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

Case Reference : LON/00AE/LSC/2012/0799

Property : 21 Airco Close Colindale London
NW9 0NW

Applicant : Ms Kathleen Neagle

Representative : N/A

Respondent : Network Stadium Housing
Association

Representative : Mr Alex Costello – Service Charge
Manager with the RespondentS

Type of Application : SECTION 27A LANDLORD AND
TENANT ACT 1985

Tribunal Members : Dr Helen Carr
Mr Hugh Geddes
Ms Susan Justice

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 3RD JULY 2013

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the service charges demanded by the Respondent in respect of the actual service charges for the years 2009/10 and estimated charges for 2010/11 and 2011/2012 are payable OTHER THAN those repair charges which the parties have agreed not to be payable. The schedule of agreed deductions is appended to this decision.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 as the landlord agreed that the costs of the Tribunal proceedings would not be passed to the lessee through any service charge.
- (4) The Respondent agreed to refund the application fees within 28 days of the date of this decision and therefore there was no need for the Tribunal to make an order on this matter.

The Background

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2009/10, 2010/11 and 2011/2012 (actual charges demanded) and 2012/13 (estimated charges).
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person at the hearing and the Respondent was represented by Mr Alex Costello, Service Charge Manager with the Respondent.
4. The property which is the subject of this application is a one bedroom flat on the third floor of a recently built block comprising 24 flats. The block has the benefit of a lift.
5. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

6. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

7. The parties identified the relevant issues for determination as follows:
- (i) Whether the system for apportioning charges adopted by the Respondent is reasonable
 - (ii) The payability and/or reasonableness of actual service charges for the years 2009/10 – 2011/12 and estimated service charges for 2012/13 relating to
 - (a) the maintenance and repair of the lift
 - (b) the cleaning charges
 - (c) repairs and maintenance
 - (d) communal telephones
 - (e) fire equipment
 - (f) electricity
 - (g) audit fee
 - (h) professional fees
 - (i) management fees
 - (iii) the reasonableness of the demand made in 2012/13 of £300 as a contribution to the reserve fund
 - (iii) the reasonableness of the system for calculating the estimated service charges which results in a substantial difference between the actual expenditure and the estimated expenditure.
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The apportionment of service charges

9. The matter of the proper apportionment of service charges for the property has been the subject of a previous determination by the Tribunal (see case

reference LON/00AE/LSC/2009/0188 dated 1st March 2010.) Following that decision the Respondent changed its practices. The Respondent informed the Tribunal that service charges are now apportioned between the lessees as follows:

Estate charges are divided equally between the 151 properties on the development.

Block charges are divided between the properties within the block.

Electricity provided to the communal areas of the blocks would logically be charged within the block charges but are actually charged on an estate basis because each block on the development does not have a meter.

10. The Respondent considered that this complied with the suggestions about reasonable practices made by the previous Tribunal. That Tribunal had determined that costs should be apportioned to the relevant building when that can reasonably be done, but that where it can not, equal apportionment between all the 151 units is not an unreasonable approach (see paragraph 49 of that decision).
11. The Applicant argues that the electricity should be charged on a block by block basis. She stated that each block does/ or should have a meter and therefore this would be a fair and reasonable way to apportion charges.
12. The Respondent says that there are only five meters to the estate and that it is not therefore possible to charge for electricity on a block by block basis. The Applicant did not accept the Respondent's position and maintains that each block does have [same point]the benefit of a meter and therefore it would be possible to charge for electricity on a block by block basis.

The Tribunal's decision

13. The Tribunal determines that the system for apportioning charges is reasonable. In particular it determines that the charging for electricity on an estate wide basis is reasonable.

Reasons for the Tribunal's decision

14. The Tribunal preferred the evidence of the Respondent as to the number of meters for the blocks on the estate. The invoices referred to by the Applicant were not determinative of the issue and the Respondent can be assumed to have knowledge of the estate unless there is substantive evidence to rebut

that assumption. As each block does not have a meter it is not practicable to charge for the electricity on a block by block basis.

15. The Tribunal note that the Applicant in all probability benefits from the current arrangement as her building has the benefit of a lift and therefore probably uses more electricity than some others.

The maintenance and repair of the lift

16. The Applicant argues that the service charge demands made in connection with the maintenance and repair of the lift are unreasonable. She has not been provided with a copy of the maintenance contract and does not know what service is meant to be provided. The lift is unreliable. To support her argument the Applicant referred to a letter dated from the Chairman of the Tenants' Association of her building complaining about the unreliability of the lift in 2010 . The Applicant gave the Tribunal a list of some of the dates during 2010 when the lift was not available.
17. The Respondent informed the Tribunal that it has a Long Term Agreement with 21st Century lifts which is for five years commencing 1st October 2009. The agreement covers monthly maintenance visits and minor repairs. Major repairs are charged in addition. During the period in question no such charges have been levied.
18. The Agreement was subject to a competitive tendering process, and the relevant statutory consultation procedures had been complied with. The Respondent therefore argues that the lift contract offers good value for money and that the lessees have had a say in agreeing the contract.
19. The Respondent observed that in efforts to test out the market in relation to the renewal of the contract it appears that the price is likely to rise substantially when the new contract is negotiated.

The Tribunal's decision

20. The Tribunal determines that the amount payable in respect of the lift maintenance contract is reasonable and payable.

Reasons for the Tribunal's decision

21. Whilst the Tribunal can understand the Applicant's frustration in paying to maintain a lift which is nonetheless unreliable, it appears to them that the

contract that the Respondent has entered into is a reasonable contract, following a reasonable process and is reasonably well managed.

22. There was little to substantiate the Applicant's assertion that the lift was out of order for unreasonable periods of time.

The cleaning charges

23. The Applicant argues that the cleaning service is poor, that no window cleaning has been carried out for a number of years, that certain communal areas receive no cleaning and that it would be reasonable to provide a cleaner for the block and charge for cleaning on that basis.
24. The Respondent provided a copy of specifications for the services provided and copies of inspection sheets carried out by its Housing Team in connection with the performance of the contract. Mr Costello argued that the service provided by the cleaner, who is based on the estate and spends one day a week in the Applicant's block, represents good value for money.

The Tribunal's decision

25. The Tribunal determines that the amount payable in respect of cleaning is reasonable and payable.

Reasons for the Tribunal's decision

26. The Applicant had no evidence, such as complaints from other lessees or photographs, to substantiate her claim that the cleaning service did not provide value for money or that the cleaner regularly fails to carry out the allocated tasks. The Applicant pays a low weekly charge and should bear this in mind when evaluating the service provided.

Repairs and maintenance

27. The Applicant argues that the block is being charged for repairs which do not relate to the block.
28. On the second day of the hearing the Respondent produced a number of work sheets relating to the charges. The Tribunal worked through the work sheets and the Respondent conceded that some items were not chargeable and the Applicant agreed that certain charges were chargeable.
29. The Tribunal is grateful to the parties for agreeing the appropriate charges for repairs to the block. The schedule of agreed charges is attached to this decision.

The Tribunal's decision

30. The Tribunal determines that the amount payable in respect of repairs is as agreed between the parties.

Communal lift telephone charges

31. The Applicant argues that there is no telephone in the lift and therefore the charges should not apply. She was very sceptical about the invoices for phone charges provided by the Respondent.
32. The Respondent informed the Tribunal that the lift button links to a telephone line so that an engineer is able to respond to a call.

The Tribunal's decision

33. The Tribunal determines that the amount payable in respect of communal lift charges is payable.

Reasons for the Tribunal's decision

34. The amount demanded for the service provided is minimal. It is reasonable to charge for the emergency calls and there is no evidence to suggest that the charges are bogus.

Fire equipment

35. The Applicant argues that the only fire equipment in the block consists of two fire notices. She cannot understand what the charges are for.
36. The Respondent informed the Tribunal that the charges related to the annual inspection and maintenance of emergency lighting in the block. The Applicant accepted that there was emergency lighting in the block.

The Tribunal's decision

37. The Tribunal determines that the amount demanded in respect of inspecting and maintaining the emergency lighting in the block is reasonable and payable.

Reasons for the Tribunal's decision

38. It is necessary to provide emergency lighting and to inspect and maintain it. Whilst the charge seems high, there was no evidence to suggest that it is an unreasonable amount. The Tribunal notes that the charge includes minor repairs.

Electricity charges

39. The Applicant argues that different blocks are being charged different amounts for the provision of electricity. She considers that the Respondent has failed to achieve the best value available in the provision of electricity.

She has carried out an exercise to demonstrate that different providers charge different standing charges for different blocks. She believes this operates to the detriment of the lessees in her block.

40. The Respondent says that it has entered into a Long Term Agreement with Monarch Partnership for it to procure electricity and gas supplies on its behalf. Monarch receives commissions from the companies from whom it procures services and does not charge the Respondent for its services. This arrangement enables the Respondent to provide best value for its lessees. The differences in standing charges between the blocks are of no consequence as the differences are pooled and charges are made on an estate wide basis. Further, as the Applicant had not provided information about the differing unit costs charged it was not clear that, even if charges were allocated on a block by block basis, as the Applicant would prefer, the block would actually be paying more electricity than other blocks.

The Tribunal's decision

41. The Tribunal determines that the amount payable in respect of electricity is payable and reasonable.

Reasons for the Tribunal's decision

42. The Respondent has done its best by its lessees in entering into the arrangement with Monarch. As the different standing charges are pooled the Applicant is not disadvantaged by those differences. The system the Respondent follows is reasonable.

The audit fees

43. The Applicant argues that the audit is not carried out to a proper standard and that the charge is too much. She produced no evidence of market comparables, nor was she clear about what it was that she thought that the auditor should do that was not being done.
44. The Respondent informed the Tribunal that the audit is carried out across the whole of the Respondent's properties on a test basis, and there is no invoice relating specifically to the costs of the audit for Airco Close. Mr Costello agreed to provide a copy of the invoice to the Applicant.

The Tribunal's decision

45. The Tribunal determines that the amount payable in respect of the audit are payable and reasonable.

Reasons for the Tribunal's decision

46. There was no evidence to suggest that the charges were anything other than reasonable and that the work was not carried out to a satisfactory standard.

Professional fees

47. The Applicant was unclear what professional fees related to and therefore considered them to be unreasonable.
48. The Respondent informed the Tribunal that the professional fees related to the annual Fire Risk Assessment. The Respondent carries this out on an annual basis, even though there is no statutory requirement to do so, ever since a recent tragic incident that led to deaths on a London housing estate.

The Tribunal's decision

49. The Tribunal determines that the amount payable in respect of professional fees was reasonable and payable.

Reasons for the Tribunal's decision

50. The Respondent is acting responsibly in carrying out annual fire risk assessments. There was no evidence to suggest that the charges were unreasonable.

Management fees

51. The Applicant argues that the amount charged for management of the block is unreasonable. She refers to her memorandum of agreement at the time of her purchase when monthly management charges were described as totalling £4.50.
52. The Applicant suggested that management charges of £100 would be reasonable if the management of the property was at a reasonable level. She reached this sum by referring to decisions of previous LVT decisions, and taking into account the age of the development.
53. She argued that given the poor quality of the management provided the sum should be reduced to £15 per annum for the period of the dispute.
54. The Respondent provided the Tribunal with an analysis of the costs of providing management to its properties. This would suggest that the actual costs are currently around £230 per flat per annum. Having adjusted that figure for inflation for the years of the dispute, Mr Costello argued that it was clear that the Respondent was undercharging for its services throughout the

period of the dispute. Indeed the block in question is probably more demanding in terms of management than the average block because of the lift, and therefore the undercharge is probably substantial.

55. The Tribunal asked Mr Costello if he was prepared to concede that the inadequacies of management to which the Applicant referred would justify a reduction in the management fee charged. Whilst Mr Costello agreed that there had been some problems with service delivery, he argued that these were not substantial. As the charge is substantially below market levels he would not be prepared to concede any reduction.
56. Mr Costello was unable to clarify the status of the memorandum and the monthly fees referred to therein.

The Tribunal's decision

57. The Tribunal determines that the amount demanded in respect of management fees is reasonable and payable.

Reasons for the Tribunal's decision

58. The Tribunal considers that the sum of £230 referred to by Mr Costello is likely to be representative of the market rate for managing the property. The fact that current charges are considerably lower than this rate means that the Tribunal agrees with Mr Costello that despite some lapses in service it would not be appropriate to reduce the fees further.

The reasonableness of the demand for reserve funds 2012/13

59. The Applicant argues that in the past reserve fund contributions have been limited to £33 per annum. The demand for 2012/13 is for £300. She argues that amount should have been subject to consultation. Further she says that the suggestion within the Respondent's projections for future works for the price of the lift is over-inflated. She draws on an extract from an architectural journal to demonstrate this. Finally she refers to the clause of the lease which requires that demands for reserve funds should fluctuate as little as is reasonable.
60. The Respondent argues that the previous sums demanded were too low and were unrelated to the need to plan for works that would inevitably be required in the future such as the decoration of the exterior and the replacement of the lift.
61. The current demand was based upon a professionally prepared (in-house) plan for future works at current values; uplifts for future costs are estimated using an online calculator. He argues that it is a reasonable sum for a prudent

freeholder to demand, and that it will not fluctuate to the same degree in future as it has now been properly calculated.

The Tribunal's decision

62. The Tribunal determines that the amount demanded in respect of the reserve fund is payable.

Reasons for the Tribunal's decision

63. The amount demanded is a reasonable and prudent sum taking into account projected works.
64. Although raising the sum to a reasonable amount has caused a considerable increase in the service charge demand made of the Applicant, it is a reasonable response to particular circumstances.

The discrepancy between estimated and actual service charges

65. The nub of the Applicant's argument here is that the estimated charges for services to be provided to the block in 2009 – 10 appeared to be £20,000 more than was expended and yet no money was returned to her at the end of the year. Over the years of the dispute the discrepancy between estimates and actuals has declined.
66. The Respondent explained that the apparent overcharge of £20,000 related to the fact that cleaning costs for the whole estate were included in the estimate. These were never in fact demanded from the lessees who were only asked to pay their contribution to the cleaning contract. Therefore there was no overpayment to be reimbursed.
67. The Respondent accepted that this way of presenting estimated costs was very confusing to lessees. The system has now been adjusted and there is unlikely to be any similar confusion in future.

The Tribunal's decision

68. The Tribunal accepted the explanation of the apparent discrepancy.

Application under s.20C and refund of fees

69. At the end of the hearing, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that she had paid in respect of the application. The Respondent agreed to refund the fees within 28 days of the

date of this decision and therefore there was no need for the Tribunal to make an order. .

70. In the application form the Applicant applied for an order under section 20C of the 1985 Act. The landlord indicated that no costs would be passed through the service charge, and therefore the Tribunal did not make an order.

71. The parties should note that whilst the Tribunal has determined this matter largely in favour of the Respondent, the Tribunal had sympathy with the Applicant's difficulties in understanding the Respondent's accounting system and would urge the Respondent to do more to make this more transparent.

Helen Carr

Date 3rd July 2013

Schedule

Block deductions agreed as follows

2009/10 - £343.90

2010/11 - £1,871.73

2011/12 - £270.51

Total £2,486.14

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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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 leasehold valuation 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;
 - (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (c) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (d) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (e) 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 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.