

12088



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

Case Reference : LON/00AH/LSC/2016/0236
(consolidated with /0121)

Property : 78 Priory Crescent, Beulah Hill
Upper Norwood
London SE19 3EE

Applicant : Hastoe Housing Association

Representative : Mr R James (Counsel)
Instructed by Stephens Scown LLP

Respondent : Mr O Bonsu

Representative : in person

Type of Application : Transfer from Croydon County
Court for the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal Members : Judge J E Guest
Mr L Jarero BSc FRICS

**Date and venue of
Hearing** : 05/12/2016
10 Alfred Place, London WC1E 7LR

Date of Decision : 20/12/2016

DECISION

Decisions of the Tribunal

- (1) The Tribunal decided that the service charges and costs of major works claimed in the County Court (under reference C3QZ219P) are payable, save that the cost of TV aerial works is limited to £250.00. The total sum payable, therefore, amounts to £14,534.87 (excluding ground rent totalling £60.00 and including a reduction of £54.77 in respect of the TV aerial works).
- (2) The Tribunal grants the Applicant's application for dispensation under section 20ZA of the Landlord and Tenant Act 1985 in respect of any failure by the Applicant to serve the Respondent with the 'notification of proposal' (sent to all other leaseholders on 02/06/2011) in respect of works concerning the fire doors.
- (3) The Tribunal refused to make an order under section 20C of the Landlord and Tenant Act 1985 so that the Applicant's costs of the Tribunal proceedings may be recovered through the service charge.

The background

1. The property is a three bedroom flat situated on the top floor of a 5 storey purpose-built block of flats (26-78 Priory Crescent), which forms part of the larger Beulah Estate.
2. The Respondent has been the leasehold owner of the property since 10/05/2002 pursuant to a lease dated 30/08/1991 with a term of 125 years commencing on 25/12/1981. The lease requires the Applicant to provide services and for the Respondent to contribute to their costs by way of a variable service charge.
3. On 04/03/2016, the Applicant issued County Court proceedings for unpaid service charges and ground rent of £10,422.42 and unpaid major works costs of £4,227.22.
4. On 03/06/2016, the County Court ordered that the case be transferred to the Tribunal for a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the service charges payable. The relevant statutory provisions are attached as an Appendix to this decision. It should be noted that the Tribunal has no jurisdiction in relation to ground rent.
5. The Tribunal held a case management hearing on 30/06/2016 when directions were made. A solicitor's agent, Mr C Green, attended the hearing on behalf of the Applicant, but the Respondent did not attend nor was he represented.

6. Further directions were made by the Tribunal on 11/11/2016 following an application by the Applicant under section 20ZA of the 1985 Act dated 07/11/2016 for dispensation from part of section 20 consultation requirements in relation to works to fire doors (ref. LON/00AH/LDC/2016/0121). The Tribunal directed, amongst other things, that the section 20ZA application be served on all leaseholders and consolidated the application with these proceedings.

The hearing

7. The Applicant was represented by Counsel, Mr R James. The Applicant's leasehold services manager, Ms R Fury, major works manager, Mr R Gleaves, and leasehold management accountant, Ms D Shepley, all attended and gave oral evidence. The Applicant's head of home ownership, Ms M Toomey, was also present but she did not give evidence. The Respondent appeared in person.
8. 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.

The Respondent's position

9. In his Defence to the County Court claim, the Respondent made some brief points. In his Defence, the Respondent:
 - Claimed that the Applicant had not undertaken a section 20 consultation in respect of works to fire doors and the installation of satellite TV.
 - Asserted that the costs of new fire doors, new windows and a new roof were unreasonable, particularly as he had not been provided with any invoices or a detailed breakdown as to the cost.
 - Complained about the Applicant's use of different accounts and the establishment of a reserve account.
10. The Respondent did not comply with the directions made on 30/06/2016. In particular, the Respondent failed to file/serve any statement of case or any evidence (save for a print out of some of his emails with the Applicant).
11. As the Respondent did not provide a statement of case, the Tribunal had no detailed information as to the basis upon which the Respondent challenged the reasonableness of the costs. The Tribunal, however, managed to ascertain that the Respondent's position shortly after the

start of the hearing. The Respondent told the Tribunal that he was unable to challenge the cost of works as he had not been provided with copies of invoices/receipts for relevant items. For example, he said that he had not been provided with an invoice/receipt regarding the cost of each new fire door or the cost of each a new window frame. The Respondent was of the view that he was entitled to such documents as a matter of law, as the Applicant was acting as his agents.

Reasons for the Tribunal's decisions

Invoices

12. The Respondent misunderstood the nature of his legal relationship with the Applicant. The Applicant is not acting as agent, but as landlords of the block and the wider estate. The lease is a contract between the landlord and the tenant. The law provides some statutory safeguards, which apply in addition to these contractual terms, but it does not create an agency.
13. Section 22 of the 1985 provides that a tenant has a right to inspect documents such as accounts, receipts and other documents that support the landlord's summary of relevant costs. This statutory provision gives a tenant the right to inspect documents held by the landlord. It does not extend to obtaining disclosure of invoices/receipts held by third parties, such as the landlord's contractors.
14. The works to the fire doors, TV aerial, roof and windows were all works that were put out to tender. Each contract was awarded to the contractor who provided the lowest estimate. A contractor provides a quote for the entire works and the specification of works contains a breakdown of the different categories of expenditure. The breakdown, however, does not detail the cost of individual items. This will be a matter between the contractor and its own suppliers.
15. The Respondent was, therefore, in effect, requiring the Applicant to produce documents that were not within its control.

Works to the roof and windows

16. The Applicant carried out a full consultation in respect of the roof works and window works in compliance with section 20 of the 1985 Act. The Respondent did not raise any objection or make any comment in relation to the roof works. He also made no substantive comment to the proposal to replace the windows.
17. The Respondent did not put forward any evidence as to why the cost of the works was not reasonable.

18. In the absence of any substantive challenge, the Tribunal determined that these costs had been reasonably incurred.

TV aerials

19. The Applicant did not complete the consultation procedure in relation to the TV aerial works having wrongly assumed that the cost to each leaseholder would not exceed £250.00.
20. The Applicant did not make any application under section 20ZA in relation to its failure to complete the consultation exercise.
21. Mr James, Counsel for the Applicant, indicated that the Applicant wished to make a section 20ZA application in relation to the TV aerial works at the hearing. The Tribunal refused to allow such application to be made at the hearing since any such application would need to be notified to the other leaseholders so that they would also have an opportunity to raise any objection.
22. Mr James suggested that the Respondent be debarred from disputing the costs of the TV aerial works, as the Respondent had not complied with the Tribunal's directions, in particular the Respondent had not set out his reasons for challenging the costs in a statement of case nor had he included the item in his schedule of items in dispute.
23. The Tribunal also refused the Applicant's request that the Respondent be debarred from disputing this item, given that (a) the Respondent was unrepresented (b) he stated in the Defence form completed on 13/03/2016 that "*satellite - £304, no section 20 consultation received*" and (c) the Applicant had indicated in its statement of case that it would be making a section 20ZA application to seek dispensation. A section 20ZA application was subsequently made in respect of the fire doors but not the TV aerial. This appeared to have been an oversight on the Applicant's part.
24. Counsel for Applicant subsequently conceded that the costs of the TV aerial works would be limited to £250.00.
25. As the Respondent did not challenge these costs in any other respect, the Tribunal determined that the costs had been reasonably incurred.

Fire doors

(a) section 20ZA application

26. The Applicant carried out a full consultation in respect of the works to install a fire alarm system, fire doors, etc. save that it was unable to

prove that the Respondent had been sent the second notice (notice of proposal), which was sent to all other leaseholders on 02/06/2011. It was for this reason that the Applicant made an application was made under section 20ZA.

27. The section 20ZA application was served on the other leaseholders in accordance with the directions made by the Tribunal on 11/11/2016. Apart from the Respondent, no other leaseholder opposed the application.
28. The Respondent was served with the section 20 notice of intention on 03/12/2010. He did not respond to the Applicant's proposed works.
29. The contract was awarded to K Martin Limited who submitted the lowest tender.
30. The Applicant informed the Tribunal that, in the event that he had been served with the notice dated 02/06/2011, he would have requested a breakdown of the costs of the works. However, the breakdown would have specified the costs of the certain categories of work. The breakdown would not have satisfied the Respondent since he is of the view that he is entitled to know the actual cost of each fire door, which would not have been forthcoming in any event.
31. The Supreme Court decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 is the leading authority on dispensation and further guidance was given by the Upper Tribunal in the case of *OM Property Management Limited* [2014] UKUT 0009. In summary, the burden rests on a leaseholder to establish the existence of real prejudice resulting from the landlord's failure to comply with the consultation requirements and, if such a prejudice has been suffered, the landlord may be required to effectively compensate by reducing the amount of service charges claimed.
32. Given the above, the Tribunal concluded that the Respondent did not establish that he had suffered any prejudice and accordingly granted the application.

(b) Cost of works

33. As regards the costs themselves, the Respondent did not submit any evidence to establish that the costs were unreasonable.
34. During the hearing, the Respondent queried the additional items ('variations' to the contract) added to the overall costs, including the upgrade of fire alarms at a cost of £17,133.83. The Applicant was not in a position to respond to this specific query since this challenge was first raised during the hearing. The Applicant's surveyor was able to

ascertain that the works included the installation of fire alarm control panels. Mr Gleaves originally thought that the panels needed to be upgraded when it became apparent during the course of the works that the panels were defective. Mr Gleaves then realised that the block previously had no fire alarm system. The Tribunal had some concerns that the original quote failed to include the installation of the fire alarm control panels, but the Respondent did not put forward any evidence that the cost had not been reasonably incurred.

35. Given the above, the Tribunal concluded that the costs had been reasonably incurred.

Application under s.20C

36. At the end of the hearing, the Applicant made an application under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determined that it was not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act.

37. The Tribunal declined to make an order as the Respondent's position regarding the invoices was without merit, he put forward no substantive argument as to why the costs had not been reasonably incurred and the service charges were almost entirely upheld by the Tribunal.

Next steps

38. The matter must now be transferred back to Croydon County Court.

Name: Judge J E Guest

Date: 20/12/2016

Rights of appeal

Rule 36(2) of the Tribunal Procedure (First-tier Tribunal) Property Chamber Rules 2013 requires the Tribunal to notify the parties about any rights of appeal they may have.

If a party wishes to appeal the decision to the Upper Tribunal (Lands Chamber), then a written application for permission to appeal must be made to the First-tier Tribunal regional office which has been dealing with the case.

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

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case reference number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 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.