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

Case reference : **LON/00AZ/LSC/2018/0042**

Property : **First Floor Flat, 315 Brockley Road,
London, SE4 2QZ**

Applicant : **Guaranteed Investments Limited**

Representative : **Mr James McDonald**

Respondent : **Riverpark Limited**

Representative : **In person**

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

Tribunal Members : **Judge Robert Latham
Hugh Geddes (Professional
Member)**

**Date of Hearing and
Venue** : **13 June 2018 on
10 Alfred Place, London WC1E 7LR**

Date of decision : **13 June 2018**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that the follow sums are payable for the service charge year 2017/8:

Insurance: £206.84;
 Accounts Fee: £25;
 Management Fee: £250;
 Repairs & Maintenance: £97.50.

- (2) The Tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

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 service charge year 2017/8.
2. On 27 March 2017, the Tribunal gave Directions. The application initially related to the interim service charge for the year. However, the final accounts were now available and it was agreed that the Tribunal should determine the reasonableness and payability of the following:

Insurance (25%): £206.84;
Accounts Fee: £25;
Management Fee: £250;
Repairs & Maintenance: £97.50.

3. The Tribunal directed that if the Respondent wished to challenge the service charges payable for any other year. It should issue a separate application. No such application, with the appropriate fee, has been issued.
4. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

5. The Applicant was represented by Mr James McDonald who is a director of both Guarantee Investments Limited (the landlord) and Guarantee Property Services (its managing agents). The Respondent did not appear.
6. The Tribunal were shown e-mails indicating that the parties are negotiating a settlement whereby the Respondent take over the full management of the building. It seems that as part of the settlement, the Respondent would agree the interim service charges that have been demanded. No settlement has been reached and the Tribunal is therefore required to determine the application.

The Tribunal's Determination

7. The service charge demand for 2017/8, dated 28 March 2018, is at p.68 of the Bundle. The requisite service charge account is at p.67. We were

referred to the terms of the sub-lease, dated 24 February 1989, and the head-lease, dated 10 June 1988, at p.129.

Insurance (25%): £206.84

8. Clause 3(b) requires the tenant to re-imburse the landlord one half or other fair proportion of the cost of the insurance paid by the lessor to the superior landlord. Clause 4(A) of the head-lease requires the landlord and the superior-landlord to pay the insurance "in equal proportions". The tenant is therefore required to pay 25% of the overall cost. There is no suggestion that the overall premium is unreasonable.

Management Fee: £250; Accounts Fee: £25

9. Paragraph 5 of the Fourth Schedule of the lease permits the landlord to employ managing agents, accountants to carry out its obligations under the lease or employed to assist it. The landlord employs its linked company, Guaranteed Property Services which has its own accounts department. There is no objection to a landlord doing so, provided that the charges are reasonable. The management functions are specified in the document at p.43.
10. The Tribunal would treat the accounts fee as part of the management charge. The Tribunal is satisfied that an overall management fee of £275 pa is reasonable.

Repairs & Maintenance: £97.50

11. Details of the two items of repair are provided at p.67. The issue seems to be whether the commercial tenant on the ground floor should contribute to these costs. By the First Schedule the head-lease demises all the ground, first and second floors of the premises that are edged red on the plan to the tenant. By the Second Schedule, the tenant covenants to repair and maintain the inside and exterior of the demised premises. We are therefore satisfied that the tenant of the commercial premises is not obliged to contribute to these repairs to the demised premises and that modest sums demanded by the Applicant are reasonable.

Application for Refund of Fees

12. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). Having heard the submissions from the Applicant and taking into account the determinations above, the Tribunal orders Respondent to refund the

fees of £300 paid by the Applicant within 28 days of the date of this decision.

Written Representations on Costs

13. At the end of the hearing, the Applicant indicated that it wished to consider an application for penal costs pursuant to rule 13(1)(b) of the Tribunal Rules. Rule 13(1)(b) provides that the tribunal may only make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case or a leasehold case. The parties are referred to the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT 290 (LC), with particular reference to the three stages that the tribunal will need to go through at [27] to [30] before making any order.
14. If the Applicant is minded to make such an application, by **5 July 2018**, the Applicant shall send the Tribunal and the Respondent his written representations (i) addressing the grounds upon which it is alleged that the Respondent has acted unreasonably in defending or conducting the proceedings having regard to the three stage test in *Willow Court*, and (ii) providing with full details of the costs being sought, together with any supporting evidence.
15. If such an application is made, by **19 July 2018**, the Respondent shall send the Tribunal and the Applicant its written representations in response. These shall set out its reasons for opposing the application and any challenge to the amount of the costs being claimed, with full reasons for such challenge and any alternative costs.

Judge Robert Latham

13 June 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the 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 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.