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

Case Reference : **LON/OOAZ/LSC/2013/0207**

Property : **Upper Maisonette 57, Hurstbourne
Road, London SE23 2AA**

Applicant : **Mr Z Benveniste**

Representative : **Circle Residential Management
Limited**

Respondent : **Makaan Limited**

Representative : **none**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge pursuant to
s27A Landlord and Tenant Act 1985**

Tribunal Members : **Mr A Dutton - Tribunal Judge
Mr N Maloney FRICS**

**Date and venue of
Determination** : **30th July 2013 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **30th July 2013**

DECISION

Decisions of the tribunal

The tribunal determines that the sum of £250 is a reasonable charge in respect of the Respondents 50% share of the roof repairs totalling £500 and is payable by the Respondent within 28 days.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness of a service charge in respect of roof repairs .
2. The relevant legal provisions are set out in the Appendix to this decision.

The Determination

3. The tribunal had before it a bundle of documents prepared by the Applicant's representative, Circle Residential Management Limited (CRML). The bundle contained a statement of case with supporting documents, the application, directions and a copy of the lease and the Landlord's and Respondent's register of title details. In addition copies of an invoice from Chris Ball & Son Roofing Limited in the sum of £500, including VAT and an alternative estimate from B McGuinness Decorators & Maintenance at a price of £535 were produced.

The background

4. The property which is the subject of this application is a terraced property containing two flats/maisonettes. The Respondent hold under the terms of a lease dated 19th June 1979. This provides at clause 3(6) that the tenant will pay one half share "*of the expenses incurred by the Landlord in....maintaining the roof*"
5. The Landlord at clause 4(6) of the said lease covenants to "*well and substantially repair the roof...*"
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 issues

7. The directions, dated 30th April 2013 set out four issues

- Whether the costs incurred in carrying out the temporary roof repairs in November 2012 were reasonably incurred
 - Whether the service charges for the whole property is reasonable
 - What is the percentage of the interim service charges payable by the leaseholder under the lease
 - Whether an order for reimbursement of application/hearing fees should be made
8. Having considered all of the documents provided, the respondent not participating, the tribunal has made determinations on the various issues as follows.

Service charge item & amount claimed

9. Whether the costs incurred in carrying out the temporary roof repairs in November 2012 were reasonably incurred

The tribunal's decision and reasons

10. The tribunal determines that the amount payable in respect of the Respondent's contribution to the costs incurred in dealing with the roof repair is £250. The Respondent does not challenge the need for the works. CPML produced a copy of a "maintenance request form" indicating that there was water penetration to the flat, presumably the Respondent's upper floor maisonette. The cost of £500 appears reasonable when viewed against the other estimate obtained and on the basis that access would need to be gained and a protective covering applied. We are therefore satisfied on the evidence before us that the work was needed and the cost was reasonable and is payable by the Respondent.

Service charge item

11. Whether the service charges for the whole property is reasonable. What is the percentage of the interim service charges payable by the leaseholder under the lease.

The tribunal's decision

12. In respect of the first issue it is not clear what is expected of us. The only service charge in issue is the roof repair and we have dealt with that above. It does not seem to us that there is any matter to consider. In so far as the interim service charge is concerned we cannot see that the lease allows the collection of any 'interim' payments. The lease at

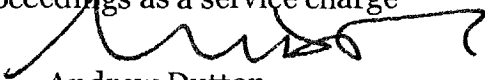
clause 3(6) requires the tenant to “*pay and contribute one-half share of the expenses incurred (our underlining) by the landlord in... maintaining the roof*”. As appears to be the case in this matter the Landlord has incurred the costs of repairing the roof and the tenant must pay them. It seems to us that the Landlord is entitled to demand payment of service charge costs as and when they are incurred, but not in advance. The Respondent clearly has an obligation to contribute 50% of the proper costs incurred.

Application under s.20C and refund of fees

13. Given our findings and the fact that the Applicant appears, through CPML, to have tried to avoid bringing these proceedings but has been met with silence, we order the Respondent to refund the application fee of £50 within 28 days of the date of this decision.

14. No application under s20C has been made by the Respondent. However, as a matter of comment it does not seem to us that the lease includes provisions for the Landlord to recover the costs of these proceedings as a service charge

Name:


Andrew Dutton -
Tribunal Judge

Date:

30th July 2103

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.