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

Case Reference : **LON/00/BE/LSC/2014/0226**

Property : **215 Helen Gladstone House , Nelson
Square London SE1 0QB**

Applicant : **Ms G MacFarlane**

Representative : **Mr S Stevens**

Respondent : **London Borough of Southwark**

Representative : **Mr P Cremin**

Type of Application : **S27A and s20C Landlord and Tenant
Act 1985**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mr M Taylor FRICS**

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

Date of Decision : **11 August 2014**

DECISION

The Tribunal determines that the Respondent landlord's charges for hot water for the service charge years 2012-3 and 2013-4 calculated at £384.90 and £463.83 respectively are reasonable and are payable in full by the Applicant. These sums include a 10% charge for administration made by the Respondent under the provisions of the 3rd Schedule to the lease.

The Respondent conceded that the Applicant was not liable in respect of its claim for heating charges for the years 2012-3 and 2013-4.

The Tribunal makes an order under s20C Landlord and Tenant Act 1985.

REASONS

1 The Applicant is the tenant of the premises known as 215 Helen Galdstone House Nelson Square London SE1 0QB (the property) and the Respondent is the landlord of the property. The property is a three bedroom flat within a block which has a district heating and hot water system.

2 The Applicant made an application to the tribunal on 7 April 2014 challenging the reasonableness of service charges for the years 2011-12, 2012-13, 2013-4 and 2014-5. In her statement of case she also asked for a variation of lease, challenged the administration charges levied by the Respondent and asked for compensation in the sum of £1500.

3 The Tribunal explained to the applicant that it was unable to deal with service charge year 2011-12 (1 April -31 March) because the Applicant had not been the legal owner of the property during that service charge year and that an apportionment of service charges and/or retention to reflect that year's liability would have been made by her solicitor on completion of her purchase transaction. The Tribunal was also unable to deal with any application to vary the lease as that issue was not the subject of the present application, nor with any question of damages/compensation, the latter not being within its jurisdiction.

4 Similarly, the Tribunal was unable to deal with the estimated service charges for the current year (2014-15) in respect of which no evidence was adduced by either party. An estimate for the current year had been provided to the Applicant (but was not included in the bundle of documents) but was unlikely to be reliable in the light of the continuing discussion between the parties about the re-installation of central heating to the flat by the Respondent.

5 The basis of the Applicant's case was that in each of the service charge years under discussion she had been charged for both heating and hot water although her flat did not possess central heating and therefore could not benefit from that element of the services supplied by the Respondent landlord.

6 The Respondent conceded that the Applicant was not liable for charges relating to heating costs and had adjusted its claim to hot water charges only to reflect that fact.

7 The Respondent was now claiming the sums of £384.90 for the service charge year 2012-13 and £463.83 for 2013-4. In both cases these figures included a 10% administration charge as permitted under schedule 3 of the lease dated 15 November 1999 under which the Applicant holds the property. The Applicant accepted that the management fee charged by the Respondent had been reduced in proportion to the amount being claimed.

8 The Applicant maintained that £250 was a reasonable figure for each of these two years. She sought to justify her argument by saying that the Energy Performance Certificate (page 164 , dated 2011 and part of the documentation supplied to her by her seller on purchase of the property) suggested that £234 was the proper sum for this expense and by referring to a decided case (page 176) of the Leasehold Valuation Tribunal which referred to service charges for the years 2004-5 and 2010-11. The Tribunal does not accept that the Energy Performance Certificate is reliable evidence of the reasonableness of the heating costs for this property because, apart from the fact that the certificate dates from April 2011, it contains only an estimate of charges and that estimate relates only to the fuel costs of supplying hot water and does not include any element of the costs of repairs which would normally form part of a service charge account . Neither does the Tribunal give great weight to the decision referred to by the Applicant (LON/00BE/LVL/2010/0017) because that decision is dated January 2011 and in part refers to the years 2004-5 at which time both fuel and repair costs would have been significantly different from those applicable to the years under discussion in this application.

9 The Respondent was able to show the Tribunal a breakdown of the charges for boiler maintenance and the supply of hot water (see eg p 132). In the absence of any further evidence from the Applicant the Tribunal, using its own experience and judgment considers that the hot water charges proposed by the Respondent for the years in question are reasonable sums to be charged in respect of a three bedroomed flat.

10 The Applicant made an application under s20C Landlord and Tenant Act 1985. The Respondent said that they did not intend to add the costs of this hearing to the tenants' service charge bills but that they did not oppose the making of a s 20C Order. That being so, the Tribunal makes an order under s20C Landlord and Tenant Act 1985.

11 The Tribunal did not consider it necessary to inspect the property.

12 The Law

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).

Judge F J Silverman as Chairman
Date 11 August 2014

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking