FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2022/0148**
Property	:	**Flat 3, 7 Dunheved Road South, Thornton Heath CR7 6AD**
Applicant	:	**Shabana Jaffer**
Respondent	:	**Southern Land Securities Ltd**
Representative	:	**Together Property Management Ltd**
Type of Application	:	**Service charges**
Tribunal Members	:	**Judge Nicol** **Mrs A Flynn MA MRICS**
Date and venue of Hearing	:	**31st October 2022;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**1st November 2022**

DECISION

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(1) The Tribunal has determined that the Respondent's estimate of £22,612 for a major works programme of external repairs and decorations is reasonable so that the service charges arising are payable.

(2) There is no order as to costs.

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

The Tribunal's reasons

1. The Applicant is the lessee of the subject property, one of three flats in a converted house. The Respondent is the freeholder. Their managing agents are Together Property Management Ltd ("Together").

2. The Applicant has applied for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the reasonableness and payability of service charges demanded in respect of a proposed major work programme of external repairs and decorations estimated to cost a total of £22,612.

3. The Tribunal heard the application on 31st October 2022. The attendees were the Applicant and Ms Karen Young from Together.

4. The documents considered by the Tribunal were contained in a bundle of 376 pages, in electronic form, prepared by the Applicant. They included a Scott Schedule setting out the Applicant's objection to various elements of the work specification and their associated costs with the Respondent's responses on each item.

5. The Applicant's lease of the property includes the following:

> 5. THE Landlord ... HEREBY COVENANTS with the Tenant as follows:-
>
> (1) Subject to and conditional upon payment being made by the Tenant of the maintenance charge at the times and in the manner hereinafter provided:-
>
> (a) To maintain and keep in repair and condition:
>
> (i) the main structure of the Building including the exterior walls and the foundations and the roof thereof with its main water tanks main drains gutters and rain water pipes (other than those included in this demise or in the demise of any other part of the Building)
>
> (b) As and when the Landlord shall deem necessary
>
> (i) but at least once every three years from the date of commencement of the term of this lease paint the whole of the outside wood iron and other external parts of the Building heretofore or usually painted and grain and varnish such external parts as have been heretofore or are usually grained and varnished

6. In accordance with the lease, Together arranged for external repair and decoration works to be carried out in 2016 for £12,826.04. In accordance with the 3-year timetable in clause 5(1)(b)(i), they began consulting on the next round of such works in December 2019. The estimated cost of the works was £18,440.10, inclusive of VAT and administration and surveyor fees. Unfortunately, the COVID pandemic caused the works to have to be postponed. Together corresponded with the lessees, including the Applicant, as to when the programme of works could resume and the fact that the postponement would likely cause the cost to increase.

7. By letter dated 18th November 2021 Together re-commenced the consultation process required under section 20 of the Act. The works were described as "the overhaul, repair and redecoration of the external

common parts of the building". A specification of works drawn up by an independent surveyors' firm, Angell Thomson, was attached.

8. Angell Thomson sent out the specification to 3 contractors they knew and felt would be suitable for the work so that they could tender for the programme. Two responded: Craven Builders & Decorators quoted a total of £15,860 plus VAT and C&N Building Services £27,095 plus VAT.

9. By letter dated 15th March 2022 the lessees were again consulted and informed of the outcome of the tendering process. None of the lessees responded. This is unfortunate. The Applicant raised a number of pertinent questions and understandable concerns during her Tribunal application but that is precisely what the consultation process is for. The Tribunal suspects that much of her application would have fallen away some time ago if she had taken the opportunity to use the consultation process.

10. In particular, none of the lessees had proposed any contractors of their own. The Applicant pointed out that she found it difficult to find any contractor and would not trust them if she did. However, she also criticised the fact that only two contractors took part in the tendering process. The way that contractors are encouraged to produce trustworthy outcomes for a trustworthy cost is by having to compete with each other by tendering for the work. If she had proposed another contractor, as well as being able to quiz that contractor with any questions she had, she would have made the tendering process more competitive and thus enabled a potentially improved outcome.

11. Together decided to appoint Craven which had given the cheaper quote. They charged 5% for contract administration and Angell Thomson charged for their intended works supervision, thus producing the total of £22,612, of which the Applicant's share was one-third. Half of this cost was included in the half-yearly service charge demand which Together issued on 1st August 2022.

12. It should be noted that this sum was an estimate. Ms Young acknowledged at the hearing that it included provisional and contingent sums which, if stripped out, would reduce the cost to around £10,000. If the provisional and contingent elements turned out not to be required, the final bill for the actual charges would be much reduced. The Applicant objected to so much money being allocated to provisional and contingent sums but it is only sensible management to provide for genuine possibilities in case work turns out to be required.

13. Together had intended to commission and complete the works before the second half of the cost became due with the next half-yearly service charge demand in February 2023. The idea was that the demand would be based on the final account for the works so that the lessees would only have to pay the difference between the first half of the cost and their share of the actual cost of the works. Unfortunately, due to the delaying effect of these proceedings, it might now not be possible to do this. For

example, external works can be delayed by bad weather and the period between now and February is, of course, the time when the worst weather is expected.

14. Having said that, Ms Young acknowledged that the works constituted a significant cost and that the Applicant was in the same position as many people at the moment of finding it difficult to afford such bills. The Tribunal would hope that the parties can find a compromise which would allow the Applicant the same opportunity to pay no more than her share of the actual cost of the works rather than having to fork out for the full estimate in anticipation of recovering some unknown sum later.

15. The Applicant had a number of objections to the specification of works and the costings. It is a pity she felt unable to afford her own surveyor who could have analysed them with the same level of expert knowledge and experience as Angell Thomson. She did get alternative quotes for some of the work from other contractors but they do not carry the same evidential weight:

    (a) Contractors do not have the same expertise as a surveyor.

    (b) Nor do they have the same degree of independence – they may quote, knowing what has already been quoted by the other contractors, in the hope of getting the work themselves.

    (c) It is not comparing like with like to compare quotes for only parts of the proposed works with quotes for the whole of them.

16. The Applicant calculated that the increase in the cost of external works had risen between 2016 and 2022 by 76% which she said was considerably ahead of building cost inflation. However, it is highly unlikely that the comparison is between exactly the same works. Moreover, her comparison is between the final bill in 2016 and the estimate in 2022. As already referred to above, the final bill in 2022 may well be considerably lower. It is entirely understandable that the Applicant and her fellow lessees baulk at such sums of money but whether they are unreasonable depends on a closer analysis than just looking at how large the service charge is.

17. The Applicant referred to the fact that the specification of works broke down each element on each elevation. She was concerned that this enabled price inflation by encouraging the contractor to quote higher sums more often. Ms Young explained that the breakdown provided transparency and enabled the identification of particular sums in the event that any work was not required or not to standard. The Tribunal was unable to identify any examples of over-specification.

18. The Applicant challenged both the need for and the cost of scaffolding. She suggested that at least some of the elevations could be addressed by the use of ladders or a tower while the scaffolding need only be up where and when strictly necessary. Ms Young replied that the applicable regulations did not permit the use of ladders for the period of 10 weeks the work would take while a tower was impractical for this property. The

scaffolding would be hired for a fixed fee for the full length of the work and the cost would not change with how long it was actually up. Further, it needed to be up throughout the work so that the contractors could work from the top down and the surveyor could inspect at the end.

19. The Applicant objected to the use of a skip but Ms Young estimated that the cost would be no less if waste were disposed of regularly by the contractors at the appropriate municipal centre.

20. The Applicant pointed out that the specification required the preparation and decoration of any previously painted downpipes whereas all but one of the pipes were plastic and did not need painting. Ms Young accepted this but herself pointed out that sometimes plastic pipes were found to have been painted by previous contractors so that work needed to be maintained to a proper standard. This was an example of a contingent sum and Ms Young thought it highly likely that, when the contractors went on site, this would be the first item to be removed from the specification. On that basis, there would be no cost to the lessees.

21. The Applicant queried whether work was really required every 3 years. She pointed to the contingent sum for repair of the flat roof and to the fact that paint quality had improved since the lease had first been drawn up around 35 years ago. However, there are two problems with this argument. Firstly, the lease requires re-decoration every 3 years. The Respondent would breach clause 5(1)(b)(i) if they failed to do so. Secondly, the delay resulting from the COVID pandemic has meant that external works have not been done for considerably more than 3 years. Ms Young also again pointed out that the sum provided for roof repair was contingent so that, if it became apparent on site that no repairs were required, none would be carried out and the lessees would not be charged.

22. The Applicant suggested that work should be guaranteed by the contractors so that, if work needed doing again only 3 years later, the cost would be covered. However, apart from some items such as roof repairs or replacement, it is highly unlikely that contractors would guarantee their work for that long. Ms Young explained that 5% of the contract sum is retained so that the contractors would return within the further 6-month liability period after the end of the works and remedy any faulty work identified by the surveyor.

23. The Applicant queried the amount of £200 for washing down uPVC framed windows. Ms Young replied that this was for cleaning them of debris and excess paint that might have got on them during the works. A standard wash from a window cleaner might not cover such additional work.

24. The Applicant asked why Together's contract administration fee of 5% could not be covered in their annual fee. However, it is standard industry practice to separate out the annual fee from fees incurred for work done

only every few years. Not to do so would be less transparent and require a higher annual fee.

25. The Tribunal has the power under section 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to order that the Respondent may not seek their costs of these proceedings through the service charge or as an administration charge. However, the application has failed. As referred to above, the Applicant had the opportunity to address her questions and concerns earlier and without resorting to litigation. In the circumstances, the Tribunal declines to make a costs order.

Name: Judge Nicol **Date:** 1st November 2022

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 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.

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.