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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/OOBE/LSC/2013/0258
Property	:	Flat 6, Palm Court, Garnies Close, London SE15 6PB
Applicant	:	Mr and Mrs Adjei-Amoah
Respondent	:	London Borough of Southwark
Type of Application	:	Leasehold Management
Tribunal Members	:	Robert Latham Susan Coughlin MCIEH
Date and venue of Hearing	:	Paper Hearing determined on 26 June at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	8 July 2013

DECISION

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(1) The Tribunal determines that a service charge estimated at £2,807.78 is payable by the Applicants in respect of the proposed communal electrical works.

(2) The Tribunal makes no order for the reimbursement of the tribunal fees paid by the Applicants.

(3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

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The Application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to their liability to pay a service charge in respect of electrical works to the common parts at 1-8 Palm Court.

2. On 9 May 2013, the Tribunal gave directions (at R14 of the Respondent's Bundle prepared). The Tribunal identified the following issues to be determined:

   (i) whether the service charge in dispute is payable and reasonable;

   (ii) whether an order for reimbursement of fees should be made.

3. Pursuant to these Directions:

   (i) The Respondent has filed its statement of case setting out its grounds for opposing the application (at R20); witness statements from Derek Lebby, the Respondent's Electrical Project Officer (R123) and Zaid Nauman, an Associate at Brodie Plant Goddard Ltd (R125); and a bundle of relevant documents.

   (ii) The Applicants have filed a Bundle of Documents, reference to which will be prefixed by "A__".

4. The Tribunal directed that the application should be determined on the papers, unless either party requested an oral hearing. Neither party has done so.

5. On 17 June, the Applicants applied for an order to be made under Section 20C of the Act.

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

The Background

7. The Applicants are tenants of 6 Palm Court ("the flat") pursuant to a lease dated 9 December 2002. The Applicants acquired their 125 leasehold interest under the Right to Buy legislation. The lease is at A28. Their flat is part of a block of 8 flats (Nos. 1-8 Palm Court). In their lease, this is described as "the building". The building is on the North Peckham Estate.

8. There are two other neighbouring blocks, namely 1-10 and 11 – 35 Oak Court. All these blocks shared a common electricity supply.

9. In November 2009, there was a fire at 1-10 Oak Court. The Respondent proceeded with reinstatement works after notifying their insurers of the damage to the block. Apollo in Partnership (now Keepmoat) was instructed to carry out reinstatement works. On 12 September 2011, works commenced.

10. In September 2012, EDF attended to reconnect the electricity supply to the block at 1-10 Oak Court. They found that the Applicants' building shared its electricity supply with the lateral mains at Oak Court. Whilst this was acceptable practice when the blocks were built in the 1960s, this was no longer considered to be acceptable. In order to carry out the works to 1-10 Oak Court, EDF required the Respondent to isolate the supply to the Applicants' building.

11. In addition, the lateral mains supply to Palm Court had a parallel connection at the location of the consumer's meter in that two flats were connected to one 60 amp fuse. Were there to be a loss of supply to one flat, both flats would be without electricity. The available capacity to each flat was limited to 30 amps which could lead to overcharging and loss of supply. Current requirements stipulate that each property has its own dedicated supply connected to the landlord's fuse box and rated at 60 amps.

12. EDF were unwilling to reconnect 1-8 Palm Court and asked for all the lateral mains to be renewed. The problem was resolved by installing a split board that provided power to the three blocks with compliant power cables and lateral mains.

13. The relevant works to renew the electrical cabling to the Applicant's building commenced in September 2012 and were completed on 26 October, when EDF carried out the change-over.

14. On 3 October 2012, the Respondent consulted the tenants on the proposed works (at R54). The Applicants were notified that their contribution towards the works was estimated to be £2,807.78. The letter provided details of the proposed works and reasons as to why these works were proposed. The total cost of the works to the Applicants' building was estimated at £19,466.36. The deadline for responding to the consultation was 5 November. This was somewhat academic given that the works were well underway. However, no point is taken on the consultation requirements.

15. On 31 October (at A2) the Applicants responded to the consultation contending that the electrical works were required as a consequence of the fire. The cost should therefore be borne by the Respondent's insurance policy.

16. On 12 November, the Respondent replied. Whilst the works to 1 – 10 Oak Court were carried out under the insurance policy, the electrical work to the Applicant's building was not linked with the fire. The problem at their building was that the electrics did not comply with present day regulations. If EDF were to continue to supply electricity to the block, the layout had to be changed.

17. On 22 November (at A4), the Applicants required the Respondent to satisfy them as to the provision under their lease which required them to pay towards the works. On 30 November (at A5), the Respondent referred the Applicants to various provisions of the lease.

18. There are two matters which this Tribunal is required to consider:

(i) Is the Respondent entitled to charge the Applicants for this work under the terms of their lease; and

(ii) Should the cost of these works have been met through the Respondent's Insurance policy?

19. The Tribunal notes that the sum of £2,807.78 is the Applicants' estimated share of the works. Their actual liability has yet to be calculated. There is no suggestion that the cost of the works has been unreasonably high. The Applicants rather dispute their liability to contribute to the cost.

The Lease

20. The Applicants' lease is at p.28-52. The following provisions are relevant to our determination:

(i) the lessee has the "right to the use and maintenance of the cables or other installations serving the flat for the supply of electricity" (First Schedule, para 5);

(ii) the Council covenants "to keep in repair the common parts of the building and any other property over or in respect of which the lessee has any rights under the First Schedule hereto" (Clause 4(3));

(iii) the lessee covenants to pay the service charge contributions set out in the Third Schedule (clause 2(3)(a));

(iv) the Council is entitled to recover the cost of services under the Third Schedule. The service charge account includes the costs and expenses of or incidental to:

(a) "the carrying out of all works required" by Clause 4(3) (para 7(2)); and

(b) "the maintenance and management of the building and the estate (but not the maintenance of any other building comprised in the estate) " (para 7(6).

(v) The Council's covenant to insure is set out at Clause 4(6).

(vi) The expressions "the building" and "the services" are defined at p.1-2 of the lease.

Issue 1 – The Contractual Obligation

21. We are satisfied that the works to the electricity supply to the Applicants' flat fall within the Council's obligations under the lease:

(i) The works fall within the Council's obligation to keep in repair the cables or other installations serving the flat for the supply of electricity. The electrical cables are property in respect of which the lessee has rights under the First Schedule; and/or

(ii) Alternatively, the works fall within the Council's obligation for "the maintenance of the building".

22. We do not accept the Council's suggestion that these works would come within their covenant under Clause 4(5) to maintain the "services" to or for the flat. Maintenance of the electrical installations does not fall within the definition of "services" at page 2 of the lease.

Issue 2 - Insurance

23. The Applicants contend that the construction of the independent electrical supply would not have been necessary but for the fire. The cost of the works should therefore be covered by Council's insurance policy. We cannot accept this argument:

(i) The fire itself did not interfere with the supply of electricity to the Applicants' flat. The problem arose almost three years later. Had EDF inspected the electrical supply at any stage, it would have insisted that the works were carried out to ensure that the supply to the building complied with current standards. All that can be said is that it was the fire which caused EDF to inspect the electrical installations.

(ii) Under Clause 4(6), the Council is obliged to insure the "building". At page 1, "building" is defined as "1-8 Palm Court" and associated common parts. Thus the Council's insurance policy in respect of 1-8

Palm Court is quite separate from that for 1-10 Oak Court, the building where the fire occurred.

24. It is quite apparent that the Council would have funded these works under their insurance policy had they been able to do so. The Insurance Company decided that the works fell outside their liability in respect of the fire. As stated, the need for the works was the outdated state of the electrical installations, rather than the fire.

Application for Refund of Fees

25. The Applicants make an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that they have paid in respect of the application. In view of our finding in favour of the Council, we are satisfied that it would not be appropriate to make such an order.

26. The Applicants also apply for an order under section 20C of the 1985 Act. In view of our findings above, the Tribunal does not consider it to be just and equitable in the circumstances to make such an order.

Tribunal Judge: Robert Latham

Date: 8 July 2013

Appendix of Relevant Legislation

Landlord and Tenant Act 1985

Section 18 – Meaning of "service charge" and "relevant costs

(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 – Limitation of service charges: reasonableness

(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 – Liability to pay service charges: jurisdiction

(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 – Limitation of service charges: cost of proceedings

(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 leasehold valuation 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 a leasehold valuation tribunal;
   (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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 – Reimbursement of fees

(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).