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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AE/LSC/2016/0251**
Property	:	**89 Bridge Road, Willesden, NW10 9DG**
Applicant	:	**Mr Fitzeverold Lindsay – leaseholder**
Representative	:	**Ms Lindsay - his daughter**
Respondent	:	**Brent Housing Partnership**
Representative	:	
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Mrs S O'Sullivan** **Mr S Mason FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**5 September 2016**

DECISION

Decisions of the tribunal

The tribunal determines that the sum of £2,226.13 is payable by the Applicant in respect of the exterior works carried out in 2013.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") payable by the Applicant in respect of service charges in connection with major works carried out to the exterior of the property.

2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is a 2 bedroom maisonette.

4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been helpful given the works took part of 2013.

5. The Applicant is the daughter of the leaseholder who 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.

6. Directions were made in this matter dated 4 July 2016. In accordance with those directions the parties lodged a bundle of documents with the tribunal. As neither party requested an oral hearing this matter was considered by way of a paper determination on 5 September 2016.

The Applicant's case

7. The Applicant is the former leaseholder of the property known as 89 Bridge Road, London NW10 9DG.

8. In the application form the Applicant says that he reached an agreement with BHP by which his property would be removed from the contract of works to the exterior of the property. Following consultation under section 20 of the Act the Applicant painted his own property. He now says that he is not liable for the charges. The Applicant also relies on a chronology dated 19 July 2016.

9. The Applicant relies on a letter dated 11 February 2013 in which he requests that he be allowed to carry out the works identified in the notice of intention.

10. The Applicant says that Brent Housing Partnership ("BHP") did not assist the Applicant in locating the leaseholder of 91 and that he tried tirelessly to contact him to no avail. The Applicant says he painted the property and guttering and that in error the contractors took down the guttering and subsequently had to change the guttering back to leave the property in the condition it was in. The Applicant says he was informed that no charges would be levied. The charges only came to light after the resale pack was requested. BHP say the invoices were sent to the wrong address in error.

The Respondent's case

11. The Respondent relied on a witness statement of Katherine Bond dated 4 August 2016. Ms Bond is a leasehold manager employed by BHP.

12. Responding to the Applicant's case she explained that on 28 February 2013 Ms Battman, leasehold management office said as far as the Applicant's request to be removed from the contract was concerned, this would only be considered if the leaseholder of the adjoining property consented. For data protection reasons BHP could not release the leaseholder's contract details but had forwarded a copy of the Applicant's letter. It was made clear that the responsibility for securing consent rested with the Applicant. The Respondent has no record of consent having been received from the owner of 91.

13. In mid July 2013 the BHP surveyor responsible for coordinating the external works, Madeleine Horrocks, met with the Applicant. It is denied that she agreed no works would be recharged but rather agreed that the Applicant would not be recharged for certain works. Ms Horrocks is no longer employed. However the Respondent does have emails from 10 May 2013 in which Ms Lindsay expresses concern about BHP's contractors removing the guttering to which Ms Horrocks confirmed that the guttering would be reinstated and that the Applicant would not be charged for that. In her email of 14 May 2013 Ms Horrocks confirmed that the Applicant had not been removed from the contract of works. In email correspondence dated 15 May 2015 Ms Horrocks confirmed that although this was not a standard approach BHP would not charge the Applicant for the external decoration work as he had undertaken this himself.

14. The notice of proposal was served on 15 January 2013. An actual invoice for the works was sent on 5 December 2014 in the total amount of £2958.14, it is said it correctly includes charges for external decoration and gutters and down pipes. The Applicant says that this was not received and the Respondent acknowledges the wrong postcode

was used. £100 was offered by way of compensation for this administrative oversight but this was refused.

15. From May 2015 onwards Ms Lindsay engaged in email correspondence when the Applicant was seeking to sell the property. Mitul Patel, Senior Leasehold Officer, emailed Ms Lindsay on 2 July 2015 to confirm that he had located the above email exchanges and raised a credit to the Applicant's service charge account for the cost of external redecoration, gutters and down pipes and associated preliminary, consultant and BHP management costs. The credit amounted to £732.01 (£657.49 for works and £74.42 for management fees) bringing the total outstanding balance to £2226.13 which the Respondent says is reasonable. The Respondent says that the Applicant has provided no evidence to support his claims and without such evidence considers the charges reasonable.

16. The Respondent exhibits copies of the emails it relies upon to Ms Bond's statement.

The tribunal's decision

17. The tribunal determines that the amount payable is £2,226.13.

Reasons for the tribunal's decision

18. Mr Lindsay first requested permission to carry out the works in a letter dated 11 February 2013. In a reply dated 28 February 2013 the Respondent confirmed that consent would only be given if consent from the owner of 91 was also given. No such consent was obtained. The Respondent rightly points out that the freeholder has the responsibility for carrying out the works to the exterior of the building. In an email of 14 August 2015 the Respondent confirmed that there are cases where they allow freeholders to carry out works but that this is at their discretion and subject to their consent. The email correspondence between Ms Lindsay and Ms Horrocks clearly evidences that BHP had not agreed that the property would be removed from the contract. It appears that BHP was willing to consider a request to be removed from the contract but that this would only be considered if both leaseholders agreed. Unfortunately the leaseholder of 91 could not be contacted and no consent was obtained.

19. It is stressed by Ms Horrocks in her email of 15 May 2013 that in addition to the painting there would be new soffits and fascia as per the schedule of works and scaffolding was erected. The Applicant does not allege that he carried out the further works in the contract. It is noted that BHP did agree to give credit for the painting that the Applicant carried out, this was a concession and the Respondent was in no way obliged to do this under the terms of the lease. Further it is clear that by

email dated 16 May 2013 Ms Linsday clearly confirmed that the contractors should complete the remaining paint work to 91.

Costs applications

20. There were no costs applications before the tribunal.

Name: S O'Sullivan **Date:** 5 September 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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.]