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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/22UN/LSC/2018/0019**
Property	:	**16 Clearwater Reach, 15 Marine Parade East, Clacton-on-Sea CO15 1UJ**
Applicant	:	**Mr Christopher John Thurston Greenslade**
Representative	:	**Mr C J T Greenslade In Person**
Respondent	:	**Long Term Reversions (Harrogate) Limited**
Representative	:	**Mr Mathew McDermott Counsel**
Type of Application	:	**S27A Landlord and Tenant Act 1985 – determination of service charges payable**
Tribunal Members	:	**Judge John Hewitt** **Mr D Brown FRICS** **Mr N Miller BSc**
Date and venue of determination	:	**5 July 2018** **Lifehouse Spa & Hotel**
Date of Decision	:	**8 August 2018**

DECISION

The issue(s) before the tribunal and its decision(s)

1. The issue before the tribunal was the amount of service charges demanded on account in respect of proposed works of repair to the a stairwell window by replacing it. The on-account demands attributable to this item were:

   05.07.2017 £773.66
   01.01.2018 £773.66

   Associated with the above were applications pursuant to s20C Landlord and Tenant Act 1985 (the Act) and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (CLRA 2002)

2. The decision of the tribunal is that the above two sums were payable by the applicant to the respondent within 14 days of receipt of each demand.

3. The decision of the tribunal is that it will not make orders pursuant to s20C of the Act and/or paragraph 5A of Schedule 11 to CLRA 2002.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

4. The application is dated 21 February 2018 [1].

5. Directions were given on 13 March 2018 [15] and varied on 10 April 2018 [18].

6. Pursuant to those directions we have been provided with a page numbered hearing bundle of relevant documents. In brief:

   The applicant's statement of case: [22-54]
   The respondent's statement of case: [55-224]
   The statement of the respondent's witness – Mr Roy Emmerson [226 - 286]
   Lease documents [289–322]
   Applicant's reply [324-330]

7. The inspection and hearing was set for Thursday 5 July 2018 to coincide with an application by made by Mr B A Crooks of 5 Clearwater Reach – Case Reference CAM/22UN/LAC/2018/0003 which concerned variable administration charges. There was a large degree of overlap in that both applications touched on the intention of the respondent landlord to repair what it considered to be a defective stairwell window by replacing it. There was a joint inspection followed by the hearing of Mr Crooks' application and then the hearing of Mr Greenslade's application. Both applicants made contributions to both

hearings but there was not necessarily uniformity of view between Mr Crooks and Mr Greenslade on all points.

8. Both Mr Crooks and Mr Greenslade were present at the inspection together with representatives of the landlord:

Mr Mathew McDermott	Counsel
Mr David Bland –	Head of Litigation – Pier Management – Asset managers
Ms Lyn Walker	Property Manager - Countrywide Estate Management (CEM) – managing agents
Ms Louise Vidgeon	CEM Southend Office branch manager
Ms Ruby Ali & Ms Fleur Baker	CEM - observing

9. Some of those present drew the attention of the members of the tribunal to a number of physical features, mostly concerning the large stairwell window that the landlord proposes to replace but also to the front façade and those areas of it which may be the subject of an external redecoration project.

The development and the service charge regime

10. The development known as Clearwater Reach was constructed in or about 1994 on the sea-front at Clacton-on-Sea, Essex. It comprises 16 self-contained flats, accessed via two entrance ways, Nos 1-8 and 9-16, and laid out over four floors. Each entrance way has a lift serving the upper floors. There is a video entry-phone system and other modern amenities. Parking provision is at the rear of the development.

11. The entrance way to Nos 9-16 has the benefit of a substantial decorative stairwell window which runs pretty much from just above street level to the roof line. Helpful illustrative photographs are at [267]. It is this window which is the subject of the proceedings.

12. We were not told whether the floor areas of the 16 flats are of uniform size. We suspect that they might not be. Some flats have the benefit of balconies which appear to be of a variety of designs and sizes. Evidently it was not in dispute that each lessee contributes one sixteenth to the cost of services.

13. Despite the development containing some sophisticated services the service regime set out the leases is very basic. All 16 leases were granted by the respondent between June and December 1994 at which time its name was Regisport Plc. The leases were prepared by its solicitors, Tolhurst Fisher of Southend-on-Sea. The leases granted terms of 99 years from 1 July 1993. The lease of flat 16 has been surrendered and re-granted (as amended) for a term of 119 years from 1 July 1993 [315].

14. The lease provides for the payment of a ground rent, for the payment of an insurance rent and in clause 3(2) [295] a covenant on the part of the tenant:

"Subject as herein before mentioned to contribute and pay a proper proportion of the costs expenses outgoings and other matters mentioned in the Third Schedule hereto and if required by the Landlord to make an advance payment or advance payments in respect of the same or on account thereof"

The Third Schedule [301] is in fairly standard and conventional form.
Paragraph 1 concerns maintaining, repairing , rebuilding, insuring and decorating the Building;
Paragraph 2 concerns cleaning and lighting the internal common parts;
Paragraph 3 concerns exterior redecorations;
Paragraph 4 concerns an administration charge of 15% on any works carried out by the landlord direct;
Paragraph 5 relates to the payment of managing agents fees;
Paragraph 6 relates to the costs and fees incurred in the preparation and auditing of the maintenance fund; and
Paragraph 7 concerns *"All other costs and expenses incurred by the Landlord or its agents in carrying out its obligations under the Lease"*

15. It will be noted that there is no provision for an accounting period, preparation of an annual budget, set dates for payments on account, preparation of periodic accounts or for balancing debits/credits as the case may be. That is slightly curious given that paragraph 6 of the Third Schedule expressly envisages audited accounts. Also, it will be noted there is no provision for a reserve fund even though the development will require expensive works from time to time on a cyclical basis.

16. Despite the foregoing CEM, which has managed the development since about 2008, apply an accounting period of 1 July – 30 June, prepare an annual budget and collect (or seek to collect) two equal payments on account on 1 July and 1 January in each year. Whilst these arrangements are not expressly provided for in the lease, they are not expressly disallowed and it appears that the arrangements have worked to mutual benefit for a number of years without complaint or objection.

17. Mr Greenslade, and Mr Crooks of flat 6, are members of the committee of a residents' association (RA). Whilst the association is not formally recognised there is plainly a helpful a healthy dialogue between CEM and the residents' committee, including discussions on draft budgets.

The 2017/18 budget and the replacement of the window

18. Copies of the budget are at [30/136]. The total is £82,520.65. This included £53,800 for two sets of major works. More detail was not given in the budget, but it was provided to the RA committee as follows:

Stairwell window replacement:	£24,757 (= £1,547.32 per flat)
External redecorations:	£29,043 (= £1,815.16 per flat)

19. Mr Greenslade had no issue with the budget for routine services and external redecorations, but the replacement of the window was more contentious.

20. The replacement of the stairwell window was the subject of a brief report dated 6 September 2012 [231] issued by Mr Roy Emmerson, a chartered building surveyor, in which he raised a concern about the integrity of the window. Mr Emmerson contacted Glass & Glazing Federation and Glass & General Maintenance to obtain quotes for a more detailed inspection of the window to be carried out.

21. Glass and General Maintenance issued a report dated 30 October 2012 [240]. The recommendation was to replace the window. The estimated cost at that time was £14,000 + VAT. The advice of Mr Emmerson was that these works need not be carried out for 2/3 years. By letter dated 28 November 2012 [243] CEM notified lessees of that position and made it plain that in due course full consultation will take place and more precise quotations obtained.

22. In April 2017 Ms Walker, CEM's property manager for Clearwater Reach, contacted Mr Emmerson with a view to progressing the works to replace the window. Exactly what prompted Ms Walker to do so at that time was not made clear to us. Mr Emmerson prepared a specification of works [201] and went through an informal tender process with prospective contractors. Mr Emmerson informed Ms Walker of a figure of £24,757 which was evidently adopted and inserted into the draft budget.

23. A draft budget was submitted to the RA committee in mid-June 2017. There were alternatives proposed but Mr Greenslade said that that there was little information provided to support the options and no agreed position was arrived at. Mr Greenslade accepted that at that time the respondent landlord intended to carry out the works within the budget period and intended to carry out a s20 consultation process in respect of them.

24. The proposed works were the subject of further discussion with the RA committee. On 8 November 2017 a site meeting took place when Ms Walker and Mr Emmerson met with Mr Greenslade, Mr Crooks and a Mr Richard McMillan (the three RA elected committee members) to discuss them. Mr Greenslade was irritated that the Glass and General Maintenance report of 2012 was tabled at the meeting, 'but whipped away before it could be read'. He was also irritated that his request to see Mr Emmerson's 2012 report was refused on the grounds it belonged to the freeholder. Mr Greenslade told us that the first he saw of these reports was when the respondent's statement of case was served upon him.

25. At the November 2017 meeting the RA sought permission to procure its own technical report on the subject window. This was duly granted. The report by EyeSurvey is dated 30 November 2017 [43]. That report

raised a question about buildings' insurance which, in the event was not an appropriate way forward, but that apart, its main finding was that replacement of the window should not be carried out at present, there were no imminent signs of failure and that monitoring should take place over a period of time to check for any further movement or distortion. A copy of that report was provided to CEM who passed it on to Mr Emmerson.

26. By letter dated 1 December 2017 [262] the RA committee urged CEM to defer progress with the works for a year or two to allow further monitoring to take place.

27. The landlord procured a further technical report. It was prepared by Mr Derek Lofty C. Eng. F I Struct E. of Derek Lofty & Associates, who are structural engineers. The report is dated March 2018 [273]. The conclusion was that the frame appears securely fixed in position, but the frame has sagged due to its design and construction but there was nothing to suggest that the window frame structure is distressed. The observation was made that it was not possible from one inspection to understand whether there is any ongoing movement and/or what effect a strong wind loading is having on the frame. The report suggested periodic 6-monthtly inspections to monitor movement, and that an inspection at the time of high winds would be necessary. Remedial measures to the frame were not recommended - *"The money would be better invested in a new appropriately design[ed] window frame."*

28. Mr Lofty was then asked to comment on the EyeSurvey and the Glass & General Maintenance reports and to clarify some aspects on his own report. He did so in an email dated 15 March 2018 [282]. One of his observations concerning the life expectancy of the window was: *"Whilst there is no evidence that the window is in an state* [sic] *imminent collapse I cannot advise* [how] *long the existing window will last and/or what condition the fixings are in. It can be seen that the window transoms have sagged due to the poor design of the frame. I cannot advise on the long term effect of this defect."*

29. At the hearing we were told by Ms Walker that on the basis of the current information before it the landlord intended to proceed with the proposed works, and will do so as soon as it has collected funds from the lessees to enable it to do so.

The nub of the issue now raised by Mr Greenslade

30. Originally, in his application form, Mr Greenslade challenged the legitimacy and justification of the claim to an on account payment towards the cost of these works. He was critical that there had been no consultation prior to the demand being made. He also questioned whether there was technical justification for the works.

31. In his statement of case [22] Mr Greenslade posed two questions for the tribunal:

31.1 Did the procedure followed by the Freeholder's agents meet the terms and spirit of Section 20 Landlord and Tenant Act 1985, in undertaking consultation the Leaseholders?; and

31.2 Has it been proved that there is sufficient technical justification to necessitate the work?

In his concluding paragraph he said: *" If the works proceed, I believe the liability of each Leaseholder should be limited to £250, leaving the sum of £20,757.20 to be made good by the Freeholder."*

32. In opening his case at the hearing Mr Greenslade wished it to be clear that:

32.1 He was making the application on behalf of himself and his wife, who are the joint lessees of flat 16, in his private capacity, and not on behalf of the committee of the RA or any other lessees;

32.2 In the light of more recent information he now accepted that the proposed works require to be carried out, the sooner the better for the mutual benefit of the freeholder and the lessees, that the specification (so far as it goes) is a reasonable specification and that the budgeted/estimated cost of £24,757 is a reasonable amount; and

32.3 The gist of his case now is that if and when the works are carried out and the actual cost is ascertained, the amount payable by he and his wife should not be one sixteenth of that cost but should be limited to £250 because the s20 consultation process was flawed. To put that in context, if the actual cost of works was, say £24,757 the share ordinarily payable by Mr & Mrs Greenslade would amount to £1,547.32, but he submitted it should be reduced to £250.

33. To determine this application it is necessary to follow the applicable s20 consultation regulations; the process actually undertaken by the landlord and to consider Mr Greenslade's criticisms of it.

Section 20

34. The provisions of s20 are set out in full in the Appendix to this decision. In essence where there is a failure to comply with the consultation regulations in respect of qualifying works, the amount payable by the lessee is limited to the 'appropriate amount' (£250) - unless a tribunal grants an application made by a landlord (or management company) under s20ZA of the Act to dispense with some or all of the consultation requirements.

35. The consultation requirements are set out in Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987). By regulation 7(4) the relevant consultation requirements

for the subject proposed works are those set out in Schedule 4 Part 2 to the regulations. Again these are set out in full in the Appendix. In summary the stages are:

1. To give notice to each lessee of the intention to carry out works and to invite written observations on the proposed works and to invite the lessee to nominate a potential contractor whom the landlord shall invite to tender for the work. (Paragraphs 1-3)
2. To prepare a specification of the proposed works; put it out to tender to prospective contractors (including any nominated by a lessee); to obtain at least two estimates; to report to lessees on the estimated cost of the proposed works; to include in the report whether he has received any observations on the notice of intention and if so to summarise them and his response to them; and finally to invite further observations. (Paragraphs 4-5)
3. Where appropriate to give notice to lessees within 21 days of entering into a contract that he has done so, state his reasons for doing so and if he has received observations under paragraph 5, his response to them. This stage 3 notice is not required where the contractor with whom the contract is placed was either nominated by a lessee, or is the contractor who submitted the lowest tender. (Paragraph 6)

The consultation process undertaken

36. The notice of intention is dated 26 June 2017 [46].

Paragraph 2 describes the proposed works to be: *"The replacement of the large window to the front elevation of block 9-16."*

Paragraph 3 sets out the reason why the works are consider necessary because: *"The window ties are failing and the window poses a health and safety risk."*

The notice went on to invite observations and nominations of a potential contractor about which no complaint is a made. The notice did not specify a place where a description of the proposed works may be inspected but Mr Greenslade did not complain about that. The notice specified 31 July 2017 as the deadline date for observations.

37. In response to this notice Mr Greenslade contacted CEM to obtain more information. By email dated 3 July 2017 [200] Ms Walker sent to him Mr Emmerson's specification prepared in April 2017 [201]. It is brief but the material parts include:

"Schedule of Works – Staircase Window Replacement
9. To supply and erect a scaffold to the outside elevation of the staircase to allows us access to remove and replace the screen. The scaffold to have a projecting fan at ground floor level and be fully netted.

10. Carefully remove the existing window, cart away and make good all damage.

11. To supply and fit bespoke commercial grade curtain wall screen incorporating opening sashes and solid insulation panels masking the floor slabs. All to match the existing design. To be powder coated white.

12. Allow to remove the blown plaster down each side of the frame (mostly blown already due to water ingress) and clear from site.

13. Thoroughly clean upon completion."

38. Mr Greenslade did not submit any observations on what was proposed or nominate a contractor.

39. Mr Greenslade submitted that the notice was not compliant with stage 1 in two respects. First the description of the works was too vague. He considered more detail of exactly what was proposed should have been set out. Secondly, he was highly critical of the reason given for considering the works to be necessary. He said that the expression 'health and safety' was such an over used expression or excuse that it was in effect meaningless and no weight could be attached to it. Mr Greenslade maintained these criticisms even though he has now seen the more recent reports, both that commissioned by the RA committee and that prepared by Mr Lofty.

40. Mr McDermott submitted that the notice was valid. Mr McDermott reminded the tribunal the paragraph 1(2) of Schedule 4 Part 2 required that the notice: *"shall (a) describe, in general terms, the works proposed ... or specify the place and hours at which a description of the proposed works may be inspected;"*

41. As to the second point, that the reasons given for considering the works necessary were inadequate, Mr McDermott submitted that the words used were not vague or ingenuous, but were clear and unambiguous in that the stairwell window in its current condition did pose a safety risk. At the time the notice was given the landlord had before it, and relied upon, the advice given by Mr Emmerson and Glass and General Maintenance and it was reasonable for it to do so.

42. On both points we preferred the submissions made by Mr McDermott. The regulations do not require a detailed specification to be set out in the notice of intention or available for inspection. It simply requires a description of the proposed works in 'general terms'. We find that the subject notice complies with that obligation. That is sufficient. But, in this case although the notice did not specify a place at which a description of the works could be inspected, Mr Greenslade requested more detail and this was provided when, on 3 July 2017 Mr Emmerson's specification was sent to him. Mr Greenslade had until 31 July 2017 to submit observations but he chose not to do so. Mr

Greenslade did not suggest that he was in any prejudiced or prevented from submitting observations by the alleged vagueness of the notice. Whilst Mr Greenslade decried the use of the expression 'health and safety' we find that in context it was an apt and genuine reason put forward by the landlord.

We observe that if it were to be held that the stage 1 notice was invalid, such that it invalidated the whole process the landlord could overcome that by starting the whole consultation process over again, or by seeking a dispensation under s20ZA which might have some prospect of success.

43. Mr Greenslade had no criticism of the second stage notice dated 19 October 2017 or the summary of the quotations set out in it [41]. That notice set out that three estimates had been received, in summary:

Danson Construction:	£24,757.20
Glass and General Maintenance:	£32,950.26
Ewart Special Works:	£34,150.86

(In each case fully inclusive of management and surveyors fees and VAT.)

It also records that a contractor, Radiant Windows Ltd, nominated by a lessee (Mr Crooks), had declined to tender. Mr Greenslade observed that was due to an inadequate specification being provided but no evidence to support that observation was put before the tribunal.

44. As to the third stage notice dated 22 January 2018 [53], Mr Greenslade was critical of four words cited in paragraph 5. That paragraph set out the landlord's response to the observations it had received on the stage 2 notice. With reference to the several technical reports which had been prepared the notice said: *"The conclusion of all reports is that the window is incorrectly designed* ***and poses a risk.*** (Emphasis added to identify the four words complained of by Mr Greenslade.) The argument of Mr Greenslade was that if that was intended to mean that **all** reports were to the effect that there was posed a risk, that was inaccurate in that not all of them did so, only some of them. Mr Greenslade accepted that it was correct that **all** reports found *"... the window is incorrectly designed."* Mr Greenslade said that he wanted to draw attention to an inaccurate statement which had the potential to mislead.

45. Mr McDermott said this was a very fine point. He submitted that whilst EyeSurvey recommended monitoring, as did Mr Lofty to an extent, it was reasonable to infer that there was consensus that the window posed a serious risk of potential injury.

46. Mr McDermott also submitted that a (purported) stage 3 notice was superfluous at this time for two reasons.

47. First, by paragraph 6(1) of Schedule 4 Part 2 such notice has to be given within 21 days of entering into a contract. No contract has yet been entered into. The notice given says *"We will be entering into a contract with ... Danson Construction."* At the foot of the notice it says: *"The works will commence when all monies are received."* At the hearing the uncontested evidence of Ms Walker was that not all monies had yet been collected and that the contract had not yet been placed. Thus there was no trigger for a stage 3 notice.

48. Secondly, by paragraph 6(2) the notice to be given pursuant to paragraph 6(1) is **not** required to be given if the contract is placed with a nominated person or the person who submitted the lowest estimate. Thus, in due course, if and when a contract is placed with Danson Construction, the landlord will not be required to give a stage 3 notice because Danson Construction submitted the lowest estimate.

49. We accept and prefer the submissions made on behalf of Mr McDermott for the reasons he has put forward. The argument advanced by Mr Greenslade was verging on the pedantic. Taken at its best it could not have given rise to any prejudice or misunderstanding. Although the notice purported to be a stage 3 notice, it was not such a notice. If and when a stage 3 notice is required to be given it remains open to the landlord to give it

Conclusions

50. Taken overall this was a very unmeritorious application. By the time of the hearing Mr Greenslade had come to the conclusion that the proposed works ought to be carried for the good of the development, the freeholder and the lessees; that the scope of works was reasonable; that the tender process was reasonable; that the current estimated cost of £24,757 was a reasonable cost; and that in all other respects he should pay his one sixteenth share, but for the two alleged minor slip ups in the consultation documentation.

51. Mr Greenslade appeared to be unaware that even if those alleged slip ups had been established there were different ways in which they might be overcome.

52. The determination sought by Mr Greenslade was to the effect that if and when the proposed works were carried out his liability to contribute to the cost would be limited to £250. For the reasons given above, we have no hesitation in rejecting that submission. It is premature to say the least. The works may not be carried out or not carried out in the same manner as previously contemplated. Although at the hearing we were told that the current view of the landlord was to press on with the works, we have no doubt that the landlord will wish to give careful consideration to the technical advice presently before it and the suggestions of further monitoring. Also, the idea was floated at the hearing that if these works and the external redecoration works were both to go ahead there might be a case to carry them out together and

make full use of the expensive scaffolding or cherry picker access that would be required for both projects.

53. For avoidance of doubt we wish to make it clear that if either or both projects were to go ahead, it will, in due course, be open to any lessee to challenge whether it was reasonable to incur the cost of works, the reasonableness of the scope of works and/or the reasonableness of the cost(s) of the works by bringing an application pursuant to s27A of the Act.

54. On the application before us we find that at the time when the budget was prepared the landlord intended to carry out the works, the budget figures were reasonable figures provided by external advisers and that the landlord intended to carry out a s20 consultation exercise. In those circumstances the on-account demands made of Mr & Mrs Greenslade were reasonable in amount and were payable by them.

The reddendum in the lease provides that the sums payable under clause 3(2) are payable 'on demand'. We infer it was intended that the payment should be made within a reasonable time and fairly promptly after the receipt of the demand by the tenant, which we consider should be within 14 days.

The section 20C application

55. In his application form Mr Greenslade had ticked box 9 indicting he wished to make an application under s20C of the Act. He anticipated that some other lessees might want to do likewise, but none have done so as yet.

56. There was a brief discussion about the application at the hearing. There is nothing obvious in the Third Schedule to the lease which gives a contractual right to the landlord to pass costs of proceedings such as these through the service charge. Mr McDermott alluded to paragraph 7 of that Schedule, but that plainly concerned costs and expenses incurred by the landlord in carrying its obligations under the lease. We hold that the lease does not impose an obligation on the landlord to oppose applications which a lessee might make to a tribunal such as this tribunal, still less to appear at hearings to do so. Obviously the landlord has the right to oppose applications and attend hearings, but it not obliged by the terms of the lease to do so.

57. In these circumstances we decline to make an order under s20C because it is not necessary to do so. Even if the lease had permitted the landlord to pass costs of proceedings through the service charges payable by Mr & Mrs Greenslade we would not have made an order preventing the landlord from doing so because Mr Greenslade's application was unmeritorious.

58. In the event that the landlord seeks to pass the costs of these proceedings through the service charge account, it will be open to any

lessee to challenge the landlord's right to do so, whether by applications under s20C and/or s27A of the Act.

Paragraph 5A of Schedule 11 Commonhold and Leasehold Reform Act application

59. Mr Greenslade also ticked box 10 in his application form indicating a wish to make an application under this provision.

60. Mr & Mrs Greenslade's predecessors in title negotiated an extended lease. Their lease now includes provisions not found in the original leases. One of those provisions is a new clause 2(m) [321] which is a covenant on the part of the tenant: *"To keep the Landlord indemnified against all expenses, costs, claims damages and loss (including any diminution in the value of the Landlord [sic] interest in the Flat and loss of amenity of the Flat arising from any breach of the Tenant covenants in this lease, or any act or omission of the Tenant, any under Tenant or their respective workers, contractors, or agents or any other person on the Flat with the actual or implied authority of any of them."*

61. Mr McDermott submitted that the failure of Mr & Mrs Greenslade to pay the on account demands amounted to a breach of covenant within the meaning of the above provision and that the landlord is entitled to be indemnified its costs of opposing the application. We are far from satisfied that bringing an application such as a s27A application amounts to a breach of covenant to trigger the indemnity obligation but this was not fully argued before us. Further, so far as we are aware no demand for costs has been served on Mr & Mrs Greenslade. In these circumstances we decline to make an order pursuant to paragraph 5A. However, if at some future time the landlord serves a demand for such costs on Mr & Mrs Greenslade, it will be open to them to challenge that demand on whatever ground they may consider appropriate and/or make a fresh application to the tribunal pursuant to paragraph 5A

Judge John Hewitt
8 August 2018

The Appendix
Statutory Materials

Landlord and Tenant Act 1985

18.— Meaning of "service charge" and "relevant costs".

(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.

19.— Limitation of service charges: reasonableness.

(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 provision 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.

(2A)-(3) (4) ... [repealed]

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

20.- Limitation of service charges: consultation requirements

(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.

20ZA Consultation requirements: supplementary

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long t erm agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

20C.— Limitation of service charges: costs of proceedings.

(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 First-tier 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;

(ba) in the case of proceedings before the First-tier Tribunal, to the 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.

27A Liability to pay service charges: jurisdiction

(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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

The Service Charges (Consultation Requirements)(England) Regulations 2003 SI 2003 No.1987

PART 2

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS FOR WHICH PUBLIC NOTICE IS NOT REQUIRED

Notice of intention

1.—

(1) The landlord shall give notice in writing of his intention to carry out qualifying works–

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall–

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify–

(i) the address to which such observations may be sent;
(ii) that they must be delivered within the relevant period; and
(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

2.—

(1) Where a notice under paragraph 1 specifies a place and hours for inspection–

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

3.-
Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

4.—

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate–

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate–

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)–

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out–

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord–

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by–

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)–

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify–

(i) the address to which such observations may be sent;
(ii) that they must be delivered within the relevant period; and
(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates
5.-
Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract
6.—
(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)–

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Commonhold and Leasehold Reform Act 2002 c. 15

Schedule 11 ADMINISTRATION CHARGES

Limitation of administration charges: costs of proceedings
(This paragraph in force from: April 6, 2017)
5A
(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) *"litigation costs"* means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
(b) *"the relevant court or tribunal"* means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	**The relevant court or tribunal**
Court proceedings:	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings:	The First-tier Tribunal
Upper Tribunal proceedings:	The Upper Tribunal
Arbitration proceedings:	The arbitral tribunal, or if the application is made after the proceedings are concluded, the county court

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.