

9796



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

**Case Reference** : **LON/00AC/LSC/2013/0587**

**Property** : **52 Edgeworth Close, London NW4  
4HN("the property")**

**Applicants** : **Daejan Properties Limited**

**Representative** : **Ms Marie Claire Bleasdale**

**Respondent** : **Ms A A McDonald**

**Representative** : **In Person**

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

**Tribunal Members** : **Ms M W Daley LLB (Hons)  
Mr K Cartwright FRICS  
Ms J Dalal**

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

**Date of Decision** : **9 January 2014**

---

**DECISION**

---

Decisions of the Tribunal

- (1) The Tribunal determine that the Service charge contributions for the cleaning for the year ending 31.3.2010, in the sum of £4064.00

(respondent's share in the sum of £125.98) is reasonable and payable, for the year ending 31.03.2011 in the sum of £4152.00 (respondent's share in the sum of £128.71) is reasonable and payable, and for the years ending 31.3.12 in the sum of £4218.00 (respondent's share £130.76 is reasonable and payable.

- (2) The Tribunal determine that the charges for the gardening maintenance for the years in issue are reasonable and payable, save that the Tribunal determines that the Respondent's share will be reduced by 10% to reflect the issues with the overgrown tree which affected her enjoyment of the property.
- (3) The Tribunal determines that in respect of the service charge cost for the Health and Safety reports, (payable for the year ending 31.03.10) the sum ought to be reduced by 50% for reasons set out in the decision.
- (4) The Tribunal determines that the cost of Rim Latch Front door in the sum of £351.00 for the premises is reasonable and payable.
- (5) In respect of the service charges for refuse removal payable in the year ending 31.03. 2012 the Tribunal determine that the sum claimed of £266.00 (the respondent's share in the sum of £8.25) is reasonable and payable.
- (6) The Tribunal determines on a balance of probabilities that the service charge demands, were served, and were compliant with the Service Charge ( Summary of Rights and Obligations) Regulation 2007
- (7) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

### The application

1. The Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether future service charges are reasonable and payable for the periods set out above.
2. The Applicant issued proceedings in the Northampton County Court in the sum of £3611.73. Pursuant to this claim, the Respondent admitted that service charges of £2538.98 were payable and accordingly paid. Of the balance of £1,072.75, the Respondent stated that she wished to challenge the charges for communal cleaning, gardening the fitting of a lock to the front door, and the bulk refuse removal for the years ending 31.03.10-31.03.12.

3. The matter was transferred to the property chamber (Residential Property Tribunal) pursuant to the order of DJ Kumrai.
4. Directions were given by the Tribunal on 24.09.2013.

### **The matter in issue**

5. An oral pre-trial review was held by the Tribunal on 24 September 2013, which was attended by the Applicant's representative. The Respondent did not appear and was not represented, directions were given and the matter was set down for hearing on 6 December 2013.
6. The relevant legal provisions are set out in the Appendix to this decision.

### **The background**

7. The premise which is the subject of this application is a first floor flat situated in a block of four flats, part of a development of eight flats built in the post second world war period. The Respondent's share of the estate cost was 3.1%; her share of the block cost was 25%.
8. The Applicant holds a long lease of the premises, pursuant to the assignment of the lease of premises on 27 September 1984. The lease required the landlord to provide services and the Respondent, as leaseholder, to contribute towards the cost of the service, by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

### **The Hearing**

9. At the hearing the Tribunal were provided with a Skeleton Argument filed on behalf of the Applicant.
10. The Respondent had raised as a general issue, that she had not received itemised statements from the Applicant or any demands, at the hearing the Applicant's produced demands, however they were unable to provide copies of the provision of a *Summary of Tenant Rights and Obligations* which had accompanied the demand.
11. The Applicant's explained that these were appended to the demand in the post room. Ms Bleasdale, counsel stated on behalf of the Applicant, that this issue had not been raised by the Respondent before, and that other leaseholders had received and paid their service charges. The Tribunal determined on a balance of probabilities that these demands had been served by the Applicant.

### ***The Cleaning and the Tribunal's determination on this issue***

12. At the hearing the Tribunal were provided with copies of the invoices in respect of the cleaning of the common parts. The cleaning was carried out by Sterling Maintenance Services on a weekly basis, and the stairwells and walkways of the premises were cleaned. The monthly amount paid was between £310 and £388 per month.
13. The contract was a rolling contract. In general the Respondent had no issue with the way in which the cleaning was being carried out. Her objection was that because of dumping of items and inappropriate use of the passage as a storage area, the area in front of her property was unsightly and as such she was not deriving benefit from the cleaning( the Respondent produced photographs taken on 30.09.2013 in support of her claim).
14. However the Respondent accepted that cleaning was being carried out to a reasonable standard and in general the contractor cleaning around the stored area, furthermore she took no issue with the costs charged in relation to the cleaning.
15. The Tribunal determined that the issues raised by the Respondent related to the way in which the building was managed and that the landlord had not been strictly enforcing compliance with the lease, this did not relate to the reasonableness and payability of the cost of cleaning, accordingly the Tribunal had to consider whether the services were provided as set out in the invoice, and whether the cleaning was undertaken to at a reasonable cost and to a reasonable standard.
- 16. On the evidence of the Respondent and of the building manager Mr Kotecha, the Tribunal determined that the standard and cost of the cleaning was reasonable and that the sums demanded were reasonable and payable by the Respondent.**

***The Garden Maintenance and the Tribunal's determination on this issue***

17. The Tribunal were referred to the gardening cost for 2010 in the sum of £1880.00. The Tribunal were provided with the contract which set out the services provided, together with details of the frequency and the invoices. The services were provided by Stephen Bracken, the property was checked on a month basis by Mr Kotecha the property manager.
18. The issue for the Respondent was that there was a hedge below her window which had overgrown to such an extent that it was causing damage and inconvenience to the Respondent ( this was evident by a photograph). The Tribunal were informed that this was in fact a tree which was growing from the neighbouring property which had since the photograph been removed.
- 19. The Tribunal noted that this tree had caused a nuisance to the Respondent for several years and that as a result the standard of the gardening had been compromised. The Tribunal have determined that this ought to be reflected in a reduction in the cost of the gardening of 10% for each of the years in issue.**

### ***The Health and Safety Reports and the Tribunal's determination on this issue***

20. Ms Bleasdale informed the Tribunal that this was the cost associated with a health and safety inspection carried out every two years. A report was produced by Ark Workplace Risk and the Applicant's acted on the basis of this report.
21. On questioning by the Tribunal, the Applicant did not have a copy of this report to hand, and was given until 23 December 2013 to provide a copy for the Tribunal. (The Respondent was given to 1.01.2014 to provide a reply).
22. The Respondent noted that there was no evidence that the issues of inappropriate storage and a washing line which prevented access to the rear, (all of which were potential fire hazards) had been address by this inspection.
23. In answer to questions by the Tribunal, it was agreed that the Applicant would obtain the report, in order to address any health and safety issues that had arisen and which needed to be addressed at the property.
24. On 6 January 2014, the Applicant wrote to the clerk for the Tribunal, to inform the Tribunal that they were unable to produce a copy of the Fire Safety Report.
25. Although the Tribunal did not have sight of the report, it was self evident that the matters described by the Respondent were fire hazards, and that although the Applicant had sent one letter to the leaseholders at the building, there was no evidence that the report had led to proactive steps being taken to address the health and safety issues at the premise.  
**Accordingly, the Tribunal considers that there was little purpose in commissioning a report without follow up of compliance action. Accordingly the cost of the report ought to be reduced by 50% to reflect the lack of management action on the report. The Tribunal determined that the Respondent's payable cost of the report ought to be reduced by 50%.**

### ***Rim Latch to the Front door in the sum of £351.00***

26. The Applicant had had a door lock fitted in the period ending 31.03.2010. This was because the communal doors had been fully accessible, and this had caused issues with lack of security at the premises.
27. The Respondent was concerned that these were fire doors and that as a result of the door lock, she had problems with visitors being unable to come to her flat, and mail had not always been left at the premises.
28. The Applicant stated that they had consulted about an intercom, however the majority of the leaseholders had objected to this cost, (the Respondent had no recollection of having been consulted).
29. The Tribunal noted that the door could be opened from the interior without a key and as such the lock did not cause a fire hazard at the premises. The Tribunal noted that it was not appropriate for the communal doors to be incapable of being locked, as this caused an additional security risk at the premises. **Accordingly the Tribunal**

**find the cost associated with the fire door was reasonable and payable.**

***The Refuse Removal in the sum of £266.00***

30. This was a one off bulk refuse removal to the external walkways and garden area at the premises, the Respondent objected to this cost on the grounds that there was still an issue with dumping at the premises.
31. The Applicant stated that there were issues with “fly tipping” at the premises, and that some of the leaseholders let their properties and as such some of the tenants left their unwanted items behind.
32. Ms McDonald (the Respondent) stated that the local authority might have agreed to remove these items without cost. This was not within the experience of the Applicant.
33. The Tribunal noted that her concern was that this one off removal had not lead to a solution for the issue of dumping that existed at the premise. The Tribunal noted that this would only improve with more robust management of the premises, and that this would also involve increased cost as the landlord increased the frequency of refuse removal; however the issue was whether the cost had been reasonably incurred. The Tribunal determined that the cost had been reasonable incurred and that the sum claimed was reasonable, and payable.

**Application under s.20C and refund of fees**

34. The Tribunal noted that given its finds it is not appropriate to make an order under Section 20C of The Landlord and Tenant Act 1985. This is because the Tribunal have substantially found in favour on behalf of the Applicant.
35. The Tribunal determines that this matter shall be remitted back to the County Court in accordance with the Tribunal’s determinations, within 28 days of the date of this determination.

**Name:** Ms M W Daley

**Date:** 09. 01.2014

## **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.

### **Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**

#### **Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

### **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.