



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

Case reference : LON/00AG/LSC/2015/0490 &
LVT/2015/0013

Property : Flats 2 & 3, 28 Church Row,
London, NW3 6UP

Applicant : Esther Fitzgerald

Representative : In person

Respondent : Central Property Investment
Limited

Representative : Mr C Maunder-Taylor, Managing
agent

Type of application : For the determination of the
reasonableness of and the liability
to pay a service charge and
variation of a lease

Tribunal members : Judge Evis Samupfonda
Mr John Barlow FRICS

**Venue & date of
hearing** : 10 Alfred Place, London WC1E 7LR
19 February 2016

Date of decision : 21 March 2016

DECISION

Decisions of the tribunal

- (1) In respect of the application under section 27A Landlord and Tenant Act 1985 for the determination of the reasonableness and liability to pay service charges, the tribunal determines that the sum of £250 in respect of the Interfurnish invoices, £1,330.21 for all of the invoices from Peckfords and £1250.35 in respect of the Fire alarms repairs and maintenance is the amount payable by the Applicant in respect of the service charges for the period 22 March 2014-31 December 2014.
- (2) In respect of the application under section 37 (1) Landlord and Tenant Act 1987, the tribunal makes the Order varying the leases of Flats 2 & 3, 28 Church Row, London NW3 6UP in the terms as set out in the Draft Order annexed to this decision.
- (3) The tribunal does make 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 does not make an order under section 38 (10) of the Landlord and Tenant Act 1987 providing for any party to the respective leases to pay, to any other party to the lease or any other person, compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.

The applications

1. There were two applications before the tribunal. In the first application, Ref LON/00AG/LSC/2015/0490, the Applicant is the tenant of Flat 2, Ms Fitzgerald who sought 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 her in respect of the service charges for the period 22 March 2014-31 December 2014.
2. In the second application, Ref LON/00AG/LVT/2015/0013, the roles were reversed. The Applicant was the freehold owner and the Respondents were Ms Fitzgerald and Mr Laurent Combe tenant of Flat 3. The Applicant sought a variation order of the leases of Flats 2 & 3, 28 Church Row, London NW3 6UP pursuant to section 37 (1) of the Landlord and Tenant Act 1987.

The hearing

3. The hearing of the applications took place on 19 February 2016. Ms Esther Fitzgerald appeared in person. She was accompanied by her son and assisted by her friend Ms V Nichol. Mr C Maunder-Taylor,

Managing Agent represented the freeholder. Ms L Moniatis, Property Manager, accompanied him. Mr Combe did not attend and was not represented.

4. Immediately prior to the hearing the parties handed in a revised schedule of the proposed variation of apportionment of the service charges under the terms of the respect leases. It was explained to the tribunal that the parties had reached an agreement as to the terms of variation and a copy of the draft order sought was submitted.

The background

5. The properties that are the subject of the applications comprise the two residential units which are situated on the second and third floors of a Grade 11 listed building. The basement, ground and first floors provide commercial and office accommodation which is let to various tenants.
6. 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.
7. The Applicant in respect of case Ref LON/00AG/LSC/2015/0490 holds a long lease of Flat 2 that requires the landlord to provide services and for the tenant to contribute towards their costs by way of a variable service charge.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination in the first application as follows:
 - (i) The payability and/or reasonableness of service charges for the period 22 March 2014 to 31 December 2014.
 - (ii) Whether an order should be made under section 20C of the 1985 Act.
 - (iii) In respect of the second application, whether an order should be made varying the leases in terms as set out in the draft order pursuant to section 37(1) and whether an order should be made under section 38 (10) of the 1987 Act
9. 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.

Application under s27A of the Landlord and Tenant 1985 Act.

10. In this application, Ms Fitzgerald challenged the reasonableness of the invoices from Interfurnish Carpets Ltd totalling £2991.70 and Peckfords Electrical Ltd totalling £1330.21 and the invoices from One Price Fire Protection Ltd for £1250.35.
11. With regards to the invoices from Interfurnish Ltd she stated that although she received four separate invoices, all the work was carried out around the same time and related to the floor work and partial re-carpeting of the common parts. A number of floorboards were replaced, and then the floorboards were varnished. The stair rods were refurbished, which she considered to be unnecessary. The carpet on three stair treads was replaced. She stated that as the cost of the floor work exceeded £250 per leaseholder, the landlord was required to serve a notice under section 20 of the 1985 Act prior to the floor related work being carried out and this was not done. Therefore the landlord must be limited to recovering only £250 from each lessee for this work.
12. With regards to the invoices from Peckfords, she said that again the landlord failed to serve a notice under section 20 of the Act as the costs of the works exceeded £250 per leaseholder.
13. Ms Fitzgerald also challenged the reasonableness of the costs incurred in respect of the repairs and maintenance of the fire alarms on the basis that the costs incurred were excessive, it was not necessary for the fire alarm to be tested by an expert and the materials could be obtained at a cheaper price. She provided alternative costings and a comparable quote from Gary Whybrow.
14. With regards to the Interfurnish invoices, Mr Maunder-Taylor stated that a risk assessment was carried out and this identified a number of broken floorboards. A decision was taken to sand down and repair the floorboards and replace the broken ones. This work cost £840. It was then decided that the boards should be varnished and this also cost £840. The carpet on three steps was identified to be a trip hazard and so it was replaced and this cost £313.20. He added that the landlord wished to ensure that the stair rods were in good condition and so they were refurbished which cost £998.50. He submitted that although the invoices were dated July 2014 and served at the same time, the works carried out represented individual items of work and a notice under section 20 was not required.
15. With regards to the Peckfords invoices, he stated that they represented works carried out as a result of day-to-day call outs in response to complaints and thus section 20 did not apply.

16. With regards to the fire alarms invoices, he said that the costs were reasonably incurred. He explained that there is a legal obligation for the fire alarm to be tested by a Responsible Person. Any liabilities that may flow from failure to do so will fall on the landlord and the managing agent. Ms Moniatis received the comparable evidence that Ms Fitzgerald submitted and when she considered it, it was decided that no real benefit would be gained from terminating the current contract. Mr Maunder-Taylor said that the landlord would consider using another person to test the fire alarm subject to suitability and cost.

The tribunal's decision

17. The tribunal determines that the amount payable in respect of the Interfurnish invoices is £250.00. The amount payable in respect of the Peckfords invoices is £1330.21. The amount payable in respect of the repairs and maintenance of the fire alarms is £1,250.35.

Reasons for the tribunal's decision

18. With regards to cost of work undertaken by Interfurnish, the tribunal was not provided with the dates when the floor work was carried out. The tribunal was given the relevant invoices and it observed that they were all dated July 2014 with three being dated 30/7/2014. Ms Fitzgerald's evidence that she observed all the work being carried out around the same time and that she received all four invoices at once was not challenged. The tribunal considered the nature of the floor work undertaken. It was not persuaded by Mr Maunder-Taylor's submissions that the work represented individual separate sets of work. It took the view that following a risk assessment that identified necessary work such as broken floor boards, it would be reasonable to expect that a landlord who takes the decision to replace those boards would also anticipate that sanding down and varnishing would be required so that a uniform appearance both in colour and finish would be achieved. Furthermore, the tribunal was of the view that it would be reasonable to expect that a carpet that was identified to be a trip hazard would be replaced at the same time. Mr Fitzgerald's evidence that it was unnecessary for the landlord to refurbish the stair rods was also not challenged. The reason given to the tribunal for such work was that the landlord wanted to ensure that the stair rods were in good condition. There was no evidence to demonstrate that the work was necessary or required. Taking into consideration all of the circumstances, the tribunal concluded that the floor works were qualifying works within the meaning of section 20, that they were the subject of the same contract by Interfurnish, they were similar in character and all done more or less at the same time, therefore they formed part of a single set of works. Consequentially, as the contributions from each leaseholder exceeded £250, the landlord was required to serve a notice under

section 20. As it failed to do so, the amount that is recoverable from each leaseholder is therefore £250 in accordance with the Act.

19. With regards to the invoices from Peckfords, the tribunal considered that the work carried out represented separate individual jobs carried out in response to either call out or as repair and maintenance work. Thus the landlord was not required to serve a notice under s20 of the Act.
20. With regards to the fire alarm invoices, it was agreed by both parties that a weekly fire alarm testing was a requirement under the relevant regulations and a responsible person should carry this out. The tribunal compared the cost incurred by landlord's contractor with that of the alternative lower quote provided by Ms Fitzgerald from Mr Whybrow. Although not exactly like for like, the landlord's contractor, whilst more expensive than Mr Whybrow, the difference in price was not so great to the extent that the tribunal could conclude that the costs incurred by the landlord was not reasonable. Both parties acknowledged that this was an area that they would be willing to discuss further in order to resolve a long standing ongoing issue.

Application under section 37 of the landlord and Tenant Act 1987

21. As stated above the parties reached an agreement at the commencement of the hearing.

The tribunal's decision

22. The tribunal determines that Clause 2 (1) (b) of the leases for Flats 2 and 3 should be varied in the same terms as the Draft Order annexed to this decision.

Reasons for the tribunal's decision

23. The tribunal considered the original leases and determined that a variation was required in order to reconcile the total amount of service charges being collected by the landlord under the terms of all the leases.

Application under s.20C and refund of fees

24. In the application form and at the hearing, Ms Fitzgerald applied for an order under section 20C of the 1985 Act. Although Mr Maunder-Taylor 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 Landlord's costs may not pass

any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

25. With regards to the application under the 1987 Act, there was no application from any party for the tribunal to make an order of compensation pursuant to s38 (10) of the Act. Mr Maunder-Taylor indicated that the Landlord would meet all the costs incurred in respect of the variation of the leases other than any legal costs that maybe incurred by Mr Combe and Ms Fitzgerald in seeking legal advice on the revised leases.

Name: Judge Evis Samupfonda **Date:** 21 March 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

Deed of Variation in respect of

1. Flat 2, 28, Church Row, London, NW3 6UP

That under Clause 2(1) (b) the following shall be submitted

“To pay to the Lessor 15.5% of the costs, charges and expenses incurred by the Lessor in carrying out its obligations under Clause 3(b) hereof relating to insurance premium, conducting media, external repairs and maintenance and management fees and 22% of the costs, charges and expenses incurred by the Lessor in carrying out its obligations under Clause 3(b) hereof in relation to common parts repairs and redecorations such contribution shall be ascertained and certified by the lessors managing agents once a year on the 25th day of March in each year commencing on the 25th day of March 2014.”

2. Flat 3, 28, Church Row, London, NW3 6UP

“To pay to the Lessor 14.25% of the costs, charges and expenses incurred by the Lessor in carrying out its obligations under Clause 3(b) hereof relating to insurance premium, conducting media, external repairs and maintenance and management fees and 20.25% of the costs, charges and expenses incurred by the Lessor in carrying out its obligations under Clause 3(b) hereof in relation to common parts repairs and redecorations such contribution shall be ascertained and certified by the lessors managing agents once a year on the 25th day of March in each year commencing on the 25th day of March 2014.”

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 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.