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

Case Reference : **LON/00AZ/LSC/2016/0476**

Property : **23 Peters Path, London, SE26 6LD**

Applicant : **London Borough of Lewisham**

Representative : **Mr Adams, Counsel**

Respondent : **Mrs Imogene East (not in attendance)**

Representative : **Ms Newell (daughter of respondent)**

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

Tribunal Members : **Judge Owusu Abebrese
Mrs Lorraine Hart, Lay member
Mr Michael Cartwright
Professional Member**

Date and venue of Hearing : **2 May 2017
10 Alfred Place, London WC1E 7LR**

Date of Decision : **14 May 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that all the service charge demands as set out in the claim of the applicant covering the years 2011-2017 are payable by the Respondent.
- (2) The applicant is entitled to the sum of £5,854.20 as set out in their statement of account. The sum of £10 to be deducted from above sum from each of the respective years starting from 2011 and ending with 2017 as credit due to the Respondent.
- (3) The tribunal makes no finding in respect of any ground rent that may fall due under the lease as it is not within our jurisdiction.
- (4) The amounts payable by the Respondent **do not include** the following : **door entry works ; door management fees**. The Applicant conceded that both these payments were not part of their claim and were not be pursued.
- (5) The tribunal makes the determinations as set out under the various headings in this Decision
- (6) The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985 or refund of any administration charges.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges payable by the Applicant in respect of the service charge years 2011-2017.
2. Proceedings were originally issued in the Lambeth County Court under claim no. C1QZ7P9R. The claim was transferred to the Clerkenwell and Shoreditch County Court and then in turn transferred to this tribunal in December 2016.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Adams, Counsel at the hearing and the Respondent did not appear in person and was represented by her daughter Ms Nezlin Newell.
5. Immediately prior to the hearing Ms Newell informed the tribunal that her mother was in Jamaica and unable to attend, and that she had been given authority by her mother to represent her at the hearing.

The background

6. The property which is the subject of this application is a flat which is part of the block/building owned by the freeholders London Borough of Lewisham. A full definition of the demised premises is contained in the Fourth Schedule of the Lease.
7. 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.
8. 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 specific provisions of the lease and will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for years 2011-2012 to 2016-2017. The service charges for 2016-2017 are estimated charges.
 - (ii) Whether the above mentioned liability of the respondent arises under Clause 5(1) of the lease, where it is contended that the Respondent covenanted to meet a contribution towards charges, cost and payments made expended or incurred or to be made expended or incurred by the Respondent.
 - (iii) Whether in accordance with Part 1 and 11 of the tenth Schedule of the lease demands have been properly issued to the Respondent
 - (iv) Whether following on from the abovementioned clauses the Respondent is liable to make payment for the demands.

- (v) Whether the Respondent has a defence in law to the claims of the Applicant in respect of the payability and / or reasonableness of the actual or estimated charges which fall within the relevant periods.
10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charges 2011-2017

11. The Applicant's claim for these charges they argue falls to be determined under clauses 5 (1), 8(1) (a) and (b), 10th Schedule of the lease particularly Parts (1) and (11). The tribunal heard evidence from Mr James Walker who is employed by the Applicant's as a Leasehold Caseworker. Mr Walker relied on his witness statement which he adopted as his evidence. In essence his evidence supports the claims of the Applicant that not only are the sums outstanding payable but that they have been reasonably incurred.
12. The Applicants representative also made submissions to the tribunal relying on the above clauses of the leases to conclude that no viable defence in law had been raised by the Respondent and that the service charges are all payable and reasonable. The tribunal accepts the evidence and submissions made by Mr Adams in respect of the above mentioned provisions of the lease.
13. The tribunal considered the defence raised by the Respondent that the service charges had risen and that she was not able to afford payment. Furthermore, that the Applicant whilst carrying out works had caused damage to the Respondent's property.
14. The Respondent did not raise any valid arguments in law to rebut the suggestions of the Applicant that the service charges are payable in law. The tribunal also were not provided evidence from the Respondent to establish that there was a counterclaim available to them in respect of the alleged damage caused by the erecting of the scaffolding and damage to the guttering.
15. The Respondent also provided a damp survey following the finding of her damp on her premises, this was also considered by the tribunal.
16. The Respondent also raised concerns regarding insurance of the demised premises, anti social behaviour charges and reasonableness of external decorations and caretaking charges. Respondent did not provide any evidence on any of these items to support her concerns.

The tribunal's decision

17. The tribunal finds that the service charges for all of the relevant years fall within the terms of the lease and are payable and, have been reasonably incurred. The tribunal accepts the validity of the claims of the applicant.

Reasons for the tribunal's decision

18. The tribunal's decision is based on the provisions of the lease. The tribunal applied Clause 5(1) and the Schedule 10 Parts 1 and 11. The tribunal considered that there was a consultation process carried out by the Applicants but that the Respondent did not participate actively in the process in the circumstances we find that the external decorations charges are reasonable.
19. The Respondent is also required by the terms of the lease to insure the demised premises and it is not the responsibility of the Applicant. It is unfortunate that the Respondent has not been able to obtain insurance for the property.
20. The tribunal also find that on reading of the damp survey that responsibility for the water penetration may fall to Thames Water and not to the Applicant. The tribunal found a lack of evidence in respect of a possible counterclaim of the Respondent and declined to accept jurisdiction.

Application under s.20C and refund of fees

21. At the end of the hearing, no application was made by either party in respect of an application under Section 20C cost and refund of any administration charges. The tribunal therefore in the circumstances makes no order under both of these provisions.
22. The tribunal has no jurisdiction over ground rent or county court costs.

Name: Judge Owusu Abebrese **Date:** 14 May 2017

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).