



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

**Case Reference** : LON/00AX/LSC/2016/0053

**Property** : Flat B, 43 St James Road, Surbiton,  
Surrey KT6 4QN

**Applicant** : Ian Humberstone Limited

**Respondent** : Mr Philip and Mrs Georgia Bazin

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

**Tribunal Members** : Ms M W Daley LLB (hons)  
Mr M Cartwright FRICS

**Date and venue of  
paper determination** : *23 May 2016 at 10 Alfred Place,  
London WC1E 7LR*

**Date of Decision** :

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**DECISION**

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**Decisions of the tribunal**

- (1) The tribunal makes the determinations as set out under the various headings in this Decision

- (2) The tribunal makes no 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].
- (3) The Tribunal does not make an order, for the reimbursement of the Application fees and in respect of the hearing fees for reasons set out in the determination, the Tribunal

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable in the sum of £400.00 for work undertaken next to an external wall of creating a drainage gulley with grill to drain water into an existing drainage pipe and work of making good the pavement and fitting an air brick to the exterior wall of flat A. .
2. Directions were given on 4 March 2016 in the Directions the Tribunal stated -:" The applicant relies on the lease provisions in particular Schedule 4, and says that the leaseholders of flat A,C, D and E all agree that there is a shared liability for the cost of the works between all leaseholders. It is said that the respondent believes that the leaseholder of Flat A should bear the cost as the side wall is demised to flat A..."The Tribunal directed that the Application was to be determined without a hearing unless either party makes a written request to be heard within 14 days of the date of the directions."
3. Neither party requested a hearing and the matter was listed for a determination in the week commencing 23 May 2016.
4. The relevant legal provisions are set out in the Appendix to this decision.

### **The background**

6. The premises which are the subject of the Application are a semi detached Victorian House which has been converted to provide 5 flats, 2 in the lower ground floor and 1 each on the ground, first and second floor.
7. The Respondent hold a long lease of the property pursuant to a lease dated 17 January 1983, which was subsequently assigned to the Respondents. The lease requires the landlord to provide services and

the tenant to contribute towards their costs by way of a variable service charge.

8. The provision of the lease between the Applicant and flat A dated 5 February 1985 is also relevant to this determination
9. The Tribunal were provided with two bundles of documents one from the Applicants and the other from the Respondents which contained their written submissions. Neither party had provided photographs of the wall or the pathway and the drain which had been fitted. The Tribunal noted that this information would have assisted the Tribunal.

### **The written submissions by the parties to the Tribunal**

10. The Applicants in their application and the reply to the Respondent's statement of case noted that Water was stood on the side path which sloped towards the house wall and so collected against the outer wall surface and that was the cause of the dampness. The Applicant relied upon clause 5(d) of the lease which provided that the freeholder was responsible for maintaining the structure of the building which in their view included the side path and also the drains "passage of the mansion".
11. The Applicant noted that clause 7 (ii) of the lease imparted rectification of defect into the work repair "*...notwithstanding that it is inherent or due to the original design of the building.*"
12. The Respondents in their detailed submissions relied upon the wording of the lease for flat A which defines the demise to include the internal and external walls of the flat, the Respondent submitted that the plan provided for both the garden and the pathway (which was partially the subject of the work) to be part of the demise of Flat A.
13. In the submissions the Respondent noted that: "*... even if the path were not demised, which is not agreed or admitted , it is solely for the use of flat A in any event and I presume has been in existence for many decades without issue.*"

### ***The decision of the Tribunal***

14. The Tribunal having considered the detailed written submissions and considered the leases for both flats, have noted that clause 1 of the lease for flat A includes the internal and external walls of the premises in the demise of the flat. The Tribunal accepted that the wall was the

responsibility of flat A. The Tribunal accordingly finds that the cost of the air brick not payable by the Respondent.

15. The Tribunal noted that pursuant to clause 5 (d) ii the liability for repairs to the water pipe and drains is the responsibility of the landlord. As stated earlier in the determination, the Tribunal lack the benefit of photographs which might have informed the Tribunal as to the scope of the work, however as described in the application the work comprised creating a drainage gully with grill to drain water into an existing drainage. The Tribunal noted that the work falls within the scope of the landlord's responsibility under clause 5(d) ii which would also include the making good of any pathway that had been disturbed in the process. Accordingly as the work is being undertaken to the drain the Tribunal has not found it necessary to determine whether the pathway is demised to Flat A, if it is then the Applicant would be obliged to reinstate any pathway that had been damaged by the work even if this required an improvement.
16. The Tribunal noted that the lease in clause, 7(ii) permitted the landlord to carry out works to remedy a defect. This means that the landlord may undertake improvements to remedy defects. The Tribunal finds that the drain was defective in that it did not allow water to drain off. Accordingly the tribunal finds that the work undertaken was within the scope of the lease and is reasonable and payable by the Respondent. Accordingly the Tribunal finds (i) That the costs of the air brick is payable by the leaseholder of flat A (ii) that the cost of creating a drainage gully and making good the path is reasonable and payable by all leaseholders The Respondents share for this work is 17% as provided by the lease.

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

17. The Tribunal have determined in accordance with its findings that the application raised issues of the interpretation of the lease, and that the outcome has been mixed success for both parties, The Tribunal accordingly in accordance with its findings has made an order limiting the recoverability of any of the costs to the service charges to 75% if the total. The Tribunal also determine that no reimbursement of the fees shall be ordered.

## 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.