



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

Case Reference : **LON/00BK/LSC/2014/0022**

Property : **FLAT F, 132 SUTHERLAND
AVENUE, LONDON W9 1HP**

Applicant : **MR NIGEL CROSS, TPS ESTATES
(MANAGEMENT) LTD**

Representative : **SLC SOLICITORS**

Respondent : **NORMANDY PROPERTIES LTD**

Representative : **RAFINA SOLICITORS**

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

Tribunal Members : **MS L SMITH (Legal Chair)
MS S COUGHLIN, MCIEH**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR
Determination without a hearing**

Date of Decision : **23 April 2014**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £5484.49 is payable by the Respondent in respect of the service charges for the years 2012 and 2013 as claimed in the County Court proceedings (including charges for major works)
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) Since the Tribunal has no jurisdiction over statutory interest, county court costs and fees, this matter should now be referred back to the Telford County Court.

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 service charge years 2012 and 2013 (including charges for major works).
2. Proceedings were originally issued in the Northampton County Court under claim no. 3YQ70199 . The claim was transferred to the Telford County Court and then in turn transferred to this Tribunal, by order of District Judge Brown on 23 December 2013.
3. The relevant legal provisions are set out in Appendix A to this decision.

The determination

4. A case management conference was held on 4 February 2014. It was directed at that case management conference that the determination of the application would take place in the week beginning 22 April 2014 and would be determined on the papers unless either party made a written request to the Tribunal no later than 2 weeks before that date for an oral hearing. No such request was received and accordingly the application was determined on the papers. The Tribunal had before it at the date of the determination a bundle including the Respondent's statement of case and Applicant's statement of case and a schedule of the amounts comprised in the application with comments from both parties as to the items in dispute. The Tribunal also had a copy of the lease for Flat A, 132 Sutherland Avenue supplied by the Applicant as an indication of the terms of the leases for the flats in the building (see paragraph 6 below).

The background

5. The property at 132 Sutherland Avenue is (according to the determination of the Tribunal of 14 October 2010) an end of terrace brick built Victorian Villa in Maida Vale. That property is built over 5 floors including a basement and is divided into eight individual flats. The property which is the subject of this application, Flat F (“the Property”) is retained by the freeholder which is the Respondent to this application. 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.
6. The Director of the Respondent holds a long lease in relation to Flat A, 132 Sutherland Avenue (“the Lease”) which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. Clause 5(12) of the Lease provides for the Respondent Lessor to “contribute towards the service charge hereunder and to be under like obligation in respect of the Tenants obligations herein contained in respect of flats in the Building which are not let on long leases”. The Respondent did not dispute its liability to pay service charges in accordance with the terms of the Lease. The relevant clauses of the Lease are set out at Appendix B to this decision.

The issues

7. From the parties’ statement of cases and the schedule referred to at paragraph 4 above, the Tribunal ascertained that the items in dispute were as follows (the Respondent having accepted liability for the sum of £3176.51 although not having commented on the amounts demanded for the period 24 June – 24 December 2013):
 - (i) The payability and/or reasonableness of service charges for major works relating to refurbishment of the internal common parts and fire safety (“the First Major Works”) claimed by the Applicant in the sum of £4145.85
 - (ii) The payability and/or reasonableness of service charges for management fees claimed by the Applicant in the sum of £2400 per annum (being £3600 over an 18 month period of which the Respondent’s share is £450)
 - (iii) The payability and/or reasonableness of service charges for security costs claimed by the Applicant in the sum of £90 (of which the Respondent’s share is £11.25)
 - (iv) The payability and/or reasonableness of service charges for major works claimed by the Applicant in the sum of £3720 per annum (“the Second Major Works”) (of which the Respondent’s share is £465)

8. Having considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The cost of the First Major works claimed by the Applicant in the sum of £4145.85

9. The payability and/or reasonableness of service charges for the cost of the First Major Works claimed by the Applicant in the sum of £4145.85

The Tribunal's decision

10. **The Tribunal determines that the amount payable in respect of the cost of the First Major Works is £4145.85.**

Reasons for the Tribunal's decision

11. The Applicant served notices under s20 Landlord and Tenant Act 1985 (as amended) in relation to the First Major Works on behalf of the Respondent freeholder on 13 June 2011 (notice of intention to carry out works) and 27 October 2011 (notice of estimates received and intention to appoint contractor). On 9 May 2012, invoices were issued to the lessees for their respective shares of the cost of the First Major Works which totalled £33,166.80. The Respondent's share of the cost of the First Major Works amounts to £4145.85.
12. The Respondent disputes the reasonableness of the cost on the basis that it has obtained a cheaper estimate (in the total sum of £17,260 + VAT) and that the First Major Works have not been carried out. The Applicant's response to this is that he is entitled to claim for works in advance under the Lease (clause 4(2)(b) of the Lease) and that the Respondent did not make observations during the s20 consultation response nor at any time since and it is now too late to provide a cheaper estimate and seek to dispute reasonableness on that basis.
13. The Tribunal agrees with the Applicant that it is now too late for the Respondent to provide an alternative estimate, having failed to participate in the consultation process and at a time when a contractor has been appointed. The Tribunal also agrees with the Applicant that he is entitled to claim for the cost of works in advance under the Lease. Accordingly, the cost of the First Major Works as claimed is payable and reasonable in the total sum of £33,166.80 of which the Respondent's share is £4145.85.

Management fees claimed by the Applicant in the sum of £2400 per annum

14. The payability and/or reasonableness of service charges for management fees claimed by the Applicant in the sum of £2400 per annum (being £3600 of which the Respondent's share is £450)

The Tribunal's decision

15. **The Tribunal makes no determination in relation to the amount payable by the Respondent in respect of management fees which are agreed by the parties as being £396 (£3168 being the agreed total for the 3 half years at issue in this application).**

Reasons for the Tribunal's decision

16. The Applicant claimed management fees in the sum of £2400 per annum. Accordingly, the amounts claimed for service charges in the County Court proceedings are the Respondent's share of £3600 (1.5 years x £2400). The Respondent's share of this figure is £450.
17. The Respondent disputed this item on the basis that when the Applicant was appointed manager of 132 Sutherland Avenue by the Tribunal on 23 November 2010, the remuneration which was agreed and ordered by the Tribunal for the 5 year management term was £1760 + VAT being £2112. The Applicant agreed that he had overlooked this when submitting the accounts and accordingly agreed that the Respondent (and the other lessees of 132 Sutherland Avenue) would be refunded the difference between £2400 and £2112 per annum.
18. The amount claimed in the County Court proceedings covers a period of 18 months (3 half year demands). Accordingly, the figure claimed by the Applicant in those proceedings needs to be reduced by £54 (1.5 years x £36). Since that was agreed between the parties prior to the decision, the Tribunal makes no determination in relation to this amount.

Security costs claimed by the Applicant in the sum of £90

19. The payability and/or reasonableness of service charges for security costs claimed by the Applicant in the sum of £90 (of which the Respondent's share is £11.25)

The Tribunal's decision

20. **The Tribunal determines that the amount payable by the Respondent in respect of the service charge item for security costs is £11.25.**

Reasons for the Tribunal's decision

21. The Respondent challenged this item on the basis that there was no security being provided to the Property and no invoice had been produced in this respect. The Applicant indicated in response that the £90 was in respect of works to the front door to the building. A copy of the invoice from Crawford Security Limited dated 15 March 2013 appears at p86 of the bundle before the Tribunal. The Applicant states that this work was required due to reports of theft of post delivered to the Property which matter was drawn to the attention of the lessees by letter dated 7 March 2013. Work was carried out by Crawford Security Ltd on instruction from the Applicant to ensure that the main front door of 132 Sutherland Avenue was closing properly to ensure that there was no unauthorised access to the building.
22. The Tribunal is satisfied that the amount claimed is payable and reasonable and that the work has been done and that the expense was reasonably incurred. Accordingly, the sum of £90 is payable and reasonable for this item and the Respondent's share is £11.25.

Major works claimed by the Applicant in the sum of £3720

23. The payability and/or reasonableness of service charges for the cost of the Second Major Works claimed by the Applicant in the sum of £3720 (of which the Respondent's share is £465)

The Tribunal's decision

24. **The Tribunal determines that the amount payable by the Respondent in respect of the cost of the Second Major Works item is £250.**

Reasons for the Tribunal's decision

25. The cost of the Second Major Works is claimed as £3720 included in the 2012-13 accounts as "major works". The Second Major Works related to works done to the basement flat at 132 Sutherland Avenue. The Applicant explained that the Second Major Works were to remedy damage caused to the basement flat due to water ingress from the front steps that lead to the main building. The Respondent observed that the invoice for the Second Major Works was addressed to Mr Parnaby, the lessee of the basement flat, and that it was told by Mr Parnaby that the Second Major Works were works in relation to which no contribution was required from the other flats in the building. Mr Parnaby also apparently informed the Respondent that he had paid for the Second Major Works (although the Tribunal notes that no witness statement was produced from Mr Parnaby or indeed anyone on behalf of the Respondent to support these assertions).

26. The Applicant disputed that the other lessees of the building were not liable to contribute to the cost of the Second Major Works on the basis that the damage was “caused by external defects relating to the framework of the building” and as such fell within the lessor’s repairing liability and, therefore, fell to be paid for via the service charge. Clause 5(2) of the Lease places an obligation on the Lessor to maintain the main structure of the building and the main staircases. Furthermore, the Lease grants easements to the lessee in the form of the right to “shelter and protection” from the other parts of the Building and from the site. The Tribunal therefore agrees with the Applicant that the cost of the Second Major Works is payable as part of the service charge under the Lease and that the Respondent is liable to pay its share (subject to reasonableness).
27. The Tribunal notes however that the cost of the Second Major Works exceeds the limit of £250 per flat above which a consultation procedure should have been carried out in relation to the Second Major Works. There is no evidence before the Tribunal that the Applicant carried out such a consultation procedure nor that any application for dispensation was made (or is currently made) by the Applicant. Although it remains open to the Applicant to make an application for dispensation (as to which the Tribunal notes the reference in the Applicant’s statement of case to the urgent need for the Second Major Works), unless and until such an application is made, the maximum which the Applicant can claim is £250 per flat. Accordingly, the Respondent’s contribution to the cost of the Second Major Works is £250 (reduced from £465).
28. Based on the above determinations, the Tribunal calculates that the sum claimed in the County Court proceedings should be reduced by £269 giving a total claim of £5484.49.

The next steps

29. The Tribunal has no jurisdiction over statutory interest or county court costs or fees. This matter should now be returned to the Telford County Court.

Name: Ms L Smith

Date: 23 April 2014

APPENDIX A

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 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) a leasehold valuation 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 20ZA

- (1) Where an application is made to a leasehold valuation Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term 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.

APPENDIX B

Relevant clauses of the Lease

Clause 1

1. In consideration of the sum mentioned in Part 1 of the Second Schedule hereto paid to the Lessor by the Lessee.... and of the rents and covenants hereinafter reserved and contained and on the part of the Lessee to be paid observed and performed the Lessors HEREBY DEMISE unto the Lessee ALL THAT Flat details of which are set out in Part 2 of the Second Schedule hereto....

TOGETHER with the easements rights and privileges mentioned in the Third Schedule hereto but subject as therein mentioned by EXCEPT AND RESERVING as mentioned in the Fourth Schedule hereto TO HOLD the demised premises unto the Lessee for a term of ninety-nine years from PAYING therefor during the said term the yearly rents as specified in Part 3 of the Second Schedule by equal half-yearly instalments in advance on the 24th day of June and the 25th day of December in every year free of all deductions whatsoever.... AND FURTHER PAYING as rent the maintenance charge and the excess contribution hereinafter described.

Clause 4

4. The Lessee HEREBY COVENANTS with the Lessor and with and for the benefit of the owners and lessees from time to time during the said term of the other flats comprised in the Building that the Lessee will at all times hereinafter during the said term

....

(2)(a) Pay to the Lessor in addition to the rent hereby reserved the yearly sum as specified in Part 4 of the said Second Schedule (hereinafter called "the maintenance charge") as a contribution towards the expenditure incurred by the Lessor in carrying out his obligations under Clause 5 hereof..

(b) Pay to the Lessor (if so requested in writing by the Lessor or his Agents) on the same days as and together with the maintenance charge such further sum in advance and on account of the excess contribution hereinafter referred to include the creation of a reserved fund for future expenditure as the Lessor or his Auditors or his Managing Agents shall specify at their discretion to be a fair and reasonable interim payment.

(c) The maintenance charge and the further sums (if any) on account of the excess contribution shall be paid to the Lessor by equal instalments in advance on the days hereinbefore appointed for payment of rent in each year together with rent hereinbefore reserved and so that in case of default the same shall be recoverable from the Lessee as rent in arrears.

(d) If the expenditure incurred by the Lessor in any accounting period of twelve months in carrying out his said obligations under clause 5 hereof (hereinafter called "the annual cost") exceeds the aggregate amount payable (or deemed to be payable) by way of maintenance charge by the lessees of all flats in the Building in the accounting period in question (hereinafter called "the annual contribution") together with any unexpected surplus as hereinafter mentioned and a certificate containing a summary of the expense incurred by the lessors showing the amount by which the annual cost exceeds the annual contribution and any such unexpended surplus be served upon the

Lessee by the Lessors or the Managing Agents then the Lessee will pay to the Lessor within twenty-eight days of the service of such certificate (hereinafter called "the excess contribution") of the amount of such excess shown therein due credit being given for all interim payments made by the Lessee in respect of such accounting period and such excess contributions or any balance found payable shall be recoverable from the lessee in case of default as if the same were rent in arrears....

...

(f) For the purposes of this paragraph:-

(i) the said accounting period shall mean a period commencing on 26th March each year and ending on 25th March the following year

(ii) in respect of the obligations contained in Clause 5 hereof the maintenance charge shall be 12 1/2 % of the annual contribution plus 12 1/2 % of the excess contribution

Clause 5

5. The Lessor ... HEREBY COVENANTS with the Lessee that the Lessor subject to contribution and payment by the Lessee as hereinbefore provided will at all times during the said term:

.....

(2) Maintain and keep in good repair and condition:-

(i) the main structure of the Building including the principal internal timbers the exterior walls the foundations and the roof thereof including the main water tanks main drain gutters and rain water pipes

(ii) all such gas and water mains and pipes drains water and sewage ducts and electric cables and wires in under and upon the Building as are not both comprised within and used solely for the purpose of one flat

(iii) the main entrances passages landings staircases (other than those included in the demised premises) ... enjoyed or used by the Lessee in common as hereinafter provided and the boundary walls of the Building pathways and courtyard

.....

(8) Employ a firm of Managing Agents to manage the Building and discharge all proper fees charges and expenses payable to such agents in connection therewith including the cost of computing and collecting the maintenance charges

....

(12) To contribute towards the service charge hereunder and to be under like obligations in respect of the Tenants obligations herein contained in respect of flats in the Building which are not let on long leases.

SECOND SCHEDULE

.....

PART 4

Contribution Towards Maintenance

£50 per annum

THIRD SCHEDULE

Easements Rights and Privileges Granted

....

2. The right to subjacent and lateral support and to shelter and protection from the other parts of the Building and from the site and roof thereof