FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AU/LSC/2019/0043**
Property	**:**	**Flat A, 31 Archway Road, London, N19 3TU**
Applicant	**:**	**Dinglis Estates Limited**
Representative	**:**	**Miss Murray of Counsel**
Respondent	**:**	**Gillian Hoggard**
Representative	**:**	**Miss Gopaul of Counsel**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Tribunal Judge I Mohabir** **Mr S Mason BSc FRICS FCIArb**
Date and venue of hearing	**:**	**15 May 2019** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**8 July 2019**

DECISION

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of its liability to pay and/or the reasonableness of various service charges for the year ended 24 March 2018.

2. 31 Archway Road, London, N9 3TU ("the property") is a building that has been converted into 5 flats, of which the subject property forms part. It is held by the Applicant under a long lease dated 30 August 2017 granted to it by the Respondent ("the lease"). She acquired the freehold interest in January 2017.

3. It appears that, historically, the leaseholders managed the building themselves on an ad hoc basis until the Respondent acquired the freehold interest.

4. On 29 August 2018, the Respondent's solicitors, Fahri LLP, served a service charge demand on the Applicant claiming a contribution of £1,552.25 for the year ended 24 March 2018.

5. On 8 October 2018, the Applicant paid the service charge demand but queried the heads of expenditure that eventually formed the subject matter of this application. These are dealt with in turn below.

6. On 28 November 2018, the Respondent's solicitors provided a reply with some disclosure including a copy of their invoice to the Respondent dated 27 September 2018 for services in relation to "debt collection from lessees" in the sum of £903. However, the narrative description of the work carried out on behalf of the Respondent had been redacted because it was covered by "lawyer/client privilege".

7. The Applicant was dissatisfied with the reply it had received and made this application to the Tribunal dated 28 January 2019.

Relevant Law

8. This is set out in the Appendix to the decision.

Decision

9. The hearing in this case took place on 15 May 2019. The Applicant and Respondent were represented by Miss Murray and Miss Gopal respectively of Counsel.

10. Miss Gopal confirmed that the Respondent was making no claim against the leaseholders in respect of the sums for the bank overdraft, accruals and loss set out in the service charge accounts for the year ended 24 March 2018. In any event, the Tribunal ruled that these items are not within its jurisdiction because they do not fall within the definition of a service charge in section 18 of the Act.

11. The Tribunal then heard submissions from both Counsel regarding the remaining disputed heads of expenditure set out below. Miss Murray confirmed that the Applicant was essentially putting the Respondent to proof in relation to that expenditure.

Repairs & Maintenance

12. £1,600 is claimed for the main flat roof above the studio flat on the ground floor of the property by RAH Roofing. The original invoice was dated 20 September 2018 and stated that the work had been completed on 15 August 2017. An amended invoice was filed with the Tribunal on 10 May 2019 with a date of 15 August 2017 stating that the work had been completed on the same date.

13. The Tribunal did not accept Miss Murray's primary submission that the discrepancy in the dates on the invoices rendered them unreliable although Miss Gopal could provide no explanation for the discrepancy in the dates. She simply submitted that this was simply an error in the preparation of the invoice.

14. The Tribunal was satisfied that the work described in the invoice related to the proposed work set out in the section 20 Notice of Intention dated 28 April 2017. Indeed, the same estimate was included in the Notice of Estimates later served on the lessees dated 23 June 2016. Therefore, on balance, the Tribunal was prepared to conclude that the roofing work was carried out RAH Roofing on 15 August 2017 and that the original invoice had been prepared in error.

15. For the same reasons, the Tribunal was also satisfied that the work stated in the invoice had been carried by RAH Roofing because the additional roof works described in a further section notice dated 27 November 2018 were materially different in nature to the work described in the invoice. Therefore, the Tribunal did not accept Miss Murray's third submission in these terms.

16. The Tribunal also did not accept Miss Murray's third submission that the work carried out by RAH Roofing was unnecessary. This submission was based on an email from a Miss Marcelle Holmes dated 17 April 2019 confirming that the repair was inappropriate. The submission failed for two reasons. Firstly, Miss Murray conceded that Miss Holmes possessed no expertise in roofing and was unable to properly comment on the work carried out. Secondly, the Tribunal was satisfied that the matters to which Miss Holmes referred to her in her email did not relate to the work carried out by RAH Roofing as described in its invoice.

17. There was no challenge by the Applicant to the quantum of the invoice. Accordingly, the Tribunal found the sum of £1,600 for the roof work carried out by RAH Roofing to be reasonably incurred and reasonable in amount.

Legal & Professional Fees

18. £1,000 is claimed for the professional fees incurred by the Respondent's solicitors, Fahri LLP ("Fahri"). Their original redacted invoice dated 27 September 2018 was for the global sum of £903 including VAT and related to "debt collection services from lessees". Subsequently, in the course of these proceedings, Fahri produced two separate invoices dated 15 May and 11 August 2017 respectively for preparing two sets of section 20 notices to be served on the lessees, which all related to roof repairs. These two invoices also coincidentally totalled £903.

19. Miss Gopal conceded that the Respondent could only recover the sum of £903 for this expenditure. She also conceded that the original invoice sent by Fahri to the Applicant had wrongly claimed legal privilege for the redaction. Again, she could provide no explanation for the discrepancy in the dates in the various invoices and no explanation was provided in the Respondent's statement of case.

20. Again, on balance, the Tribunal accepted that the original invoice served by Fahri dated 27 September 2018 had been prepared in error and was corrected by the amended invoices dated 15 May and 11 August 2017. The Tribunal was supported in this view because the original sum of £1,000 claimed appears in the service charge accounts dated 8 June 2018. It follows that the costs must have been considered by the Accountant when the accounts were prepared.

21. However, the Tribunal found this level of inaccuracy by a firm of solicitors in relation to its invoicing surprising. If the Tribunal had not found that the original invoice dated 27 September 2018 was prepared in error, then the inference to be drawn was that the later amended invoices had been manufactured to support the Respondent's case. If this was correct, it would amount to an attempt by Fahri to mislead the Tribunal. This would give rise to a serious professional conduct issue of which Fahri would no doubt be aware.

22. The Tribunal found that these costs were contractually recoverable under paragraph 1 of the Schedule to the lease as relevant service charge expenditure. Indeed, Miss Murray, for the Applicant, accepted that there was no express wording in paragraph 1 to prevent recovery. The Tribunal also found the costs formed part of the landlord's management function under clause 5(g) of the lease.

23. As to the reasonableness of the costs, the Tribunal accepted the submission made on behalf of the Applicant that the overall cost of preparing two section 20 notices was unreasonable. The Tribunal found that a sum of £250 plus VAT in total was reasonable instead.

Management Fees

24. £900 is claimed by the Respondent as a management fee for this year. The menu of management services the Respondent asserted that she provided are to be found at page 85 in the bundle. The Applicant put the Respondent to proof as to what services were in fact provided and how the figure of £900 was arrived at.

25. No such evidence was provided by the Respondent. Therefore, the Tribunal had little difficulty in finding that these costs were not reasonable and were disallowed entirely.

Sinking Fund

26. A contribution of £1,500 was sought from the leaseholders by the Respondent. It was common ground that paragraph 6 in the Schedule to the lease permitted the landlord to demand such a contribution should it reasonably considered to be necessary from time to time to meet any future liability for major works.

27. On the Respondent's case, the basis for the demand is that it was a "best guess" by her. The figure appears to have been provided by her Accountant. However, the Respondent accepted that there was no evidence to support the figure claimed.

28. Therefore, the Tribunal found the sum claimed in respect of the sinking fund to be unreasonable and it was disallowed.

Section 20C & Fees

29. As to the Applicant's section 20C application, the Tribunal determined that it was just and equitable that an order should be made that the Respondent not be entitled to recover any of the costs she had incurred in these proceedings, even though she had succeeded in part.

30. The reasons for the Tribunal making the order are that they were satisfied the Respondent did not provide the relevant disclosure requested by the Applicant until proceedings had commenced. Had she done so, it may have avoided this application having being made or perhaps have narrowed the issues. In any event, even when the disclosure was made by the Respondent, it transpired that there were material clerical errors in the invoices relating to the roof works and her solicitor's costs for the section 20 notices. This perception of a lack of transparency and/or proper accountability by the Applicant was further exacerbated by the Respondent's solicitors redacting their original erroneous invoices on the basis of a misconception of legal privilege.

31. By reason of this conduct, the Tribunal concluded that the Respondent should not recover any of the costs she had incurred in this litigation.

32. For the same reasons, the Tribunal determined that the Respondent should reimburse the Applicant the fees it has paid to have the application issued and heard in the sum of £300. Payment is to be made by the Respondent within 28 days of this decision being issued to the parties.

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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).