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

Case Reference : **LON/00aw/lsc/2014/0003**

Property : **Flat 7 ,18 Kensington Court London
W8 5 DW**

Applicant : **John Fernandez**

Representative : **In Person**

Respondent : **18 Kensington Court (Freehold)
Limited**

Representative : **William Heath &Co solicitors**

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

Tribunal Members : **Judge P Leighton LLB**

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

Date of Decision : **5th March 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Applicant is not liable to pay the sums of £49.75, £31.32 and £12.07 to Respondent in respect of the service charges for cleaning in the years 2010/11, 2011/12 and 2012/13]
- (2) The tribunal further determinations that the Applicant is entitled to credits of £63.39 and £75.38 paid on the 23rd July 2013 and 2nd August 2013
- (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 £65 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") as to the amount of service charges payable by the Applicant in respect of cleaning charges for the service charge years 2010/11 to 2012/13 for Flat 7, 18 Kensington Court London W8 5DW ("the property").
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person. The Respondent who was represented by solicitors William Heath & Co did not appear at the hearing but wrote to the Tribunal conceding the claim by the applicant

The background

4. The property which is the subject of this application is a self contained flat in a block of 8 flats of which the other seven flats own a share of the freehold
5. 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.
6. 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.

The issues

7. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of the cleaning costs for the years 2010/11 to 2012/13 for which the Applicant sought a deduction of £93.07
 - (ii) A declaration that the sums of 63.39 and £75.38 which had been paid by the Applicant on 23rd July 2013 and 2nd August 2013 should be credited to his service charge account
8. Having read the submission from the Applicant and the letter from the Respondent's solicitors the tribunal was satisfied that the claim was made out and made the declarations sought by the Applicant.

Application under s.20C and refund of fees

9. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant in the sum of £65 28 days of the date of this decision.
10. In the application form/ in the statement of case/ at the hearing, the Applicant/ Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the Applicant and having read the lease and taking into account the determinations above, the tribunal determines that an order to be made under section 20C of the 1985 Act, so that the Applicant/ Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. The tribunal is satisfied that the lease does not make provision for the payment of legal or other costs other than in relation to a possible claim relating to the service of a section 146 notice

Name: Peter Leighton

Date: 5th March 2014

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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.

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).