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

Case Reference : **LON/00BH/LSC/2013/0634**

Property : **170 Forest Road Walthamstow
London E 17 6 JQ**

Applicant : **Mr F Batoon and Mr P Booth**

Representative :

Respondent : **Naka Estate Limited**

Representative :

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Dr Helen Carr
Hugh Geddes**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **17th December 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £ 1,678.00 demanded in connection with works carried out to the property in 2013 is not payable by the Applicant.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (4) The tribunal determines that the Respondent shall pay the Applicant £ within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the charges for works carried out in 2013 .
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Tribunal held a case management hearing of this matter on 8th October 2013 which both parties attended and issued directions on the same date. In those directions it was decided that the matter should be determined on the basis of written representations and without an oral hearing.
4. The matter is therefore being determined on the basis of the papers provided.

The background

5. The property which is the subject of this application is a [brief description].

6. The dispute between the parties arises as a result of works carried out to the exterior to the Applicants' property during March of 2013. The Applicants state that they had been pressing the Respondent to do works to the property but that when a Mr Thompson turned up to inspect the property and subsequently carry out works, it was unclear what his identity was, and only in August 2013 did it become clear that he was the Respondent, using his nickname.
7. Photographs of the works which were carried out are provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

9. The relevant issues for determination (identified at the case management hearing) as follows:
 - (i) The lack of compliance with s.20 of the Landlord and Tenant Act 1985
 - (ii) The lack of compliance of the service charge demand with the legal requirements set out in s.48 of the Landlord and Tenant Act 1987 including the failure of the demand to provide a summary of rights and obligations.
 - (iii) The failure to provide service charge accounts, receipts or invoices in relation to the sum of £1678.00 demanded in connection with the works.
10. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Lack of compliance with s.20 of the Landlord and Tenant Act 1985

11. The Applicants state that the Respondent failed to comply with the statutory notice requirements set out in s.20 of the Landlord and Tenant Act 1985.
12. The Respondent states that he understood that a section 20 notice was not required because each job was less than the cost of £250 per leaseholder.

13. He also states that as the works were of an urgent nature and may have caused damage to the state of the property the works were urgent. There is a note in pen on the statement saying 'dispensation order'.
14. Finally he states that the tenants agreed for the works to go ahead with the quote sent negating the need for a section 20 notice as they were pressing us for the works to commence immediately.
15. The documentation provided to the tribunal also includes a notice under s.20 of the Landlord and Tenant Act 1985 relating to works to clear and maintain all external rain water pipes and valleys, full installation of fire alarm system and other works to conform to the local authority and fire authority requirements in respect of fire risk at the flats and communal areas, electrical upgrade and certificate for the communal areas.
16. This notice appears to relate to the works already carried out to the property. For the avoidance of doubt, and to save the costs of further applications to the tribunal which would be disproportionate, the tribunal has decided to treat the hand written words on the Respondent's letter to the tribunal together with the notice described in paragraph 15 as an application for dispensation.
17. The Respondent argues that the statutory requirements should be dispensed with as a matter of urgency as the works were necessary for health and safety reasons and to prevent further damage to the fabric of the property.
18. He also states that the Applicants agreed to the works being carried out.
19. The Applicants say that the works cannot have been urgently required as they have been pressing the Respondent to carry out the works for at least six months.
20. The tribunal has considered the comments of the Applicants on the works and the photographs provided. It is clear to the tribunal that the works are of a poor standard and do not comply with building regulations.
21. Agreement from the Applicants that the works be carried out does not take away the need for consultation. Moreover the agreement from the Applicants appears to have been solely out of desperation to get some work done to the property, enabling them to proceed with internal repairs. Any agreement would imply that the works were to be of reasonable cost, carried out to a reasonable standard by a professional.

Decision of the tribunal

22. The tribunal determines not to grant the application for dispensation from the requirements to consult.

Reasons for the tribunal's decision.

23. There is no evidence to support the Respondent's claim that the works were urgent and necessary for health and safety reasons.
24. The consequences of this decision is that the Respondent is not entitled to charge the Applicant more than £250 for the works. However this is subject to the decision of the failure to comply with statutory provisions set out below.

Lack of compliance with statutory requirements for service charge demands and failure to provide invoices and receipts in connection with the works

25. The Applicants state that no legally valid demand for monies has been received by them and therefore the monies are not payable.
26. They also state that the Respondent asked Mr Booth to hire tools to carry out the works, which he did because he was so frustrated by the failure to carry out the works.
27. The Respondent asks, in his letter to the tribunal, what demand? He also states that the invoice provided is the one contained in the bundle before the tribunal.

The tribunal's decision

28. The tribunal determines that there is no statutorily compliant demand for the monies in dispute and therefore it is not payable.

Reasons for the tribunal's decision

29. The Respondent does not dispute that no statutorily compliant demand has been served.
30. The consequences of this decision is that the Respondent is not able to recover any monies for the works he has carried out to the property.
31. If the Respondent serves demands that comply with the legislative requirements he may be able to charge the lessee up to £250 for the works done. However, in order to charge £250 he would have to

demonstrate that the works were properly invoiced and carried out to an appropriate standard. From the photographs provided and the statements by the Applicants which are not denied by the Respondent the current standard of works is very poor and it is not likely that a tribunal would determine that any thing other than a nominal sum would be payable by the Applicants. If a further demand is made the Applicants will of course be able to apply to the tribunal for a determination of payability and reasonableness.

32. Both parties may benefit from seeking legal advice about their rights and responsibilities. The Respondent appears unfamiliar with the legal responsibilities involved in owning and managing leasehold properties. The Applicants may wish to consider whether it would be appropriate for them to apply to the tribunal to become an RTM company.

Application under s.20C and refund of fees

33. Taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
34. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having read the documentation from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: Helen Carr

Date: 17/12/2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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 matter of an application
under sub-paragraph (1).