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

Case Reference : LON/00AW/LSC/2014/0234

Property : Flats 2 & 6 226 Old Brompton Road London
Sw5 0DA

Applicants : Mr Claudio Costagliola di Fiore
Mr Luigi Corcione
Ms Laly Nickatsadze

Representatives : Mr Costagliola di Fiore and
Ms Nickatsadze in person

Respondents : Remstar Ltd

Representatives : Mr A Ebert Director
Ms C Jennett Fortune Management

Type of Application : to determine the reasonableness and
payability of service charges

Tribunal Members : Mrs E Flint DMS FRICS IRRV
Mr M Cartwright FRICS
Mr O N Miller BSc

Date of Hearing : **22 September 2014**

Venue of Hearing : 10 Alfred Place London WC1E 7LR

Date of Decision : 22 September 2014

Decision of the Tribunal

The Tribunal determines that the insurance premium, cost of reinstatement works, external decorations and repairs except where noted below and the surveyors fees are payable. Management fees of £2500 + VAT are also payable.

The Tribunal makes an order under section 20(c)

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") in respect of the 2013 costs in respect of external decorations, surveyors fees, reinstatement works after repairs to the gas pipe, the insurance premium and the management fees. The Applicant also sought an order under s.20c of the act.
2. Directions were issued on 20 May 2014 following an oral case management hearing. Further directions were issued on 21 August 2014.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. Mr Costagliola di Fiore and Ms Nickatsadze appeared for the Applicants. The Respondents were represented by Mr A Ebert, a Director of the landlord company and Ms C Jennett of Fortune Management, the managing agents.

The background

5. 226 Old Brompton Road comprises 7 flats. The applicant suggested an inspection of the roof might be useful however the Tribunal did not consider that one was necessary in view of the evidence and noted that there was no safety rail to facilitate such an inspection.
6. The bundle included the leases in respect of Flats 2 and 6 dated 1 August 1975 and 22 January 1980 respectively. The leases are for terms of 99 years from 25 March 1975 and 29th September 1975 respectively at an initial ground rent of £50 per annum plus a service charge.
7. By clause 3 (25) the lessee covenants "*to keep the landlord indemnifiedand to pay the tenant's proportion of all costs charges and expenses incurred by the landlord in carrying out its*

obligations hereunder” together with other expenditure set out in the Sixth Schedule of the lease.

8. The Sixth Schedule sets out the costs to be included in the service charge which include the costs of “keeping all fixtures and fittings in or upon the Reserved Propertypipes in good order and repair and of replacing the same when necessary.
9. By clause 4 (2) the landlord covenants to insure the property and by clause 4 (3) (5) and (6) to repair and maintain the reserved property and the structure and decorate the common parts and reserved property.

The issues

10. The items listed in the application and referred to at paragraph 1 remained outstanding at the commencement of the hearing.
11. Having heard evidence and submissions from the applicant and the respondent and having considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Repairs and Decorations: £80750 + VAT

12. Mr di Fiore said that the specification included items such as sash cords which were not service charge items and other items which were unnecessary. The specification as a whole was not sufficiently detailed resulting in provisional sums of over £20,000 which resulted in uncertainty for the lessees. The charges are excessive; external decorations should be of the order of £45,000; the cost in 2006 was less than half the proposed cost. The applicants considered the building to be in a good state of repair.
13. The applicants had instructed Michael Ashton Associates, Chartered Building Surveyors (MAA), to prepare a report in relation to the specification. Mr Ashton had not seen the whole of the schedule of works and referred in his report to only part of the repairing covenants in the leases. He raised queries regarding the clarity and detail of the schedule; pointed out several items he considered should not be service charge items and noted that replacing single glazed windows with double glazed may be considered an improvement rather than a repair. He was of the opinion that it would be possible to repair the concrete in the light well rather than renew. He considered the contingency sum excessive for a contract of this size; in his opinion the works descriptions were unclear and could be improved.

14. The applicants stated that windows are the responsibility of each lessee; the flue should be the responsibility of the individual lessee. Mr di Fiore did not consider that the windows to his flat, including a large fanlight should be replaced, he had not experienced any problems. There had been a leak from his bathroom which he had repaired.
15. The applicants considered the brickwork to be satisfactory.
16. It was agreed by the parties that item 137 in the sum of £2000 on the schedule of works headed joinery repairs should be removed from the schedule as it related to the lessees repairing obligations.
17. Mr Ebert said that the investigation into the flue was necessary to ascertain if it was a flue serving only one flat or several: in the latter instance it would be a cost properly covered by the service charge account.
18. Ms Jennett said that the roof was not in a very good condition. There had been several leaks reported since the works had been delayed. The balcony had been resurfaced approximately 2 years ago to try and solve problems of water leaks.
19. The water tank had leaked into flat 7. It had been completely renovated approximately 7 months ago. The parties agreed that the work should be inspected and providing it was completed satisfactorily this item could be removed from the schedule.
20. Mr Ebert referred to the 6th Schedule clause 5 in relation to the aerial system. The applicants accepted that the landlord was entitled to do the work.
21. Mr Simon Dove of McQuade Property Consultancy had prepared a report outlining the thought process behind the specification and replying to the points raised by MAA. He confirmed that he had not seen the leases but had assumed that all external areas were the responsibility of the landlord to repair and decorate. He was of the opinion that once the scaffolding was in place it would be possible to accurately identify the scope of the work required to the roof, masonry etc. Until the old paint on the stucco is scraped off it is not possible to accurately state the condition of the plaster and brickwork below. He had taken into account that it was unlikely that scaffolding would be erected again for 5 or 6 years.

The Tribunal's decision

22. The tribunal determines that the windows or fanlight in Mr di Fiore's flat should not be replaced. Additional drainage to the balcony is an

improvement and not allowed. The provisional sums in relation to the roof and brickwork are reasonable in the circumstances, all other items on the schedule of work except where noted may be charged to the service charge account.

Reasons for the Tribunal's decision

23. On Mr di Fiore's own evidence the windows and fanlight are not in need of repair or replacement. The extent of the work necessary in relation to the roof and walls will become evident after a closer inspection, if the work is not necessary it will not be undertaken and the cost of the works will be reduced accordingly.

Surveyors Fees: £8075 + VAT

24. The applicants challenged the amount of surveyors fees based on 10% of the contract sum for external repairs and decorations. . It was a significant amount of money: 5% would be a reasonable charge.

25. Miss Jennett of Fortune Management confirmed that the company use several surveyors for this type of work. No commission was received for placing the work which in her experience attracted fees of 10 – 15% of the contract sum. She considered that 10% was a reasonable charge.

26. The on account charge was based on 50% of the estimated final charge. It had been calculated by applying 10% to the lowest tender sum of £80,750. The final bill will be based on the actual costs incurred.

The Tribunal's decision

27. The Tribunal determines that a charge based on 10% of the contract sum is reasonable and payable.

Reasons for the Tribunal's decision

28. No evidence of alternative quotes for undertaking similar work were provided. Using its own knowledge and experience the tribunal determines that a fee based on 10% of the contract sum is reasonable.

Reinstatement Works: £337.83

29. During the course of the hearing the location and purpose of the works was clarified. The applicants accepted that the amount charged was payable.

Decision of the Tribunal

30. The Tribunal has no further jurisdiction in relation to this item.

Reasons for the Tribunal's decision

31. The Tribunal's jurisdiction does not cover items agreed between the parties.

Insurance Premium: £8798.93

32. Mr di Fiore had made enquiries regarding insuring the building; the resultant illustrative premiums were much lower than the actual premium. However the terms quoted were not the same as in the actual policy and on a like for like basis and after being advised of the number of claims made within the previous 2 years most insurers were unwilling to quote. However he was concerned at the way in which the claims had been handled which had resulted in other insurers not being willing to quote.

33. Mr Ebert said that the number of the claims was down to the lessees. The process was that the lessees informed the managing agents who then advised the broker, St Giles. St Giles dealt with the actual claims. Mr Ebert confirmed that at least half the flats were sublet and that the landlord received 10% commission on the insurance premium.

The Tribunal's decision

34. The Tribunal determines that the commission paid to the landlord should be credited to the service charge account.

Reasons for the Tribunal's decision

35. The evidence regarding the placing of the insurance and management of the claims process was dealt with by St Giles, the landlord's insurance broker. It is not reasonable that the cost of insurance should include a commission paid to the landlord in such circumstances. There was no evidence on a like for like basis that the sum charged was unreasonable.

Management Fees: £3000 + VAT

36. The Applicants stated that there had been a significant increase in the management fees. The fees had been £2394 + VAT and had increased to £3000 + VAT per year. This represented a large percentage increase: they would have expected the fees to go up by 3 – 5% per annum. The fee increased from £2058 to £2394 from 2009 to 2012,

this was a reasonable increase of between 3 and 5% per annum. The Applicants accepted the previous year's charge was reasonable and offered to pay an increase of 5% for 2013.

37. Ms Jennett explained that the company's minimum charge for a block was £2500. £3000 was the minimum charged in this area of London; some agents charged £5000 plus 2.5% for major works. Fortune Management made no additional charge for serving s20 Notices. The reason for the increase was set out in a letter dated 4 November 2013 in which it was stated that the increase was to cover inflation, additional work in relation to new legislation and to put the block in line with the company's fee structure. Ms Jennings was unable to refer to any such legislative provisions within the previous year.

The Tribunal's decision

38. The management fees are payable under the terms of the lease. The Tribunal determines that a management fee of £2500 + VAT is reasonable and payable.

Reasons for the Tribunal's decision

39. In the Tribunal's experience the increase in the management fees from 2012 to 2013 was significantly more than the norm. This is a small block; decorations and repairs are overseen by others; there have been no significant additional statutory duties placed on managing agents in the previous 12 months.

Section 20(c) Landlord and Tenant Act 1985.

40. Mr di Fiore said that the lessees had tried to resolve the outstanding matters and had been willing to attend a mediation meeting to avoid the hearing but Mr Ebert had refused to agree to mediate. The applicants felt they had no choice but to continue to a hearing.
41. Mr Ebert said that he had owned the property for 30 years; there had never been any disputes until now. Fortune Management or one of their predecessor companies had managed the block throughout this time. The other lessees were the losers here because the challenges had delayed the works. Mr di Fiore did not agree with the specification and that is why no agreement has been reached. He agreed that he was not prepared to attend a mediation meeting if Mr di Fiore was there. He would have considered mediation if Mr di Fiore had appointed someone to represent him at the mediation.
42. Ms Jennett advised that the additional costs which had been incurred in relation to the application were £554.40 for the surveyor to dealing

with the reply to the MAA report and £500 additional costs for Fortune Management Limited.

The Tribunal's decision

43. The Tribunal determines that an order under section 20(c) should be granted.

Reasons for the Tribunal's decision

44. The Tribunal is satisfied that the applicants had no alternative but to come to a hearing. It became clear during the hearing that the applicants were content not to pursue matters once they had been given a cogent explanation to their queries.

Chairman: Evelyn Flint

Date: 19 November 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a Leasehold valuation 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 a Leasehold valuation 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 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 leasehold valuation 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;

(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.