9635

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	LON/OOBE/LSC/2013/0686 LON/OOBE/LDC/2014/0011
Property	:	FLAT 11 2 FAIR STREET & VARIOUS FLATS AT 2 FAIR STREET LONDON SE1 2XT
Applicant 1	:	CHRIS SETO (FLAT 11)
Representative	:	No representative
APPLICANT 2	:	LONDON BOROUGH OF SOUTHWARK
Representative		Mr Andrew Cusack, Income enforcement officer
RESPONDENTS	:	VARIOUS FLAT OWNERS
Type of Application	:	(1) Reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985 ("the Act") (2) Dispensation from consultation under Section 20ZA of the Act
Tribunal Member	:	JUDGE T RABIN MR T JOHNSON FRICS
Date and venue of hearing	:	17th March 2014 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	17th March 2014

DECISION

The applications

1. The Tribunal was dealing with two applications:

- an application by Applicant 1 seeking a determination pursuant to Section 27A of the Act as to whether the service charge of £1,675.62 for 2011/12 was reasonable and payable by the Applicants in view of the fact that Applicant 2 had not undertaken the consultation required under Section 20 of the Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 ("the Regulations). These costs included boiler renewal and fuel charges.
- an application by Applicant 2 for an order under Section 20ZA of the Act dispensing with the Section 20 consultation requirements. Respondent.

2. The applications relate to Flat 11 (Applicant 1) and 1,3,4,5,11,12,15,and 16, 2 Fair Street SE1 2XT2 ("the Flats"). Applicant 1 is the long leaseholder of Flat 11 and Applicant 2 is the freeholder of 2 Fair Street aforesaid ("the Building

3. Applicant 1 originally made an application tor the Tribunal to determine whether Applicant 2 should have made Section 20ZA application. Applicant 2 then made the application under Section 20ZA before the Tribunal.

4. Apart from the application by Applicant 1, only one objection was received and that was from Mr and Mrs Lloyd Davies of Flat 12. They said they had been unaware of Applicant 1's application but in their view the works were not emergency works. The works were not undertaken quickly and the installation of temporary boilers increased the cost. In their view there was no reason that Section 20 procedure could not have been undertaken. As a result the leaseholders had not been given the opportunity of making an informed assessment of the reasonableness of the works in both scope and cost.

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

6. In view of the nature of the claim it was determined that an inspection was not necessary.

The evidence

7. The Tribunal considered the submissions from Applicants 1 and 2 and the objections by Mr and Mrs Lloyd Davies. Applicant 1 contended that Applicant 2 should have made an application for dispensation that all the works comprised in the charge of £1,675.62 required consultation as the total sum was far in excess of the £250 threshold.

The costs should have been worked out as a single boiler repair charge rather than charged as individual elements of repair. He said that the onus was on Applicant 2 to prove that none of the charges exceeded the £250 threshold.

8. Applicant 2 submitted that estimated service charges were given to Applicant 1 and the Respondents on 1st April 2011 and actual service charge accounts were submitted on 11th December 2012. The Actual costs are the subject ofthe application by Applicant 2.

9. The service charges covered all the services specified in the leases. One of the items was for heating at £1,851.22 and the full amount is not being disputed by Applicant 1. In any event the fuel costs are the subject of a qualifying long term agreement for which consultation is not necessary. Applicant 1 is disputing the boiler repairs which cost £1,375.23. included in the figure for heating.

10. The total figure includes other undisputed items such as care and upkeep, lighting and electricity, minor repairs and entryphone. Of the sum of £1,375.23 attributable to heating, £852.99 relates to the cost of fuel for the temporary boilers and £797.01 to the cost of repairs to the boilers.

11. Applicant 2 states that the actual cost of repairs replacement and fuel for the boiler at 2 Fair Street amounted to £56,131.62. Applicant 1 reduced this sum by £25,601.43 in order to ensure that all items of expenditure fell below the capping provisions. This avoided the need for consultation as the none of the items in the service charge would exceed £250. There was therefore no need to follow the procedure in the Regulations.

THE TRIBUNAL'S DECISION

12. The Tribunal carefully considered both applications. Applicant 1 objects to the lack of consultation rather than the quality or cost of the works. However, by making the reduction described above, there was no need for any consultation.

13. No reason was given for Applicant 1 reducing the costs by a substantial amount in order to avoid the necessity of consultation. It was puzzling that this concession was made after the application under Section 20ZA which was not pursued.

14. Applicant 2 has explained how the cost of boiler maintenance, repair and fuel are calculated which results in the cost for a one bedroom flat, such as that owned by Applicant 1, of £200.21.

15. The Tribunal determines that there is no need for consultation and therefore no decision is required in respect of Application 2 under Section 20ZA of the Act. In relation to Application 1 the Tribunal fins that the service charges are properly demanded and are reasonable and payable by the Respondents. In the case of Applicant 1 the sum due is £1,675.62 and this is now payable

Judge Tamara Rabin

Appendix of relevant legislation

Landlord and Tenant Act 1985

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.

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.

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- (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 the appropriate 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 the appropriate 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).