



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

Case reference : LON/00BE/LSC/2014/0046

Property : 6 Herrick House Elmington Road
London SE5 7QW

Applicant : London Borough of Southwark

Representative : Ms A Mills, Legal Officer

Respondent : Mr Presley Owobu

Representative : In person

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

Tribunal members : Ms R Wayte
Mr J Barlow FRICS

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

Date of decision : 30 June 2014

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £3,690.01 is payable by the Respondent in respect of the advance service charges demanded for the major works contract as at the date of the county court proceedings.
- (2) 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 Respondent through any service charge.
- (3) The tribunal determines that the Respondent shall pay the Applicant £95 within 28 days of this Decision, in respect of part reimbursement of the tribunal fees paid by the Applicant.
- (4) This matter should now be referred back to the Lambeth County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the major works contract charged in service charge years 2012/13 and 2013/14.
2. Proceedings were originally issued in the Northampton County Court under claim no. 3YS17754. The claim was transferred to the Lambeth County Court and then in turn transferred to this tribunal, by order of Deputy District Judge Cridge on 21 January 2014.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Mills at the hearing with the following witnesses: Mr Phillipps, Lead Designer; Ms Shadbolt, Project Manager; Mr Wellbeloved, Estimates Manager; Mr Bulah, Consultant and Mr Larkin, Senior Contracts Manager. The Respondent appeared in person.

The background

5. The property which is the subject of this application is a three storey brick built walk-up block of flats dating from the 1950s. There are 18 flats in total, either one bed or studio flats. The property forms part of the Elmington Estate in Southwark.
6. Photographs of the building were provided in the hearing bundle. 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.
7. The Respondent 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

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether the landlord has complied with the consultation requirement under section 20 of the 1985 Act in respect of the major works.
 - (ii) Whether the estimated costs of the major works are reasonable.
 - (iii) Whether an order under section 20C of the 1985 Act should be made.
 - (iv) Whether an order for reimbursement of the application fee should be made.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Consultation

10. The works in question fell within a qualifying long term agreement and therefore the consultation requirements are set out in Schedule 3 of the Service Charges (Consultation etc)(England) Regulations 2003 ("the Regulations"), requiring the landlord to give notice in writing of his intention to carry out qualifying works. The issue raised by the Respondent was that no notice had been given, as the Applicant wrote to the Respondent at his previous address and not at the property.

11. Mr Wellbeloved, the manager of the team responsible for leaseholder liaison, gave evidence that the Applicant's standard practice was to send a copy of the notice via the correspondence address on file and deliver a copy of the notice through the letterbox of the relevant property. He had signed a statement of delivery to this effect on 4 October 2012, which confirmed that the notice had been hand delivered to the property on 2 October 2012.
12. The Respondent maintained that he had not seen the notice at the time, which the tribunal accepts. However, the tribunal also accepts the evidence of the Applicant that a copy of the notice was put through the letterbox to the property, the obvious explanation being that this was mislaid or overlooked by the Respondent.

The tribunal's decision

13. In the circumstances the tribunal considers that the consultation requirements have been met by the Applicant. It is most unfortunate that the Applicant failed to update the Respondent's correspondence address as this may well have meant that any concerns about the works could have been dealt with at an earlier stage and without legal proceedings.

The major works

14. Ms Shadbolt, the Project Manager for the Applicant, explained that the works were undertaken as part of the "Warm, dry and safe" strategy which aimed to bring all council property to that standard by 2016. This particular package of works was also informed by the Applicant's stock condition database and the feasibility report produced by Brodie Plant Goddard surveyors.
15. The estimated cost of the works in the section 20 notice for the property was £8,064.16, which had been charged in accordance with the lease over three service charge years, depending on the amount of the cost due to be incurred within each year. This meant that as at the date of issue of the County Court proceedings, £5,250.20 or 65% of the total cost had been charged and formed the limit of our determination.
16. However, by the time of the hearing draft final accounts were available which showed that the actual cost had significantly reduced, with a new estimate of £5,667.75 in total due from the Respondent. Applying the same percentage, this would reduce the amount outstanding as at the date of the County Court proceedings to £3,690.01. In view of the draft final accounts being the best available evidence as to the cost of the works at the date of the hearing, the Applicant agreed to use those accounts as the amount claimed for each item in the major works which was considered in turn as set out below.

The roof - £41,418.68

17. Mr Bula for Brodie Plant Goddard gave evidence on the feasibility report, although his colleague Mr Goddard had looked at the block in question. He admitted there were minor errors in the report as to the postcode and description of the flats and confirmed that the inspection was at ground level, although his colleague had apparently seen the roof from a neighbouring property. The report confirmed that this block was the last on the estate with its original roof covering and after that length of time it was considered the roof had reached the end of its natural life and should therefore be replaced as part of the programme.
18. Ms Shadbolt also confirmed that the stock condition survey had highlighted the roof as requiring replacement. Finally, Mr Phillipps, the Lead Designer, confirmed that he had personally inspected the roof and made the decision that replacement was required as the damage to the tiles and flashing was beyond economic repair. The cost of the works was mainly provided for in the qualifying long term agreement and considered to represent best value for money.
19. The Respondent maintained that the feasibility report was a poor piece of work and did not make out the need for replacement of the roof. He had asked his neighbours whether they had any problems with the roof and was unaware of any complaints. He didn't make any specific objection to the cost of the works, focussing on whether they were necessary and fell within the service charge provisions in the lease set out in clause 4 which were limited in this respect to the recovery of the Applicant's costs of keeping the structure and exterior in repair.

The tribunal's decision

20. The tribunal determines that the amount payable in respect of the advance service charge for works to the roof is £41,418.68. The tribunal agrees that the feasibility report was poor, the best evidence as to the need for the works was presented at the hearing. That evidence is accepted by the tribunal which considers that once a roof covering has reached the end of its natural life, replacement is allowable as the most economic means of repair and falls within the Applicant's repairing covenants in the lease. There was no dispute as to the actual cost and the tribunal considers it reasonable.

Redecorating - £2,308.50

21. The Applicant gave evidence that this work was essentially repairs and fire resistant finishing to the single communal staircase. The finish was part of the new council requirements for protection to residents in the event of the fire, using a special fire-retardant paint, which accounted for the higher than average cost.

22. The Respondent felt the cost was too high, although he had no alternative quote or idea of how much was reasonable.

The tribunal's decision

23. In the absence of any evidence to the contrary, the tribunal determines that the cost of £2,308.50 is reasonable as an advance charge. The tribunal accepted the Applicant's evidence that the work was a mandatory requirement and therefore considered it was reasonable to use that finish.

Electrical work - £7,415.50 - allowed

24. This item was the single largest reduction on the original estimate of £32,995.43. In view of this the Respondent confirmed he made no objection to the cost which was allowed in full. For the avoidance of doubt, given the huge reduction in cost, the tribunal would not have determined that the original amount sought was reasonable, particularly in the absence of any evidence as to the need for the works – this item being specifically excluded from the feasibility study.

Provisional sums - £1,579 - allowed

25. Again, this item was substantially reduced in the final draft accounts from an initial claim of £16,609. The Respondent made no objection and therefore this amount was allowed in full. Although it is not unusual for provisional sums to be reduced, again the tribunal would not have determined that the original amount sought was reasonable, given the large reduction in the final draft accounts and the fact that a significant proportion of the amount appeared to relate to the electrical work as described above.

Scaffolding - £33,540

26. This sum included £29,400 for the scaffolding and £4,140 for skips. There was some debate about whether the charge would have been based on a daily rate and therefore whether there should have been a reduction in the final account. Mr Larkin for the contractor confirmed that the price had been on the basis of what was required for the works to the roof and as these had been carried out as originally specified, no reduction was due. Ms Shadboult also confirmed that the council do check that scaffolding charges are competitive, by way of a price comparison with all three of their delivery partners holding long term agreements.
27. The Respondent felt this item was overpriced but had no alternative quotes or cost for the tribunal to consider.

The tribunal's decision

28. In the absence of any alternative evidence the tribunal accepts the Applicant's evidence that the cost is reasonable and allows this item in full.

Preliminaries - £12,897.53 - allowed

29. This item includes preliminaries, overheads and profit and the survey, engineering and design services charged by the contractor. Having heard an explanation of what this covered and the fact that the charge was proportionate to the works carried out on his block, the Respondent made no objection to the item which was allowed in full.

Professional and administration fees

30. The tribunal heard evidence that these are charged at 9.12% and 10% respectively on the cost of the works. The Respondent felt that he should not have to pay these charges as the work was carried out by council employees but the tribunal considers that the lease is clear that a proportion of costs can be recharged to a long leaseholder and in the absence of any evidence to the contrary considers that the cost is reasonable. These fees are therefore allowed in full as they apply to the final draft account.

Application under s.20C and refund of fees

10. When considering the applications for costs the tribunal took into account the repeated failure on the part of the Applicant to write to the Respondent at the property. Given the attitude of the Respondent at the hearing, the tribunal considers that had he received the previous correspondence, which included an offer of payment by instalments, subsequent court action may well have been unnecessary. The tribunal also took into account the significant reduction of the amount originally claimed, particularly in relation to the electrical works and provisional sums which the tribunal would not have considered reasonable as originally estimated.
11. In the circumstances, although the tribunal has upheld the final draft accounts as being a reasonable cost for the major works, the tribunal orders the Respondent to refund £95, being 50% of the fees paid by the Applicant within 28 days of the date of this decision.
12. The Respondent had applied for an order under section 20C of the 1985 Act. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985

Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the Respondent's service charge.

The next steps

13. This matter should now be returned to the Lambeth County Court, although it is hoped that now the Respondent has clarity as to the total sum due, an agreement may be reached by the parties without the need for further proceedings.

Name: Ruth Wayte

Date: 30 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.

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) the appropriate 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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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 the appropriate 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 the appropriate 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).