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

**Case reference** : LON/00AA/LSC/2016/0048

**Property** : The Heron, Milton Court,  
London EC2Y 9AP

**Applicant** : The Heron Residences LLP

**Representative** : The Beavis Partnership LLP

**Respondent** : The 285 lessees of the Heron whose  
names are annexed to the  
application form

**Type of application** : Liability to pay service charges

**Tribunal member(s)** : Judge Nicol  
Mr H Geddes RIBA

**Venue** : 10 Alfred Place, London WC1E 7LR

**Date of hearing** : 13<sup>th</sup> July 2016

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**DECISION**

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**Decision of the Tribunal**

The Tribunal has determined that service charges arising from the maintenance of the heating, air conditioning and sprinkler systems in the flats in the subject building are payable under the terms of the leases. This decision does not address whether or not those charges are reasonable.

Relevant legislation is set out in the Appendix to this decision.

## Reasons for Decision

1. The Applicant has sought a determination under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of the Respondents’ liability to pay certain service charges in respect of 285 flats at the Heron, Milton Court, Moor Lane, London EC4Y 9Ap (the “Property”), a purpose built 36 storey residential tower. The Guidhall School of Music is located on levels 1-6 of the tower and there is one commercial unit situate on the ground floor.
2. The application relates to relevant costs proposed to be incurred in 2016 in maintaining and servicing the heating and cooling equipment in the Property and more particularly the heat interface units, fan coils and sprinkler flow switches serving each flat in the Property. The Applicant obtained a quote from Jaguar Building Services Limited in the sum of £58,085.66 for maintaining and servicing the plant in question via the provision of a full time engineer on site undertaking a planned programme of works. The Applicant has sought a determination as to whether the tenants are liable under the terms of their leases to make payment but not whether these relevant costs are reasonable (contrary to the statements in the Tribunal’s two directions orders).
3. Directions were made dated 4<sup>th</sup> February 2016 which provided for any participating tenants who opposed the application to serve a statement of case and bundle and for a hearing to take place on 25<sup>th</sup> April 2016. As no tenants opposed the application the Tribunal agreed it could be considered without a hearing on the papers only and it was duly considered on 27<sup>th</sup> April 2016. However, the Tribunal found it did not have sufficient information to make a decision and made further directions with a hearing on 13<sup>th</sup> July 2016.
4. The hearing was attended by Ms Katie Gray of counsel and Mr Daniel Steer and Ms Elisa Keating from Rendall & Ritter, the managing agents. No lessees attended. Only one objection has been received at any time – by letter dated 23<sup>rd</sup> February 2016, Berkeley Way, the agents for the lessee of flats 708 and 908, said their primary concern was that the service charges, already too high, would increase. There has been no objection to the argument that the charges arising from these costs would come within the terms of the leases. In any event, the Applicant has pointed out that, on the contrary, there should be a substantial cut in relevant costs of more than half. The recognised tenants’ association for the Property supports this application.
5. The leases are apparently in common form throughout the Property and contain the following clauses:

“Residential Service Charge” means the obligation of the Tenant to pay the Residential Service charge Proportion of the

## Residential Service Charge Items

- “Residential Service Charge Item” means an item of expenditure which is properly incurred by the Landlord in providing the Services (or any of them) and which is for the benefit of the lessees of the Building (residential only)
- “Service Media” means pipes wires conduits drains gullies ducts sewers and other conducting media for the passage of services to and from the Estate
- “Services” means the services set out in the Sixth Schedule hereto as varied from time to time in accordance with the provisions hereinafter contained and such of the services set out in the Seventh Schedule hereto as the Landlord may from time to time at its reasonable discretion and in the interests of good estate management decide to provide

6. Subject to the Tenant paying the Rent and performing and observing its covenants herein contained the Landlord hereby covenants with the Tenant that:-
- (a) It will perform the Services provided that:-
- (i) the Landlord shall be entitled to amend the Services cease carrying out any of the Services or carry out new Services where in the interest of good estate management of either the Building or the Estate

### THE FIRST SCHEDULE DESCRIPTION OF THE APARTMENT

The Apartment INCLUDES:

- (a) the internal plastered coverings and the plasterwork of the walls bounding the Apartment ...
- (d) the plastered coverings and plasterwork of the ceilings (but nothing above them) and the surface of the screed covering the floors together with the floor coverings and floor boards (but in each case nothing below such floors);
- (e) all Service Media exclusively serving the Apartment (unless such Service Media is owned or maintained by a statutory body);
- (f) all fixtures and fittings in or about the Apartment and not hereafter expressly excluded from this Demise; and
- (g) any part of the Communal Apparatus (as defined in the Fourth Schedule hereto) that is within the Apartment and exclusively serves the Apartment (without leading to or providing any supplies to any other part of the Building)

BUT EXCLUDES:

- (h) any part or parts of the Building (other than any conduits expressly included in this Demise) lying above the said surface of the ceilings or below the said floor coverings and/or the floorboards; ...

THE THIRD SCHEDULE  
RIGHTS EXCEPTED AND RESERVED

- 7. The right for the Landlord ... to enter into and upon the Apartment or any part or parts thereof:-
  - (a) for the purpose of inspecting cleansing maintaining repairing renewing or replacing any mains pipes wires conduits appliances meters mains switches drains equipment or other service media and conduits within the Building (whether or not within the Apartment)
  - (h) for any other proper and legitimate purpose connected with the Landlord's interests in the Apartment or the Building or the Estate ...

THE FOURTH SCHEDULE  
TENANT'S COVENANTS WITH THE LANDLORD

- 3. To keep the Apartment and all parts thereof and all fixtures and fittings therein and all additions thereto in a good and substantial state of repair ...
- 12. (a) to pay to the Landlord within fourteen days of written demand the Residential Service Charge Proportion of:-
  - (i) such of the costs charges and expenses which the Landlord shall properly incur in providing the Services which the Landlord (acting reasonably) designates as being a Residential Service Charge Item and
  - (ii) the costs charges and expenses which the Landlord shall properly incur in doing any works or things to those parts of the Building utilised by the residential flat owners for the maintenance and/or improvement thereof

THE SIXTH SCHEDULE  
LANDLORD'S COVENANTS

- 3. To keep in good repair and decorative condition:-
  - (d) the communal Service Media serving the Building
- 4. To maintain the facilities from time to time benefiting the Building (but without prejudice to the Landlord's right to replace or remove any or all of such facilities subject to the Landlord acting reasonably at all times) and insofar as may be applicable to pay and discharge all or any rental or other payments (including maintenance payments) which may from time to time be payable in relation such facilities in respect of which such

payments shall from time to time become due whether such facilities are situated wholly or partly within the Common Parts or elsewhere within the Building)

SEVENTH SCHEDULE  
ADDITIONAL SERVICES

1. The repair maintenance overhaul modernisation inspection testing clearing cleaning and (where reasonably necessary) replacement of:-
  - (a) such of the plant machinery and equipment serving the Building as is from time to time used or capable of being used for the common benefit of some or all of the occupants of the Building and
  - (b) the conduits and other conducting media within the Building
9. The supply inspection repair maintenance cleansing and (wherever the Landlord reasonably considers it appropriate) the renewal and replacement of window cleaning cradles runways and hoists fixtures fittings bins receptacles tools appliances equipment materials notice boards signs flags furniture seating furnishings plants drinking fountains ornaments artwork cornicing decorative lighting decorative features and other things (not already expressly mentioned elsewhere in this paragraph) as the Landlord may reasonably consider necessary or desirable to have in the Building or the Estate for the better performance of the Services the better or more efficient maintenance upkeep cleaning promotion management use or appearance of the Building or the Estate or the security comfort and convenience of its occupants or as are required to be installed or provided by law
6. The heating and cooling equipment is partly located within each flat and in the ceiling voids above each flat. For that reason, the Applicant has to date treated the equipment as being "fittings ... about the Apartment" included within the demise under paragraph (f) of the First Schedule. Each lessee has thereby maintained the equipment at their flat under paragraph 3 of the Fourth Schedule. The Applicant now believes this to have been mistaken.
7. The equipment located within and above each flat is not isolated. They are connected and integral to communal systems, some parts of which are located on the roof. In the case of *Flat 8 and Flat 45 Kennistoun House* [2010] UKUT 194 (LC) the Upper Tribunal held that the parts of a single central heating system serving the whole of the building which were within each flat could be regarded as part of the communal system, to be maintained by the landlord, along with those parts within the communal areas. The Tribunal agrees with this approach. The equipment is not part of the demise and, therefore, not within the tenant's repairing covenant.

8. Even if that were not the case, the lease in this case has some very widely-drawn provisions (e.g. paragraph 9 of the Seventh Schedule). There is nothing intrinsically wrong with a landlord being responsible for the maintenance of something within a demise and, indeed, many leases contain such provisions. Even if the equipment is within the demise, the other above-quoted provisions of the lease permit the Applicant to take on their maintenance and pay for that maintenance through the service charge.
  
9. The Applicant's case has been presented on the basis that only payability under the lease is being considered. It would not be fair to lessees who did not object or attend in reliance on that for the Tribunal to consider reasonableness in these circumstances. Therefore, the issue of reasonableness is still open.

**Name:** NK Nicol

**Date:** 13<sup>th</sup> July 2016

## **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.