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

Case Reference : **LON/00BG/LSC/2016/0248**

Property : **29 Chambord Street London E2
7NJ**

Applicant : **Mr Danny Crane and Mrs Helen
Crane**

Representatives : **-**

Respondent : **The London Borough of Tower
Hamlets**

Representative : **-**

Type of Application : **For the determination of the
liability to pay and reasonableness
of service charges (s.27A Landlord
and Tenant Act 1985)**

Tribunal Members : **Professor Robert M. Abbey
(Solicitor)**

Venue of Decision : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **18 October 2016**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the service charges for the property are payable as follows:-

2011-2016 bin hire and door entry repairs service charges

The tribunal has no jurisdiction and therefore cannot currently make a determination for these service charges for 2011-2016.

2017-2020 estimated service charges

The tribunal has no jurisdiction and therefore cannot currently make a determination for the estimated service charges for 2017-2020.

2016-2017 estimated service charges

The estimated block cleaning charges of £377.48, the estimated door entry repairs charges of £14.52 and the estimated bin hire charges of £24.79 are all reasonable.

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 charge payable to the respondent in respect of service charges payable for services provided at 29 Chambord Street London E2 7NJ, (the property) and the liability to pay such service charge.
2. The relevant legal provisions are set out in the Appendix to this decision.

The decision

3. By Directions of the tribunal dated 14 July 2016 it was decided that the application be determined without a hearing.
4. The tribunal had before its two bundles of documents prepared by the applicant.

The background and the issues

5. The property which is the subject of this application is within a larger building but actually comprises a ground floor and first floor 3 bedroom

maisonette with a front and rear garden. The applicant purchased the property in November 2005.

6. 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 respondent 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 issues the applicant raised covered the reasonableness of the charges made for the several items listed in the trial bundle and apparently carried out by the respondent. The applicant considers that the items are either excessive or unreasonable or demanded without foundation or legal authority from the lease terms. The applicant says that as they do not benefit from the works that as a result they should not pay for items being block caretaking, bin hire and door entry system repairs
8. Accordingly the tribunal has been asked, first, to consider block caretaking for the years 2016 to 2020, secondly, door entry repairs charges for the years 2011 to 2020 and thirdly, bin hire for the years 2011 to 2020.

Decision

9. The Applicant seeks a determination with regard to the estimated service charges for the years 2016 through to 2020. The respondent has conceded that the tribunal has jurisdiction to consider the 2016-17 estimates but not for the years thereafter to 2020. The tribunal will make a determination in regard to the estimated charges for 2016-2017.
10. With regard to the estimated service charges from 2017 to 2020 a demand for payment is necessary for there to be the possibility of referring a disputed estimated service charge to the tribunal. The respondent has not issued any such demand for payment of an estimated sum for the years from 2017 onward and as such the tribunal finds it has no jurisdiction at this time to make a determination in respect of the possible estimated charges for the years 2017 to 2020. As such the tribunal cannot currently make a determination for the estimated service charges for 2017-2020.
11. Furthermore, the tribunal is of the view that it cannot consider the bin hire charges and door entry repairs for the period 2011 to 2016 because these items were covered by a Mediation Agreement entered into by the parties on 1 March 2011 and which covered service charge items for those years. Accordingly the tribunal cannot make a determination in this regard because there has been a mediated settlement to the previous 2011 application and the parties are bound to that agreement

and cannot make another application in respect of the same period covered by the mediation.

12. The applicant seeks a reduction in all the charges because the property has its own separate entrance, its own bins for refuse and because their property does not benefit from the block caretaking. The Respondent seeks to rely upon the Court of Appeal decision of **Billson v Tristrem**[1999] **CCRTF 1999/0851/B2** which decided that the court was not entitled to consider if a lease covenant was fair; all it had to do was to decide what the lease actually made provision for. The court needed to consider what the lease said as a whole to describe the intentions of the original parties to the lease as to the effect of the lease terms. This meant that even if the wording of the lease was “inept” the parties will still be bound notwithstanding this gave rise to an unfair outcome.
13. In this dispute it is clearly unfair for the applicant to pay for services that do not directly benefit them such as caretaking door entry repairs or bin hire. However, if the lease says that they are responsible for these payments then the above case says that they are required to pay these charges. On reviewing the lease it is clear to the tribunal that the applicant is liable for payment of the service charges by clause 4(4) of the lease and in the manner provided for in the fifth schedule of the lease. To be precise, pursuant to clause 4(4) the applicant covenants to pay an interim charge and the final service charge at the times and in the manner provided in the fifth schedule. It is also clear from the lease terms that the service charge will cover bin hire caretaking/block cleaning and door entry repairs, as required and contemplated by clause 5(5) of the lease.
14. As for the level of the charges, the respondent says that the estimated costs are reasonable because they are calculated using the rateable value methodology, or an average of the last three years actual costs or as an apportioned sum. The respondent in its statement of case set out in detail how the charges are calculated and the tribunal has considered these calculations in detail and is satisfied in this case of the reasonableness of the estimated charges or costs. Therefore the tribunal determines that the estimated block cleaning/caretaking charges of £377.48, the estimated door entry repairs charges of £14.52 and the estimated bin hire charges of £24.79 are all reasonable.
15. For all the reasons set out above the tribunal is of the view that the service charges are reasonable and that the charges should be as set out above.

Name: Judge Professor Robert
M. Abbey

Date: 18 October 2016

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.

20B Limitation of service charges: time limit on making demands.

- (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.