11586

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LSC/2016/0183**
Property	:	**12 Boxmoor House, Whiston road, London E2 8SA**
Applicant	:	**London Borough of Hackney**
Representative	:	**Mr. John Wenham**
Respondent	:	**Mr. Mohan Emmanuel**
Representative	:	**In person**
Type of Application	:	**Service charges**
Tribunal Members	:	**Judge LM Tagliavini** **Mrs E Flint FRICS**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR** **19 October 2016**
Date of Decision	:	**19 October 2016**

DECISION

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The tribunal determines that the sum of £3,046.01 is payable by the Respondent in respect of the Major Works Charges incurred for the years 2010/2011 (communications installation and work to lift).

(1) The tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985 and determines that a sum of £190 may be passed to the lessees through any service charge.

(2) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court at Clerkenwell and Shoreditch.

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 Respondent in respect of the Major Works Charges incurred in 2010/2011 for the installation of a communal aerial for receiving digital television broadcasting and the supply and fitting of a new lift car at the subject premises.

2. Proceedings were originally issued in the County Court Business Centre under claim no. C2QZ059E. The claim was transferred to the Clerkenwell and Shoreditch County Court and then in turn transferred to this tribunal, by order of District Judge Sterlini on 20 April 2016.

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

The hearing

4. The Applicant was represented by Mr. John Wenham at the hearing and the Respondent appeared in person.

5. The Respondent was given an opportunity to consider the hearing bundle before the start of the hearing as he claimed not to have received it.

The background

6. The property, which is the subject of this application is a second floor flat in a purpose built block of 25 flats forming part of a larger estate.

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 Respondent holds a long lease dated 19 March 2001 of the subject property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. This was not contested by the Respondent.

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 service charges for Major Works carried out in 2010 and 2011 relating to:

      (a) the installation in 2010 of communal digital television communications system in the sum of £310.53 (attributable to the Respondent);

      (b) the supply and fitting of a new lift car and sling in 20111 in the sum of £2,735.43 attributable to the Respondent;

      (c) the section 20 consultation procedures;

      (d) the standard of the lift works;

      (e) the Respondent's liability to pay for the communications system from which he received no benefit.

The Applicant's case

10. In addition to the hearing bundle containing section 20 notices, proof of posting and confirmation of works completed and invoices, the Applicant relied upon the written and oral evidence of Victoria Akiwowo, Major Works Officer who informed the tribunal that the subject major works were carried out as part of a Qualifying Long term Agreement.

The Respondent's case

11. The Respondent gave oral evidence to the tribunal in which he admitted having received the consultation notices in respect of the aerial installation works dated 4 March 2010, but denied receipt of the

notices concerning the lift works or the invoice dated 14 June 2010. The Respondent asserted that the lift had broken down on numerous occasions, but did not provide any supporting evidence to that effect. The Respondent also told the tribunal that he preferred not to have television in his property and even if he did there were other services available as an alternative to a communal television aerial. Consequently, he believed he should not have to pay for a service he not use.

12. 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.

The tribunal's decision

13. The tribunal determines the following:

(ii) The section 20 consultation requirements are accepted as having been complied with in respect of the communication installation.

(iii) The tribunal finds that on the balance of probabilities the letter of intention dated 14 June 2010 was sent and received by the Respondent as certified in the certificate of posting dated 14 June 2010.

(iv) The works of installation in respect of the digital signal are both reasonably required and are reasonable in cost.

(v) The Respondent is liable to pay the sum of £310.53 for these installation work.

(vi) The works for the supply and fitting of the lift cage are reasonably required and reasonable in cost.

(vii) The tribunal finds there is no evidence to support the Respondent's assertions of frequent breakdowns of long periods of the lift being out of action as a result of these works.

(viii) The tribunal finds that the Respondent is liable to pay his contribution to the cost of the lift works in the sum of £2,735.48.

Reasons for the tribunal's decision

14. The tribunal finds that the Applicant's case was supported with documentary evidence as well as oral evidence. In contrast, the tribunal finds the Respondent's case to be vague and unsupported by any persuasive evidence. The tribunal particularly notes that, notwithstanding a certificate of positing dated 2 March 2010 in respect of a section 20 letter dated 4 March 2010, the Respondent accepted that he had received the consultation letter in respect of the communications installation. In the absence of any persuasive evidence form the Respondent, the tribunal prefers the evidence of the Applicant in respect of the issue of section 20 compliant consultation for the major lift works.

12. The tribunal also noted that the Respondent was unable to produce any letters of complaint either in respect of the alleged numerous lift breakdowns, any query as to the communications installation or any lift engineer report to identify why the works were sub standard or the cause of the many breakdowns. The tribunal prefers the Applicant's evidence on this issue as it is supported by a log of regular maintenance checks and service of the lift showing a small number of call-outs for lift breakdowns, which the tribunal would reasonably expect over a six year period for a single lift which is regularly used by the occupiers and their visitors in this block of flats.

Section 20C

13. The tribunal finds that the Applicant has behaved reasonably in this matter and the Respondent has been unable to show any document or communication indicating a willingness to pay or contribute to the costs of the subject works or airing his complaints. The tribunal therefore refuses the Respondent's application and permits the Applicant to add the requested sum of £190 legal costs to the service charge.

Signed: Judge LM Tagliavini

Dated: 19 October 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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) a leasehold valuation 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.