9864

		**FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**
Case Reference	:	**LON/00BBL/LSC/2013/0691**
Property	:	**13 Finden Road, London E7 8DE**
Applicant	:	**Cyril Freedman Limited (landlord)**
Representative	:	**Ms A. Griffiths of Trust Property Management (managing agents)**
Respondent	:	**Mr D. Elliott (leaseholder)**
Representative	:	**In person**
Type of Application	:	**Determination of service and administration charges, (under the Landlord and Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002) following a transfer from the Romford County Court (reference: CY001171)**
Tribunal Members	:	**Professor James Driscoll, solicitor, (Tribunal Judge), Mr Michael Cartwright RICS and Mrs Lucy West**
Date and venue of Hearing	:	**The hearing took place on 24 February 2014**
Date of Decision	:	**14 April 2014**

The decisions summarised

1. For the service charge year 2012, the accountancy fees of £54.00 were agreed; we determine that the leaseholder's share of the costs of insuring the building of £606.97 were reasonably incurred ; we determine that the leaseholder's share of the costs of repairs and maintenance of £9.00 were reasonably incurred; we determine that the leaseholder's share of the costs of commissioning a health and safety report of £177.00 were reasonably incurred; we determine that management costs of £190.00 were reasonably incurred; and we determine that the consultation requirements for planned major works were complied with and that the scope of the projected works were reasonable.

2. As to the proposed major works we determine that the estimated figure of £7,117.40 should be reduced by the leaseholder's costs of carrying out repairs to the windows of his flat and the costs of the works to the front wall to the entrance of the building. We determine that the fees of Benjamin Mire Chartered Surveyors should be based on 10% of the adjusted costs of the major works.

3. Turning to the service charge year 2013 we determine that the estimated costs for this period are reasonable in principle. These are the leaseholder's proposed share of the costs of cleaning (£312.00), building insurance (£660.00), management fees (£190.00), professional fees (£180.00) and repairs and maintenance (£750.00). We determine that the costs charged for seeking to recover the service charges of £67.20 were reasonably incurred as an administration charge under the 2002 Act.

4. No order restricting any professional costs under section 20C of the 1985 Act is made.

5. The claim should be returned to the Romford County Court for any further action that may be needed.

Background

6. The parties to this application are respectively the landlord and the leaseholder of one of the flats in the subject premises which consists of a converted block of two flats both held on long leases. Mr Elliott, the leaseholder, owns the ground floor flat on a long lease. He told us that he purchased the flat in 1990. He sublets the flat on an assured shorthold tenancy and the current rent he receives is £650.00 per month.

7. The other flat is on the first floor of the building and it is also held on a long lease. At the hearing we were told that both flats are occupied by tenants holding assured shorthold tenancies.

8. Under the terms of the long leases the landlord is responsible for insuring, repairing and maintaining the building. In return the leaseholder has to pay one-half of the landlord's costs of discharging these obligations. These

service charges are calculated on an annual basis with the service charge period being the calendar year. The landlord is entitled to make two interim demands for advance payments of these charges, one in January and other in June each year. In the usual way the landlord sends the leaseholder a demand for the payment for a particular service charge year, which will consist of a demand for additional funds if the sums received were less that the landlord's actual expenditure for that period, or a credit if the interim sums were greater than the landlord's expenditure.

The County Court claim

9. The landlord started court proceedings (and these proceedings are now within the jurisdiction of the Romford County Court) seeking recovery of service charges and administration charges (as well as statutory interest and costs). It is common ground that under the terms of the lease the landlord must repair, maintain and insure and manage the premises and that the landlord's costs incurred in so doing may, in principle, be recovered as service charges.

10. The leaseholder has not paid service charges for the year 1 January 2012 to 31 December 2012. Nor has he paid the interim demands for the year 1 January 2013 to 31 December 2013.

11. In summary, this is because he contends that the quality of management and services was poor and that he was justified in withholding the charges because of the poor service he received as a leaseholder.

12. The County Court proceedings were started in 2013 and the leaseholder filed a defence. In total the landlord claimed the sum of £9,438.76 (inclusive of the court fee, standard costs and interest). On 17 September 2013 the Court transferred that part of the claim relating to the unpaid charges to this tribunal for a determination under section 27A of the 1985 Act (for the service charges) and schedule 11 of the 2002 Act (for the administration charges).

The case management conference

13. At the pre-trial review held on 29 October 2013 the landlord was represented by Ms Griffiths of Trust Property Management Limited, managing agents appointed by the landlord. Mr Elliott, the leaseholder, appeared in person.

14. Various directions were given and in accordance with these directions the managing agents prepared a bundle of documents for the hearing which was scheduled for 24 February 2014. The parties completed a 'Scott Schedule' summarising their respective positions on the disputed items.

The hearing

15. Ms Griffiths and Mr Elliott attended the hearing and each of them addressed the Tribunal and responded to questions. At the request of the Tribunal, Ms Griffiths was able to obtain additional information and documents which she presented to us.

16. At the start of the hearing we told the parties that we did not consider that it was necessary for us to carry out an inspection of the subject premises. The parties agreed that such an inspection was unnecessary in this case.

17. At the start of the hearing we explained to the parties that under the county court order transferring the service charge claim our jurisdiction is to determine the reasonableness of the service charges (under section 27A of the 1985 Act) and the reasonableness of any administration charges (under section 158 and schedule 11 of the 2002 Act). (Copies of the relevant statutory provisions are contained in the appendix to this decision).

18. There are two service charge periods in dispute: 2012 where a determination of the final figures for this period is required; and 2013 where the figures represent the landlord's estimate of what is likely to be spent for that year.

19. During the hearing we considered a schedule of the different items claimed to which each party had appended their comments. This was a useful document and we are grateful to the parties for completing it.

The 2012 service charge period (actual expenditure)

20. The first disputed item, the charges for accountancy, were agreed by the parties so it is unnecessary for us to make a determination.

21. Turning to the second item, the costs of the insurance, the leaseholder told us that he has made his own enquiries and that he could have arranged similar insurance cover at a more competitive rate. (He provided an email in support of this proposition - on pages 33 to 36 of the bundle). In response, the landlord included a letter from their insurance brokers, a firm called Lorica Insurance Brokers, who deal with the insurance cover for all of the landlord's property portfolio. The landlords consider that they are entitled to place insurance with an insurer of their choice and that additional cover is needed for properties such as this where the leaseholder does not reside in the flat.

22. The leaseholder also challenges the management charges which he says are too high and unfair as he does not consider that the current managing agents are doing much to justify their fees. However, the landlord claims that the charges, based as they are on £265.00 (exclusive of VAT), is a reasonable fee for properties of this type in London.

23. He also questions a charge of £9.00 which the landlord says was incurred by a health and safety report.

The 2013 service charge period (estimated expenditure)

24. The landlord estimates that it will incur £4,562.00 during this service charge year. This is made up of the following items each of which the leaseholder challenges. The leaseholder told us that he intends to exercise the right to manage (under Part 2 of the Commonhold and Leasehold Reform Act 2002). The leaseholder's share of these estimated costs is the sum of £2,281.00.

25. The simplest way of dealing with this is to say that the landlord proposes (a) to engage cleaners to clean the common parts, (b) to arrange the insurance for the building at a cost of £1,320.00, (c) a proposed management fee of £624.00 (based on a fee of £260.00 per flat), (d) proposed professional fees of £360.00 to supervise works and (e) proposed costs of repairs and maintenance of £1,500.00 based on a report they have commissioned.

26. The leaseholder objects to these proposed charges. He considers that he should have the opportunity of finding a suitable cleaning company; as for previous years he believes that suitable insurance can be purchased more cheaply; he contends that the proposed management charges are too high; he would like the opportunity of finding a company to supervise works; he has not seen the report the landlord relies on for the repairs and maintenance works estimates.

The reasons for our decision

27. We deal first with the insurance costs. In our experience leaseholder complaints about the costs of insurance are very common and understandable. It is, however, difficult for leaseholders to obtain quotations for building insurance which are a valid comparison. This is partly to do with cases such as this one where a landlord with a large portfolio of properties wants to arrange insurance for all of the properties for both reasons of convenience and the expectation that the costs will be less when several properties are insured together.

28. Despite our sympathy with the position of leaseholders seeking to challenge the costs of insurance we have concluded that the landlord has taken reasonable steps to obtain insurance at a competitive cost. The costs of the insurance for the two service charge years in dispute were reasonably incurred.

29. Turning next to the management charges, appointing a manager to manage a building containing just two flats might be seen excessive but a corporate landlord must of necessity appoint a manager for a building. Under the lease the landlord is entitled to appoint a manager and on the basis of our professional knowledge and experience we do not consider that the charges are out of line with such charges in that part of London for buildings of that size.

30. We note that the leaseholder is planning to exercise the statutory right to manage. If he and the other leaseholder were to succeed with such an application (under Part 2 of the Commonhold and Leasehold Reform Act 2002) they would through an RTM company take over the landlord's responsibilities under the leases. Until such time as the leaseholder undertakes such an exercise the landlord is entitled to appoint a manager and to make reasonable charges for this.

31. This leads us to the conclusion that the costs of employing a manager were reasonably incurred.

32. We conclude that it was reasonable and sensible for the landlord to commission a health and safety report and the costs are reasonable.

33. As to the major item for the 2012 service charge period of projected works we are satisfied on the basis of the papers supplied and the arguments advanced at the hearing that there were no flaws in the statutory consultation process. We were told that the costs claimed for this period have yet to be incurred. Although we find that the consultation process was carried out correctly the leaseholder will be entitled to challenge the quality of the works and the costs when they are eventually carried out.

34. We turn now to the estimated charges for the service charge year 2003. We remind ourselves that these are estimates and that under the lease the landlord can require the leaseholder to make interim payments. Our jurisdiction under section 27A of the 1985 Act extends to proposed service charge expenditure (see section 27A(3) of the Act). This serves to protect a leaseholder from having to pay excessive charges in advance. We do not consider that the leaseholder has challenged these proposed charges successfully as they are reasonable estimates of what the landlord proposes to do. Again, the leaseholder will have rights to challenge the actual charges or the quality of the works or services in due course.

Application under section 20C

35. We were asked to make an order under section 20C of the 1985 Act in relation to any costs incurred in the conduct of these proceedings and limiting or prohibiting their recovery as a future service charge. However, we do not consider it appropriate to make such an order in this case. As the leaseholder has declined to pay charges for the two years in question, the landlord, having insured the building, appointed managing agents and commissioned a report, had little alternative but to bring proceedings to recover the service charges.

36. No order is made, therefore, under section 20C of the 1985 Act limiting recovery of any professional charges or related costs occasioned in the course of the proceedings before this tribunal. However, any issues relating to the recoverability of such costs under the terms of the lease, or their reasonableness are not affected by this determination. In other words, any leaseholder could challenge such charges if they are included in a future service charge.

37. Finally, this matter is now to be transferred back to the Romford County Court for any further action that may be needed. We express the hope that in light of our determinations that the parties may now reach agreement over the payment of the service charges to avoid any further costs or delays.

Professor James Driscoll
Solicitor and Tribunal Judge

Appendix of the 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
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.
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.
But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

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 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.
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.

Schedule 11, Commonhold and Leasehold Reform Act 2002

Meaning of "administration charge"

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.
Reasonableness of administration charges
2
A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
3
(1)
Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

(a)
any administration charge specified in the lease is unreasonable, or
(b)
any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
(2)
If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
(3)
The variation specified in the order may be—
(a)
the variation specified in the application, or
(b)
such other variation as the tribunal thinks fit.
(4)
The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
(5)
The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
(6)
Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.
Notice in connection with demands for administration charges
4
(1)
A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
(2)
The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
(3)
A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
(4)
Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.
Liability to pay administration charges
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).
Interpretation
6
(1)
This paragraph applies for the purposes of this Part of this Schedule.
(2)
"Tenant" includes a statutory tenant.
(3)

"Dwelling" and "statutory tenant" (and "landlord" in relation to a statutory tenant) have the same meanings as in the 1985 Act.

(4)

"Post-dispute arbitration agreement", in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen.

(5)

"Arbitration agreement" and "arbitral tribunal" have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).