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

Case Reference : **LON/00AH/LSC/2013/0188 and
LON/00AH/LSC/2013/0201**

Property : **80A and 82A Beulah Road,
Thornton Heath, Surrey, CR7 8JF**

Applicant : **J Sullivan**

Representative : **Mr Moulvi of Peacock Interiors
Ltd., managing agent**

Respondent : **Mrs M Joseph (leaseholder 80A)
Mr E J Joseph (leaseholder 82A)**

Representative : **In person**

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

Tribunal Members : **Judge F Dickie
Mr W R Shaw, FRICS**

**Date and venue of
Hearing** : **19 June 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **31 July 2013**

DECISION

Decisions of the tribunal

- (1) The Respondents are liable to pay an administration charge in respect of interest on sums admitted to be due of £478.57 (Mr Joseph – Flat 82A) and £471.94 (Mrs Joseph – Flat 80A).
- (2) In respect of the other disputed amounts, the tribunal finds each Respondent is liable to pay service and administration charges (including interest thereon) totalling £500 each.
- (3) All other items in paragraph 6 below having been agreed by the parties, the tribunal has no jurisdiction in respect of them.
- (4) The tribunal determines that the Respondents shall pay the Applicant £550.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

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 and administration charges payable by the Respondents in respect of the service charge years 2008 – 2013. The relevant legal provisions are set out in the Appendix to this decision.
2. Flat A, 82 Beulah Road and Flat A, 80 Beulah Road are adjoining two bedroom flats above shops, each flat having its own entrance. The freehold is owned by the Applicant and managed on her behalf by Mr Moulvi of Peacock Interiors Ltd. The tribunal did not consider it necessary to carry out an inspection.
3. Flat A, 80 Beulah Road is let to Mrs Joseph and Flat A, 82 Beulah Road to Mr Joseph, who are mother and son. In each lease the definition of “The Building” provides “the building known as 80/82 Beulah Road, Thornton Heath ...”. Each lease includes the following obligations:

Clause 1 To pay by way of further rent a yearly sum equal to 50% of the sum or sums which the Lessor shall from time to time pay by way of premium (including any increase premium payable by reason of any act or omission of the Lessee) for keeping the demised premises insured under the Landlords covenant...”

Clause 2(6)(a) pay or contribute one half of the expense of making repairing maintaining supporting rebuilding and cleansing the roof all the structure courtyard passages pathways entrance hall sewers drainsand gates fences hedges ... belonging to or used or capable of being used by the Lessee in common with the

Lessor or the tenants or occupiers of the buildings of which the flat forms part ...

Clause 2(6)(b) To pay 50% of all reasonable property expenses of the Lessor (including Managing Agents and Surveyors Fees if required) in connection with the insurance of the building.

4. The lease makes no provision for the payment of an administration charge other than in Clause 2(12) and 2(18). In Clause 2(12) the lessee covenants:

To pay all costs charges and expenses (including solicitors costs and surveyors fees) incurred by the Lessor in or in contemplation of any proceedings under Section 146 and Section 147 of the Law of Property Act 1925 and notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court.

5. Clause 2(18) provides for interest to be charged at 4% above Barclays Bank base rate on any moneys outstanding under the lease.
6. Ground rent is included in the application, but the tribunal has no jurisdiction in respect of it. The other matters that are the subject of the application are:

Year ending 24/6/13	
Buildings Insurance	£276.64
Service Charges	£100.00
Year ending 24/6/12	
Buildings Insurance	£195.55
Service Charges	£100.00
Assessed Charges and Funding	£2560.00
Accountancy	£60
Year ending 24/6/11	
Buildings Insurance	£188.06
Service Charge	£100.00
Accountancy	£60.00
Year ending 24/6/10	
Buildings Insurance	£182.95
Site visits and clearing debris	£100.00
Accountancy	£60.00
Year ending 24/6/09	
Buildings Insurance	£191.92
Service Charge site visits	£100.00
Survey Fees	£172.92
Administration	£46.48
Accountancy	£60.00
Additional Costs	£650.00

(But incl. £600.00 c/f to 24/6/12)

Year ending 24/6/08	
Buildings Insurance	£186.33
Service Charge –	
- call outs to properties & clearance	£200.00
Administration Charges	£38.63
Accountancy Charge	£30.00

The hearing

7. The Applicant was represented by Mr Moulvi at the hearing, and the Respondent Mr Joseph appeared in person. On the day of the hearing Mr Joseph agreed all items within the application except for the amounts on the invoices of 4 October 2011, referred to as "additional service charges". That agreement included reduction to £50 of the £650 in "additional costs" levied in the year ending June 2009. It is understood from Mr Joseph and Mr Moulvi that the same agreement had been reached with Mrs Joseph earlier in the same week by telephone. The disputed charges to Mr Joseph were for £2560 in additional service and administration charges and to Mrs Joseph were for £2640.

Disputed Additional Charges and the Tribunal's Determination

8. 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.
9. The charges were made up as follows:
- o Directors' loan account charges for loaning funds to Freeholder Account to finance charges owed by lessee of 80 Beulah Road's Refusal to pay charges, insurance, ground rent, accounts fees and for works
£1640
 - o Consultation and continued correspondence re continued non payment by lessee over the last 5 years, approx 20 hours
£400
 - o Charged to Flat 82A - Site visits due to unauthorised alterations to common fire escape and access area to rear of property, including the taking of photos, clearing debris and reinstating copies of insurance documents and contact details to notice area at rear of property
£520
 - o Charged to Flat 80A – As for (iii) above plus further costs of leaks incurred to shop front at 80 Beulah Road, photo evidence and site visits approx 30 hours)

10. The tribunal bears in mind the definition of an administration charge in Schedule 11 of the 2002 Act, and of a service charge in section 18 of the 1985 Act. It is satisfied that the lease does not provide for payment of administration charges except those recoverable under Clause 2(12) and 2(18).
11. The time spent was estimated only, and no copies of invoices to the landlord for such additional charges were provided to the tribunal in evidence. Furthermore, whilst Mr Moulvi claimed to have served three notices under s.146 of the Law of Property Act 1925 on the Respondents, no copies of such notices were produced, Mr Moulvi could not provide the dates on which they were sent, and Mr Joseph denied that any were received.
12. Mr Moulvi referred the tribunal to the application which stated that the landlord intended to apply to court for forfeiture. However, the tribunal is not considering the costs in these proceedings, but the charges made since 2008, and it finds insufficient evidence that these were charges which were in contemplation of forfeiture of the lease. Accordingly, no disputed administration charges are payable by the Respondents except insurance and interest.
13. The tribunal was satisfied that some of the additional service charges demanded were recoverable as the landlord's costs in compliance with the repairing and cleaning obligations in Clause 2(6)(a) and costs in connection with the insurance of the building in Clause 2(6)(b).
14. The invoices largely represented charges for the time of Mr Moulvi and his wife in carrying out various responsibilities, including visiting the property to check for and clear rubbish and bulky items (e.g. a fridge) from the rear and clearing blocked drains; visiting the property when the flats were empty in order to comply with the insurance obligations upon the landlord; keeping the insurer informed when the property was empty for a period of more than 30 days; securing flats; demanding unpaid ground rent and insurance; sending reminders. The charges were not referable to actual time recorded on particular days but had the look of a global "best guess". Mr Joseph said that he himself had paid to have the area outside of the gate to the property cleared of rubbish.
15. It was not in dispute between the parties that rubbish frequently accumulated in the common areas and required removal. There was some dispute as to the extent to which the Respondents' tenants were responsible, but that does not go to the issue at hand. The tribunal takes the view that routine rubbish removal has been carried out and that this would be likely to have been at the expense of the landlord. However, in the absence of any invoices showing that expenditure, and the poor evidence produced as to the amount and dates of such expenditure, the tribunal takes a conservative view and determines that a figure of £250 is reasonable and payable as a service charge by each Respondent in respect

of rubbish removal since 2008 (including estimated interest as an administration charge thereon).

16. The tribunal is also persuaded that there would be likely to have been a cost to the landlord of additional visits to the building when the flats were vacant for long periods of time in order to comply with the requirements of the insurance policy, and in communicating and making changes to the insured risk. Again, however, in the absence of any invoices or adequate evidence the tribunal must make a reasonable estimate and determines that service charges of £250 are payable by each Respondent for additional costs of maintaining the insurance under Clause 2(6)(b) (including estimated interest as an administration charge thereon).
17. Mr Moulvi also apparently charged for borrowing costs associating with obtaining funding to enable the freeholder to insure the building in the absence of financial contribution from the Respondents. However, the landlord has an obligation to insure the building and finance charges (which were not in fact proved on the evidence in any event) are not recoverable under its terms.

Breaches of Covenant

18. Charges were claimed in respect of alleged breaches of covenant. A charge was demanded in respect of losses and time resulting from installing a new security gate to the side of the buildings, which Mr Moulvi said was a breach of the lease. However, Mr Joseph said that he had taken this step in 2010 because the previous gate had been kept in poor repair by the landlord and was a security risk, and a request to Mr Moulvi to repair it was refused. He said the new gate could be exited by pressing a button from within. From Mrs Joseph an amount was demanded arising from damage done to the shop owing to a leak from flat 80A, the repairs having been indirectly funded by the landlord. However, no documentary evidence was produced in support of this.
19. Mr Joseph is a professional landlord, running a property management company which lets out to local authorities. He said he visited the property once a month and it was a very difficult one to manage owing to the landlord's failure to carry out maintenance. He referred to penetrating damp, blocked drains, guttering and roofing problems.
20. The tribunal finds that no sums are payable as service or administration charges in respect of these alleged breaches of lease, which does not provide for charges to be payable in these circumstances. These allegations amounted to claims for damages for breach of covenant, which are a matter for the County Court.
21. The charges included legal fees of approximately £200 for taking advice about the Respondents' breaches of covenant, though no invoice for any such expenditure was produced. The landlord has failed to prove this expenditure and the tribunal disallows it.

Contractual Interest

22. The Applicant was directed by the tribunal to submit a revised interest calculation based on the sums agreed at the hearing to have been outstanding from 2008. The Respondent was given the opportunity to provide an alternative calculation if he did not agree with it.
23. Mr Moulvi submitted by a letter dated 24 June a revised interest calculation copied to the Respondents. He produced a schedule of the Barclays Bank variable interest rates plus 4% throughout the relevant period. No representations have been received from the Respondents upon these interest rates, which the tribunal therefore accepts as correct. This calculation included a figure for the year ending 24 June 2013 in the sum of £465.55, whereas £405.55 was outstanding. The tribunal has made an approximate adjustment to the interest sum according. The tribunal finds the total interest outstanding is £478.57 (Mr Joseph – Flat 82A) and £471.94 (Mrs Joseph – Flat 80A).

Fees and Costs

24. In the letter of 24 June 2013 Mr Moulvi said he was applying for costs. However, he did not say in what amount or give any grounds in support of his application. The tribunal's jurisdiction is limited to an order for costs up to £500 (Schedule 12, paragraph 10 of the Commonhold and Leasehold Reform Act 2002). However, the tribunal does not consider that the Respondents have acted "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings" and declines to make any order for costs against them.
25. The tribunal however considers it appropriate to order the Respondents to reimburse the Applicant with the tribunal fees paid for the application and hearing within 28 days of the date of this decision.

Name: Ms F Dickie

Date: 31 July 2013

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 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) a leasehold valuation 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.

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.