FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AN/LSC/2020/0053**
Property	:	**Flats 2 Marzell House 120 North End Road West Kensington London W14 9PP**
Applicant	:	**Mr Isreal Jones**
Representative	:	**In person**
Respondent	:	**(1) London and Quadrant Housing Trust,(2) IDM Properties Ltd**
Representative	:	**Tom Smith for London and Quadrant Housing Trust, Prez Fadrowski for IDM Properties Ltd**
Type of Application	:	**The determination of the reasonableness of and the liability to pay service charges**
Tribunal Members	:	**Mr D Jagger MRICS** **Mr T Sennett FCIEH**
Date and venue of Hearing	:	**22nd January 2021** **By video conference**
Date of Decision	:	**3rd February 2021**

DECISION

Covid-19 pandemic: description of hearing

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This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was coded as CVPREMOTE - use for that is held entirely on the Ministry of Justice Cloud Video Platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the Covid -19 pandemic restrictions and regulations and because the parties agreed the issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 314 pages, the contents of which we have noted. In addition, the second respondent submitted a copy of the insurance documentation together with a schedule of insurance claims in the block. The applicant provided to 'pro-forma witness statements on behalf of Helen Shah of Flat 4 and Mr A Shah of flat 3. Each party confirmed they had no objections to submissions of these documents.

Introduction

1 This is an application dated 28th December 2019 made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of their liability to pay and/or the reasonableness of service charges claimed by the Respondents for the years 2015-2016, 2016-2017, 2018-19 and 2019-2020. The various heads of expenditure under which the disputed service charge expenditure arise are dealt with below . The total value in dispute stated in the application is £6,278.61 and the applicant has also made a Section 20C application and an application under paragraph 5A of section 11 to the 2002 Act.

2. The subject property is Flat 2 Marzell House 120 North End Road , West Kensington London W14 9PP ("the property") and is described as being a second floor two bedroom flat which forms part of a former office block which has been partly converted to form 15 flats on the first, second and third floors. There is a commercial property on the ground floor and basement which is let to Waitrose. The residential area has its own entrance,. common parts comprise split entrance corridors staircase and lift to the upper floors with landings on each floor.

3. The Applicant is the present leasehold owner of Flats 2 which he holds under a long lease and 40% shared ownership granted by the first respondent.

The Lease Arrangements

4. Firstly, there is a head lease dated 30th March 2015 between Rosefield Property Company Ltd and London and Quadrant Property Trust. In fact, this is the only property held by the Trust in the building and we assume it was acquired to house a Key Worker based upon a shared ownership agreement. The service charge expenditure is to be found in the second schedule (page 107) and this sets out the mechanism and calculation of the service charge payments.

Clause 1.13 of the lease defines the Tenants proportion which is "*a fair and proper proportion of the building expenditure as defined from time to time by the landlord (acting reasonable)* Therefore, this clause does not provide a precise formula and gives the landlord wide ranging powers. The landlord calculated the service charge expenditure based upon two percentages. The first is a percentage of 6.425% (Schedule A) and calculates the costs for the flats and commercial property for example as set out in the statement of anticipated service charge expenditure (page 211). The second percentage is 9.0229% which refers to the flats only and lists various items of expenditure as once again set out on page 211. Mr Fadrowski confirmed the method to calculate the two percentages is based upon the floor area of the flats and commercial premises. This method of calculation is endorsed by the RICS Code of Practice and is a method accepted by this Tribunal.

5. Next, there is a Stared Ownership Flat Under lease relating to the flat dated 30th March 2015 between London and Quadrant Housing Trust and Israel Jones and Andrea Jones. The Service Charge provisions are set out in Clauses 7.1 through to 7.8 (Pages 133-135)

By clause 7.2 of the lease, *the lessees covenant with landlord to pay the service charge during the term by equal payments in advance*. This is based upon an expenditure budget provided by London and Quadrant Housing as likely to have been incurred in the account year and a balancing payment or refund is then paid once the actual figures have been determined and certificate provided to the tenant.

Relevant Law

6. This is set out in the Appendix annexed hereto.

Decision

7. The application in this case was heard by remote video hearing on 22nd January 2021. The hearing was originally scheduled to take place on the 18th December 2020, but the Tribunal were not in possession of the bundle prepared by the Respondent for which he was in no way to blame. On the 18th January 2021 the Applicant submitted a request for the Reconvene hearing on the 22nd January 2021 to be postponed in order for a third party to prepare documents. This was reviewed by Regional Judge Carr and the Applicants request was refused. The Applicant Mr Jones, appeared in person. as did the two Respondents: Mr Smith for London and Quadrant Housing and Mr Fadrowski for IDM Properties Ltd. On the day of the hearing an email was received from the Applicant Mr Jones which was shared with the two Respondents and attached seven photographs indicating various potential building defects.

The Years in dispute

8. Mr Smith provided the Tribunal the precise service charge demands which are set out below and are not disputed by the Applicant

2015-2016 £1,491.50

2016-2017	£3,338.63
2017-2018	£2,960.73
2018-2019	£2,603.23
2019-2020	£3,435.48

9. It is evident to the Tribunal when it examined the papers in the bundle and questioned Mr Smith that the budgeted figures provided in advance of the service charge year bore little resemblance to the certified figures and this no doubt has caused the Applicant confusion and a lack of understanding in order to calculate the final figures set out in the demands. Mr Smith when questioned , confirmed that although The Housing Trust only owned one property in the building, all demands presented to them by IDM Properties Ltd were scrutinised and inspections were carried out by members of staff.

10 The Directions prepared by the Tribunal on the 5th August, adjusted by Judge Martynski clearly stated '*copies of all relevant invoices relating to the matters disputed by the tenant in the schedule, together with any other documents (including any colour photographs) upon which either respondent intends to rely* ' Very little evidence of invoices were provided by the Respondents which did not assist the Applicant and the Tribunal had to rely on its expert knowledge. Looking through the schedule of charges set out in the various demands, the figures without backup invoices appear to be within the reasonable range and no figures are outside the range of reasonableness for a building that is located on the borders of Prime Central London which would attract such a level of service and maintenance.

The Applicants case

11. The Applicants advanced the following main arguments in relation to this dispute.

    (a) The applicant sets out a statement of case and evidence found in the bundle at pages 306-314.

    (b) The evidence includes service charge schedules for the relevant years in dispute whereby the applicant sets out 'My affordability/proposed payment' based upon a percentage of the anticipated share due. When we look at this column it contains various very precise percentages which range from nil through to 58.27 %. When questioned, Mr Jones stated he felt these are the percentage figures that are appropriate for each element in schedule A and B. The problem the Tribunal has with this evidence is that it is purely based upon arbitrary percentages provided by the Applicant and is not backed up by any evidence of alternative costs whatsoever. Therefore, it is very difficult for the Tribunal to place weight on this evidence.

(c) The Tribunal carefully considered the Applicants personal statement and the main points are considered below under separate headings. Essentially, this part of the Applicants case appears to be based upon ‘usage’ rather than the covenants within the lease. For example, the Applicant stated a number of the flats are occupied by Airbnb short-term rentals which create a higher degree of maintenance to common parts, disturbance and have significantly added to the list of insurance claims. Mr Fadrowski when questioned about this matter confirmed that in his opinion the lease did not restrict this form of occupancy. Otherwise, this matter is not within the Tribunals remit in this particular matter.

12. The Tribunal provided the Applicant the opportunity to identify the various headings in the schedules (pages 306-309,312) and considered the Applicant’s arguments above in turn and made the following findings.

Insurance

13. When questioned on this matter Mr Fadrowski provided the Tribunal a copy of the current insurance documentation plus a schedule itemising the claims in the past years. It is stated that the Landlord uses a reputable broker who reviews the policy and tests the market annually to seek the best possible quotation on the insurance market. The building has been subject to a recent building insurance re-valuation at a figure of £5,500,000. The commercial premises on the ground floor let to Waitrose pay 28.79% of the annual premium. In his experience insurance premiums have been increasing annually possibly due to current risks, the claims history and the Grenfell disaster. Mr Jones commented that he has never made a claim and why should he have to pay more due to other tenants and they're subletting. Based upon the evidence provided, the Tribunal considered the Insurance premium to be reasonable, especially in the absence of an alternative quote based upon precisely the same criteria as the subject.

Health and Safety/Fire Equipment Maintenance

14. The Respondent is obliged to review Health and Safety and the Maintenance of Fire Equipment annually and for this reason the Tribunal found the sums claimed for the years in dispute to carry out these functions to be reasonable.

Managing Agents Fees (All Years)

15. Mr Fadrowski confirmed the annual Management Fee for the building is £3000 which equates to £200 per unit. The Tribunal found these costs to be more than reasonable especially given the location of the building and the relatively small number of units involved. The photographic evidence provided by the Applicant appeared to contend that the building is not maintained and managed to the highest standards

however the Tribunal were not convinced by this argument, and once again, no alternative quotations were provided by the tenant for management fees.

Electricity

16. Tribunal found that the cost incurred for Electricity in each of the years was rather high, for example at £189.48 for the year 2019-2020. However there was no evidence put forward by the Applicant to provide an alternative other than their percentage assertion. Accordingly the Tribunal finds these costs to be reasonable in the years in question.

Accountancy Fees (2016-2018)

17. The cost incurred in each of the years was £360. The cost of £3,600 inserted in the schedule for the year 2019-2020 was confirmed to be a typing error. These costs represented costs incurred and did not strike the Tribunal as being unusually high. In addition, there was no evidence from the Applicant to support an alternative figure other than the percentage assertion. Accordingly, the Tribunal found these costs to be reasonable.

Lift Maintenance

18. The Applicant maintains that he should not pay for any lift maintenance whatsoever because he does not use the lift. This however is not a sustained argument, as it could be said a ground floor property does not use a lift. The cost of the lift maintenance is split between the leaseholders in the building based upon the percentages. This is confirmed in the decision in **Solarbeta Management Co Ltd v Akindele (2014) UKUT 415 (LC).** This case involved a lift not used by the tenant and located in a different block to the tenant and whereby The Upper Tribunal found it was irrelevant that the tenant had no benefit as they were contractually bound to contribute under the terms of the lease

General Maintenance

20. The costs were incurred for each year in connection with maintenance of the fabric of the building Unfortunately, no invoices were provided as evidence by the Respondents, and the Tribunal can only rely on the figures entered in the schedule for each year. Again, the Applicants were unable to make any meaningful submissions on this issue. The costs submitted by Respondent did not strike the Tribunal as being unusual or excessive, especially for a building of this type. Accordingly, the Tribunal found these cost to be reasonable for each of the years.

Conclusion

21 Whilst, the Tribunal has every sympathy for the Applicant in this matter, on the basis of the material before the Tribunal, the Applicants have not made out their case, which suffers from a complete lack of supporting evidence. The service charges alleged to be owing are payable for the years in question.

Costs - Section 20C & Fees

22. In the application, the Applicant invited the Tribunal to make an order preventing the Respondent from recovering its costs incurred in these proceedings. as part of the service charge.

23. This matter was not examined at length during the hearing. However, considering the success achieved by the Respondents in this decision. The Tribunal considered it just and equitable not to make an order preventing the Respondent from recovering the costs it had incurred in these proceedings. However, given the hardship being endured by the Applicant, the Tribunal would like to think both Respondents will take the circumstances of the Applicant into consideration when making a decision in this particular matter.

24. For the same reasons, the Tribunal determines that the Applicant is to bear the costs he has incurred to have this application issued and heard.

Tribunal Judge D Jagger

3rd February 2021

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.]

<u>Section 20C</u>

(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).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
   (a) specified in his lease, nor
   (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
   (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) …