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

Case Reference : **LON/00AC/LSC/2015/0024**

Property : **Flat 17 Unwin Court, 1 Beaumont
Close London N2 0GA**

Applicant : **The Bishop's Avenue Management
Company Limited**

Representatives : **Bradys - Solicitors**

Respondent : **Ms Natalia Kudimova**

Representative : **William Sturges - Solicitors**

Type of Application : **Reasonableness of and liability for
service charges and administration
charges under the Landlord and
Tenant Act 1985 (Section
27A)/Commonhold and Leasehold
Reform Act 2002 (Schedule 11)**

Tribunal Members : **Prof Robert M. Abbey (Solicitor)
Mr Duncan Jagger (MRICS)**

Date of Decision : **21st April 2015**

DECISION

8. The landlord applicant claimed arrears of service charges for communal gas flue works carried out at the property together with administration charges incurred as a result of the non-payment of the charges in respect of these works. It is the applicants position that to ensure compliance with gas safety regulations the applicant was required to carry out works relating to the gas flues including the installation of inspection hatches. To that end works were carried out at Unwin Court between 15th November 2013 and 24th December 2013. The applicant maintains that the gas flues which required works were located in the communal areas and that none of the work carried out related to property demised to leaseholders.
9. The work carried out consisted of the creation of new riser cupboards in common parts, the re-routing of boiler flues located in the common parts, roofing works to accommodate new flue locations, installing flue inspection hatches in the common parts and redecorating common parts following completion of the works. The total cost of the works was £35,063.11. The respondent's proportion of the charge is set at 11.0771%. Accordingly the respondent was charged £3,883.98 for her share of the costs of these flue works.
10. The respondent says that there is no provision in the lease for these works and that these works should be carried out by and be at the cost of the individual flat owners

Liability for the service charges claimed

11. Having read evidence and written submissions from the parties and considered all of the documents provided, the tribunal determines the issue as follows.
12. Dealing first with the issue of where in the lease there may be provision for a charge to cover these gas flues works, "service Media" is defined in clause 1.36 of the lease as "foul and surface water drains and sewers gas and water pipes electric telephone radio and television relay wires amplifiers aerials and cables and (generally) all service conducting media and apparatus ancillary to the foregoing or any of them".
13. It is the applicant's view that the term Service Media includes gas pipes and also "all service conducting media and apparatus ancillary to the foregoing or any of them". The applicant then says that gas flues can be considered ancillary to the pipes as they form a necessary part of the gas heating process.
14. Ancillary is defined as being a subordinate part or element, e.g. a branch of an organisation in much the same way as a gas flue is a part of the gas supply process. You cannot use the gas supply if it cannot be burnt in a safe way and current safety regulations have necessitated these works and hence they are apparatus ancillary to the gas supply. (Apparatus has a

definition that covers instruments, machinery, tools, materials, etc., having a particular function. This would seem to neatly cover a gas flue). Accordingly the Tribunal is of the view that the work is covered in the lease provisions by way of this clause.

15. Paragraph 1.3 of the eleventh schedule in the lease requires the applicant to maintain amend and renew the Service Media in Unwin Court but excludes any media that solely serve and are incorporated solely within any one of the flats in this block. It is the case that the gas flues being covered by the concept of Service Media are not incorporated solely within the flats and as such must come within the maintenance covenants imposed upon the lessor applicant. As has been noted earlier the works carried out as listed in paragraph 9 were in the common parts or the roof of the block.
16. Accordingly the respondent is liable to contribute to the cost of the communal gas flue works for the reasons set out above.
17. The Tribunal also noted that clause 5 of the twelfth schedule allows the lessor to charge for the costs of providing services for the general benefit of the flat owners in the block as may be in the interests of good estate management. It is apparent to the Tribunal that ensuring gas safety for all the residents by this work would also come within the range of this provision.
18. With regard to the administration fees the tribunal was satisfied that these were reasonable and proportionate given the nature of the claim and the dispute. The tribunal therefore decided that the administration charges of £187.20 were payable by the Respondent.

Transfer back to the county court

19. There were some claims made in the court proceedings which we do not have jurisdiction to determine. We have therefore transferred the file back to the county court so that these claims may be pursued if the applicant wishes to do so.

Name: Judge Professor Robert
M. Abbey

Date: 21.April .2015

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 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

Administration charges

Part 1 Reasonableness of administration charges

Meaning of “administration charge”

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.

Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3(1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

- (2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
- (3) The variation specified in the order may be—
- (a) the variation specified in the application, or
 - (b) such other variation as the tribunal thinks fit.
- (4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
- (5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
- (6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

- 4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
- (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to pay administration charges

- 5(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 subparagraph (1).