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

Case Reference : **LON/00AY/LSC/2013/0103**

Property : **41 Arne House, Tyers Street,
London SE11 5EY**

Applicant : **The London Borough of Lambeth**

Representative : **Ms Tweedy of Counsel instructed
by Judge & Priestly solicitors**

Respondent : **Mrs Mary Elke**

Representative : **None**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Judge O'Sullivan
Mr S Mason BSc FRICS FCI Arb**

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

Date of Decision : **12 September 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £16,512.84 is payable by the Respondent in respect of the major works.
- (2) The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.
- (3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Lambeth County Court.

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 Respondent in respect of service charges in respect of major works in the sum of £16,512.84.
2. Proceedings were originally issued in the Northampton County Court under claim no 2XZ74968. The claim was transferred to the Lambeth County Court and then in turn to this tribunal, by order of District Judge Zimmels on 7 February 2013. In the County Court the Respondent admitted the sum of £4500 and judgement was entered for this amount with the balance of the claim being transferred.
3. The relevant legal provisions are set out in the Appendix to this decision.
4. Directions were made in this matter dated 19 March 2013. Following a short hearing further directions were made dated 12 June 2013 which provided for further disclosure of certain documents to support the Applicant's claim. A further hearing took place on 11 September 2013.

The hearing

5. The Applicant was represented by Ms Tweedy of Counsel with Mr Mc Clave, a major works charges co-ordinator also attending. The Respondent, Ms Elke, appeared in person.
6. The Applicant had filed a bundle of documents in preparation for the hearing which contained a Third Statement of Case dated 18 July 2013 and which attached copies of the priced specification, the final account, the completion certificate, invoices for professional fees and a copy of the section 20B notice.

7. The Respondent has not filed any statement of case in the proceedings. When asked why she informed the tribunal that she had not understood the directions and had not realised that she had been required to make a statement. She confirmed that she wished to rely on the matters raised in her defence in the county court.

The background

8. The property which is the subject of this application is a two bedroom flat in a block of 87 flats. Major works were carried out as part of a contract on the wider estate.
9. 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.
10. The Respondent 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 and will be referred to below, where appropriate.

The issues

11. The only issue before the tribunal was the payability and/or reasonableness of the major works charges in the sum of £16,512.84. This related to a charge for major works principally comprising the renewal of windows, concrete repairs and repairs to the roof of the block.
12. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made the following determination.

The major works

13. The tribunal heard that the consultation was commenced on 10 October 2007 with a stage 1 notice under section 20. The Respondent did not respond to that notice. On 12 May 2008 the stage 2 notice was served pursuant to section 20. This provided details of the two tenders. No observations were made to that notice by the Respondent. The Applicant chose the Breyer Group plc tender as it was lower in price than the tender submitted by the Connaught Group.
14. The works were carried out from 24 March 2008. On 24 June 2010 the Respondent was served with a notice under section 20B specifying the estimated amount for her contribution up to 9 March 2010 of £15,601.83. The Respondent did not respond to that notice.

15. On 16 December 2011 the certificate of practical completion was issued, the date of practical completion was 26 May 2010. On 17 January 2012 the Respondent was sent the final account requiring her contribution of £16,512.84. The Applicant says this was in time due to the section 20B notice having been served. The Respondent was also sent a final invoice, a breakdown of those final costs. The figure for the final costs was £1,145,379.61. Her rateable proportion under the lease is 1.31063% making a total of £15,011.67. Management fees were also claimed under the lease of £1501.17 making a total contribution of £16,512.84.
16. For the sake of completeness Counsel mentioned that in the lease the Flat demise included the glass in the windows. However as part of the major works project the units installed were upvc frames with sealed double glazed units. This was not a point taken by the Respondent. The tribunal accepted that it would not have been practicable or sensible to attempt to salvage the glazing from the previous timber frames. Indeed it is standard practice that replacement units of this type will comprise double glazing and are recoverable under a repair covenant of this type.
17. At the first hearing the Respondent had raised a point in relation to the renewal of her door. She said that she was responsible for the door to the flat and had specifically requested it not be replaced to keep costs down. The Local Authority was unable to respond to this point at the first hearing. It had now however provided a list of leaseholders who wished to have their front doors replaced and kitchen or bathroom extractor fans fixed. The list does not include the Respondent as the Applicant says she did not wish to have those works carried out. These works were confirmed to have been private arrangements made with the contractor. The Applicant also informed the tribunal that it replaced the doors of tenants but not leaseholders who had to undertake these works at their own expense. The cost of the replacement of the doors to the tenants' properties was included in the final account and shown as a non chargeable item in the sum of £52,340.08.
18. The tribunal was taken to the notice served under section 20B dated 24 June 2010 which specified costs to that date of £15,601.83. The final invoice for the works was billed to the Respondent on 17 January 2012 in the sum of £16,512.84. However Counsel confirmed the dates of the subsequent works invoices as 20 January 2011, 23 February 2011 and 14 April 2011 which meant that no issue arose under section 20B.
19. The Respondent's position was that she thought the cost of the works was simply too high. She estimated that a reasonable cost was £4500 and this was the amount she had admitted in the County Court. She had reached this figure by estimating the cost of the windows replaced in her flat at approximately £3,000 and making an allowance for the other costs of £1500. She had not appreciated at the time of making her defence that she was responsible for a shared proportion of the total

block costs rather than the works to her flat alone but understood that now.

The tribunal's decision

20. The tribunal determined that the cost of the major works of £16,512.84 is both payable and reasonable in amount.

Reasons for the tribunal's decision

21. The tribunal is satisfied that the works carried out fall within the repairing covenant in the lease.
22. The demise of the Flat at paragraph 2.5.5 specifically excludes the entrance door or doors of the Flat including both external and internal surfaces. However the cost of any replacement of those doors did not form part of the chargeable works.
23. The Respondent alleged the cost of the works was too high. The works had however been competitively tendered and the lowest priced contractor had been selected. The Respondent had not appreciated that the works chargeable to her were not works solely to her flat but rather were a proportion of the total works to the block. She had not appeared to appreciate that the works included substantial roof and concrete repairs in addition to the works to replace the windows. In addition it is impossible to make a meaningful comparison between quotes in internet sites with contracts such as these as there are other components which must be included such as scaffolding, health and safety and professional fees.
24. The tribunal would mention that it did have some concerns about the level of management fees charged at 10% on the cost of the total works which were charged in addition to surveyor's fees. These were not challenged by the Respondent. Although the tribunal appreciates that the Applicant has a contractual entitlement to a management charge of not less than 10% it would expect it to use some discretion in reducing that fee on contracts such as this.

Application under s.20C

25. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that no order should be made under section 20C.

The next steps

26. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the Lambeth County Court.

Name: S O'Sullivan

Date: 12 September 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.

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) the appropriate 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.]

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 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.
- (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).