11490

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AF/LSC/2015/0389**
Property	:	**Flat 1, 37 Selby Road, London SE20 8ST**
Applicant	:	**Gateway Property Holdings Limited**
Respondent	:	**(1) Lionel Worley** **(2) Katerina Worley**
Type of application	:	**For the determination of the reasonableness of and the liability to pay service charges and administration charges**
Tribunal members	:	**Judge T Cowen** **Ms S Coughlin**
Venue of hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**15 December 2015**

DECISION

Decision of the tribunal

(1) The Tribunal determines that the amount payable by the Respondent in respect of the sum claimed in the county court proceedings (claim no. B20YM606) for service charges is the sum of **£590.33** and is not the sum of **£1,224.34** claimed in the proceedings for service charges.

(2) For the avoidance of doubt, the Tribunal's decision does not affect the Applicant's right to claim in the county court proceedings for ground rent and other sums not included within the category of service charges and dealt with in this decision and we express no view as to the merit of any of those other claims.

(3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that all of the costs incurred or to be incurred in connection with these proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent.

(4) The reasons for the orders made above are set out in the remainder of this decision.

The Referral to this Tribunal

1. The Property is a flat in a converted house which comprises a total of 3 flats. There is a lease of the Property dated 24 April 1992 for a term of 125 years. The Respondents are the current lessees of the Property. The Applicant has been the registered freehold proprietor of the building which includes the Property since 9 December 2008 and is therefore the current landlord under the said lease.

2. The Applicant commenced proceedings against the Respondents in the County Court Money Claims Centre (claim number B20YM606) in June 2015 claiming the sum of £1,588.17 comprising service charges, ground rent and insurance premiums.

3. The service charges which are claimed are alleged to have been due on various dates ranging from 25 December 2013 to 19 May 2015.

4. The Respondent entered a Defence in the County Court proceedings which made the following points:

    a. No maintenance has been carried out at the building and the amounts charged have therefore not been reasonably incurred.

    b. As a result there is serious disrepair at the building for which a counterclaim is made in the county court.

5. On 25 August 2015, the County Court at Croydon (to which the matter had been transferred) ordered that the issue of the reasonableness of service charges claimed by the Applicant from the Respondents be referred to this Tribunal.

6. This Tribunal has no jurisdiction in relation to ground rent nor in relation to the Respondents' counterclaim or interest or the costs of the county court proceedings.

7. The amount of the county court claim which relates to all other amounts is the total sum of **£1,224.34** (being the proportion of the claim of £1,588.17 which relates solely to service charges, other legal expenses and insurance premiums, but excluding interest and costs)

8. Neither party has made any separate application to this Tribunal. Our task in this decision is therefore only to consider those service charges and insurance premiums which are claimed in those proceedings. The Respondents have made an oral application under section 20C of the Landlord and Tenant Act 1985.

Jurisdiction

9. The jurisdiction upon a transfer from the County Court is dictated by section 176A of the Commonhold and Leasehold Reform Act 2002 (which was inserted by The Transfer of Tribunal Functions Order 2013 [2013/1036] and came into force on 1 July 2013) which reads as follows:

> (1) Where, in any proceedings before a court, there falls for determination a question which the First-tier Tribunal or the Upper Tribunal would have jurisdiction to determine under an enactment specified in subsection (2) on an appeal or application to the tribunal, the court–
>
> (a) may by order transfer to the First-tier Tribunal so much of the proceedings as relate to the determination of that question;
>
> (b) may then dispose of all or any remaining proceedings pending the determination of that question by the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal, as it thinks fit.
>
> (2) The enactments specified for the purposes of subsection (1) are–
>
> ...
>
> (c) the Landlord and Tenant Act 1985,
>
> ...
>
> (3) Where the First-tier Tribunal or the Upper Tribunal has determined the question, the court

may give effect to the determination in an order of the court.

10. The other relevant statutory provisions are set out in full in the appendix to this decision. In this case, sections 19, 20 and 27A(1) of the 1985 Act are particularly relevant.

The Service Charge Covenants

11. The service charge provisions in the said lease are as follows:

    a. Clause 2(2) contains a lessee's covenant to pay one-third of the building insurance premium

    b. Clause 2(5) contains a lessee's covenant to pay one-third of the Applicant's cost of maintaining the structure, common parts, conduits and accessways as defined in that clause.

    c. Clause 2(19) contains a lessee's covenant to pay legal costs incurred in anticipation of notices under the Law of Property Act 1925 arising out of any breach of covenant.

    d. Clause 3(3) permits the Applicant, at its discretion, to employ managing agents.

    e. Clause 3(4) requires the Applicant to serve audited service charge accounts on the Respondents within 2 months of the end of the service charge year (which is 25 December).

12. There is no express provision in the lease allowing the Applicant to demand estimated service charges in advance on account. The Applicant submitted that there is an implicit right to demand estimated service charges. It relied on clause 3(2) which provides that the lessor's covenant to repair is "subject to the payment by the lessee of the contribution referred to in clause 2(5) hereof at the time or in the manner specified in this Lease". In our judgment, that is a standard form of repair covenant on the part of the lessor which does not contain an implied obligation on the part of the lessee to pay estimated service charges in advance. Not least because clause 3(2) itself refers to payment of service charges being "at the time or in the manner specified in this Lease".

13. It follows that the amounts claimed to have been due on 25 December 2014 for "service charges in advance" cannot be recoverable in the present proceedings. The service charges for the service charge year ending 25 December 2015 can only be demanded after 25 December 2015, which is after the date of commencement of these proceedings. That means that we must reduce the amount payable by the sum of £206.67, being the amount demanded on that date.

14. Although the remainder of the service charges for the years in question are expressed on the statement of account to be "in advance", those

service charge years have now ended and so we have treated the amounts as actual service charges due at the end of the relevant year.

Discussion

15. The following remaining items require determination:

Legal expenses

16. £300 was demanded by the Applicant on 10 July 2014 in relation to legal expenses which are alleged to have been incurred before the commencement or anticipation of these proceedings.

17. There is no evidence that the Applicant incurred this amount. No solicitors' invoice was produced despite clear directions at the case management conference on 29 September 2015 that the parties should file and serve copies of all invoices relied upon. No explanation was given as to what these legal expenses related to or what legal services were provided. In the circumstances, we have reached the conclusion that the amount claimed for legal expenses was not reasonably incurred, if incurred at all.

2013-2014 Accounts

18. The bundle provided for the hearing included a copy of the service charge expenditure accounts for the service charge year ended 25 December 2014. They are not signed or certified by any accountants, although we note that they include an accountancy fee of £72.

19. They demonstrate what the Applicant claims to be the actual expenditure for that year. Since we have decided that there is no provision in the lease for demanding estimated service charges and that the only service charges recoverable in the present county court proceedings are those for the year ended 25 December 2014, we will base the remainder of our discussion on the items shown in those accounts.

Building Insurance Premium

20. £913 is shown on the accounts as the building insurance premium for the year. £304.33 was demanded by the Applicant on 13 August 2014 in relation to the annual building insurance premium. The Applicant is entitled under the lease to be reimbursed for the premium in the appropriate proportion. The Applicant has produced the relevant proof of the premium paid in the sum of £913 including tax for the year commencing 1 July 2014. £304.33 is one-third of that amount.

21. The Respondent has challenged the amount of the premium on the grounds that a policy at a lower premium could have been obtained. The Respondent produced quotes which he had obtained in the sums of £705.61 (Axa) and £855 (NIG). We remind ourselves that the

Applicant is not required to obtain absolutely the lowest possible quote, rather one in the reasonable range. We also note that the quotes obtained by the Respondent did not necessarily take account of the claims history and may not have been on an exact like-for-like basis. The Applicant's representative explained that the Applicant used a broker (which was a subsidiary), tested the market every year and acquired insurance on a portfolio basis to keep overall costs down. In our judgment that is a reasonable approach which has resulted in a reasonable premium. We have decided that the insurance premium is reasonably payable in full.

Valuation

22. The accounts include a sum of £200 labelled as "valuation". The Applicant's representative told us that this was the cost of a valuation of the building carried out for the purposes of insurance. There was no evidence of this money having been invoiced or otherwise incurred nor any record of the attendance by a valuer or any request by an insurance company for the valuation to take place. Given that the Applicant was ordered at the CMC to provide copies of all invoices and other material to be relied upon and has provided no evidence of this claimed item of expenditure, we have decided that the sum claimed was not reasonably incurred.

Repair costs

23. The total amount claimed for the year ended 25 December 2014 in relation to repairs and maintenance was the sum of £258. We were told by the Applicant that work was carried out at the property including the clearing of guttering. One of the other leaseholders of a flat in the building, Denise Keable, admitted that this work was done in an email dated 19 November 2014. Photographs were produced by the Respondent in an attempt to show that this work was not done, but the photographs in question were taken about a year later. In the circumstances, this does not provide evidence that the work had not been done a year earlier.

24. Since there is evidence from one of the other leaeholders that work was done, we have decided that the amount of £258 was reasonably incurred and that one-third share of £258 (being £86) is reasonably payable.

Management Fees

25. £1,128 is claimed in the service charge accounts for the year ended 25 December 2014 including accountancy, bank charges and postage. That amounts to £376 per flat.

26. There is no express provision in the lease requiring the Respondent to pay management fees. The Applicant relied on clause 3(3) of the lease which permitted the Applicant to employ managing agents. The

Applicant's representative argued that there would be no purpose in a clause in the lease permitting the landlord to employ a managing agent if that was not for the purpose of passing on the cost to the leaseholders. It is therefore implied that management costs can be included in the service charges. We agree with that submission.

27. As to the level of management fees, we have considered carefully all the evidence presented to us about the level of service provided by the Applicant and the state of the premises. We are not considering the counterclaim for disrepair, but the state of the premises is relevant when we are considering what is a reasonable amount to pay for management of the building in the circumstances.

28. We agree with the Respondent that the building is in a poor state of repair and that little has apparently been done in the relevant period to remedy that. The Applicant's management of the building has been, at best, simply responsive, if that. It could be described as the bare minimum of management. They have sent out invoices to the leaseholders, arranged insurance, and collected ground rent but they have not (as outlined above) complied with the lease procedure for service charge collection and there is no evidence of regular maintenance of the building or any other form of active management.

29. On the basis of our expertise and experience, we think that £376 per flat annually is towards the high end of what could be charged for a block like this. One would expect a high level of management for that cost. As described, the level of management was much lower. We have decided that it would not be reasonable for the Respondent to pay more than £200 per flat for management and we therefore determine that £200 is reasonably payable in respect of that item.

Conclusion

30. We have calculated the amounts payable as a result of the decisions made above and the resulting figures appear in the record of our decision at the beginning of this judgment.

31. As we indicated at the hearing, if the Respondents wish to make an application under section 20C of the Landlord and Tenant Act 1985, they should do so in writing setting out the reasons for the application and should also send a copy to the Applicant.

Dated this 25th day of April 2016

JUDGE TIMOTHY COWEN

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).