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

Case Reference : LON/00BH/LSC/2013/0397

Property : Ground floor flat, 26 Fletcher Lane,
Leyton, London E10 6JE

Applicant : Ms Jacqueline Shagourie

Representative : N/A

Respondent : Mr Harjit Singh

Representative : Ms Angela Louis of Counsel

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

Tribunal Members : Miss J E Guest (solicitor)
Mr M Cairns MCIEH

**Date and venue of
Hearing** : 16/10/2013
10 Alfred Place, London WC1E 7LR

Date of Decision : 21/10/2013

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £621.14 is payable by the Applicant in respect of the estimated service charges for the period from 01/01/2013 to 31/12/2013.
- (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 Respondent shall pay the Applicant £250.00 within 28 days of this decision in respect of the reimbursement of the tribunal fees paid by the Applicant.

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 the Applicant in respect of the service charge year 01/01/2013 to 31/12/2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person with the assistance of her friend, Ms Aliyah Rashid. The Respondent was represented by Ms Angela Louis of Counsel. Neither the Respondent nor anyone on behalf of the managing agents, Hexagon, attended the hearing.
4. At the outset, it was established that two items, namely a site survey fee of £480.00 and a section 20 consultancy fee of £200.00, were no longer included in 2013 budget.

The background

5. The property which is the subject of this application is a three bedroom self contained flat situated on the ground floor of a two storey end of terrace house with its own entrance at ground floor level. The Applicant has exclusive use of the gardens. The first floor flat also

comprises of three bedrooms and it has its own entrance at ground floor level. There are no shared internal communal areas.

6. 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. The tribunal considered photographs of the property that were included in the hearing bundle.
7. The Applicant 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 and will be referred to below, where appropriate. It should be noted that the copies of the lease held by both parties are incomplete. Attempts were made by Ms Louis to obtain a full copy during a short adjournment but this was unsuccessful.

The issues

8. At a pre-trial review hearing on 08/07/2013, it was identified that the relevant issues for determination were follows:
 - (i) The payability and/or reasonableness of estimated service charges for the period 01/01/2013 to 31/12/2013; and
 - (ii) The payability and/or reasonableness of administration charges demanded in respect of late/non payment of the above.
9. 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.

General Maintenance & Repairs £300.00

10. The Applicant acquired the leasehold interest in 2006 and she informed the tribunal that no service charges had been demanded until the Respondent's managing agents, Hexagon, had been appointed. Hexagon wrote to the Applicant notifying her of their appointment on 10/01/2013 and they subsequently served a demand on 24/01/2013 in respect of the advance service charges due in relation to 2013. The Applicant informed the tribunal that Hexagon had been previously operated under the names CSC and then SS but that they had failed to undertake any management of the building, including the collection of ground rent.
11. The Applicant stated that she had assumed responsibility for the repair and maintenance of the building, which included purchasing ladders so she could herself clean guttering and arranging for works at the

cheapest possible cost when water penetration from the flat above caused internal damage to the property. The Applicant wished to continue undertaking such works herself to reduce costs.

12. Ms Louis for the Respondent relied upon paragraph 1 of the Fifth Schedule that requires the landlord to repair and maintain the building. Ms Louis submitted that the estimated charge was not excessive and that the amount would be credited back to the service charge account in the event that no works were carried out.

The tribunal's decision

13. The tribunal determines that the amount payable in respect of general maintenance is £300.00. The Applicant's contribution is **£150.00**.

Reasons for the tribunal's decision

14. Clause 4(4) of the lease requires the Applicant to contribute towards the expenditure listed in Schedule 5. The percentage contribution in the lease has been inadvertently left blank. Given that the two flats are of equal sizes, the Applicant agreed that the Respondent's 50% apportionment was appropriate.
15. The Respondent is responsible for the repair and maintenance of the building under paragraph 1 of the Fifth Schedule.
16. The estimate charges of £150.00 per flat were considered to be modest in the circumstances and the charge was allowed in full.

Initial inspection £150.00

17. The Applicant disputed this charge, which related to an inspection by 'Zaf' of Hexagon's maintenance department on 17/01/2013. The Applicant considered the cost both excessive and unnecessary.
18. Ms Louis submitted that the expenditure was reasonable as the managing agents needed to carry out an inspection in order, for e.g., to verify the condition of the building for insurance purposes. In his witness statement dated 30/08/2013, Mr Q Ali of Hexagon stated, amongst other things, that the inspection had been undertaken by a member of the maintenance team who was NEBOSH qualified (*National Exam Board in Occupational Safety and Health*) and that the cost included their travel, the time on site and the time spent compiling the report.

The tribunal's decision

19. The tribunal determines that the amount of £150.00 is not payable.

Reasons for the tribunal's decision

20. The tribunal considered that this was not an inspection but a visit by the managing agent. The managing agent levies a charge for managing the building and the tribunal considered that such a site visit was part of the Hexagon's general management duties.
21. Zaf is not a surveyor since s/he is qualified in matters of health/safety, s/he purported to give an opinion on the condition of the property but only looked at the front exterior yet concluded the property was in good condition. S/he also thought the building was constructed after World War 2 when it was much more likely to be Victorian.

Building insurance £282.27

22. The Applicant objected to this cost as she has been insuring her flat since she purchased the leasehold interest in 2006. Her current policy was obtained at a cost of £136.00 and expires on 23/11/2013. The Applicant considered it unreasonable that she should be required to pay insurance again.
23. Ms Louis informed the tribunal that the Respondent is obliged to insure the building under paragraph 5 of the Fifth Schedule and referred to the insurance certificate obtained for a 12 month period commencing on 04/02/2013.

Tribunal's decision

24. The tribunal determines that the amount payable in respect of the building insurance is £282.27. The Applicant's contribution is **£141.14.**

Reasons for the tribunal's decision

25. The Respondent is obliged to insure the building under the terms of the lease. It is essential that the entire building is insured and not just the Applicant's flat. The tribunal considered that the cost of insurance was more than reasonable. The sum was, therefore, allowed in full.

Accountancy fees £400.00

26. The budget included an estimated charge of £400.00 but the Applicant accepted the proposal made in Mr Ali's statement that the

book keeping would be undertaken in-house at a cost per flat of £90.00 (including VAT).

Tribunal's decision

27. In view of the agreement reached between the parties, the tribunal determined that the charge for accountancy as £180.00. The Applicant's contribution is, therefore, **£90.00**.

Management fees £480.00

28. The Applicant considered these fees to be both unnecessary and excessive. Ms Louis relied upon paragraph 6 of the Fifth Schedule that entitles the Respondent to charge for the reasonable fees of the managing agent for the collection of rent and for the general management of the building. Ms Louis did not have any information regarding Hexagon's fee charging structure.

Tribunal's decision

29. The tribunal determines that the amount payable in respect of the management fee is £480.00. The Applicant's contribution is, therefore, **£240.00**.

Reasons for the tribunal's decision

30. The tribunal considered that the management fees of £200.00 plus VAT per flat were reasonable given the size, character and location of the building. The tribunal, therefore, allowed the sum in full.

Administration charges £186.00

31. The Respondent served a demand seeking advance payment of the service charges for 2013 on 24/01/2013. Ms Louis conceded that this demand had not been accompanied by the summary of tenants rights and obligations as required by section 21B of the 1985 Act, although it was noted that the demands in relation to the administration charges were accompanied with the relevant summary. Following service of the demand, Hexagon sent further demands on 05/03/2013, 18/03/2013 and again on 27/03/2013 each incurring an administration charge of £48.00, £48.00 and £90.00 (all incl VAT) respectively.
32. Ms Louis relied upon paragraph 6 of the Fifth Schedule in respect of the payability of these charges but, particularly in the absence of any witness from Hexagon, she was unable to give any information to the tribunal as to how these charges were calculated. Mr Ali stated in his

witness statement that the Respondent was entitled to levy an administration charge pursuant to paragraph 8 of the Eight Schedule.

Tribunal's decision

33. The administration charges are not payable.

Reasons for the tribunal's decision

34. There is no provision in the lease that entitles the Respondent to levy an administration charge. Paragraph 6 of the Fifth Schedule relates only to the collection of rent by managing agents and does not refer to the collection of service charges. Although it was acknowledged that the lease appears to be incomplete, it was unlikely that there was an Eight Schedule given that the signature on the lease appears after the Sixth Schedule, which indicates that as the end of the document.

Application under s.20C and refund of fees

35. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application and hearing¹ that amount to a total of £250.00.
36. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund the sum of £250.00 to the Applicant within 28 days of the date of this decision.
37. At the pre-trial review hearing, the Applicant 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 Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name:

Miss J E Guest

Date:

21/10/2013

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).