10924

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AH/LSC/2015/0149**
Property	:	**68 Mayfield Road, South Croydon, CR2 0BF**
Applicant	:	**Aneesh Limited**
Representative	:	**Mr Ajay Arora (in-house solicitor)**
Respondent	:	**Flat 3 – Ms Ingrid Johnson** **Flat 6 – Mr Owen Sean Lowe**
Representative	:	**Ms Ingrid Johnson**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Ruth Wayte (Tribunal Judge)** **Ms Krisko FRICS** **Mr Piarroux**
Date and venue of hearing	:	**2 July 2015 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**17 July 2015**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the following sums are payable by the Respondents in respect of the actual charges for the service charge years 2013/14 and 2014/15.

Service Charge Year	Flat 3	Flat 6
2013/14	£1074.63	£1327.68
2014/15	£1231.64	£1521.44

(2) The tribunal determines that £3,641.59 is payable by Flat 3 and £4,498.43 is payable by Flat 6 in relation to the budgeted service charge for 2015/16.

(3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(4) The tribunal determines that each Respondent shall pay the Applicant £125 within 28 days of this Decision, in respect of the reimbursement of the £250 application fee 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 the service charge years 2013/14, 2014/15 and 2015/16.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Mr Arora at the hearing. Ms Johnson, the owner of Flat 3, appeared in person. Mr Lowe, the owner of Flat 6, was out of the country and had previously sought an adjournment of the hearing, which was refused. Part of the reason for that refusal was that the case advanced in respect of each flat was identical and the hearing proceeded on that basis.

4. Immediately prior to the hearing the Applicant sought to hand in a skeleton argument. The start of the hearing was delayed while the tribunal allowed Ms Johnson to consider this new document. She subsequently objected to the Applicant handing it to the tribunal.

Bearing in mind the overriding objective to deal with cases justly and the fact that the skeleton argument had not been served in advance on Ms Johnson, who was unrepresented at the hearing, the tribunal refused to consider it. Mr Arora was free to use his document for his own benefit and the Tribunal did not consider the lack of a skeleton argument would cause any difficulties in hearing the case.

5. The original application had been limited to the service charge years 2013/14 and 2014/15, the latter including a claim for an on account payment for major works. By the time of the hearing, the last service charge year had expired and no works had been carried out since no payment had been made by the Respondents. The Applicant had sent out a budget for the service charge year 2015/16 which included the major works. The Respondent agreed that it would be sensible to consider these costs and the tribunal has proceeded on that basis, save for the item in relation to the proposed replacement of the door entry system as that was new and the Respondent had not had the opportunity to consider the reasonableness of the cost or obtain alternative quotes.

The background

6. The property which is the subject of this application is a house converted into 6 self-contained flats, all let on long leases. The Applicant had purchased the freehold on 6 March 2013 by auction, the previous freeholder having gone into liquidation.

7. 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.

8. The Respondents hold a long lease of the property ("the Lease") 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

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of the actual service charges for 2013/14;

   (ii) The payability and/or reasonableness of the actual service charges for 2014/15;

(iii) The payability and/or reasonableness of the budgeted service charges for 2015/16;

(iv) Whether an order under section 20C of the 1985 Act should be made;

(v) Whether an order for reimbursement of application/hearing fees should be made.

10. 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.

Service charge year 2013/14

11. By the time of the hearing the only items in dispute for this year were the buildings insurance and management fees.

Buildings insurance - £1,702.52 claimed

12. Mr Arora explained that the insurance charged in this year actually ran from the date of the contract to purchase the freehold and therefore was for a slightly longer period than 12 months. The Applicant had engaged managing agents, Synergy Home Management Limited, to manage the property and they in turn had instructed insurance brokers Coppergate Insurance Services Limited to find an appropriate policy. Coppergate had chosen a block policy with Aviva Insurance Limited, insuring the building for £750,000. The policy complied with the Landlord's obligations in Schedule 6 of the Lease which included requirements for a block policy with an insurer of repute noting the respective interests in the property, a non-invalidation clause, cover to full reinstatement value and cover for loss of rent.

13. The Respondents argued the premium was excessive, both by reference to the previous insurance cost of £637.80 (in 2010) and three recent quotes: Allianz Complete Flat Owner policy at £848.68, e-Underwriters Property Owners Insurance policy at £594.57 and Aviva's Residential Property Owners package at £1,191.78. All of the policies were for £750k, although other conditions varied.

14. Mr Arora submitted that none of the alternatives evidenced a like-for-like insurance in compliance with the lease. In particular, there was no confirmation that the insurance was by way of a block policy, or noted the respective interests in the property, which the Applicant maintained was crucial to avoid unnecessary risk on the part of the freeholder. Mr Arora relied on authorities including *Forcelux v Sweetman* [2001] 2EGLR 173 in support of his proposition that the landlord had behaved reasonably in engaging reputable brokers and

was entitled to rely on their professional skill in selecting an appropriate policy. There was no commission or profit from the placing of the insurance for the landlord and in the circumstances the tribunal's task was to decide whether the landlord had acted reasonably in relying on the broker as opposed to whether comparable insurance could have been obtained at a lower cost.

15. While the tribunal understands the Respondent's concern at the increase in the cost of buildings insurance since the service charge demand in 2010, there is no evidence that the previous freeholder's policy complied with the terms of the lease and, in any event, that evidence is now rather old. In terms of the alternative quotes, the tribunal rejected the Allianz policy as a Flat Owners policy and therefore not like for like. The e-Underwriters policy did not appear to be an "insurer of repute" and therefore was similarly rejected. The nearest quote would appear to be from Aviva, although again the policy did not appear to be a block policy or note respective interests. In the circumstances and bearing in mind that these quotes were only produced relatively recently, the tribunal determines that the amount payable in respect of building insurance for 2013/14 is the sum claimed of £1,702.52.

Management fees - £1,890 claimed

16. There was no dispute that the Applicant was entitled to charge for management of the property. The complaint was that the management was limited and the fee represented poor value for money.

17. Mr Arora took the Tribunal to the management agreement signed each year between the Applicant and Synergy Home Management. This set out the "desk top" service provided for £262.50 plus VAT in respect of each flat, with provision to charge an additional fee for overseeing major works and an hourly charging rate of £100. The witness statement by Ms Menon of the agents set out what had been done since their appointment, supplemented by the demands and other correspondence throughout the period in dispute. Mr Arora also relied on an LVT decision in 2008, *Scurlock v Dilawar Property Ltd* LON/00BG/LSC/2008/192 which accepted that a charge of £275 per unit was not unreasonable for a small block of flats in London if managed in accordance with the RICS code.

18. Ms Johnson pointed out that the previous freeholder had charged in the region of £125 plus vat, which was in her opinion a reasonable charge for such a small property. Again, the evidence produced to support that assertion was the service charge demand from 2010.

19. The tribunal considered that the evidence showed good management by Synergy. A "desktop" service was more limited than the basic service required by the RICS code, which includes regular inspection of the

property. That said, the tribunal heard evidence of inspection by a contractor at no additional cost as described in paragraph 22 - indicating that inspection had occurred, albeit not by the managing agent themselves. The service charge demand from 2010 from the previous freeholder was too old to be truly comparable and in any event there was clear evidence that management by that freeholder was limited at best, given the state of repair of the property. The tribunal therefore determines that the amount payable in respect of management fees is £1,890.

20. In the circumstances, the tribunal determines that the total service charge payable for the service charge year 2013/14 is £6,321.34, making Flat 3's contribution at 17% £1074.63 and Flat 6 at 21% £1,327.48.

Service charge year 2014/15

21. By the time of the hearing, the only items in dispute were the surveyor's costs of inspection and tender analysis, the agent's consultation costs, insurance and management fees as before and the contingency fund.

Surveyor's costs - £1260 and £180 claimed

22. The Applicant gave evidence that these costs, together with the consultation item, were in preparation for the major works planned to the exterior of the property. After the purchase at auction, Synergy wrote to the leaseholders to notify them of the sale and their appointment as agents. In that letter, the leaseholders were asked whether any repairs were necessary. Ms Menon gave evidence that a couple of replies indicated work was outstanding and after a check by a trusted contractor confirmed that to be the case, Synergy instructed surveyors Anderson Wilde & Harris to inspect the property and prepare a schedule of works.

23. The schedule indicated that major works requiring consultation would be necessary and therefore Synergy instructed the surveyors to prepare a specification for tender. The tender and invoices for the work were available in the bundle, the original report cost £750 plus vat (5 hours at £150) and the specification £300 plus vat, making a total of £1260. Once the contractors had priced the specifications, the surveyors also carried out a detailed tender analysis and recommendation for the benefit of Synergy. Again, this document was in the bundle together with the invoice for £150 plus vat.

24. Mr Arora submitted the fees were both reasonably incurred and reasonable in amount. Synergy had given the leaseholders the opportunity to recommend a surveyor of choice but had received no response. The Applicant had used the firm before but by no means exclusively.

25. Ms Johnson relied on the arguments in the schedule which suggested that a local building surveyor could have been instructed at a reduced cost. No evidence was provided in support of this assertion. In terms of the tender analysis, Ms Johnson accepted the evidence that this was not an administrative task. In any event, the schedule conceded 4 hours for this item whereas the invoice only charged for 1 hour and 10 minutes.

26. Having considered all the evidence, the tribunal was satisfied that the surveyors' fees were reasonably incurred and reasonable in cost. Ms Johnson conceded that major works were necessary to the property and the documentation clearly showed a professional and efficient approach. In the circumstances the tribunal determines that £1260 and £180 is payable in relation to this item.

The agent's consultation costs - £600 claimed

27. The consultation for the major works had been comprehensive, with three stages – including the late acceptance of the Respondent's nominated contractor into the tender. The management agreement made it clear that such costs would be in addition to the standard fee, in line with model management contracts. Synergy had invoiced the Applicant for 5 hours at £100 per hour plus vat, covering all correspondence with the surveyors and leaseholders and consideration of the tender, most of which had been included in the bundle for the tribunal to see.

28. Again, Ms Johnson relied on the objection in the schedule – claiming an hourly rate of £15 was more appropriate as this was largely an administrative task. The tribunal noted that the schedule had considered 7 hours appropriate and Ms Johnson accepted that the time charged by Synergy was reasonable.

29. No evidence was provided to support the assertion that £15 was an appropriate hourly rate. The tribunal considered that Synergy's consultation was an example of good practice in this area. The letters were well written and reasoned, indicating a good understanding of the law and were clearly more than simply administrative. In these circumstances an hourly rate of £100 was reasonable and the agent's costs of £600 are payable.

Insurance - £1,560.98 claimed

30. The cost was slightly lower this year to reflect a 12 month period. Both Applicant and Respondent relied on the same evidence as before to support their claim. For the same reasons as set out in paragraph 15 above, the tribunal determines that the amount payable in respect of building insurance for 2014/15 is the sum claimed of £1,560.98.

Management fees - £1890 claimed

31. This was the same charge as for the previous year and again both parties relied on their respective arguments for that year in support of their position. In the circumstances and relying on the reasons set out in paragraph 19 above, the tribunal determines that the amount payable in respect of management fees for 2014/15 is £1,890.

The contingency fund - £1,000 claimed

32. The objection to this was originally in the context of a contribution for major works having been demanded in the same service charge year. That had changed as the case progressed and as at the date of the hearing the request for the major works had been moved into the following service charge year and credit given for the contingency. Bearing this in mind Ms Johnson accepted that the lease allowed for a reasonable contingency payment and that the cost of the works would exceed the sum claimed for the contingency. In the circumstances she made no further objection and the tribunal determines that £1,000 is payable.

33. In the circumstances, the tribunal determines that the total service charge payable for the service charge year 2014/15 is £7,244.93, making Flat 3's contribution at 17% £1231.64 and Flat 6 at 21% £1,521.44.

Service charge year 2015/16

34. As stated in paragraph 5 above, the tribunal agreed to consider the budgeted service charge for 2015/16, excluding the sums claimed in relation to the replacement door entry system, making a total of £21,800. In accordance with the Lease, the tenant is liable to pay a reasonable sum in advance of the service charge on 1 April and 1 October in each service charge year.

35. The contribution towards the major works was the main item in issue, together with the surveyor's project management fee, insurance and management fees. The other items claimed for electricity, cleaning and general repairs were all accepted by Ms Johnson.

The major works - £15,374.80 claimed (net of contingency)

36. Ms Johnson confirmed that having considered all of the evidence provided by the Applicant she did not object to the need or cost of the major works. Her main concern was whether her money would be safe, bearing in mind that the previous freeholder had gone into liquidation. She would prefer to pay for the works in instalments once they had started to avoid the risk of paying for something that never happened.

37. Mr Arora explained that the works were scheduled to take two months and the Applicant was not willing to fund the works when the Lease entitled them to payment in advance. The tribunal explained to Ms Johnson that its jurisdiction was limited to the question of payability as set out in the Landlord and Tenant Act 1985 as opposed to any actual payment plan. The parties were encouraged to discuss options for the monies on account, which would in any event be held on trust for the tenants pending payment for the works, which could meet both parties' concerns.

38. In the absence of any concerns in relation to the works and having satisfied itself that the cost followed the outcome of an open tender, the tribunal determined that the £15, 374.80 was payable in respect of the major works. As payment was being sought in advance, the tenants would of course have the right to challenge any final account, if necessary.

Project management fee - £2,084.98 claimed

39. This fee was based on 12% of the cost of the works. Ms Johnson objected on the basis that no professional oversight was necessary. Mr Arora submitted that no reasonably competent freeholder would leave such major works to the builder without supervision. The cost of almost £18k was significant and 12% was less than the 15% proposed by the managing agents for similar supervision.

40. The tribunal accepted that it was for the freeholder to decide what supervision was appropriate for works carried out on its behalf and that the supervision costs were reasonable bearing in mind the cost of the works. In the circumstances the tribunal determined that £2,084.98 was payable in respect of the project management fee.

Insurance - £1,578.88 claimed

41. No new arguments were made in respect of this service charge year, that said, the tribunal had already identified the competing Aviva quote at just under £1,200 as being the nearest comparable. Bearing in mind that this quote had been obtained this year, the tribunal determines that the amount payable in advance of the final account is £1,200. The Applicant should ask its broker to see whether Aviva can match its own quote or provide an explanation for the difference in cost. The tribunal also considered that the Applicant should review whether £750,000 was an appropriate rebuilding cost as any reduction would probably result in a lower premium. For the avoidance of doubt, the full amount may be payable following such enquiries but the tribunal's determination at this stage is limited to £1,200.

Management fee - £1.890 claimed

42. For the same reasons as previously stated, the tribunal determines that £1,890 is payable in respect of the management fee.

43. In the circumstances, the tribunal determines that the amount payable in respect of the budgeted service charge for 2015/16 is £21,421.12, making Flat 3's contribution at 17% £3,641.59 and Flat 6 at 21% £4,498.44. For the avoidance of doubt, although the tribunal has not made any determination in respect of the door entry system costs, this does not mean that the Applicant is not entitled to demand a reasonable sum towards that work, simply that the Applicant does not have the benefit of a formal determination from the tribunal as that work was outside the scope of this application.

Application under s.20C and refund of fees

44. At the end of the hearing, the Applicant made an application for a refund of the fees that it had paid in respect of the application and hearing[1]. The Respondents had already applied for an order under section 20C of the 1985 Act in their statements of case.

45. At the end of the day, the Applicant has largely been successful, with very little being reduced by the tribunal in the light of the evidence presented. With this is mind, the tribunal does not make an order under section 20C. That said, the tribunal was concerned to note that the Applicant declined to consider mediation at the case management conference. While the tribunal considers that the application fee was necessary and should be paid by the Respondents, the hearing fee may well have been rendered unnecessary if the Applicant had agreed to consider mediation as the proceedings progressed, particularly given the concessions made by the Respondents both before and during the hearing. In the circumstances the tribunal does not order repayment of the hearing fee.

Conclusion

Name: Ruth Wayte **Date:** 17 July 2015

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

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.

(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.

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.