document; and the second page of a document headed "Repairs 2010/11 Actuals" which should have followed page 177 of the trial bundle.
11. The documents handed in by the Respondent's representatives comprised photographs of Stepney Way; correspondence; an extract from the Service Charge Residential Management Code; extracts from Inside Housing; and some quotations.
12. Copies of the each party's additional documents were handed to the other party's representatives who were given time to consider them and who did not claim to be prejudiced by the late service save that:
 - (i) the Applicant was not in a position to respond to allegations raised for the first time at the hearing regarding the standard of the cleaning undertaken on behalf of the Applicant; and
 - (ii) the Applicant was not in a position to deal with documents and oral evidence relied upon in support of assertions made for the first time at the hearing that income said to have been generated by the letting out of sheds and parking bays should affect the apportionment of the estate cleaning costs.

13. Once the Respondent's representatives had heard the Applicant's submissions in relation to prejudice, it was agreed that the proposed new limbs to the Respondent's case and the late evidence relied upon in support would be excluded.

The background

14. The property which is the subject of this application is a two storey, three bedroom, maisonette in a block of twenty-five maisonettes, fourteen of which are let on long leases. The Tribunal was informed that the block contains one five bedroom property; two four bedroom properties and twenty-two three bedroom properties.
15. The parties agreed that an inspection was not required and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute. Photographs and plans of Stepney Way were provided by the parties which the Tribunal found helpful.
16. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

17. During the course of the hearing, the parties identified the relevant issues for determination as the reasonableness of the service charges claimed during the period 12th August 2004 to 21st September 2012 under the following headings:
 - (i) management charges
 - (ii) estate cleaning
 - (iii) communal energy
 - (iv) horticultural maintenance
 - (v) block maintenance
 - (vi) estate maintenance
 - (vii) door entry maintenance
 - (viii) refuse containers (bulk waste)

18. The service charge provisions are set out at clauses 4(4), 5(5) and in the Fifth Schedule to the lease. The Respondent's representatives did not seek to argue that any of the charges were not payable under the terms of the lease.
19. Mr Gabriel Brown, a team leader in the Tower Hamlets Service Charge Advice Team gave evidence on behalf of the Applicant. Mr Roof and Mr Manan gave evidence on behalf of the Respondent.
20. Having heard evidence and submissions from the parties and having considered all of the documents referred to, the Tribunal has made determinations on the various issues as follows.

Management Charges

21. In reaching its determination under this heading, the Tribunal has taken into account the fact that a proportion of the management costs are charged under other headings.
22. Mr Brown gave evidence that the costs charged under this heading are the charges for "block related issues" (excluding the cost of providing leaseholder services) which are dealt with by the neighbourhood housing office and which include dealing with anti-social behaviour and pest control.
23. The Tribunal was informed that the actual costs were higher than the costs charged to the Respondents (for example, in the year 2006/07 the actual costs were £188.06 per unit but the Applicant capped the costs charged to leaseholders at £118.78 per unit). The Tribunal was informed that a cap will continue to be applied to the management charges until 2015 when the Applicant will seek to pass the full management costs on to the leaseholders.
24. The Tribunal finds that the sums charged to the Respondent under the heading management charges (i.e. the capped management charges) are within the range of reasonable charges for a block of this size and type for the services provided.

Block and Estate Cleaning

25. On the morning of day one of the hearing, the Respondent's representatives produced some new photographs and sought, for the first time, to challenge the standard of cleaning which was undertaken during the relevant period.
26. The Applicant's solicitor stated that the Applicant was prejudiced by the late production of this material and by the proposed additional limb to

the Respondent's case. She argued that if the photographs had been taken before the caretaker had commenced his or her cleaning duties it is likely that some rubbish would have been present. She submitted that she would be prejudiced by the late introduction of the Respondent's evidence because if she had been aware that the standard of cleaning was going to be challenged she could have sought to call the caretaker to give evidence.

27. The Tribunal accepted this submission and, as stated above, once the prejudice had been explained to the Respondent's representatives, it was agreed that the new evidence would be excluded from consideration in these proceedings insofar as it was relied upon to demonstrate any deficiency in the standard of the cleaning.
28. The actual charge for Estate Cleaning costs for the property in the year 2006/07 was said to have been £548.32 on a schedule provided by the Applicant. However, the Tribunal was informed that this figure was an error; that the amount payable has been reduced by £450.77 to £97.55; and that a credit of £450.77 was applied to the Respondent's account prior to the issue of these proceedings.
29. Mr Brown gave evidence that prior to the year 2011/12 the cleaning charges were based on the attributes of the area in question but from 2011/12 they have been based on the time spent cleaning. The Tribunal notes that the actual costs for Estate Cleaning reduced from £175.53 in 2010/11 to £44.95 in 2011/12.
30. Mr Brown stated that the earlier method of charging did not take into account the fact that Stepney Way is a fairly trouble free, low maintenance block. However, he argued that both of the methods of calculating the cleaning costs produced charges within the reasonable range. On being questioned, he stated that no schedule of the work carried out was provided for the cleaner to sign and the Tribunal noted that it would be good practice for such a schedule to be provided.
31. The Respondent's representatives relied upon the plans and photographs in the bundle and upon the photographs provided at the hearing. They described the work which was undertaken and the size of the relevant area and argued that the cleaning costs were too high.
32. The Tribunal accepts the submissions of the Respondent's representatives insofar as they relate to the estate cleaning. The Tribunal finds that reasonable estate cleaning costs for the area shown in the plans and photographs, taking into account the agreed evidence that Stepney Way is a relatively low maintenance block, would have been no higher than £100 per annum during the relevant period.

33. Accordingly, a deduction of £23.19 falls to be made in respect of the year 2008/09 when the actual block cleaning costs charged to the Respondent were £123.19; a deduction of £62.14 falls to be made in respect of the year 2009/10 when the actual block cleaning costs charged were £162.14; and a deduction of £75.53 falls to be made in respect of the year 2010/11 when the actual block cleaning costs charged were £175.53. As stated above, the charge for block cleaning costs then reduced to £44.95 in the year 2011/12.
34. A total sum of £160.86 falls to be deducted from the Respondent's service charge account under this heading.

Communal Energy

35. Mr Brown gave evidence that the communal energy charge covers the electricity costs in respect of the common parts of Stepney Way. Mr Brown stated that the block had one door entry system and communal lights but no lift. No invoices were provided by the Applicant.
36. No charges were made in respect of communal energy in the service charge years 2009/10, 2010/11 and 2011/12. The Respondent's representatives were understandably concerned that the Applicant might later seek to levy a charge in a current unknown sum because some electricity must have been consumed during that period.
37. The Applicant's solicitor stated that charges were only made when invoices were received and that in respect of the years in question no invoices had been received from the energy supplier. She confirmed that the Applicant will not seek to levy any charge for communal energy consumed in the service charge years 2009/10, 2010/11 and 2011/12, even if invoices are subsequently received.
38. The sum of £74.82 was charged to the Respondent in respect of communal electricity in the year 2006/07 but this was offset by a refund of £22.59 which was applied in the year 2007/08 and the Respondent was charged £38.77 in respect of communal electricity in the year 2008/09. Applying its knowledge and experience as an expert Tribunal in the absence of invoices or alternative quotations, the Tribunal finds that these charges are reasonable having regard to the nature and size of the block.

Horticultural Maintenance

39. The charges in respect of horticultural maintenance went up from between £2.80 and £13.88 in the earlier years to £110.01 in the service charge year 2010/11 and £121.08 in the service charge year 2011/12. The Respondent's representatives requested an explanation for this

increase and asserted that these charges were too high in comparison with the charges levied in previous years.

40. The horticultural maintenance work carried out in 2010/11 is shown in a document headed "Horticulture Maintenance 2010/11 Actuals". The work carried out comprised "tree survey and leaf clearance; new planting; weed control/treatment; rose maintenance (inc. fertilise rose beds); hedges and shrub maintenance (inc. planters); and miscellaneous work" (at £6.99 per unit).
41. The horticultural maintenance work carried out in 2011/12 is shown in a document headed "Section 4: Grounds Maintenance Service". The work carried out comprised "cut grass amenity (inc. maintenance of grass edges and margins); hedges and shrubs maintenance (inc. planters); leaf removal; mobilisation costs; rose maintenance (inc. fertilise rose beds); tree survey & leaf clearance; and tree works".
42. The Tribunal has carefully considered the plans and photographs provided and finds that the costs for the horticultural maintenance work carried out in 2010/11 and 2011/12 were within the reasonable range having regard to the nature of the work carried out. The Tribunal notes that no complaints were raised regarding the quality for the work and that an alternative quotation obtained by Mr Roof does not specify whether or not tree survey work is included.
43. The Tribunal considers it likely that in the earlier years either little horticultural maintenance work was carried out or, if such work was carried out, that the full costs of the work undertaken were not passed on to the leaseholders.

Block and Estate Maintenance

44. Mr Brown accepted that some charges for block and estate maintenance had been made which should not have been applied to the Respondent's account. He emphasised that the Applicant's systems have improved and that it is unlikely that similar administrative errors will occur in the future.
45. It was agreed that the following sums fall to be deducted from the Respondent's service charge account (it was not in dispute that the percentage of the block costs payable by the Respondent is 3.96% and the percentage of the estate costs payable by the Respondent is 2.32%):
 - (i) The sum of £53.77 falls to be deducted from the block maintenance charges in the year 2007/08 because work order 336547/1 was duplicated. The sum to be deducted from the Respondent's account is £2.13.

- (ii) In respect of estate maintenance charges in the year 2007/08 the following sums fall to be deducted: £120 (it was unclear what work was carried out to the end of staircase and where the staircase was located); £51.78 (there is no number 351 on the estate); £60 and £62.40 (there is no number 68 on the estate); £26.40, £60 and £25 (Morcambe Close garage is not on the estate); £615.36 (there are no hairpin railings on the estate); £848.28 (Redmans Road is not on the estate); £50 there is no number 89 on the estate); £50 there is no number 50 on the estate); and £50 (again, there is no number 50 on the estate). The sum to be deducted from the total charges is £2,019.22 and the sum to be deducted from the Respondent's account is £46.85.
- (iii) In respect of the estate maintenance charges in the year 2009/10 the sum of £62.12 falls to be deducted from the total costs (there is no Jamaica Street on the estate) and the sum to be deducted from the Respondent's account is £1.44.
- (iv) In respect of the block maintenance charges for the year 2010/11 the sum of £62.73 falls to be deducted from the total costs (Mr Brown accepted that work order 599659/1 was probably raised due to a failure to adequately complete work order 581898/1) and the sum to be deducted from the Respondent's account is £2.49.

46. The Respondent's representatives also challenged the following block and estate maintenance charges:

- (i) The block maintenance charges in respect of the communal water tank in the year 2008/09. The Respondent's representatives questioned why the price was significantly higher than that charged in the previous year. Mr Brown gave evidence which the Tribunal accepts that in the year 2008/09 the work undertaken included a risk assessment (the Applicant's schedule includes the entry "Risk Ass Feb 09"). The Tribunal finds that the total charge of £363.33 was within a reasonable range having regard to the fact that it includes a risk assessment.
- (ii) The estate maintenance charges in respect of the year 2008/09. The Respondent's representatives argued that the sum of £906.96 charged to replace three metal bollards was too high. Mr Brown gave

evidence which the Tribunal accepts that the Applicant had installed particularly durable fixed bollards. The Respondent's representatives did not provide any alternative written quotation for this work but stated that they had found bollards for £150 + VAT each online. The Tribunal finds that the charge of £906.96 to install three durable fixed bollards was within the reasonable range.

- (iii) The block maintenance charges in respect of the year 2009/10 relating to a cyclical water tank survey in the sum of £376.96. The Respondent's representatives argued that the survey should not have taken place because the water tanks were renewed in May 2009. Mr Brown gave evidence which the Tribunal accepts that the inspection is likely to have occurred one or two months after the installation of the new tank; that a block contract to undertake the inspections annually was entered into following a competitive tender; and that the overall costs would be increased if inspections were to be carried out on an ad hoc basis. He also emphasised that the safety of residents was of paramount importance. Having regard to Mr Brown's evidence and to the Tribunal's expert knowledge and experience, the Tribunal finds that the block maintenance charges relating to the cyclical water tank survey were reasonably incurred and are reasonable in amount.
- (iv) The block charges in respect of the year 2011/12 to trace and remedy water leaks. The Respondent's representatives argued that, because major works had been carried out to the roof in 2008, leaks through the roof should not have occurred alternatively, if leaks did occur the remedial work should have been covered by a warranty. Both Mr Brown and Mr Manan gave evidence as to the nature of the work which they thought had been carried out. The Tribunal finds as a fact that the work which was carried out is likely, on the balance of probabilities, to have comprised repairs to the floor of the tank room and finds that the costs in question which amount to £899.07 in total were reasonable and reasonably incurred.

Accordingly, a total of £52.91 falls to be deducted from the Respondent's service charge account under the heading block and estate maintenance.

Door Entry Maintenance

47. The Respondent's representatives argued that a charge of £303.28 for remedying a defective closer on the door entry system was too high. Mr Brown gave evidence which the Tribunal accepts that the door entry services were provided by an external company and that the contract with that company was entered into following a competitive tender process. The Respondent's representatives did not provide any alternative written quotation for the work in question. Having regard to Mr Brown's evidence that a competitive tender was carried out and to the Tribunal's expert knowledge and experience, the Tribunal is satisfied that the sum charged is within the reasonable range for the work provided.

Refuse Containers (Bulk Waste)

48. Mr Brown gave evidence that the bulk refuse service level agreement costs were £360,157 in 2009/10; £386,160 in 2010/11; and £502,000 in 2010/12 and the Respondent's representatives questioned the increase in the costs relating to the disposal of bulk waste.
49. Mr Brown gave evidence which the Tribunal accepts that the increase in 2010/12 occurred upon the Applicant entering into a new contract following a competitive tender process and that the level of the service provided improved in this year. No alternative quotations for a service level agreement of this type were provided by the Respondent's representatives. Having regard to Mr Brown's evidence and to the Tribunal's expert knowledge and experience, the Tribunal finds that the charges in respect of bulk waste were within the reasonable range throughout the relevant period.

Total deduction

50. A total of £213.77 falls to be deducted from the sum claimed by the Applicant in respect of unpaid service charge in the period 12th August 2004 to 21st September 2012.

Application under s.20C and refund of fees

51. At the hearing, the Respondent's representatives applied for an order under section 20C of the 1985 Act. The Applicant consented to this application. Accordingly, the Tribunal makes an order by consent 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

52. The Tribunal has no jurisdiction over county court costs, county court interest or solicitors' costs. This matter should now be returned to the Willesden County Court.

Judge: Naomi Hawkes

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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, 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) 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 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.