



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

**Case Reference** : LON/00AZ/LSC/2013/0736

**Property** : GROUND FLOOR FLAT, 46  
RAVENSBOURNE PARK, LONDON  
SE6 4RW

**Applicant** : LONGMINT LTD (IN  
ADMINISTRATION)  
[ALMOND LAND LTD]

**Representative** : THOMPSON ALLEN LLP

**Respondent** : MS MARY OLARINDE

**Representative** : PARKER ARRENBURG  
SOLICITORS

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

**Tribunal Members** : MS L SMITH (LEGAL CHAIR)  
MR K M CARTWRIGHT, FRICS  
MR A D RING

**Date and venue of  
Hearing** : 31 March 2014  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 22 April 2014

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal makes no determination in relation to the sum of £771.75 in respect of the service charges for the year 2012-2013 as those were not disputed by the Respondent and the parties agreed that those had already been paid in full.
- (2) The Tribunal determines that the sum of £7342.50 is payable by the Respondent in respect of the cost of major works demanded in the service charge year 2011-2012.
- (3) The Tribunal determines that the sum of £120 is payable by the Respondent as an administration charge for legal costs.
- (4) The Tribunal determines that the Respondent shall pay the Applicant £195 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.
- (5) Since the Tribunal has no jurisdiction over ground rent, statutory interest or county court costs and fees, this matter should now be referred back to the Bromley County Court.

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge year 2012-13 and for the cost of major works initially demanded on 24 December 2011 as well as legal costs of £120.
2. Proceedings were originally issued in the Northampton County Court under claim no. 3YQ03617. The claim was transferred to the Bromley County Court and then in turn transferred to this Tribunal, by order of District Judge Brett on 29 October 2013.
3. The relevant legal provisions are set out in Appendix 1 to this decision.

## **The hearing**

4. At the hearing, the Applicant was represented by Ms Thompson of Thompson Allen LLP and Mr Allan (managing agent of Houston Lawrence) and the Respondent attended in person and was represented by Mr Richards of Counsel.

5. At the start of the hearing, the Tribunal raised the question of what service charges were outstanding for payment for the service charge year 2012-13 as it appeared from the Respondent's defence that she had paid all the service charges for the year 2012-13 and did not appear to be disputing the reasonableness of those charges. The parties were afforded a short adjournment for the Applicant to check the position after which it was confirmed that the Respondent did not owe anything by way of service charges apart from the cost of the major works. Since the Respondent did not dispute those service charges and had paid them, the remainder of the hearing therefore focussed on the cost of the major works and the legal costs. **Accordingly the Tribunal makes no determination in relation to the sum of £771.75 for the service charge year 2012-13 since this was not disputed by the Respondent and the parties agreed that this sum had already been paid in full.**

### **The background**

6. The property which is the subject of this application ("the Property") is a ground floor flat in a block of 4 flats.
7. 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.
8. The Respondent holds a long lease of the Property ("the Lease") 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 are set out in Appendix 2 to this decision and are referred to below, where appropriate.
9. The Applicant landlord ("Longmint") is in administration. The block of flats at 46 Ravensbourne Park including the Property was transferred to Almond Land Ltd ("Almond Land") on 19 December 2013 although Almond Land is yet to be formally registered as the freehold owner as the transaction forms part of a very large portfolio previously owned by Longmint and the various parts of that transaction are in the course of registration. Almond Land was added as Applicant to the Tribunal proceedings by order dated 7 March 2014 so that no issue arises about the Applicant's entitlement to claim service charges from the Respondent either as current or former freehold owner.
10. The Respondent and her fellow co-tenants have been seeking to acquire the freehold of the block of flats at 46 Ravensbourne Park but so far their efforts have been thwarted. The Respondent claims in her defence that those efforts have been thwarted by the Applicant bringing proceedings for unpaid service charges against the tenants and that this has been done in bad faith. That is not a matter for the Tribunal to

determine. Suffice it to say, there are currently no outstanding proceedings by the tenants to acquire the freehold.

11. The Tribunal was also informed that the Respondent is in the course of selling the Property but as yet no sale has been agreed so that the Respondent remains liable for the service charges.

### **The issues**

12. Following the short adjournment when it was agreed that the service charges for the year 2012-13 had been paid and since the Respondent's statement of case and defence in the County Court disputed only whether those were outstanding and not their reasonableness, the issues for determination by the Tribunal were identified as follows:
  - (i) The payability and/or reasonableness of service charges for major works which were demanded on 24 December 2011 ("the Major Works")
  - (ii) The payability and/or reasonableness of an administration charge in the sum of £120 in respect of legal costs.
13. 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.

### **Costs of the Major Works - £7342.50 (Respondent's contribution)**

14. The Applicant seeks the sum of £7342.50 being the Respondent's contribution to the cost of Major Works demanded on 24 December 2011.

### **The Tribunal's decision**

15. The Tribunal determines that the amount of £7342.50 is payable in respect of the Major Works.

### **Reasons for the Tribunal's decision**

16. The Applicant seeks to collect advance contributions for the cost of proposed the cost of the Major Works for communal repairs and external redecoration and repairs. The Major Works are described in greater detail in the specification appended to the Applicant's statement of case. The Tribunal noted that some of the Major Works related to works to the fire alarm, to a retaining wall to the basement flat and to repair rotten timbers to the windows and as such were matters of substance and not simply redecoration.

17. It was common ground that none of the Major Works had been carried out and it was also common ground that no substantial works had been carried out to the Property for many years.
18. The Applicant pointed to notices served as part of the s20 consultation process on 27 May 2011, 21 August 2012 and 8 February 2013. The Applicant has proposed to award the contract for the Major Works to Bromley Building Services Ltd in the total sum of £28,939.09. Bromley Building Services submitted the lowest tender.
19. Ms Thompson pointed to the provisions in the Lease which required the landlord to carry out such works and also the entitlement for the landlord to claim such sums in advance of the works being carried out (clauses 3(4) and 4(1)).
20. In response, Mr Richards submitted that the cost of the Major Works was not reasonable because the Major Works were not required to be done or were not urgently required. The report relied upon dated back to 2011. Action was being taken by the tenants to acquire the freehold interest in 46 Ravensbourne Park and the Respondent and 2 of the other 3 tenants were intent on acquiring that interest. The Respondent had requested an extension to the Lease on 24 March 2014 and a notice had been served under s13 Leasehold Reform, Housing and Urban Development Act 1993 by the Respondent and 2 other tenants (although this was not submitted to the Tribunal in evidence). The difficulties in the previous application to acquire the freehold had arisen from the actions of the Applicant who had entered default judgment against one of the tenants which had since been set aside and entered judgment against another for failure to comply with directions which the Respondent's solicitors had not received. Mr Richards submitted that the claim for the cost of Major Works was premature. If the tenants acquired the freehold, they would decide what works were required to be done and would re-tender for those works if necessary. He pointed out that the freehold had been transferred to Almond Land and not yet registered.
21. The Respondent gave evidence. She informed the Tribunal that the tenant of the top flat had paid for his share of the cost of the Major Works and that the tenant of flat 3 had started to pay by instalments but she and that tenant had been told by their solicitors not to pay while the freehold transfer proceedings were ongoing. She said that no works had been done for 10-15 years except works which the tenants themselves had carried out. If the Major Works had been started, she would not have been so adamant that she should not pay. She was not however saying that the Major Works were not required. Redecoration work was long overdue. She accepted that she had probably not responded to the consultation notices. She indicated that the tenants' estimate for the cost of the work which needed doing was about

£16,000 but, again, no evidence was submitted to the Tribunal in support of this estimate.

22. In response, Ms Thompson informed the Tribunal that the s13 notice had been sent on 26 March 2014 to the solicitors by the tenants' solicitors but had not yet been served on the freeholder. A s146 notice had been served on the tenant of the basement flat so that there may be a question mark whether that tenant qualified for these purposes. There had been one failed attempt to buy the freehold by the tenants and the administrators of Longmint wanted to sell. She submitted that the ongoing attempts by the tenants to acquire the freehold did not preclude a determination of whether the cost of the Major Works was reasonable and payable. The Major Works still needed to be undertaken. Whether or not they were urgent was not the issue (although it did appear to the Tribunal that some such as to install a fire alarm and repair a retaining wall might well be). Almond Land had an obligation under the Lease to maintain the Property. There was though no "sinking fund" and the carrying out of the Major Works depended on collection of the service charges in order to carry out the Major Works.
23. The Tribunal determines that the cost of the Major Works is reasonable and payable. There is an obligation on the Applicant under the Lease to maintain the Property. None of the Major Works appeared to be excessive in nature and indeed some appeared to the Tribunal to be very necessary whatever the decorative condition of the Property. The s20 consultation procedure had been properly undertaken (albeit rather unusually after the demand had been made). If the Respondent objected to the carrying out of the Major Works then her remedy was to participate in that consultation procedure and to suggest other contractors if she and the other tenants consider that the Major Works could be done for less. It was somewhat fatal to her case that she admitted that at least some of the Major Works were necessary and "long overdue". The Applicant had accepted the lowest tender.

#### **Administration charge for legal costs in the sum of £120**

24. As part of the County Court proceedings, the Applicant claimed the sum of £120 by way of legal costs.

#### **The Tribunal's decision**

25. The Tribunal determines that the amount payable in respect of the administration charge for legal costs is £120.

#### **Reasons for the Tribunal's decision**

26. Ms Thompson relied on clause 4(1)(f) of the Lease. The Tribunal pointed out to her that this was part of the Lessor's obligations under

the Lease which might entitle the Applicant to recover the legal costs by way of the service charge against all the tenants but did not entitle it to recover the full amount against the Respondent as an administration charge. She relied also on clause 2(9) which the Tribunal considers is sufficient to entitle the Applicant to recover the costs and since Mr Richards did not dispute the Applicant's entitlement to recover under this clause, the Tribunal determines that the costs are payable under that clause.

27. Ms Thompson indicated that those legal costs were for the initial referral and letter before action which included having the matter referred, checking that the sums were due, checking the provisions of the Lease and drafting the letter before action. In the view of the Tribunal and in the absence of any challenge to the amount by Mr Richards for the Respondent, the Tribunal determines that the amount is reasonable.

### **Application under s.20C and refund of fees**

28. At the end of the hearing, the Applicant made an application for a refund of the fees that it had paid in respect of the application/hearing<sup>1</sup>. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the fees paid by the Applicant within 28 days of the date of this decision. Those fees are in the sum of £195.
29. Mr Richards for the Respondent indicated that no application was made under section 20C of the 1985 Act.

### **The next steps**

30. The Tribunal has no jurisdiction over ground rent, statutory interest or county court costs. This matter should now be returned to the Bromley County Court.

**Name:** Ms L Smith

**Date:** 22 April 2014

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

## **Appendix 1: 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 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) a leasehold valuation 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 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 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).

## Appendix 2: Relevant clauses of the Lease

### Clause 2

THE Tenant hereby covenants with the Lessor as follows:-

....

(9) To pay to the Lessor all costs charges and expenses including Solicitor's Counsel's and Surveyors' costs and fees at any time during the said term incurred by the Lessor in or in contemplation of any proceedings in respect of this Lease under Section 146 and 147 of the Law of Property Act 1925 or any re-enactment or modification thereof including in particular all such costs charges and expenses of and incidental to the preparation and service of a notice under the said Sections and of and incidental to the inspection of the Demised Premises and the drawing up of Schedules of Dilapidations such costs charges expenses as aforesaid to be payable notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court

### Clause 3

THE TENANT HEREBY COVENANTS with the Lessor and with and for the benefit of the tenants of other flats in the Building (hereinafter called "the Flat Owners") that throughout the term the Tenant will:-

....

(4) Pay the Service Charge (as hereinafter defined) at the times and in the manner provided in the Fifth Schedule hereto such Charge to be recoverable in default as rent in arrear

### Clause 4

THE Lessor with the intent to bind itself and its successors in title or other the persons for the time being entitled to the reversion of the Demised Premises immediately expectant on this lease but not to bind itself after it shall have parted with such reversion or to incur further liability thereafter HEREBY COVENANTS with the Tenant subject to payment by the Tenant of the Service Charge hereinafter mentioned as follows:-

.....

(b) To maintain in good and substantial repair and condition the exterior and party walls including all external surfaces of doors door frames and windows and the roofs foundations and main structure of the Building pavement vaults and main drains and exterior pipes serving the same and the storage tanks sewers drains and water courses cables pipes and wires and all other conduits serving more than one Flat in the Building

(c) In every fifth year of the term to redecorate the exterior of the Building including the external window frames

(d) To repair decorate internally as often as the Lessor shall consider necessary maintain renew rebuild light and cleanse the halls passages staircases and service areas and all other parts of the Building used in common by the Tenant and the Flat Owners.....

(e) To maintain in good working order and operation all electrical mechanical and other plant equipment chattels fixtures and fittings or

ornament or utility in use for common benefit and including the cost of provision for removal and replacement whenever necessary

(f) Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as may in the Lessor's absolute discretion be necessary or advisable for the proper maintenance safety and administration of the Building Provided Always that the same shall be carried out to a reasonable standard (including without prejudice to the generality of the foregoing) the appointment and employment of managing or other agents Surveyors Valuers Architects Solicitors and Accountants and the payment of their proper fees in connection with the supervision and performance of the Lessor's covenants in this lease contained and the employment and payment of such caretakers porters maintenance staff contractors agents or servants as the Lessor shall think necessary in and about the performance of the covenants and provisions of this lease and for the benefit of the Building and the occupiers thereof

### **Clause 5**

THE Lessor shall be at liberty at any time or times during the term hereby granted to set aside a separate fund (which setting aside shall for the purposes of the Fifth Schedule hereto be deemed an item of expenditure incurred by the Lessor) such sums of money as the Lessor shall reasonably require to meet such future costs as the Lessor shall reasonably expect to incur of replacing maintain and renewing those items which the Lessor has hereby covenanted to replace maintain or renew.... PROVIDED THAT this course shall not operate to authorize the setting aside by the Lessor of funds to cover costs not recoverable from the Tenant by virtue of the provisions of Schedule 2 to the Housing Act 1980 or modification or re-enactment thereof

### **THE FIFTH SCHEDULE**

1. In this Schedule the following expressions have the following meanings respectively:-

(1) "Total Expenditure" means the total expenditure incurred by the Lessor in any Accounting Period (which period shall be any calendar year commencing on or such other date as the Lessor may notify in writing) in (i) carrying out its obligations under Clause 4(1) of this Lease (ii) such sum as the Lessor may set aside pursuant to Clause 5 hereof and (iii) any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing (a) any interest or other charges incurred by the Lessor on sums borrowed by it to enable it to carry out its obligations under Clause 4(1) hereof.....

(2) "the Service Charge" means one quarter of the Total Expenditure as hereinbefore defined.....