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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AZ/LSC/2014/0063**
Property	:	**50, 52 & 56 Arnulf Street, London, SE6 3EQ**
Applicant	:	**(1) Mr T Atkinson (tenant of flat 56)** **(2) Ms Witherington (tenant of flat 50)** **(3) Ms Campbell (tenant of flat 52)**
Representative	:	**Mr Atkinson**
Respondent	:	**Phoenix Community Housing**
Representative	:	**Mr Richard Parker, Leasehold Consultation Advisor**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**(1) Judge A Vance** **(2) Mr L G Packer** **(3) Mrs J Davies, FRICS**
Date and venue of Hearing	:	**08.05.14 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**08.05.14**

DECISION

Decisions of the tribunal

1. The tribunal determines that the sum of £2,813.11 is payable by each of the Applicants in respect of the costs of major works demanded from them in the 2013 service charge year.

2. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

3. The tribunal determines that the Respondent shall pay the Applicant £440 within 28 days of this Decision in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

4. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by them in respect of the costs of major works demanded from them in the 2013 service charge year.

5. The Applicants are all lessees of flats in a two-storey purpose built block of flats at Arnulf Street, London, SE6 3EQ ("the Building"). There are four flats in total in the Building. The remaining flat is tenanted by a council tenant. The Building forms part of a larger estate containing two additional blocks of four flats.

6. The sum under challenge relates to the installation of a door Entry Phone system that was the subject of a major works consultation in late 2012; with the installation itself taking place in early 2013. The Applicants challenge the sum demanded from them by the Respondent on 27th December 2013 in the sum of £4,539.82 each

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

8. Numbers below in bold and square brackets refer to pages in the hearing bundle.

Inspection

9. 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.

Background

10. The Applicants hold long leases which require the Respondent to provide services and the tenants to contribute towards their costs by way of a variable service charge. A copy of Mr Atkinson's lease dated 01.09.03 is included in the hearing bundle **[31]**. He purchased his flat in 2008. The Applicants did not seek to argue that the costs demanded from them were not payable under the terms of their leases or that the sums had not been validly demanded. Nor did they challenge the consultation procedure followed by the Respondent under s.20 of the 1985 Act. Their sole challenge concerned whether or not the sums demanded from them had been reasonably incurred.

11. The Applicants were first notified of the Respondent's proposal to install an Entry Phone system when it received a notification dated 28.03.12 inviting all tenants in the Block to vote as to whether or not they wanted the Respondent to install the system **[25]**. The proposed system was manufactured by a company called GDX which Mr Parker informed the tribunal was the system favoured by Phoenix over the many properties for which it is the landlord.

12. This GDX system allowed for controlled key-fob access and the notification states that where the installation requires the fitting of doors this was included within their initial cost estimate of £1,750 per long-leaseholder.

13. Shortly after that notification, an email was sent by Mr Michael Sparrow, Team Leader in the Respondent's Liaison & Service Quality team to Mr Atkinson dated 05.04.12 **[27]**. In that email he states that the estimate of £1,750 was averaged out from about 50 other Entry Phone installations that it had carried out in other blocks. He states that the figure quoted in the notification may be an over-estimation.

14. Mr Parker informed that tribunal that he believed that all of the long lessees and the council tenant voted in favour of the installation. This is disputed by Mr Atkinson who stated that he voted against the installation. However, no point was taken by the Applicants as to whether or not it was appropriate for an installation to proceed. Nor was there any point taken as to whether or not this amounted to a work of improvement that was allowed under the terms of the Applicants' leases.

15. The Respondent subsequently sent the Applicants a consultation notice under s.20 of the 1985 Act dated 11.10.12. In that notice estimated total expenditure is stated as being £9,545.58 (which excluded the Respondent's 10% management fee). It is stated that the works were to be carried out under an existing long-term agreement with the Respondent's contractors, Mulalley, and that the intended works may include the installation or replacement of door entry systems and/or

doors, cabling and equipment. Observations were invited as to the proposed works or estimated expenditure but, according to Mr Parker, none were received. Mr Atkinson confirmed that he made no observations.

16. Mr Parker confirmed that by the time that notice was sent, Mulalley's had already surveyed the Building and that they should have been able to form a realistic estimate of the total cost of the required works. He also confirmed that Mulalley's informed the Respondent at around this time that the existing doors were not compatible with the proposed Entry Phone system but that this information was not passed on to the lessees.

17. When the installation work was carried out it included not only the installation of the Entry Phone system but also the improvement of the front entrance steps to allow for disabled access (via a ramp and step) and the fitting of new communal entrance doors to the Block, including an electronic lock to the rear door. Additional key fob readers to the rear doors were also required because, according to Mr Parker, these were required in order to make the system fully functional.

18. When the Applicants were sent the service charge demand based on the final actual cost of the works, the cost had risen to £16,419.33 (excluding the 10% administration charge for the Respondent). The sum demanded had therefore increased from £2,666.40 per lessee (which was the sum demanded in an interim service charge demand in 2013) to £4,539.82. This increase, the Applicants submit was unreasonable.

Case Management Hearing

19. A case management hearing took place on 04.03.14 attended by Mr Atkinson, Ms Witherington and Ms Campbell. Mr Parker also attended. Ms Campbell was added as added as a party to this Application at that hearing. All parties indicated a wish to mediate but wished to attempt informal mediation prior to deciding whether or not to use the service provided by the tribunal. Directions were issued by the tribunal on the same day.

The hearing

20. The Applicants were represented by the First Applicant, Mr Atkinson who appeared in person. Mr Parker attended on behalf of the Respondent.

21. During the course of the hearing Mr Parker handed in a breakdown of the final actual costs of the works. Mr Atkinson did not object to the

late submission of this evidence and the Tribunal allowed Mr Parker to rely upon it. The breakdown is as follows:

Installation/Improvement Front Entrance Steps		£2,090.50
New Communal Entrance Doors to Block		£3,292.00
New Entry Phone system		£8,274.60
Additional Readers to Doors		£620.58
	TOTAL	**£14,277.68**

The Applicants' Case

22. The Applicants contend that;

(i) The sum demanded far exceeded the estimate provided in the consultation notice and was unreasonable.

(ii) Unnecessary work was carried out that had inflated the cost. The doors fitted to the front and rears of the Block were not noticeably different from those already present. Further, the fitting of a disabled ramp was not a matter on which they had been consulted.

(iii) The cost of the Entry Phone system was excessive. They relied on al alternative quote obtained by Mr Atkinson in the sum of £1,175 **[52]** for the installation of a BELL 801 four station system.

The Respondent's Case

23. In its statement of case **[22]** the Respondents conceded that the installation of a disabled ramp was not included within the statutory consultation and that it would not seek to recover the costs involved from the lessees.

24. Half-way through the hearing before the tribunal Mr Parker also agreed that the Respondent would not seek to recover the costs of the door installations.

25. As to the cost of the Entry Phone installation itself, he contended that this was reasonable and that the estimate obtained by Mr Atkinson was for an inferior system and not a like for like quote.

The tribunal's decision and Reasons

26. Having heard evidence and submissions from the parties and considered all of the documents provided the tribunal determines that the amount payable by the Applicants is £2,813.11 each. It considers that this sum has been reasonably incurred. This sum is the amount that the Respondent now seeks from them following the concessions made in respect of the disabled ramp and the installation of the communal doors. It is broken down as follows:

New Entry Phone system	£8,274.60
Additional Readers to Doors	£620.58

	£10,229.46
Mulberry project overheads and profit @15%	£1,334.28

Respondent's Administration Charge @10%	£1,022.95

	£11,252.41
Divided by four	**£2,813.11**

27. The tribunal does not consider there is evidence before it that would justify it finding that the decision taken by the Respondent to install a GDX Entry Phone system was an unreasonable one.

28. It accepts Mr Parker's submissions that such a system adds considerable benefit over the system referred to in the quote obtained by Mr Atkinson which did not operate on a key-fob basis. In the tribunal's view a key fob system allows for greater security in that it allows the Respondent to block individual fobs if these are lost or stolen.

29. It also accepts Mr Parker's submission that there are significant cost savings to be achieved in terms of installation and maintenance of the system given that the Respondent is seeking to install the same system throughout its' properties. Mr Parker informed the tribunal that the Respondent tendered for a maintenance contract for these systems in 2012 and that the quotes received were low because having a uniform system meant lower maintenance costs. He also submitted that the Respondent was having difficulties in securing parts for older

installations installed by the local authority in other blocks. In the tribunal's view these are realistic cost savings, achievable because a - uniform system is being used,

30. As to the actual costs of the system installed, the quote obtained by Mr Atkinson is clearly not a like for like quote. He conceded as much before the tribunal. In its statement of case, the Respondent invited the Applicants' to submit an alternative a quote for a GDX system but the Applicants have not done so. As such, there is not evidence before the tribunal sufficient for it to conclude that the costs incurred by the Respondent in installation of this system are unreasonable.

31. The tribunal also bears in mind that following the concessions made by the Respondent, the revised sum sought from them is close to the figure set out in the s.20 consultation notice issued by the Respondent to which none of the Applicants appear to have submitted observations. It is also close to the sum that Mr Atkinson states that he paid following service of the interim demand and which, he informed the tribunal, he offered in satisfaction of the sum demanded following the actual service charge demanded in December 2013. If the Applicants considered that the sum demanded in the interim demand was unreasonable the tribunal would have expected them to query this at that stage. There is no evidence that they did so and Mr Atkinson had, of course paid his contribution. If no challenges were made at that time it is difficult to see how the revised sum now sought by the Respondent is unreasonable in amount.

Application under s.20C and refund of fees

32. In the application form and at the hearing, the Applicants applied for an order under section 20C of the 1985 Act. Although Mr Parker indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondents may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

33. At the end of the hearing, the Applicant made an application for a refund of the fees that the Applicants had paid in respect of the Application and hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund to the Applicant the application fees paid of £250 and the hearing fee of £190 within 28 days of the date of this decision.

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

34. The tribunal acknowledges that there appears to have been little by way of communication from the Applicants to the Respondent so as to avoid the issue of this Application. However, Mr Atkinson's evidence, which was not challenged by Mr Parker, was that he telephoned the Respondent after receiving the December service charge demand. He proposed that they accept the sum of £2,666.40 paid by him following the interim service charge demand for these major works in satisfaction of the debt. He was, apparently, told that this was unacceptable and the full amount needed to be paid. There was, therefore, some attempt by Mr Atkinson to resolve this dispute and in the light of the response he received it was not unreasonable for him to have issued his Application.

35. The tribunal also notes that whilst Mr Parker returned a form to the tribunal consenting to mediation, that Mr Atkinson did not do so and nor did any of the other Applicants. It is possible, but by no means certain, that if mediation had taken place the costs of the hearing could have been avoided.

36. Despite this, it is the tribunal's view that the Respondent should have realised prior to the issue of this Application that the concessions now made should have been made at an earlier date. It should have realised that the installation of a disabled ramp was not the subject of the consultation process and that given the wording of the ballot notification and the s.20 consultation notice, it was reasonable for the lessees to expect that the costs of any door installation works were included within the estimate stated in the consultation notice. As such, it is difficult to see how the Respondent could have envisaged that the sum demanded in the December 2013 demand was justified given the very large variance from the sum stated in t he consultation notice.

37. On balance, therefore, given the very late concession regarding the costs of the installation of the communal doors the tribunal considers it appropriate to order a refund of the tribunal fees paid

Name: Amran Vance **Date:** 08.05.14

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.