

12207



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

Case Reference : **BIR/OOCN/LIS/2017/0006
BIR/OOCN/LLC/2017/0006**

Property : **Flat 8, 46-48 Handsworth Road,
Birmingham B20 2DT**

Applicant : **Mr D Zhou**

Respondent : **Blue Property Group**

Type of Application : **Landlord and Tenant Act 1985**

1. Service charges (s27A application)
2. Limitation of costs (s20C application)

Members of Tribunal : **Judge D Jackson
N Thompson FRICS**

Date of decision : **20 April 2017**

DECISION

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1. The Applicant holds a leasehold interest in the Property, granted for 125 years from and including 31st January 2008, by a Lease dated 21st May 2008 and made between Narinder Verma (1) and the Applicant (2).
2. The Lease contains a covenant by the Applicant to pay one fifteenth of the Landlord's expenses set out in the Sixth Schedule by way of service charge. The Applicant covenants to pay by way of further or additional rent the service charge in accordance with the provisions contained in the Seventh Schedule.
3. By application received on 30th January 2017 the Applicant applied to the Tribunal under s27A for determination of liability to pay and reasonableness of service charges. The application relates to radiator/heater installation cost in the sum of £1404.13. The work was carried out in 2010 but no demand for payment was made until 2014. The Applicant paid in full on 2nd June 2014. It is claimed that the Respondent failed to properly record the payment in service charge accounts but added the amount, as unpaid, into a service charge demand in late 2016.
4. It is not alleged by the Applicant that the costs of replacement of the radiator/heater installation were not reasonably incurred nor that the work carried out was not of a reasonable standard. Accordingly the application raises no issues as to reasonableness under section 19 of the 1985 Act. The Applicant's case relates solely to the conduct of the Respondent in relation to how the demand and payment were dealt with.
5. The Applicant has also made an application under section 20C, also received by the Tribunal on 30th January 2017.
6. On 13th February 2017 the Respondent replied to the application. The Respondent claims that this is not a service charge matter at all but relates to work carried out directly at the Applicants request by Blue Property Maintenance UK Limited under invoice dated 10th March 2010. That invoice details the work carried out as "Supply and fit 5 convector heaters" and "2 new water heaters" as well as "Paint flat throughout".
7. The sum of £1404.13 was paid into the service charge account in error on 2nd July 2014 (the Applicant claims payment was made on 2nd June 2014). Thereafter the Respondent added the invoice to the service charge account to correct that error in late 2016.
8. The Respondent has now produced a revised service charge account showing that both the invoice and the Applicant's payment have been removed as it is the Respondent's case that these items do not relate to service charges.
9. By letter received by the Tribunal on 21st February 2017 the Applicant confirmed that his application related to the "fundamental error to compile the account correctly" and that the Respondent "made no effort or attempt to rectify this situation from June 2014 onwards till late 2016".
10. On 24th February 2016 the Tribunal issued Directions in relation to striking out the application under Rule 9 of the Tribunal Procedure Rules.

11. The Tribunal invited both parties to make further representations. However neither party has made any representations beyond those already received as summarised in paragraphs 4 – 6 above.

Decision

12. There is no dispute between the parties that work was done in relation to radiators and heaters in 2010. The applicant does not complain that the costs were unreasonably incurred nor that the standard of work was unreasonable. The Applicant makes no complaints as to the reasonableness of the amount he was charged for the work.
13. It is not disputed that the Applicant paid promptly and in full on presentation of an invoice in 2014.
14. The Respondent has belatedly sorted out its accounting error by removing both invoice and payment from the service charge account in late 2016.
15. We find that the contract for supply and fitting of the heaters was a matter between the Applicant and Blue Property Maintenance UK Limited and was not a matter carried out under the Lease as a service charge. The Landlord's Expenses as set out in the Sixth Schedule to the Lease do not extend to the supplying and fitting of convector heaters nor water heaters. The painting of the interior of the flat is the responsibility of the Applicant under clause 8 of Covenants by the Tenant contained in the Seventh Schedule to the Lease.
16. Accordingly as this application does not relate to costs incurred under the service charge provisions of the Lease the Tribunal does not have jurisdiction and strikes out the application under Rule 9(2) (a).
17. It follows that, as this is not a service charge matter and does not involve the Landlord under the terms of the Lease, the Applicant is entitled to an order under section 20C. We order that none of the costs incurred by the Landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

D Jackson
Judge of the First-tier Tribunal

Either party may appeal this decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission to appeal. Any application for permission must be in writing, setting out grounds relied upon and must be received by the Tribunal within 28 days after the date that the Tribunal sends these written reasons for the decision to the party seeking permission.



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2. The Lease contains a covenant by the Applicant to pay one fifteenth of the Landlord's expenses set out in the Sixth Schedule by way of service charge. The Applicant covenants to pay by way of further or additional rent the service charge in accordance with the provisions contained in the Seventh Schedule.
3. By application received on 30th January 2017 the Applicant applied to the Tribunal under s27A for determination of liability to pay and reasonableness of service charges. The application relates to radiator/heater installation cost in the sum of £1404.13. The work was carried out in 2010 but no demand for payment was made until 2014. The Applicant paid in full on 2nd June 2014. It is claimed that the Respondent failed to properly record the payment in service charge accounts but added the amount, as unpaid, into a service charge demand in late 2016.
4. It is not alleged by the Applicant that the costs of replacement of the radiator/heater installation were not reasonably incurred nor that the work carried out was not of a reasonable standard. Accordingly the application raises no issues as to reasonableness under section 19 of the 1985 Act. The Applicant's case relates solely to the conduct of the Respondent in relation to how the demand and payment were dealt with.
5. The Applicant has also made an application under section 20C, also received by the Tribunal on 30th January 2017.
6. On 13th February 2017 the Respondent replied to the application. The Respondent claims that this is not a service charge matter at all but relates to work carried out directly at the Applicants request by Blue Property Maintenance UK Limited under invoice dated 10th March 2010. That invoice details the work carried out as "Supply and fit 5 convector heaters" and "2 new water heaters" as well as "Paint flat throughout".
7. The sum of £1404.13 was paid into the service charge account in error on 2nd July 2014 (the Applicant claims payment was made on 2nd June 2014). Thereafter the Respondent added the invoice to the service charge account to correct that error in late 2016.
8. The Respondent has now produced a revised service charge account showing that both the invoice and the Applicant's payment have been removed as it is the Respondent's case that these items do not relate to service charges.
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11. The Tribunal invited both parties to make further representations. However neither party has made any representations beyond those already received as summarised in paragraphs 4 – 6 above.

Decision

12. There is no dispute between the parties that work was done in relation to radiators and heaters in 2010. The applicant does not complain that the costs were unreasonably incurred nor that the standard of work was unreasonable. The Applicant makes no complaints as to the reasonableness of the amount he was charged for the work.
13. It is not disputed that the Applicant paid promptly and in full on presentation of an invoice in 2014.
14. The Respondent has belatedly sorted out its accounting error by removing both invoice and payment from the service charge account in late 2016.
15. We find that the contract for supply and fitting of the heaters was a matter between the Applicant and Blue Property Maintenance UK Limited and was not a matter carried out under the Lease as a service charge. The Landlord's Expenses as set out in the Sixth Schedule to the Lease do not extend to the supplying and fitting of convector heaters nor water heaters. The painting of the interior of the flat is the responsibility of the Applicant under clause 8 of Covenants by the Tenant contained in the Seventh Schedule to the Lease.
16. Accordingly as this application does not relate to costs incurred under the service charge provisions of the Lease the Tribunal does not have jurisdiction and strikes out the application under Rule 9(2) (a).
17. It follows that, as this is not a service charge matter and does not involve the Landlord under the terms of the Lease, the Applicant is entitled to an order under section 20C. We order that none of the costs incurred by the Landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

D Jackson
Judge of the First-tier Tribunal

Either party may appeal this decision to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission to appeal. Any application for permission must be in writing, setting out grounds relied upon and must be received by the Tribunal within 28 days after the date that the Tribunal sends these written reasons for the decision to the party seeking permission.