



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

Case Reference : **LON/00AJ/LSC/2014/0535**

Property : **147 Jeymer Drive,
Greenford,
Middlesex UB6 8ND**

Applicant : **London Borough of Ealing**

Representative : **Mr Darryn Harris
Applicant's in-house solicitor**

Respondent : **Dr Vivak Duggal &
Mr Yashpal Duggal**

Representative : **Mr Naeem Majid**

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

Tribunal Members : **Judge J E Guest
Mrs L West
Mrs J Davies FRICS**

**Date and venue of
Hearing** : **19/03/2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **27/03/2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £3,248.48 is payable by the Respondents in respect of the service charges for major works undertaken in 2007/08.
- (2) The tribunal makes the determinations as set out under the various headings in this decision.
- (3) 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.
- (4) The tribunal determines that the Respondents shall pay the Applicant £190.00 within 28 days of this Decision in respect of the reimbursement of the tribunal hearing fee 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") as to the amount of service charges payable by the Respondents in respect of service charges that relate to major works undertaken in 2007-2008.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by its in-house solicitor, Mr D Harris. Also present to assist Mr Harris was the Applicant's paralegal, Mr P Casthenetti. The Applicant's rechargeable works officer, Ms C Silva, and its projects manager, Mr K Jobes, both attended and gave oral evidence.
4. The Respondents are father and son. The second Respondent, Mr Y Duggal, attended and he was represented/assisted by Mr N Majid. The first Respondent, Dr V Duggal, did not attend the hearing. Mr Y Duggal explained that his son was working so unable to attend. Mr Y Duggal informed the tribunal that he had all dealings with the Applicant in relation to the disputed service charges. The tribunal, therefore, considered it appropriate to proceed with the hearing in the absence of the first Respondent.
5. The Respondents' expert witness, Mr H Akbarpour, also did not attend the hearing. Mr Y Duggal gave varying reasons for Mr Akbarpour's

absence, which included Mr Akbarpour's ill health and Mr Y Duggal's unwillingness to pay his expert's fees. The directions made by the tribunal at the case management conference on 11/11/2014 gave both parties permission to rely upon expert evidence but also made clear that such evidence would only be permitted if the expert attended to be cross examined (see paragraph 12 of the directions). As Mr Akbarpour's evidence could not be tested by way of cross-examination, the tribunal decided that the evidence contained in Mr Akbarpour's witness statement would be treated as a statement of facts, not as an expert's report.

6. A bundle was filed by the Applicant on 16/03/2015 in accordance with the directions of 11/11/2014. On 18/03/2015, a supplementary bundle was filed by the Respondents. Although there was no direction for the provision of an additional bundle by the Respondents, the Applicant had no objection to this. During the course of the hearing, some further evidence was provided by the Applicant, namely a specification of works that had been prepared at the tender stage of the major works, a letter from Mr Y Duggal to the Applicant dated 27/01/2015 and a letter from the Applicant to Mr Y Duggal dated 05/02/2015.

The background

7. The property that is the subject of this application is a one bedroom flat situated on the second floor of a three storey purpose built block of flats (117 to 151 Jeymer Drive) constructed in 1977. The block consists of a total of 18 flats and forms part of a larger estate incorporating another block also consisting of 18 flats (153 to 187 Jeymer Drive).
8. Photographs of the building were included in the hearing bundle. These photographs had been taken by Ms Silva in January 2015. 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.
9. The Respondents acquired the leasehold interest on 15/03/2007. They have since let the property.
10. The lease is for a period of 130 years commencing on 01/01/1981. The terms of the lease require the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

11. The major works undertaken in 2007/08 were part of the Decent Homes programme of works. The Respondents were initially required

to pay a contribution of £6,232.34. The Applicant later revised the invoice having identified an accounting error in relation to the preliminaries. On 01/07/2011, a revised invoice was sent requiring the Respondents to pay a contribution of £5,383.40. Following the case management hearing and in an attempt to resolve the dispute, the Applicant reduced the service charges demanded to £3,248.48.

12. In the statement of case prepared by Mr Y Duggal, he took issue with the cost of certain elements of the major works, in particular in relation to window replacement, asbestos, scaffolding, preliminaries, professional fees and management fees. Mr Y Duggal also submitted that the Applicant had failed to comply with the consultation process required by section 20 of the Landlord and Tenant Act 1985 so that, in any event, his contribution should be limited to £250.00. To date, the Respondents have made no payment towards any of the costs of the major works.
13. 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.

Section 20 consultation

14. On 11/01/2007, the Applicant sent replies to pre-contract enquiries raised by the solicitors acting for the then leaseholder, Mr J Levkaite. This document included a statement that the Applicant intended to undertake a capital programme of works within the next 7 years. The document also set out the then leaseholder's current service charge arrears and service charge arrears for previous major works. No estimated charges were given. Mr Harris informed the tribunal that the Applicant does not seek any payment on account in respect of service charges so no estimated charges were stated.
15. On 24/01/2007, the Applicant served notice of intended works under section 20 on Mr Levkaite. This set out the capital programme of works. The notice included a statement that, "*if you are in the process of selling your home, you should give a copy of this Notice to the prospective purchaser*". The tribunal accepted Mr Y Duggal's assertion that the seller had not made him aware of the notice.
16. Some confusion recently arose as the Applicant re-produced a copy of the notice dated 24/01/2007 with the Respondents' details. This was an error caused by the Applicant's database merging information. Mr Y Duggal accepted this error. It was of no relevance to the central issue, which was whether the Applicant had complied with the section 20 consultation requirements.

17. Mr Y Duggal did not contend that the consultation process was in itself defective. His argument was that the Applicant had not disclosed the works in answer to the pre-sale enquiries and that Mr Levkaite had not provided him with a copy of the notice.

The tribunal's decision

18. The Applicant complied with the statutory consultation requirements under section 20 so that the service charges due are not limited to £250.00.

Reasons for the tribunal's decision

19. The notice dated 24/01/2007 was properly served on the then leaseholder. The failure of the then leaseholder to supply a copy of the notice to the Respondents is irrelevant to the issues to be determined by the tribunal. The tribunal decided that the Applicant complied with its statutory obligations, as the notice was correctly served.
20. The replies to the pre-sale enquiries stated that major works were due to be undertaken within 7 years. At the time of the replies, no section 20 notice had been served. The information given by the Applicant was, therefore, correct.

Windows

21. The tribunal heard from Mr Y Duggal that he visited the property with Mr Akbarpour in April 2010. Mr Duggal informed the tribunal that his tenant at the time informed him that nothing had been done to the windows. Later in the hearing, Mr Duggal claimed that the window replacement had been undertaken prior to his purchase. No documentary evidence was provided by Mr Duggal regarding the condition of the windows at the time of purchase. The only documentary evidence regarding the windows put forward by Mr Duggal was a letter from Mr Akbarpour dated 02/04/2010 that queried the number of windows that had been repaired.
22. The Applicant disclosed a FENSA certificate, which stated that the new windows had been installed in the property on 25/10/2007. Mr Y Duggal alleged that the certificate was a fraudulent document.
23. The Applicant also provided photographs of the block taken by Ms Silva in about January 2015. The Applicant's project manager, Mr Jobes, also inspected the block in March 2015 and he stated in his evidence that the state of the windows at his inspection was consistent with the windows having been replaced in 2007/08.

The tribunal's decision

24. The tribunal determines that the sum for the windows is allowed in full.

Reasons for the tribunal's decision

25. The tribunal made a finding of fact that the windows were installed in the property on 25/10/2007, as stated in the FENSA certificate. The tribunal considered that this document was accurate in view of the evidence of Mr Jobes and the photographs that showed that the windows in the block had been replaced by new units at some point since its construction in 1977. The tribunal considered it far more likely that the windows had been replaced in October 2007, rather than the FENSA document being fake.
26. Further, Mr Duggal's evidence was also not considered reliable due to a number of inconsistencies. Mr Akbarpour had queried the number of windows that had been replaced when he inspected in April 2010. There was no claim at that time that the new windows had not been installed as later alleged. During the course of the hearing, Mr Duggal changed his position and claimed that the windows had, he said, been replaced prior to his purchase. The tribunal found that the evidence put forward by the Applicant was far more reliable.

Asbestos

27. In his statement of case, Mr Y Duggal argued that the money spent on the removal of asbestos would have been better spent on installing a new door entry system, as the Applicant had originally suggested at the start of the consultation period. Mr Duggal made no specific challenge as to the cost of the works and he put forward no evidence of any comparative cost.
28. Mr Jobes was not the project manager who oversaw the major works. The project manager responsible left shortly before the conclusion of the contract. Mr Jobes told the tribunal that he had a total of 11 years experience as a project manager with experience in housing/maintenance prior to this. Mr Jobes considered it likely that asbestos had been found in the ceiling and under the stairs in the communal parts and that this would have to be removed prior to any refurbishment of those areas. Mr Jobes considered that the amount charged was typical for works of this nature.
29. Following the case management hearing, the Applicant reduced the charge relating to the asbestos works so that it was limited to the amount stated in a quote. Mr Harris informed the tribunal that the Applicant had reduced this aspect of the charge for pragmatic reasons in the hope that this would bring about a settlement. Mr Harris

explained that the Applicant's paperwork regarding the major works had been placed in storage. He told the tribunal that the Applicant keeps such paperwork for a period of 6 to 7 years. Although the documents had not been destroyed, Mr Harris said that the Applicant had been unable to locate them. It was for this reason that the Applicant reduced the asbestos costs to the amount stated in a quote, as the invoice for the works was not available.

Tribunal's decision

30. The tribunal determines that the sum for asbestos is allowed in full.

Reasons for the tribunal's decision

31. The tribunal considered it likely, given the age of the building, that some areas would have needed treatment for asbestos prior to the refurbishment works. The tribunal found Mr Jobes' evidence to be credible.
32. Mr Duggal did not dispute the costs themselves and he did not supply any evidence of comparative costs. In the circumstances, there was no basis upon which to consider the costs as anything other than reasonable.

Scaffolding

33. In his statement of case, Mr Y Duggal queried when the scaffolding had been installed and removed. He did not seek to challenge the costs themselves nor did he produce any evidence of comparative costs. During the course of the hearing, Mr Duggal queried whether he had been charged for scaffolding to other blocks. Mr Akbarpour had queried the term 'access' in his letter of 02/04/2010, but not made any comment on the actual costs.
34. Mr Jobes explained in his oral evidence that it was likely that the scaffolding costs had been charged at a fixed rate, as this was the norm. Mr Jobes considered, in his experience, that the scaffolding cost was not unreasonable.
35. Mr Harris produced a specification of works during the hearing that confirmed that the scaffolding cost only related to the Respondents' block.

Tribunal's decision

36. The tribunal determines that the sum charged for scaffolding is allowed in full.

Reasons for the tribunal's decision

37. Mr Duggal has only disputed certain aspects of the major works. He has not challenged other aspects of the works, such as works to guttering, fascias and soffits. In effect, Mr Duggal accepted that scaffolding was required, as these other works could not reasonably have been completed without it.
38. Mr Duggal provided no evidence regarding any alternative costs. The tribunal, therefore, accepted Mr Jobes' evidence that the cost of the scaffolding was not unreasonable.

Preliminaries

39. Mr Jobes explained in his oral evidence about the nature of preliminaries. These are the incidental costs for the setting up and administering of the works whilst on site. This includes such items as staff offices, cabins, utilities for the workmen, etc.
40. Mr Duggal challenged these costs on the grounds that there was no justification for such expense.

Tribunal's decision

41. The tribunal determines that the costs for preliminaries be allowed in full.

Reasons for the tribunal's decision

42. The works undertaken to the Respondents' block were major works. Using its own expertise and knowledge and having regard to the extent and nature of the works, the tribunal considered it reasonable that the expense of preliminaries had been incurred by the Applicant and that such costs were reasonable.

Professional fees

43. Ms Silva stated in her oral evidence that the professional fees of 7.7% had been agreed and she did not consider that such an expense was unreasonable. She explained that the works went out to public tender so as to achieve a competitive price. Ms Silva also explained that fees can vary between contracts but this is dependent on the overall size of the contract.
44. Mr Harris submitted that the tendering process was subject to the opportunity for public scrutiny. The tender was advertised in an EU journal.

45. Mr Y Duggal argued that the works constituted cleaning and repairs only so that professional fees were not justified. He also sought to adduce evidence regarding the percentage charged in an unrelated contract. Mr Harris objected to this on the grounds that Mr Duggal had not previously disputed the costs on this basis. The tribunal considered the other percentage as irrelevant since there was a complete absence of information about the extent and nature of the unrelated contract.

Tribunal's decision

46. The tribunal determines that the sum charged in respect of professional fees be allowed in full.

Reasons for the tribunal's decision

47. The contract had been the subject of a tendering process that was open to public scrutiny. Using its own expert knowledge, the tribunal accepted Ms Silva's evidence that the percentage charge for professional fees was not unreasonable given the nature of the contract.
48. The tribunal also rejected Mr Duggal's argument that there was no justification for any professional fees. It was apparent from the nature and extent of the works that professional fees had been reasonably incurred.

Management fees

49. The Applicant claimed management fees in relation to the consultation process, service of notices and demands, liaising with residents, etc. Mr Duggal again contended that such fees were unnecessary. He considered that this was a minor programme of works and that the management fees should be incorporated into any standard management fees.

Tribunal's decision

50. The tribunal determines that the charge for management fees be allowed in full.

Reasons for the tribunal's decision

51. The nature of the works undertaken clearly fell outside routine repairs and maintenance. The works were major works and formed part of a large contract. Given this, the Applicant had no option but to carry out management functions that were separate from its usual role.

52. The lease provides that the Applicant may charge a separate management fee for major works (Clause 2(A)(i)). Therefore, the charges had been properly incurred.
53. Relying upon its own expert knowledge and experience, the tribunal considered that the Applicant's management charge of 5% was well within the standard range of charges levied in such circumstances. The tribunal, therefore, found that the charge was reasonable.

Application under s.20C and refund of fees

54. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondents to refund the hearing fee paid by the Applicant within 28 days of the date of this decision.
55. The tribunal noted that there had been mistakes made by the Applicant in relation to the charge for preliminaries that later had to be revised and that there was also delay on its part in addressing the Respondents' concerns. However, after the case management conference, the Applicant revised the charges still further, not because of any error in its calculations but in an attempt to bring about a settlement. The Respondents, however, continued to dispute the remaining charges without any real grounds to do so. The Respondents largely sought to put the Applicant to proof and made unsubstantiated allegations. The Respondents achieved nothing by pursuing this position at the final hearing and, accordingly, the tribunal determined that the hearing fee must be reimbursed.
56. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that an order be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Judge J E Guest

Dated: 27/03/2015

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

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).