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

Case reference : LON/00AE/LSC/2018/0069

Property : 74b Chamberlayne Road, London
NW10 3JJ (“the second floor flat”)

Applicant : Cinnamon Faye Heathcote-Drury

Respondent : Eastlight Investments Ltd (“the
landlord”)

Representative : John D Wood, Managing Agents

Type of application : Liability to pay a service charges

Tribunal members : Angus Andrew
Luis Jarero BSc, FRICS

Date and Venue : 16 May 2018 at 10 Alfred Place,
London WC1E 7LR

Date of decision : 31 May 2018

DECISION

Decision

1. Ms Heathcote-Drury is not liable to pay the claimed insurance premiums in the respect of the period from 29 February 2012 to 6 January 2015.
2. Ms Heathcote-Drury is liable to pay a service charge of £379.04 in respect of the common parts electricity for the period from 3 April 2014 to 5 July 2017.
3. Ms Heathcote-Drury is not liable to pay a service charge in respect of the costs incurred in repairing the decked roof area.
4. Ms Heathcote-Drury is liable to pay a service charge of £131.50 in respect of the cost of repairs to the internal down pipe.
5. Ms Heathcote-Drury is liable to pay a service charge of £250 in respect of the cost of redecorating the communal hall.
6. The landlord may not recover the cost of these proceedings either as a service charge or as an administration charge.
7. The landlord must reimburse Ms Heathcote-Drury with the Tribunal fees of £300 within 28 days of the date of this decision.
8. We decline to order the landlord to pay all or any part of Ms Heathcote-Drury's costs.

The applications, directions and hearing

9. On 14 February 2018 the Tribunal received Ms Heathcote-Drury's application under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). The application form also included applications under section 20C of the 1985 Act and under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). By these additional applications Ms Heathcote-Drury sought to limit the landlord's ability to recover the cost of these proceedings either through the service charge or as an administration charge under the terms of her lease.
10. Directions were issued by Judge John Hewitt on 19 February 2018. His directions authorised us to consider whether the landlord should reimburse Ms Heathcote-Drury with the Tribunal fees paid by her.
11. We heard the applications on 16 May 2018. Ms Heathcote-Drury appeared in person. The landlord was represented by three employees of its managing agents, John D Wood: Bilal Mamood, a Property Manager; Ray Bloom, Managing Director and Kieron Bruzas, Finance Director.

12. In this decision we refer to 74 Chamberlayne Road as “the property”.

Background

13. The property comprises commercial units on the ground floor and two residential flats on the first and second floors. Ground floor extensions project beyond both the front and rear walls of the first and second floor flats and we were told that the area of the ground floor commercial units is twice that of the combined area of the first and second floor flats. Mr Bloom told us that any expenditure relating to the property has therefore been apportioned as to two thirds to the ground floor commercial units and one third to the first and second floor flats, with that one third share being apportioned equally between the two flats.
14. The two flats share a front door and common entrance hall that forms part of the ground floor extension to the front of the property.
15. Ms Heathcote-Drury is the lessee of the second floor flat and we were told that Ms Natalie Pender is the lessee of the first floor flat. Ms Heathcote-Drury does not live at the property but rents it out. The landlord also owns 72 Chamberlayne Road, the adjoining property.
16. As far as we can ascertain from the limited number of title documents in the document bundle and from answers to our questions of both parties, the property was previously owned by Queen Park Royal British Legion (“the Legion”) and the ground floor seems to have been used as a club, presumably for ex-servicemen. In 2000 the Legion granted a lease of the two upper floors to GDI Developers and Builders Ltd. That company presumably developed the two flats and subsequently sold them on long residential leases. The underlease of Ms Heathcote-Drury’s flat is dated 10 September 2004 and is for term of 99 years less 3 days from 1 January 2000. It is reasonable to assume that a similar lease of the first-floor flat was granted at about the same time.
17. Ms Heathcote-Drury purchased the lease of the second floor flat in 2007 when it seems that the freehold reversion was still owned by the Legion although we were given to understand that as at that time the ground floor was empty and used only for the odd “event”.
18. In 2011 the landlord acquired both the freehold reversion and the head lease of the two flats. In 2017 both Ms Pender and Ms Heathcote-Drury exercised their rights under the Leasehold Reform Housing and Urban Development Act 1993 to acquire new extended leases. Mr Bloom told us that upon the grant of those leases the head lease “fell away” by which we understand him to mean that it merged in the freehold reversion.

19. Having purchased the freehold reversion and the head lease the landlord appointed James Andrew International as its managing agents. However in about June 2014 the management was however transferred to John D Wood and they continue to manage both the property and 72 Chamberlayne Road.
20. The 2017 lease largely replicates the earlier 2004 underlease. Neither lease includes the usual service charge provisions for an annual budget, interim payments, annual service charge accounts and a balancing charge.
21. A contribution to the insurance premium is reserved as rent and is *“a sum equal to one half of any amount the Lessor shall expend in maintaining procuring the insurance of the Demised Premises and the Lower Flat in accordance with the covenants in that respect hereinafter contained”*. The lessor’s insuring covenant is at clause 4(v). The obligation is to insure the whole of the property and includes an obligation *“whenever required to produce to the Lessee (but not more than once in any one year) the policy or policies of such insurance and the receipt for the last premium”*.
22. Clause 2(v1) simply requires the lessee *“to pay and contribute one half (1/2) of the expenses in respect of the Demised Premises and the Lower Flat of making repairing maintaining supporting rebuilding and cleansing all ways passageways pathways sewers drains pipes watercourses water pipes cisterns gutters party walls foundations party structures staircases chimney stacks fences easements and appurtenances belonging to or used or capable of being used by the Lessee in common with the Lessor or the tenants or occupiers of the Lower Flat of which the demised premises form part and to pay half of the expenses of repairing maintaining supporting and rebuilding the roof jointly with the Tenant or occupier of the Lower Flat AND to keep the Lessor fully and effectually indemnified against all costs charges and expenses in respect thereof”*.

Issues in dispute

Insurance premiums

23. Having taken over the management of the property in June 2014 John D Wood claimed insurance premiums of £854.02 in respect of the period from 29 February 2012 to 7 July 2015.
24. The landlord’s case as explained by Mr Bloom was that these premium arrears were aged debts inherited from the previous managing agents.
25. Ms Heathcote-Drury’s case was that these premiums had not previously been demanded from her. Despite requests made by both herself and her solicitor to both the Legion and the landlord she had not been provided with a copy of the buildings insurance policy or indeed any evidence that

the property was insured until John D Wood provided a copy of the policy on 6 January 2015. Consequently, on her solicitor's advice she had effected insurance on her own flat and had paid the premiums which, for the years in dispute, exceeded those now claimed by the landlord. In answer to our questions Ms Heathcote-Drury said that she did not seek to recover the difference between the premiums now claimed and the premiums that she had paid to effect her own cover. However, she objected to paying two premiums when she considered that both the Legion and the landlord were at fault for not producing evidence of the buildings insurance.

Electricity charges

26. Although the position with regard to these charges was extremely confused it appeared that the landlord claimed to have incurred electricity charges in respect of the common entrance hall of £1,191.98 in respect of the period from 3 April 2014 to 5 July 2017 and that it was seeking to recover one half of that sum (£595.99) from Ms Heathcote-Drury. Electricity accounts were included in the hearing bundle that at first sight appeared to substantiate this expenditure.
27. The landlord's case was simple. The common parts electricity was separately metered and the expenditure was substantiated by bills received from EDF, the supplier.
28. Ms Heathcote-Drury's case was equally simple. The only electrical fittings in the common parts are two light bulbs, a socket and an entry phone that, she said, currently does not work. The electricity supply to those fittings could not possibly justify a cost of £1,191.98 over a period of 3¼ years. She believed that the meter recorded not only electricity to the common parts of the two flats but also to the common parts of the commercial units below and that the tenants of the two flats were therefore subsidising the ground floor business users.

Works to front decked roof area

29. The airspace above the front ground floor extension was not included in the demise of the first floor flat. Nevertheless, it seems that the tenant of that flat had converted the roof into a roof terrace and had used it without any authority. As an aside, we were told that when a new extended lease was granted to the tenant in 2017 the airspace above the roof was included in the demise.
30. In 2015 the landlord authorised repair works to this front decked area at a total cost of £804 and sought to recover £92.78 from Ms Heathcote-Drury. The apportionment of the larger sum is something of a mystery because Ms Heathcote-Drury's contribution should have been £134. However, for reasons that will become apparent, nothing hangs on this. Ms Heathcote-

Drury objected to paying this sum on the ground that the roof terrace and decking was the responsibility of the tenant of the first-floor flat who, Ms Heathcote-Drury said, had accepted that she should pay for it.

Renew down-pipe and boxing

31. Rain water from the front ground floor extension roofs of both the property and 76 Chamberlayne Road is funnelled into an internal downpipe at the front of the wall separating the two properties. It seems that the downpipe was damaged and it had to be replaced and the surrounding boxing renewed. The landlord incurred a total cost £1,578 in undertaking this work of which, we were told, half was paid by the owner of 76 Chamberlayne Road.
32. The landlord claimed £263, being the 1/6th of the total cost, from Ms Heathcote-Drury.
33. Ms Heathcote-Drury objected to contributing towards the cost of this work on the ground that it should have been the subject of an insurance claim.

Entrance redecoration

34. It seems that water had leaked from the roof of the ground floor front extension into the communal hall serving the two flats. The landlord had redecorated the communal hall at a cost of £828 and sought to recover half of that cost (£414) from Ms Heathcote-Drury who objected on the ground that the tenant of the first floor flat should pay the full cost because she was responsible for the leak.

Reasons for our decision

Insurance premiums

35. The premiums had certainly been demanded from Ms Heathcote-Drury even if they may not have been demanded until John D Wood assumed responsibility for the management of the property. Ms Heathcote-Drury did not dispute the reasonableness of the demanded premiums: she was not in a position to do so because they were less than the premiums that she had paid to insure her own flat.
36. Ultimately Ms Heathcote-Drury can only succeed if we are satisfied that the landlord failed "*when required*", to produce a copy of the insurance policy and last premium receipt note. Having considered the documents produced to us and the evidence given at the hearing we find as a fact that the Ms Heathcote-Drury did request a copy of the policy and that her requests were ignored. We make that finding for each of the following two reasons:

- a. Ms Heathcote-Drury's evidence to that effect which those attending on behalf of the landlord were unable to rebut because John D Wood only assumed responsibility for the management of the property in June 2015.
- b. A letter from Ms Heathcote-Drury's solicitors dated 14 May 2018 that she handed in at the hearing and to which no objection was taken. In summary the letter confirms that the property was not initially insured by the Legion, that Ms Heathcote-Drury effected insurance on the advice of her solicitor and that despite requests for a copy of the policy it was only provided by John D Wood in January 2015, after which her policy was not renewed.
37. In short both the Legion and subsequently the landlord were in breach of their obligation to provide Ms Heathcote-Drury with a copy of the insurance policy. She had a counter claim for her loss resulting from that breach. She would be entitled to claim the total premiums paid until January 2015 when a copy of the policy was produced to her solicitor. However, having limited her claim to the premiums now demanded of her the net result is that only the premium in respect of the period from 6 January 2015 to 7 July 2015 is payable by her. The premium for the year should of course be apportioned on a daily basis and we leave that calculations to the parties.

Electricity charges

38. The electricity accounts on which the landlord relies are confusing and that is possibly in large measure because many of them are based on estimated readings whilst the period of some of the accounts appear to overlap. Having analysed the accounts included in the document bundle it is apparent that the account of 29 March 2017 in the sum of £171.35 supersedes the previous accounts based on estimated readings. It is also equally apparent that Ms Heathcote-Drury's contribution for the period from 3 April 2014 to 5 July 2017 is £428.85 as follows:-

Charges for period 3 April 2014 to 23 March 2017 as per page 2 of the account of 29 March 2017	£755.95
VAT on above from same page	£37.80
Charge for period 24 March 2017 to 5 July 2017 as per account of 7 July 2017	£63.95
Total	£857.70
Half payable by Ms Heathcote-Drury	£428.85

39. As we understand the position Ms Heathcote-Drury has already paid £49.81 leaving a balance due of £379.04.
40. The above charges equate to approximately £264 per year. That is extremely high for the provision of electricity to two lights, a socket (presumably only used for cleaning purposes) and an entry phone, when working. That said we note that approximately two-fifths of the total charge is a standing charge that presumably covers the cost of the meter and operating the account.
41. Although Ms Heathcote-Drury believes that the electricity account includes the cost of providing electricity to the common parts of the commercial units the evidence is against her. A letter from Focal Point Refurb Limited dated 4 October 2017 confirms that a "*part p compliant electrician*" attended the site and having traced the meter in the common parts found that it supplied "*the communal parts of the property only*" and that the "*the rear commercial unit at 74 Chamberlayne Road... received a new installation and meter in autumn 2014*".
42. On the basis of the evidence before us we are satisfied and find that electricity charges of £379.04 are payable by Ms Heathcote-Drury.
43. If Ms Heathcote-Drury wishes to challenge future electricity charges she should accept Mr Mamood's offer to permit her electrician to inspect the meter and wiring in the commercial units. She may also consider the simple expediency of checking the meter when she has turned off all the common parts electrical installations. Finally, she may consider taking the matter up directly with EDF. It is however insufficient for her to sit on her hands and simply assert that the charges are too high.

Works to front decked roof area

44. The decking to the front ground floor extension roof was installed by the tenant of the first floor flat without having first obtained the consent of either the Legion or the landlord. The landlord can only recover the costs under clause 2(vi) of the lease. The decking is not a party structure and it is neither used nor capable of being used by Ms Heathcote-Drury. Consequently, we are satisfied that the cost of these repairs cannot be recovered from her under the terms of her lease.

Renew down-pipe and boxing

45. The roof to the front ground extension covers not only the commercial unit below but also the entrance and hall that to the flats above. Consequently, the down pipe benefits both the commercial and the residential parts of the property. It is a party's structure and is within the contemplation of clause

2(vi) of the lease. Ms Heathcote-Drury's assertion that the cost can be reclaimed under the property insurance policy is speculative. The cause of the damage to the down pipe is unclear. Consequently, we are satisfied that in principle Ms Heathcote-Drury is liable to contribute towards the cost of this work.

46. However, as we pointed out at the hearing and as Mr Bloom accepted her contribution has been incorrectly calculated. As half the cost is payable by the owners of 76 Chamberlayne Road her contribution towards the total cost should be 1/12th and not 1/6th and she is therefore liable to contribute £131.50 towards the cost of this work.

Entrance redecoration

47. Ms Heathcote-Drury does not suggest that the cost of the works is unreasonable or that a half share cannot in principle be recovered under clause 2(vi) of her lease. As observed above, her case is simply that the leak from the roof above (that necessitated the redecoration) resulted from the unauthorised use of the roof by the tenant of the first floor flat and that consequently she should be responsible for the full cost of the redecoration works.

48. There is however no evidence to support this assertion. The leak could equally result from wear and tear of the roof or possibly from the defective down pipe referred to above. Ms Heathcote-Drury has in any event benefitted from the work in that the communal entrance has been redecorated.

49. Certainly, the work is within the contemplation of clause 2(v1) and for each of the above reasons we are satisfied that Ms Heathcote-Drury is liable to contribute towards its cost. However, as she pointed out and as Mr Bloom accepted the landlord did not consult before undertaking the work. Had it consulted Ms Heathcote-Drury would have had the opportunity to explain her concerns to John D Wood and they could have been investigated.

50. Both Mr Bloom and Mr Mamood accepted that because the landlord had failed to consult in accordance with section 20 of the 1985 Act it could recover only £250 from Ms Heathcote-Drury. That is the sum she is liable to pay, there being no application from the landlord for dispensation.

Costs and Fees

51. Mr Mamood accepted that there had been past management failings in respect of the property and he assured us that the landlord would not be seeking to recover its costs incurred in these proceedings either through the service charge or as an administration charge. We can therefore take these applications in short order. Ms Heathcote-Drury has been largely successful in these proceedings and it would be both unjust and

inequitable if the landlord were to recover its costs either through the service charge or as an administration charge. Consequently, we make the orders sought by Ms Heathcote-Drury. For the same reason we also order the landlord to reimburse Ms Heathcote-Drury with the tribunal fees of £300 incurred by her.

52. Turning to Ms Heathcote-Drury's costs it was apparent that she was unaware that the tribunal is a "no-cost jurisdiction". That is there is no presumption that the successful party is entitled to recover its costs. In any event most of the claimed costs appear to have been incurred in connection with her new lease claim.

53. As we explained, costs may only be recovered under rule 13 if the other party has behaved unreasonably "*in bringing defending or conducting*" these proceedings. The landlord's past management failings are not relevant when deciding whether to award costs under rule 13. The only possible unreasonable behaviour that Ms Heathcote-Drury could point to was the landlord's rejection of an offer to mediate.

54. In the context of these proceedings that was not unreasonable. There was considerable uncertainty surrounding the insurance premiums and the electricity charges and the landlord was entitled to prefer a determination to achieve certainty. We also consider that some of Ms Heathcote-Drury's criticisms of John D Wood were overstated. They had no correspondence address for Ms Heathcote-Drury and they had been proactive in finding her. They were in large measure simply attempting to recover aged debts given to them by the previous managing agent. They offered to cooperate with Ms Heathcote-Drury in checking the electricity meter. They acknowledged their failure to consult and said that they would accept and move on from this decision. Consequently and for each of the above reasons we decline to order the landlord to pay Ms Heathcote-Drury's costs.

Name: Angus Andrew

Date: 31 May 2018

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).