10553

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AJ/LSC/2014/0447**
Property	:	**46 Northcote Avenue Ealing London W5 3UT**
Applicant	:	**London Borough of Ealing**
	:	**Mr J Bates of Counsel**
Respondent	:	**Dr Se Ming Hung**
	:	**In person**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Mrs F J Silverman Dip Fr LLM** **Mr A Lewicki BSc FRICS MBEng** **Mr C Piarroux JP CQSW**
Date and venue of hearing	:	**12 January 2015** **10 Alfred Place London WC1E 7LR**
Date of Decision	:	**30 January 2015**

DECISION

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1. The Applicant's notice and consultation procedures under s20 Landlord and Tenant Act 1985 were defective in that :
The stage 1 notice failed to give a reason for the works,
failed adequately to describe the works which were to be carried out and
failed properly to comply with Regulation 10 of the Consultation Regulations.
2. Any items charged to the tenant which date prior to 6 February 2006 are

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irrecoverable by reason of the application of s20B Landlord and Tenant Act 1985.

3. The Applicant has failed to comply with s47 Landlord and Tenant Act 1987 in respect of invoices issued in August and November 2007.

4. The replacement of the windows was on balance necessary and the cost of so doing, was reasonable and was chargeable to the tenant under the terms of his lease .

5. The Tribunal makes an order under s20C of the Landlord and Tenant Act which was unopposed by the Applicant.

REASONS

1 The Applicant is the landlord of the property situate and known as 46 Northcote Avenue Ealing London W5 3UT (the property). They filed an application with the Tribunal on 27 August 2014 claiming unpaid service charges and interest from the Respondent tenant for the service charge year 2007-08.

2 Directions were issued by the Tribunal on 30 September 2014.

3 The hearing of this matter took place before a Tribunal sitting in London on 12 January 2015 when the Applicant was represented by Mr J Bates of Counsel and the Respondent represented himself.

4 The Applicant's claim is based on s27 Landlord and Tenant Act 1985, relating to the payability of and reasonableness of service charges as between landlord and tenant. Such a matter falls within the jurisdiction of the tribunal. The Respondent wished to make an application under s20C of the Act.

5 In addition to the agreed bundle of documents before the Tribunal the Respondent asked the Tribunal to consider a supplemental bundle of documents which he had served shortly before the hearing date. He said that this bundle comprised documents which he wished the Tribunal to see but which the Applicant had refused to include in the hearing bundle . In these circumstances the Tribunal allowed the Respondent to introduce his supplementary bundle but reminded the parties that they would only consider in their decision those documents which were relevant the issues in dispute.

6 The amount in dispute between the parties was £7,493.08 which related to major works carried out in 2005-06 comprising principally of window replacement and other repairs.

7 In view of the fact that the disputed works had been carried out a number of years before the Tribunal hearing the Tribunal did not feel that an inspection of the property would be of assistance, a proposition with which the parties agreed.

8 Although the Respondent did not dispute that he had received the initial s20 notice in relation to the works (para 6 of the Directions) he argued that the notice was defective because it failed to state the landlord's name and address for service; the description of the works was inadequate; there was a lack of clarity in the figures; the notice was not compliant with s20B (2) in that it failed to contain a breakdown of costs; the works had not been necessary , thus the costs were not reasonably incurred, and that the Applicant had failed to obtain planning permission for the works (see list of issues page 13 paras 9 and 10).

9 The Applicant accepted that their stage 1 notice served under s20 Landlord and Tenant Act 1985 was, as alleged by the Respondent, defective in that it failed to give a reason for the proposed works.
10 It had been stated in correspondence prior to the hearing that the Applicant would make an application for dispensation in respect of this defect at the substantive hearing. However, counsel for the Applicant suggested that a more suitable course of action might be for the Tribunal to adjudicate in relation to the other matters which the Respondent alleged were defective and the Applicant would, in the light of the Tribunal's findings then make a fresh application , preferably to be heard by the same Tribunal , for dispensation. Therefore the matters to be considered by the Tribunal under the present application fell into the following areas: consultation; compliance with s20(B); the demands for payment; compliance with the lease terms; the need for the work to be done coupled with the reasonableness of its cost and a s20C application .
11 The Respondent agreed to this approach to the matters in dispute.
12 In relation to the stage 1 notice the Respondent also contended that the description of the works (page 66) as 'cyclical redecoration' was inadequate. Only a small proportion of the bill recharged to the Respondent related to anything akin to redecoration, the majority of the sum demanded being attributable to window replacement work. The Tribunal considers that this description is misleading and does not allow a tenant properly to understand the nature of the intended works.
13 The Tribunal recognises that the notice invited the Respondent to inspect the relevant documents (page 65) but the lack of a clear description in the notice could mislead a tenant into thinking that the works to be carried out only related to painting and minor repairs in respect of which a tenant might feel it was unnecessary to make further enquiries or an inspection of the Applicant's documents. The Respondent had not however challenged the notice on this point.
14 The Tribunal also accepts the Applicant's assertion that 'it is incumbent on a tenant to participate in the consultation process' (Southall Court (Residents) Ltd v Tiwari [2011] UKUT 218 (LC)) and that at no stage had the Respondent done so. Had he done so eg by asking for further details, he could have discovered the true nature of the works and have challenged them at that stage. The Respondent had not in fact made any challenge to the works or their cost until after the issue of the current proceedings and when questioned by the Tribunal said that he had not inspected the works either at the time or since.
15 The Applicant stated that very few observations had been received in relation to the stage 1 notice and a summary of them was attached to the stage 2 notice (page 71).
16 The Respondent criticised of the stage 2 notice by saying that it gave details of only one quotation and gave inadequate details of where the documents could be inspected.
17 It is clear from page 70 that a total of 6 quotations were set out and the Tribunal agrees with the Applicant's interpretation of Regulation 5(b)(i) of Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations') that no breakdown of the quotation is required to be given. This part of the Respondent's objection is therefore unfounded.

18 By Regulation 10(a) the notice must 'specify the place and hours at which the estimates may be inspected'. The Applicant asserted that by analogy with the decision in Peverel Properties Ltd v Hughes [2012] UKUT 258 (LC) which interpreted the meaning of the word 'specify', their statement on page 68 that the estimates could be inspected by making an appointment by telephone using the telephone number given on the letter heading, was sufficient to comply with this Regulation. The Respondent disagreed with this interpretation of the Regulation.
19 The Peverel case cited in the preceding paragraph related to the expiry of a time limit and is not in the Tribunal's view directly analogous to the situation under discussion. Effectively the notice in this case gives no details of inspection as required by Regulation 10 and places the onus on a tenant to contact the Applicant to obtain those details. This is inadequate and non-compliant with the Regulation which is intended to assist the tenant, not to deter him from seeking information.
20 The Respondent asserted that the Applicant should have served a stage 3 notice. The Applicant denied this on the grounds that the contract had been entered into with the contractor who submitted the cheapest estimate. The Tribunal agrees with the Applicant that at the time when the contract was entered into Knapmans were the cheapest contractor and that there was therefore no requirement for a stage 3 notice.
21 The Tribunal had concerns that the large increase in proposed expenditure caused by the change in specification for the new windows was not notified to the tenants. Although this cost was only a small part of the total contract price (the contract related to a number of properties owned by the Applicant in addition to the block under discussion) the increase fell disproportionately upon the tenants of this block and it would have been courteous of the Applicant to have warned the tenants of the expected increase in service charges. This point was not raised by the Respondent in the current proceedings and was therefore not discussed further by the Tribunal.
22 In relation to the application of s20B (the 'eighteen month rule' for recovery) the Applicant said that the contract had been subject to stage payments and accepted that the items listed on pages 169-178 dated between June 2005 and 14 February 2006 were irrecoverable by reason of the provisions of s20B.
23 The Applicant also accepted that pages 77 and 85 failed to comply with s 47 Landlord and Tenant Act 1987 but denied that there was a breach of s21B Landlord and Tenant Act 1985 as amended (summary of rights) because the invoices in question were dated prior to the coming onto force of that section. The Tribunal accepts the Applicant's assertions in this respect.
24 The Respondent contended that the letter on page 74 of the hearing bundle failed to comply with s20B (2) of the Landlord and Tenant Act 1985 because the words used in that letter did not recite verbatim the words of the section. In this respect the Tribunal accepts the Applicant's reliance on para 55 et seq of London Borough of Brent v Shulem B Association Ltd [2011]EWHC 1663 (ChD) which allows a non-technical approach to be taken to the application of this section ie if the meaning is clear it is not necessary to set out the wording precisely as drafted in the statute. The Tribunal finds that the wording on page 74 would be perfectly clear and

comprehensible to a reasonable lay tenant that a service charge was being referred to and finds that the Applicant has therefore complied with the section.

25 The Respondent's complaint about 'contract compliance' lacked detail but suggested that the Applicant had not demanded service charge in accordance with the terms of the lease. The tenant's covenant to pay is contained in clause 6 A 3 of the lease (page 42) and on page 45 Clause B(1) (2) and (3) allows the landlord to demand payment either by instalments or as a single one-off payment which had been the method used in the instant case. The Tribunal can find no fault on the Applicant's part in respect of compliance with the terms of the lease.

26 The Respondent's assertion that the Applicant had failed to obtain the necessary planning permission for the works and that this failure put him, the tenant, into breach of his lease is misconceived. The Applicant's evidence was that no planning permission had been required for the replacement windows and the Respondent produced no evidence to the contrary. Further, the windows do not form part of the demise (Part 1 ,3rd Schedule of lease, page 50) and thus he could not be held responsible for any breach committed by the Applicants.

27 The Respondent asserted that the works carried out, in so far as they related to the replacement windows, had been unnecessary , and as they were unnecessary, the costs charged could not be reasonable. The Applicant asserted that the windows which were being replaced were the original metal windows which had been installed when the property was built in the 1950's and that the last known maintenance of them had been in 1992 (pages 88-89). A surveyor had recommended their replacement (page 91). No other tenant had suggested that the replacement of the windows was not necessary. It was common round that the original windows were metal framed and single glazed. The Applicants' witness evidence on this point was unhelpful (Mr Moody, Mr Maguire, Ms Silva). However, the Respondent brought no evidence whatsoever to demonstrate that the windows did not need to be replaced, no alternative estimates for repairs or replacement, and, in response to a question asked by the Tribunal, said that he had not inspected the property before or during the works and had not visited the property since the works had been completed. Given that the windows were now about 60 years old and had not been maintained for over 20 years, and in the absence of any evidence to the contrary, the Tribunal finds on the balance of probabilities that the replacement of the windows was necessary and, in the absence of any evidence to the contrary, that the sum charged for the windows was reasonable.

21 The Applicant did not oppose the making of an order under s20C of the Landlord and Tenant Act 1985.

11 The Law

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).

S47 Landlord and Tenant Act 1987

Landlord's name and address to be contained in demands for rent etc.

(1)Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
(a)the name and address of the landlord, and
(b)if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.
(2)Where—
(a)a tenant of any such premises is given such a demand, but
(b)it does not contain any information required to be contained in it by virtue of subsection (1),
then (subject to subsection (3)) any part of the amount demanded which consists of a service charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.
(3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges from the tenant.
(4)In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

S48 Landlord and Tenant At 1987

Notification by landlord of address for service of notices.

(1)A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.
(2)Where a landlord of any such premises fails to comply with subsection (1), any rent or service charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.
(3)Any such rent or service charge shall not be so treated in relation to any time when, by virtue of an order of any court, there is in force an appointment of a receiver or manager whose functions include the receiving of rent or (as the case may be) service charges from the tenant.

The Service Charges (Consultation Requirements) (England) Regulations 2003
Schedule 4 part 2

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
(a)obtain estimates for the carrying out of the proposed works;
(b)supply, free of charge, a statement ("the paragraph (b) statement") setting out—
(i)as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
(ii)where the landlord has received observations to which (in accordance with

paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
(c)make all of the estimates available for inspection.

(10) The landlord shall, by notice in writing to each tenant and the association (if any)—
(a)specify the place and hours at which the estimates may be inspected;
(b)invite the making, in writing, of observations in relation to those estimates;
(c)
(i)the address to which such observations may be sent;
(ii)that they must be delivered within the relevant period; and
(iii)the date on which the relevant period ends.

Landlord and Tenant Act 1985 s21B
Notice to accompany demands for service charges
(1)A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
(2)The Secretary of State 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 a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
(4)Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
(5)Regulations under subsection (2) may make different provision for different purposes.
(6)Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Judge F J Silverman as Chairman
Date 30 January 2015

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a

request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking