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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AP/LSC/2017/0094**
Property	:	**15 Crouch Hall Road, London N8 8HT**
Applicant	:	**Mr Stephen Lynn (Flat 1)** **Mr Bill Jarvis (Flat 4)** **Mr Shamsh Dharsee (Flat 5)**
Representative	:	**Mr Stephen Lynn**
Respondent	:	**Chaplair Limited**
Representative	:	**Mr B Preko - Salter Rex LLP (managing agents)**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Mr J P Donegan – Tribunal Judge** **Mr M Cairns MCIEH – Professional Member**
Date and venue of Hearing	:	**22 May 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**05 June 2017**

DECISION

Decisions of the tribunal

(A) The tribunal makes the determinations set out at paragraphs 19 and 29 of this decision.

(B) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 ('the 1985 Act'), as set out at paragraph 33 of this decision.

(C) The Tribunal determines that the Respondent shall reimburse the £100 application fee, as set out at paragraph 34 of this decision. Such sum is to be paid to the Applicants within 28 days of the date of this decision.

The application

1. The Applicants seek a determination pursuant to section 27A of the 1985 Act, as to the amount of service charges payable by them for 15 Crouch Hall Road, London N8 8HT ('the Building').

2. The application was dated 08 March 2017 and identified the disputed service charge years as 2009/10, 2012/13, 2014/15 and 2015/16. Directions were issued on 16 March 2017.

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

The background

4. The Building is a converted Victorian house, comprising five flats. The Applicants are the leaseholders of Flats 1, 4 and 5. The Respondent is the freeholder of the Building.

5. The Applicants each hold a long lease of their respective flats. The leases require the Respondent to provide services and the Applicants to contribute towards their costs by way of a variable service charge.

6. The Tribunal did not consider that an inspection of the Building was necessary, nor would it have been proportionate to the issues to be determined.

The hearing

7. The full hearing of the application took place on 22 May 2017. Mr Lynn appeared on behalf of the Applicants. Mr Preko of the managing agents, Salter Rex LLP ('SR') appeared on behalf of the Respondent.

He was accompanied by Ms Patel and Ms King, also of SR, who assisted the Tribunal with the background to the dispute. Ms Patel also made oral representations in relation to the disputed surveyor's fees.

8. The Tribunal members were supplied with a hearing bundle that included copies of the application, directions, statements of case and relevant correspondence and documents. During the course of the hearing it became apparent that a number of key documents were missing, including the detailed final account for major works undertaken in 2014/15 and an asbestos survey report dated 23 June 2009. The final account had been copied to Mr Lynn the week before the hearing and Ms King produced copies for the Tribunal. Mr Lynne provided the Tribunal with copies of the asbestos survey report, immediately after the hearing.

The issues

9. The main area of dispute was the major works undertaken in 2014/15, which included external and internal repairs, internal redecorations and electrical works. As is often the way, there were variations and omissions from the original specification that affected the final cost of these works. The estimated contract sum was £34,029.43 (including VAT), whereas the final cost was £32,655.98 (including VAT). A substantial saving was achieved by changing the fire alarm system that formed part of the electrical works but this was not the only change. Mr Lynn's main grievance was that he did not know how the final cost had been calculated.

10. Details of the variations and omissions were included in the final account. There was a factual dispute over when this account was first disclosed. Ms Patel relied on a letter from Nadim Hashir of SR to Mr Lynn, dated 18 February 2015, in which the opening paragraph reads:

"Further to my letter dated 16th January 2015, I write to provide you with a revised final account to more accurately reflect the underspend figure and ensure conformity with the actual account."

Ms Patel believed that the final account was enclosed with that letter, relying on the word *"Encl"* that appeared at the end of the letter.

11. Mr Lynn contended that the final account had only been disclosed the week before the hearing and relied on letters he had sent to SR on 02 April and 24 October 2015, requesting the account.

12. Having studied the final account, Mr Lynn was able to concede some of the disputed items. With some encouragement from the Tribunal, the parties also agreed some of the disputed charges. By the conclusion of the hearing, there were only two outstanding service charges to be

determined by the Tribunal. There were other disputed items but, as the Tribunal explained at the hearing, these are not service charges.

13. The Respondent is seeking to recover an administration fee of £60 and legal fees of £150 that are specific to Flat 1. These are disputed by Mr Lynn. The fees were claimed in 2014/15 and are administration, rather than service, charges. There was no application to determine administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') and copies of the relevant invoices were not included in the hearing bundle. Mr Preko tried to obtain copies of the invoices during a short adjournment, without success. The Tribunal informed Mr Lynn that it was unable to determine these administration charges in the absence of invoices or an application under the 2002 Act. It also suggested the parties try and agree these charges, given the modest sums involved.

14. Mr Lynn also disputed a scaffold charge in 2015/16 that was specific to Flat 1. The Tribunal explained this was not a service charge, as it had only been billed to Mr Lynn. Whether he is liable to pay this charge is a matter of contract law and does not fall within the Tribunal's jurisdiction. Rather this would be a matter for the County Court.

15. Mr Lynn sought a £90 reduction in the service charges for Flat 1, by way of set off. This relates to the contractor's unauthorised use of his ladders during the major works in 2014/15. The Tribunal explained that Mr Lynn had a potential claim in trespass but this should be directed at the contractor, rather than the Respondent. Again, this would be a matter for the County Court.

16. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has determined the two disputed service charges as follows.

Service charge item & amount claimed

Cost of asbestos survey report - £408.25 (2009/10)

17. Mr Lynn suggested the cost of the report was excessive, as the health and safety consultant had only inspected the communal areas at the Building and had not inspected the flats. He made the point that the communal areas are small and there had been no inspection of the roof or the roof void. When pressed by the Tribunal, Mr Lynn suggested that a reasonable fee would be £150 plus VAT. He had not obtained any alternative quotes to support this figure.

18. Mr Preko explained that the asbestos survey was statutory requirement and had been undertaken by Quantum Risk Management ('QRM').

Their fee was £355 plus VAT, which is in line with the fees charged by other health and safety consultants.

The tribunal's decision

19. The Tribunal allows the cost of the report in the full sum of £408.25.

Reasons for the tribunal's decision

20. The main body of the report is 4 pages long and a number of photographs are appended to the report. Section 2 explains that QRM were asked to complete an asbestos survey of the communal areas. Section 4 explains that various areas were not inspected, including the roof void and these should be presumed to contain asbestos containing materials.

21. Based on the Tribunal members' knowledge and professional experience, QRM's fee of £355 plus VAT was reasonable for the work undertaken. This included the inspection of the communal areas and production of the report, which would have taken several hours.

22. There was no evidence to support Mr Lynn's alternative fee of £150 plus VAT, which appeared to be plucked from thin air.

Surveyor's fees relating to fire alarm system - £246.16 (2014/15)

23. The major works were arranged and supervised by Mr Nadir Hashim, who used to work for SR. His fee was 12.5% of the final contract price, plus VAT. The original specification included provision for the installation of a Grade A LD 1 fire alarm system and tenders were obtained on this basis. The tendered cost for installing this system was £4,660 plus VAT.

24. The leaseholders at the Block obtained their own fire risk report in August 2014 that suggested a lesser Grade D LD3 alarm system would suffice. After seeing this report and further consultation with the leaseholders, SR agreed to the lesser system. The installation was arranged by Mr Lynn and undertaken by N A Electrical ('NAE'), at a total cost of £1,641 plus VAT.

25. Mr Lynn attacked Mr Hashim's fees on two fronts. Firstly he sought a reduction of £500 plus VAT (total £600), representing approximately 12.5% of the tendered price of the Grade A system. He contended that the Grade A system was over specified and referred to a fire risk report from SR's experts, QRM, which mentioned a Grade D system. Mr Lynn suggested that the surveyor's fees associated with the fire alarm system should be disallowed in full. He did not feel it appropriate to pay

surveyor's fees on the installation of the Grade D system, as he arranged the work by NAE.

26. Mr Lynn also sought to set off the cost of the leaseholders' fire risk report (£180) against the cost of the major works. He submitted that the report would have been unnecessary, had the original specification provided for a Grade D report. However, the report and the contractor's invoice were not included in the hearing bundle.

27. In response, Ms Patel referred to the final account. This revealed that that Mr Hashim's fees had only been charged on the cost of Grade D system installed. These fees came to £246.15, representing 12.5% of £1,641 (£205.13 plus VAT), rather than £600. Ms Patel pointed out that although these works were arranged by Mr Lynn, they were overseen by Mr Hashim who obtained the necessary electrical certificates.

28. Ms Patel contested the set-off claim, as the leaseholders had chosen to obtain their own fire risk report without involving SR. Furthermore, the original decision to install a Grade A system was based on surveyor's advice that was, in turn, responding to deficiencies in the original fire risk report.

The tribunal's decision

29. The Tribunal allows the surveyor's fees relating to the fire alarm system, in the full sum of £246.16.

Reasons for the tribunal's decision

30. It was reasonable for Mr Hashim to charge for overseeing the installation of the Grade D system, as this formed part of the major works. He obtained electrical certificates from NAE and the installation cost was included in the final account. Mr Lynn did not challenge the rate charged by Mr Hashim (12.5%). Rather he argued the fees should be disallowed in full. Based on the Tribunal members' knowledge and experience, the 12.5% rate reasonable.

31. The Tribunal rejects the set-off claim for the reasons advanced by Ms Patel. It was reasonable to include the Grade A system in the original specification. The fact that SR agreed to downgrade the system, in the light of the leaseholders' report, does not mean the Respondent should pay for this report. Furthermore, there was no evidence in the bundle of the cost of that report.

Application under s.20C and refund of fees

32. At the end of the hearing, Mr Lynn applied for an order under section 20C of the 1985 Act, to prevent the Respondent from passing its costs of these proceedings through the service charge account for the Block. He also applied for reimbursement of the fees paid to the Tribunal, for the application (£100) and hearing (£200)[1]. Mr Lynn submitted that the application might not have been necessary had SR supplied the detailed final account at an earlier stage. Mr Preko resisted both applications, arguing that SR had done all it could to resolve the dispute. It had invited Mr Lynn to its offices to discuss the issues, had responded to the various queries and had produced copies of the disputed invoices.

33. The Tribunal makes an order under section 20C for the period up to and including 18 May 2017. No order is made for the period 19-22 May 2017. This means the Respondent can pass its costs of the hearing through the service charge account, if there is contractual provision for this in the leases. The Tribunal has not decided whether the leases permit the recovery of such costs. This would be a matter for a further section 27A application, once the 2016/17 service charge accounts are produced, if the parties feel this is appropriate.

34. The Tribunal makes an order for a reimbursement of the £100 application fee. The application for a reimbursement of the £200 hearing fee is refused.

35. The Tribunal accepts the detailed final account was only disclosed to Mr Lynn the week before the hearing. This is consistent with his letters of 02 April and 24 October 2015. SR's letter of 18 February 2015 did not specifically state the account was enclosed and there was no evidence from the author of that letter, Mr Hashim. Had he enclosed the account then the Tribunal would have expected SR to immediately point this out, when they received Mr Lynn's letters. There was no evidence they did.

36. The Respondent should have disclosed the final account, when it was first requested by Mr Lynn. Its failure to do so led to the section 27A application. It was reasonable for the Applicants to pursue the application up to the point the final account was disclosed. Ms Patel informed the Tribunal that disclosure took place on Tuesday 16 May 2017. Mr Lynn would have needed a day or two to study this account. Having studied the account, he and the other Applicants should have withdrawn the application. This step should have been taken by Thursday 18 May. It is just and equitable to make a section 20C order

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[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

in respect of the costs up to 18 May but not for the period after this date.

37. Given the finding at paragraph 36, the Applicants should be reimbursed for the application fee paid in March 2017. The Tribunal then considered whether the hearing fee should also be reimbursed. This is not appropriate as the two issues considered at the hearing were decided in favour of the Respondent. It would not be just and equitable for the Applicants to recover the hearing fee, having been wholly unsuccessful at the hearing.

The next steps

38. This decision deals solely with the two service charge issues that were still in dispute at the conclusion of the hearing. There remain the disputed administration charges and Mr Lynn's potential claims in the County Court. There is also the spectre of a further section 27A application to determine whether the Respondent can recover its costs for the period 19-22 May 2017, under the terms of the leases. Clearly it is in everyone's interests to try and resolve the outstanding issues rather embark on further litigation. This is particularly appropriate, given the modest sums at stake. The parties should make every effort to resolve their differences and may wish to consider mediation or other forms of alternative dispute resolution.

Name: Tribunal Judge Donegan **Date:** 05 June 2017

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 (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).