9024

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAK/LSC/2013/0402 and LON/OOAK/LVA/2103/0002**
Property	:	**Flat 3, 31 Gareth Drive, London, N9 9GB**
Applicant	:	**Miss Nevena Ivanova**
Representative	:	**In person**
Respondent	:	**Victoria Green (Edmonton) Management Co. Ltd.**
Representative	:	**Residential Management Group Limited (RMG)**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge and a variable administration charge(section27A and S20c Landlord and Tenant Act 1985 (the Act) and Schedule 11 Commonhold and Leasehold Reform Act 2002 (the 2002 Act)**
Tribunal Members	:	**M A Dutton – Tribunal Judge** **Mr N Maloney FRICS**
Date and venue of Determination	:	**31st July 2013 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**31st July 2013**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that 50% of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 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 years .

2. The relevant legal provisions are set out in the Appendix to this decision.

3. With the parties agreement and following directions issued in both cases the matters were consolidated and set for determination as a paper case, without the need for a hearing. There was no inspection of the Property, it being unnecessary, given the issues.

The background

4. The property which is the subject of this application is a ground floor flat in a building comprising some 32 flats but on an estate of some 174 units

5. 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 will be referred to below, where appropriate.

The issues

6. The issues in this case are as set out in the directions. In respect of the application under the 2002 Act it relates to a policy excess charge of £1,000. The issues set out in the direction are:

    (i) Why the Applicant is responsible for 100% of the excess, and not apportioned according to service charge apportionment

(ii) Why the excess is not being sought from the person liable for the flood

(iii) Whether any internal administration charge has been added to the excess

(iv) Which clause of the lease is relied upon for charging of the excess to an individual or service charge.

7. In respect of the application under the Act the following issues are to be determined

(i) Whether an administration charge of £36 in 2010 and 2011 and ordered to be removed b y the tribunal in earlier proceedings has been removed

(ii) Whether an administration charge of £30 in 2012 and £33 in 2013/14 were properly charged

(iii) Whether a reminder fee of £18 was properly charged

(iv) Whether the reserve fund should be capped in the sum of £97.69 and has been increased by the Respondent to £163.41 in 2011, £189.36 in 2012 and £195.04 in 2013.

(v) Whether an order under section 20C should be made.

8. At the determination we had before us bundles from the Applicant and RMG. We noted the contents. We did not consider the CD as we did not consider it necessary in the light of our decision.

Insurance Policy Excess under the 2002 Act Application

9. The lease provisions in this regard are to be found under the Definitions heading which defines the "Insured Risks" to include escape of water. At paragraph 3.4 of the Third Schedule is to be found the Tenant's obligations which includes the need to *"keep the Flat and all parts thereof .... in good and substantial repair (save as to damage in respect if which the Landlord or the Management Company is entitled to claim under any policy of insurance maintained by the Management Company in accordance with the covenant in tat behalf hereinafter contained except in so far as such policy may have been vitiated by the act or default of the Tenant or any person claiming through him)* "

10. The Management Company's obligations are set out in the Fourth Schedule and include at paragraph 4.2 the insurance provisions and a requirement to insure the Estate and the Buildings, including the Flat against the Insured Risks. At paragraph 4.5 the Management Company is to *"lay out all monies received through such insurance in reinstatement or rebuilding"* and building on the Estate damaged or destroyed by any insured risk

The tribunal's decision and reasons

8. We find that the lessees are to contribute, through the service charge, to the costs of any repair which falls within the policy excess. It is not a charge which should be levied against the Applicant in this case. The lease provides that water damage falls within the Insured Risk. The Management Company, the Respondent, is not only obliged to insure, but as provided for at paragraph 4.5 to pay the costs associated with any repair, which would include costs falling within the policy excess. It follows on, that in so doing, it is entitled to recover that cost as a service charge. It should be noted that the individual leaseholders benefit from a lower premium by the policy excess, which it seems also reflects the claims history of the development. It is a matter for the Respondent to consider whether it can proceed against the lessee owning the flat from which the water escaped. For our part we doubt they can as the insurance provisions expressly cover this point, which include any failings on the part of that lessee.

9. Accordingly we find that the insurance monies should be obtained without further delay, any policy excess should be met by the Respondent, and recovered of course, and the repairs should be undertaken without further delay. Although the Applicant appears to suggest that we should make some "punitive" finding we are not prepared to do so. If the Applicant believes she has a claim for any breach of the repairing obligations she should proceed with that matter through the County Court. We do not encourage her to do so as this is a leaseholder's management company, we suspect with limited funds and to extent she would be "cutting her nose off to spite her face".

The application under the Act (s27A and 20C)

10. We have set out above the number of issues which break down to essentially four matters. Has the Respondent complied with the tribunal's earlier decision? Is it reasonable for RMG to make a charge for accepting payment of the service charge by standing order, is a charge of £18 for a reminder letter unreasonable and are the contributions to the reserve fund unreasonable?

The tribunal's decision and reasons

11. Taking each of the issues set out in turn we find as follows. The administration charge in 2010 was £35.25 and by reference to the statement from RMG (Mr James Landeg dated 27th June 2013) it appears that credit has already been given to these amounts the subject of the previous tribunal decision. In that case, under reference LON/OOAK/LSC/2010/0642 dated 10th January 2011 a sum of £439.45 was disallowed, the reserve fund payments were reduced and a credit of £102 was ordered to be made to the Applicant's account. The statement of account produced by RMG shows these repayments and accordingly we dismiss this aspect of the Applicant's claim.

12. In respect of the standing order charge, or the "Deferred Payment Charge" as it is shown, we find that this is a reasonable charge. In the year 2011 there is a charge of £36 for the deferred payment and we find this is a reasonable charge to be made to enable the Applicant to in effect "amend" the service charge payment provisions in the lease as set out at clause 6 which requires payment by two instalments. This sum apparently reduced in 2012 to £30. This is not an "administration charge" within the meaning of the 11th Schedule to the 2002 Act. It is a cost that the Applicant must bear if she wishes to pay by instalments. If she does not, and pays as per the terms of the lease then the cost is not payable. We can find no reference to the £33 being added to her account as yet.

13. Accordingly we dismiss the Applicant's complaints about the deferred payment charges for the periods in dispute in these proceedings. In so far as the £18 charge for late payment is concerned this is not referred to in her statements. It appears that she had fallen into arrears, there being no credit to her account between November 2012 and March 2013 and the reminder letter appears to have produced payment of £350. The sum involved is a reasonable amount and is an administration charge under the provisions of paragraph 1(1)(c) of the 11th Schedule to the 2002 Act. Accordingly we dismiss the Applicant's complaint in respect of the fee of £18.

14. The final matter relates to the reserve fund payments. We have noted all that is said by the Applicant in her statement dated 10th July 2013. Annexed to the statement of case lodged on behalf of the Respondent by RMG dated 27th June 2013 is a detailed report from The Vinden Partnership produced by Chris Duffy a director of that company. It is not a report prepared by Mr Landeg. The report sets out maintenance works required over a 10 year programme. These include works that would be outside any NHBC cover that might be available.

15. We are satisfied that the Respondent was correct to commission such a report and to build up reserve funds to meet such requirements as cyclical decoration and general repairs. There are enough entries under the "Poor" heading to warrant this. The amounts being claimed do not seem unreasonable given the Building Condition and Budget Appraisal

spread sheets attached. Whether they should increase above the present level is a matter for the Respondent to consider and review. We therefore dismiss the Applicant's complaint in this regard.

Application under s.20C

16. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Given the finding we have made in respect of the Insurance provisions we conclude that the Respondent should not be able to recover more than 50% of any costs associated with these proceedings, it being just and equitable in the circumstances. Accordingly we make a partial order under section 20C of the 1985 Act, so that the Respondent may not pass more than 50% of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Andrew Dutton - Tribunal Judge **Date:** 31st July 2013

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 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 a leasehold valuation 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 a leasehold valuation 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).