



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

Case reference : LON/00AC/LSC/2017/0408

Property : Flat 52, Darwin Close, Brunswick
Park Road, London N11 1TA

Applicant : Pymmes Brook Management
Company Ltd

Representative : Ms A Patyna of counsel

Respondent : Ms T Petrokova

Representative : In person

Type of application : For the determination of the
reasonableness of and the liability
to pay a service charge

Tribunal members : Mr S Brilliant
Mrs S Redmond MRICS

**Date and venue of
hearing** : 15 January 2018
10 Alfred Place, London WC1E 7LR

Date of decision : 8 February 2018

Decision of the tribunal

The Tribunal determines that the Respondent is to pay the following sum in respect of the service charges for the following six-month period:

1 January 2017 - 30 June 2017	£2,212.56
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The transferred issues

1. On 19 May 2017, the Applicant landlord commenced a claim for the recovery of advance service charges in the sum of £1,918.68, together with statutory interest of £37.82, against the Respondent tenant in the County Court Money Claims Centre. The claim comprised £470.84 in respect of routine annual expenditure and £1,741.72 in respect of proposed major exterior works ("the exterior works"). This totals £2,212.56. The Respondent was in credit on her account in the sum of £599.88, so the balance sued for was £1,612.68. In addition, the Applicant claimed costs of £306.00 due contractually under the lease, making a total claim of £1,918.68
2. The Respondent is a tenant of the flat under a long lease dated 8 September 2010 made between the Applicant and Bernard Ryan ("the lease"). The lease consisted of the surrender and re-grant of an earlier lease dated 24 June 1983 ("the earlier lease"). However, the service charge provision in paragraph 13 of the Schedule to the earlier lease was deleted and replaced by a new paragraph 13 inserted by clause 5.2.7 of the lease.
3. Under the lease the Applicant provides certain services to the Respondent and is entitled to recover the cost by way of a service charge.
4. The Respondent served a Defence dated 30 May 2017.
5. By an order made in the County Court at Clerkenwell and Shoreditch on 5 October 2017 by District Judge Swan, the proceedings were transferred to the Tribunal.

The Tribunal gave directions on paper on 21 October 2017. The Tribunal identified the following issues to be determined:

- (1) the cost of major works and the demands made for payments on account;
- (2) whether the landlord has complied with the consultation requirements under section 20 of the 1985 Act;

- (3) whether the cost of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee.
7. The need for the works was agreed not to be in dispute. It was accepted before us, correctly, that the Respondent had complied with the consultation requirements under section 20 of the 1985 Act.
8. The Respondent's defence was ordered to stand as her statement of case. The Applicant was ordered to send to the Respondent a statement in response, and the Respondent was ordered to send to the Applicant a reply.

The hearing

9. The Applicant was represented by Ms A Patyna of counsel. The Respondent appeared in person.
10. The Applicant provided witness statements from Mr Purvey, who is employed as a property manager by the Applicant's managing agent, Maunder Taylor ("the managing agent"). He attended the hearing and gave oral evidence. Ms Patyna also called Mr Mountain to give oral evidence. He is a building surveyor and the contract administrator of the exterior works. The Respondent provided witness statements from 8 long lessees. Ms Silverton was the only one of those who made a witness statement who attended. Ms Patyna did not seek to cross examine either the Respondent or Ms Silverton.

The background

11. The property which is the subject of this application ("the flat") is on the second floor of a 3 storey purpose built block of flats, 1-18 Darwin Close. There is another block, 38-55 Darwin Close, in the same development. Some years ago the freehold of the blocks was bought by the long lessees and the Applicant is a company in which the long lessees are the shareholders.
12. 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 lease

13. By clause 7(a) and paragraph 4 of the Schedule to the lease, the Respondent covenanted to repair both blocks and to keep them in good repair and condition.

14. By clause 4(f) of and paragraph 13(a) of the Schedule to the lease, the Respondent covenanted to pay a one thirty-sixth part of the costs and expenses of keeping the two blocks in good condition, including the roofs, gutters and drains.
15. By paragraph 13(c) of the Schedule, the service charge year runs from 1 January to 31 December. By paragraph 13(d) of the Schedule, an advance payment on account, being a reasonable sum estimated, is to be paid on 1 January and 1 July each year. But if during the year the Applicant reasonably considers that the estimated service charge is insufficient to cover the service charge, the Applicant may make a further demand payable within 21 days. By paragraph 13(f) of the Schedule an adjustment is to be given once the certified statement of expenditure is produced in the year following.

The consultation process

16. It is common ground that work is required to the roofs and guttering of both blocks.
17. On 12 September 2016, the managing agent sent a notice of intention to carry out the exterior works to the long lessees. A detailed specification was to be made available at the Potters Bar office of the managing agent. The lessees were asked to make written observations in relation to the proposed works and were invited to nominate suitable contractors from whom tenders should be obtained. The notice of intention was properly served in accordance with s.20 of the 1985 Act and The Service Charges (Consultation Requirements) (England) Regulations 2003.
18. The period in which to respond to the notice of intention ended on 14 October 2016. There was no response to the notice of intention. No observations were made as to the scope of the works being proposed and no suitable contractors were nominated by any of the long lessees.
19. The Applicant engaged Mr Mountain to draw up a specification for the exterior works in October 2016, and then obtained 3 estimates for the exterior works. Tatham & Gallagher Ltd quoted £100,220.00, DMC & Co Ltd quoted £92,750.00 and DBK Building & Property Maintenance Ltd ("DBK") quoted £30,530.00. To these figures there are to be added:
 - (1) 1% for Mr Mountain's fees.
 - (2) 2% for the managing agent's fees.
20. On 16 December 2016, the managing agents sent a statement of these estimates to the long lessees. Again this statement was properly served in accordance with s.20 of the 1985 Act and The Service Charges

(Consultation Requirements) (England) Regulations 2003.

21. The period in which to respond to the statement of estimates ended on 16 January 2017. The long lessees asked for extra time. An EGM of the Applicant was held on 7 February 2017 at which Mr Purvey and Mr Mountain were present.
21. Mr Mountain was questioned as to why scaffolding was required when cherry pickers or a scaffold tower could be used. The scaffolding costs £21,500. Mr Mountain explained that it would be dangerous not to use scaffolding on a 3 storey building, especially as in places the land sloped.
22. Mr Mountain was also questioned as to why parts were to be re-used. As a result of concerns about this it was decided to use entirely new parts. A new schedule dated 1 March 2017 was drawn up by DBK in the sum of £88,810.00. This provided for new parts, but deducted a provisional sum of £5,000.00 for drainage which was the subject of an insurance claim. In a letter dated 3 January 2018, DBK confirmed that this tender price will stand for another 6 months.
23. The revised quotation is inaccurate in so far as items A2, A4, B2 and B4 still refer to cleaning, setting aside for reuse and salvaging. However, what will now be required instead are the removal of the items from site and the payment of tip charges. We do not consider that this materially affects the value of the estimate.

The Respondent's case

24. We would summarise the Respondent's case as follows:
 - (1) A number of long lessees, including the Respondent, have experience in the construction industry. Their view is that the overall costs are too expensive. Previous managing agents were talking of the exterior works costing £55,000.00.
 - (2) Not enough time had been given for consultation.
 - (3) Scaffolding is unnecessary.
 - (4) Mr Mountain's fees are too high: a percentage as opposed to a flat fee is likely to inflate the costing.
 - (5) The sums for contingencies are far too high.
 - (6) It was not reasonable to have demanded the whole of the cost in one service charge year, as this imposed an unfair burden on the

long lessees.

- (7) DBK were engaged to do routine maintenance at the blocks, so there was a conflict of interest in being appointed to carry out the exterior works.

Discussion

25. We found Mr Purvey and Mr Mountain to be credible witnesses. We are satisfied that the proposed works are reasonably required and that their costs are reasonable. DBK were the lowest of the 3 tenders received.
26. It is not to the point that some of the long lessees have experience in the construction industry. They have adduced no independent expert evidence to suggest that any of the proposed works are not reasonably required or are not reasonably priced. The figure of £55,000 came from a letter written by the previous managing agents, Premier Management Partners, on 6 November 2013. But, there are no tender documents justifying this figure.
27. The amount of time given for the consultation was lawful and in accordance with s.20 of the 1985 Act and The Service Charges (Consultation Requirements) (England) Regulations 2003.
28. We are satisfied that Applicant is acting reasonably in using scaffolding. The ground is, in places, not level and Mr Mountain was right to have regard to the Work at Height Regulations 2005.
29. The level of Mr Mountain's fee -11% of the contract price-is a reasonable one for the work already undertaken and to the undertaken by him. We find no evidence of the costing be inflated.
30. There has been confusion over the difference between contingencies and provisional sums. The only contingency sum is for £2,000.00 in the Preliminaries. This is a modest sum and entirely reasonable.
31. Provisional sums in respect of repairs are allowed for in items A1 (roof: £100.00), A5 (rafter ends and soffits supporting framework: £500.00), B6 (dustbin store enclosure: £600.00), B1 (roof: £500.00), B5 (rafter ends and soffits supporting framework: £500.00), B13 (minor brick: £200.00) and B20 (dustbin store enclosure: £400.00). We consider these reasonably required and reasonably priced.
32. We do not consider that the demand for payment of the cost of the exterior works by two equal instalments in advance, in accordance with clause 13 (d) of the lease, to have been unreasonable.

33. We do not consider that there was any impropriety or conflict of interest in the appointment of DBK. The simple fact is that DBK gave the lowest tender.

Conclusion

34. Accordingly, the amount claimed against the Respondent in the County Court is properly due and we remit the matter for the cost of those proceedings to be dealt with.
35. The Respondent applied for an order under section 20C of the Landlord and Tenant Act 1985, but in the light of our decision we do not consider it reasonable to make such an order.

Name: Simon Brilliant

Date: 8 February 2018

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.