10791

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AP/LSC/2014/0616**
Property	:	**45 Emerson Apartments, Chadwell Lane, London N8 7RF**
Applicant	:	**Ms S Bergan**
Representative	:	
Respondent	:	**New River Village Residents Company Limited**
Representative	:	**Mr R Daver FRICS**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Mr S Brilliant** **Mr T Johnson FRICS** **Mrs R Turner JP**
Date and venue of hearing	:	**1 May 2015** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**9 June 2015**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the following sums are payable by the Applicant in respect of the service charges for the following years:

Year ending 30 June 2012	1,849.79
Year ending 30 June 2013	1,893.60
Year ending 30 June 2014	2,015.98
Year ending 30 June 2015	2,196.88

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or an order for costs against the Applicant.

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 30 June 2012, 30 June 2013, 30 June 2014 and the estimated service charge for the year ending 30 June 2015.

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 Daver, the managing director of the Respondent's managing agents.

4. The Applicant provided a bundle containing 69 numbered pages [A/1-69] and some unnumbered pages. Subsequently, the Respondent provided a bundle containing 141 pages [R/1-141]. Page references below are to these bundles.

The background

5. The property which is the subject of this application ("the flat") is a flat in a modern purpose built block containing a total of 95 flats. The estate as a whole consists of 475 private units, 152 affordable units and 2 commercial units. The estate was completed in 2007.

6. Photographs of the exterior of the flat were provided [A/51-53]. 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.

7. The Applicant holds a long lease of the flat dated 6 March 2006 [R/22-63] ("the lease"). The lease requires the Respondent management company to provide services (clause 8 [R/33] and the Fourth Schedule [R/53-58]). The lease requires the Applicant to contribute towards their costs by way of a variable service charge (clauses 11 and 12 [R/34-40] and the Sixth Schedule [R/59-60].

8. In practice, there are three types of service charge. The first relates to the Applicant's block, Emerson. The second relates to that part of the estate also used by those living in affordable housing. The third part relates to that part of the estate not also used by those living in affordable housing. Interim payments are collected on 1 July and 1 January each year, and a balancing credit or debit issued later in the year. Within each type of service charge an amount is set aside for the reserves.

The issues

9. The Applicant was directed on 5 February 2015 to send the managing agents a schedule in the form attached to the directions setting out by reference to each service charge year any item and the amount she disputed, the reason why the amount was disputed and the amount, if any, which she would pay for that item.

10. The Applicant failed to do this. The Tribunal directed that her case should be formed by the notice of application, her letter to the Tribunal dated 2 February 2015, and her submission to the Tribunal dated 4 March 2015. We also considered her letter dated 11 December 2014 to the Tribunal.

11. The Applicant elected not to pursue a number of matters and some of her complaints related to the accounting between the parties which is not within our jurisdiction. A number of the complaints overlapped and we have drawn them together in our findings below.

Findings

12. The Applicant has been concerned about how her share of each type of service charge has been apportioned. The Sixth Schedule to the lease sets out arithmetical formulae based on the proportion the internal floor area of the flat bears to the net internal floor areas of all flats on the estate or in the block, as the case may be [R/59-60]. At the hearing the Applicant took no issue with the apportionment and we are satisfied it is being calculated in a proper manner.

13. The Applicant has from time to time been in arrears with her service charges. This has resulted in administration charges (solicitors' fees and managing agents' charges) being claimed under clauses 15.2.2 and 15.3.2 of the lease [R/42-43].

14. The Applicant said she wanted transparency about these charges. The only such charge particularised by the Applicant [A/9] was one for £129.00 in the year ended 30 June 2014 [R/70], but this had been refunded before the proceedings commenced [R/70]. It emerged during the hearing that a further figure of £604.96 mentioned by the Applicant [A/13] referred to similar charges in earlier years. As they had not been particularised and it was not clear how this sum had been calculated, we did not consider it fair to allow the Applicant to challenge any earlier administration charges. In any event the Applicant had not made any separate application to the Tribunal in respect of administration charges.

15. We were told and accept that the long lessees are given notice of how administration charges levied by the managing agents are calculated. If in future any such charges are demanded of the Applicant, and she feels the same are unfair or unexplained, she should in the first place ask for an explanation and a breakdown of the amounts claimed. If she remains dissatisfied she is at liberty to make an application to the Tribunal.

16. The Applicant drew our attention to an historic offer of settlement of issues up to 30 June 2006 [A/65] which referred to an ex gratia contribution by the developer of £40,000.00 to the service charge account. The Applicant complains that the Respondent has not given the proportion of this concession which is due to her. But as the Applicant admitted, she had never signed or returned the offer of settlement, and so had never been entitled to the benefit of it. Moreover, in a letter sent to the Tribunal on 5 May 2015 Mr Daver drew our attention to the fact that the Applicant was given a credit of £39.66 in respect of this matter on 1 July 2006.

17. The Applicant also drew our attention to an offer by the developer in the same document to contribute £5,000.00 to the cost of any new CCTV system. The new CCTV system has only just been installed and the costs are coming out of the reserves for the current year. We were given an assurance on behalf of the developer that a contribution to the reserves in this sum will be given.

18. The Applicant complains that the Respondent failed to carry out exterior redecorations works in 2011 as required by paragraph 7 of the Fourth Schedule to the lease [R/54]. These works have now been done and the cost shown in the accounts for the year ended 30 June 2014 is £93,843.00, which means the Applicant's share was about £946.00.

19. The Respondent admits that the external redecoration works were done later than required but submits that the delay has not increased the costs or caused detriment to the building. There is no evidence to dispute this. The suppliers of the render had recommended that washing down the exterior walls would be sufficient, but it is now accepted by the Respondent that some repainting will require to be carried out. The developer has agreed to pay for the cost of removing limescale from the glazed balconies. Any problem with ponding on the balconies is a matter for the individual lessees as the balcony forms part of the demise. Accordingly, we are satisfied that the service charges relating to external redecoration works are recoverable by the Respondent.

20. The Applicant complains about the increase in the costs of providing staff. The Respondent has explained that in 2014 an estate manager was recruited at a higher salary than the previous incumbent in order to attract the right calibre of staff and that in 2015 two additional staff have been taken on for this year. We are satisfied that the amount claimed in respect of staff costs is reasonable.

Application under s.20C and refund of fees

21. In the application form the Applicant 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 does not determine it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act.

22. In his letter dated 5 May 2015 Mr Daver asks for costs to be paid by the Applicant because she failed to attend the case management conference, failed to provide a schedule as directed by the Tribunal, failed adequately to particularise her case and failed to agree to meet or mediate. Although we do not accept the Applicant's evidence that she was willing to mediate with the Respondent prior to the hearing (the email she relied on did not identify where she lived), we do not find that the Applicant acted unreasonably in bringing or conducting the proceedings within the meaning of rule 13(1)(b)(iii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and we do not make an order for costs against her.

Name: Simon Brilliant **Date:** 9 June 2015

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).