



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

Case Reference	:	LON/00AM/LSC/2014/0147
Property	:	The Forum and the Square, Independent Place, Shacklewell Lane, London E8 2HE
Applicant	:	Independent Place Management Co (1999) Ltd
Representative	:	Rendall Rittner Hammond
Respondents	:	Lessees of the Forum and the Square
Type of Application	:	Payability of service charges
Tribunal Members	:	Judge Nicol Mr WR Shaw FRICS
Date of Decision	:	16th June 2014

DECISION

Decision of the Tribunal

The Tribunal determines that the Applicant is entitled to grant an exemption from payment of the costs of painting the windows at the Forum and the Square to any lessee who installs new windows to their property at or before the commencement of the painting works rather than share the total cost amongst all lessees.

The application

1. Under the leases for the properties at the Forum and the Square, the lessees are responsible for their windows, including replacing them when required, while the Applicant management company is obliged to

decorate the outside of the building, including the window frames, every five years.

2. Perhaps unsurprisingly, the lessees who have recently replaced their windows object to those same windows being painted unnecessarily at their expense through the service charge. The Applicant is agreeable to exempting them, both from that element of the decoration works and the resulting costs, but seeks a determination that they are entitled to do so. Some lessees have indicated their support for the Applicant's position but none have indicated any opposition.
3. Essentially, the Tribunal is being asked to determine a simple question, namely whether the cost of painting windows may be charged to each lessee at the actual cost of painting that lessee's windows rather than dividing the total cost amongst all lessees. Although not expressly stated, the Tribunal assumes that the former arrangements will result in some lessees having a higher charge than under the latter arrangements so that this application involves a determination as to the payability of the higher amount.
4. Expenditure recoverable through the service charge must be charged under the Fifth Schedule in each of the relevant leases in "such proportion as the Management Company or the Landlord shall at its or their discretion deem fair and appropriate having regard to all the Units in the building".
5. In the normal course of events, it would be entirely fair and appropriate to divide costs equally or in proportion to some measure of the size of each property, such as floor area or number of bedrooms for example, even if the charge to any one property did not precisely equate to the benefit received by that property. However, the wording of the leases in this case appear to the Tribunal to give the Applicant the discretion to charge the actual costs of works to individual flats to the lessee of each of those flats so long as they deem it fair and appropriate to do so having regard to the interests of all the lessees.
6. The Applicant's proposal to charge the actual costs of painting windows to each relevant flat seems to the Tribunal to be fair and appropriate in the circumstances. Therefore, the Tribunal is satisfied that the leases at the Forum and the Square entitle the Applicant to do so.

Name: NK Nicol

Date: 16th June 2014

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.