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

Case Reference : **LON/00AL/LSC/2016/0179**

Property : **45 Victoria Way, Charlton
London SE7 7UF**

Applicant : **Mr Colum McGeown**

Representative : **In person**

Respondent : **Carringtons Residential
Management Ltd**

Representative : **Louise Stevens on behalf of
Carringtons Residential
Management Ltd**

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

Tribunal Members : **Judge Daley
Mr H Geddes
Mr A Ring**

**Date and venue of
Hearing** : ***1 September 2016 at 10 Alfred
Place, London WC1E 7LR***

Date of Decision : **01/09/16**

DECISION

Decisions of the Tribunal

- (1) At the hearing the Applicant conceded that the only amount in issue was the sum contributed to the reserve fund which had risen to sum of £375.00.
- (2) The Tribunal determines that the reserve fund should not exceed £225.00 for the periods in issue.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 [so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge], the lease being silent as to the recovery of costs of legal proceedings.

The application

1. The Applicant sought 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 year. The Applicant also sought an order under Section 20C of the Landlord and Tenant Act 1985 limiting the landlord's cost of these proceedings
2. Directions were given on 24 May 2014, where the Tribunal identified the following issues to be determined-:
 - Service charges for the years 2013-2014, 2014-2015, 2015-2016 and estimated charges for 2016-2017.
 - The nature and extent of any reserve fund;
 - The nature and extent of the charges made for water rates/bills;
 - Whether the works are within the landlord's obligations under the lease/whether the costs of works are payable by the leaseholder under the lease
 - Whether an order under section 20C of the 1985 Act should be made

The Background

3. The premises consist of a 1 bedroom ground floor flat in a purpose built modern development of 6 blocks which comprise buildings made up of four or six flats, set in communal gardens.
4. The lease which is dated 17 February 1994 requires the landlord and the tenant to carry out various obligations.
5. The lessor is Fairview New Homes PLC; each lessee is a member of a company Victoria Way Charlton (Phase 2) Management Company Limited which was set up for the purpose of carrying out the obligations under the lease. The Applicant is one of three directors of the company, Mr Mc Geown brought this application on his own behalf rather than in his capacity of director of the management company
6. The day to day management is carried out by Carringtons Residential Management Limited. Prior to the hearing Ms Penny Bowyer property manager sought an adjournment on the grounds that the Applicant had not complied with the directions and served his case on 23 August.
7. The Tribunal refused this request on the grounds that the bundle comprises three pages, -: "*... therefore it will not be a time consuming exercise for the Respondent to serve and file their response.*"
8. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

9. At the hearing the Applicant Mr McGeown appeared in person. The Respondent was represented by Ms Stevens, who attended on behalf of her colleague Ms Bowyer. Prior to the hearing Ms Stevens produced a bundle. In accordance with rule 8 of the Tribunal Procedure (First –tier Tribunal) (Property Chamber) Rule 2013, the Tribunal determined that although the Respondent's documents had been served late there was little, if any prejudice to the Applicant as he himself had not complied with the directions, and the documents would assist the Tribunal in fairly dealing with his case.
10. At the hearing Mr McGeown in answer to the questions of the Tribunal conceded that the only service charges that were in issue were the reserve fund charges.
11. His case was that the reserve fund collected by way of the service charges had remained consistently high at £375.00 even though there had been little planned maintenance, save for some external work

carried out at the building. He stated that he was aware that there were plans to carry out internal redecoration and, although he accepted that his block was in need of redecoration, the majority of blocks on the estate did not at this stage require internal decoration. Mr McGeown accepted that there was a need for a reserve fund; however he considered that a reasonable sum for the reserve should in the region of £200.00, per unit, per annum.

12. He also stated that he was aware that it was possible for the timing of the internal decoration for each block to be dealt with separately so that those which needed internal decoration would be dealt with first on a rolling cycle. The cost of his block would be £1800.00 as opposed to the whole estate being decorated at a cost of £8,800.00 (based on a quotation received from Divine Decorating Services Ltd.)
13. Ms Stevens stated that she had thought that the issues had largely been resolved. She referred to an email from her colleague Ms Bowyer dated 1 July 2016 in which Ms Bowyer appeared to agree that a lesser sum could be paid into the reserve. In her email Ms Bowyer stated-*"... Over a period of 5 years, your proposed amount (£2,400 per year) may not be sufficient in the future as it would not allow for price increases. Personally, I would recommend Victoria Way has a reserve amount of no less than £125.00 per person (£4,000 per year) but this is of course the final decision of the majority of the directors..."*
14. In answer to questions from the Tribunal both Mr McGeown and Ms Stevens had a different view as to whether the directors were in agreement for the sum needed in the reserve fund, and whether there was a need for the redecoration to be carried out and if so over what period.
15. Ms Stevens was asked about the Planned Maintenance Program for the property, and although she considered that there was likely to be a program, she was unable to assist the Tribunal as to the specifics of the Program. The Tribunal noted that there was a Specification of Works for the Internal Redecoration and the quotation from Divine Decorating Services Ltd; however this did not amount to a Planned Maintenance Program.
16. The Tribunal was referred to an email from Mr Chris Banks (another of the director of the company) which stated that in principle Mr Bank agreed that the reserve should be at least £4,000. He also stated *"...I think that the internal decorating is long overdue as it has only happened once in 22 years since the flats were built... You are aware that the service charge for this year was agreed with Penny by both myself and Sarah..."*
17. The Tribunal was informed that "Sarah" was also a director at the premises. Mr McGeown stated that after that email was sent by Mr

Banks he had met with him and walked around the estate, and he had accepted that the condition of the blocks was not uniform and that not all needed internal decoration within the same period.

18. The Tribunal noted that clause 14 of the lease provided for a reserve fund which states- *"...(a) The Company may at its option create and maintain a reserve fund of such sum (to be fixed annually) as shall be estimated by the Company or its managing agents (if any) to be reasonably required to provide a reserve fund for items of expenditure in connection with the provision of the services facilities and amenities specified ...or any of them to be or be expected to be incurred at any time during the period of three years commencing with the date upon which the estimate is made..."*
19. The Tribunal noted that the purpose of the reserve was to allow the landlord/company to plan for maintenance in such a way so as to avoid sudden increases in the service charges as a result of routine maintenance needing to be undertaken.
20. The Tribunal were also asked to consider Mr McGeown's application under Section 20C of the Landlord and Tenant Act 1985, in relation to the costs incurred in the management company's attendance and preparation for the hearing. Ms Stevens was asked whether the provisions of the lease enabled provided for the payment of such costs. Ms Stevens was unable to confirm whether this was the position.

The Tribunal's decision and Reason for the decision

21. The Tribunal has considered all the evidence and have noted that in the email from Ms Bowers, there appears to be an acceptance that the sum of £375.00 for the reserve fund is not representative of the work to be carried out. However Mr McGeown does not seek to rely upon the figure put forward by her of £125.00. He proposed that the figure of £200.00 was a reasonable sum for the reserved account.
22. The Tribunal has noted that in the absence of a Planned Maintenance Programme which sets out the timing of the work and the sum to be collected it is difficult to justify the sum of £375.00 per unit. However it was agreed by the parties that there was likely to be the need to carry out internal decoration in the near future. The Tribunal has accordingly taken into account the fact that it may be likely that this work can be spread over more than one service charge year. The Tribunal accordingly finds that the sum of £225.00 would enable the sum of £7200.00 to be budgeted for the internal decorations.
23. The Tribunal is concerned about the lack of a detailed Planned Maintenance Programme, it notes that although Ms Stevens is confident that there is a Planned Programme, this was not referred to

in the email from Ms Bowyers to the directors, and there is little evidence that such a Planned Programme was in her contemplation in the figure put forward by her in her email.

24. Accordingly the sum of £225.00 is considered reasonable, Should the Respondent's managing agent wish to justify a higher sum then this should be based on a Planned Maintenance Programme

Application under s.20C and refund of fees

25. Having read the written submissions from the Applicant and taking into account the determination above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act: Accordingly no order is made under section 20C

Judge Daley

1-Sep-16

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

Appendix of 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 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.