



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

Case Reference : **LON/00AZ/LSC/2015/0130**

Property : **61 & 63 Ravenscar Road, Bromley,
Kent, BR1 5PN**

Applicants : **Mrs Beaumont - 61 Ravenscar Road
Ms Williams - 63 Ravenscar Road**

Representative : **In person**

Respondent : **Phoenix Community Housing
Association**

Representative : **Mr Richard Parker (Leasehold
Consultation Adviser)**

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

Tribunal Members : **Mr L Rahman (Barrister)
Mr M Mathews FRICS
Ms S Wilby**

**Date and venue of
Hearing** : **3rd July 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **17th August 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this decision.
- (2) 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.
- (3) The tribunal determines that the respondent shall reimburse the applicants the tribunal fees paid by the applicants within 28 days of this decision.

The application

1. The applicants seek 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 applicants in respect of the service charge years 2013-2014 and 2014-2015.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicants appeared in person. The respondent was represented by Mr Parker and Mr Neil Gulvin (Consultant Clerk of Works). Mr Gulvin attended in place of Ms Howard, the respondents Project Manager, who was unwell. Mr Gulvin had not provided a witness statement but stated that he was able to provide evidence on all the disputed issues, the evidence he proposed to give had already been disclosed to the applicants in November 2014 and during the unsuccessful mediation, and he would adopt Ms Howard's statement (on page 209) as his evidence. The applicants did not object and in the circumstances the tribunal allowed Mr Gulvin to give evidence at the hearing.

The background

4. The properties which are the subject of this application are purpose built one bedroom ground floor and first floor flats at the end of a terraced two storey maisonette comprising 12 properties in total.
5. The respondent carried out Major Works to the whole block during the 2013-2014 service charge year. Each of the applicants was required to contribute £3,089.39 and a further 10% administration fee towards the final cost of the Major Works. The service charge demands covering the

cost of the Major Works were issued in the 2014-2015 service charge year.

6. The tribunal inspected the property before the hearing in the presence of the applicants and representatives for the respondent.
7. The applicants each hold a long lease of their respective properties which requires the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. The applicants had disputed three items of expenditure in their 2013-2014 service charge account, namely; the estimated repair charge for the following service charge year in the sum of £20, the £12 asbestos charge, and the £100 management fee. However, the applicants confirmed at the case management hearing on 7.4.15 that they no longer disputed the estimated £20 repair charge in each of the relevant service charge years and the £100 management fee for the 2013-2014 service charge year. During the course of the hearing, the applicants also stated that they did not wish to challenge the £12 asbestos charge as it was only a minimal charge.
9. The remaining dispute therefore concerned the 2014-2015 service charge year and in particular the items of expenditure under the Major Works programme and the management fee.
10. The tribunal identified at the case management hearing on 7.4.15 that the main issues were whether the cost of the Major Works were reasonable in amount and whether the works were completed to a reasonable standard.
11. The respondent stated at the hearing that it was aware, due to the previous meetings with the applicants, that a further issue raised by the applicants was whether any of the works carried out under the Major Works programme were necessary. The respondent stated that it was prepared to deal with this further issue at the hearing.
12. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Were the costs of the Major Works reasonable in amount

13. The respondent stated that the contract was awarded to "Lakehouse" at the end of a tendering process. The applicants stated that they did not have any alternative quotes for any of the items of expenditure as it was not cost effective to obtain alternative quotes.
14. The tribunal determines, given that the contract had been awarded after a tendering process and in the absence of any evidence from the applicants, that the overall cost of the Major Works is reasonable in amount.

Scaffolding (£1,433.28)

15. The applicants stated that the scaffolding was not required for the works that were carried out. The applicants were adamant that the scaffolding was only to the front of the property and not to the side or the back. The applicants stated that the respondent would not have had access to erect scaffolding to the side and back. The applicants stated that the scaffolding was up for at least four months and the cost was too high.
16. The respondent stated that the works were not simply minor repairs. The works involved the replacement of the rear corner of the roof ("hip replacement"), replacing missing roof tiles, replacing the soffit and fascia, replacing the guttering, and re-pointing to the brick work. Mr Gulvin stated that he was sure that the scaffolding had been to the front and side and back of the property as he recalled walking on the scaffolding around the property to check the works that were required. The scaffolding had two levels (first and roof level) and was erected around the whole block and not just the applicants' properties. Mr Gulvin stated that the scaffolding had been up for 12-14 weeks as the works took longer than expected and were taken down once all the works to the whole block had been completed. The tendering process covered the cost of the scaffolding, the cost of the scaffolding was fixed based upon a metreage rate, there were no additional costs for the scaffolding being used for a longer period than expected, and each flat was required to pay 1/12 of the cost.
17. The tribunal noted that work was done to the rear corner of the roof, new tiles had been added to the rear section of the roof to replace missing tiles, and high level re-pointing work had been carried out. The tribunal, applying its specialist and accumulated knowledge, is aware that health & safety requires scaffolding for such works at that elevation. The tribunal accepts that a contractor would not allow its employees to walk over the roof, as suggested by the applicants. The tribunal therefore found, on the balance of probabilities, that two level scaffolding was necessary and was in fact used around the whole block.

18. Given that the cost of the scaffolding was fixed and no additional cost had been incurred by reason of the scaffolding being used for longer than expected, it is irrelevant how long the scaffolding was actually in situ.
19. The tribunal determines the scaffolding cost to be reasonable and payable.

External redecorations £1,666.67

20. The respondent stated that it paid a fixed price regardless of the actual works carried out. The respondent accepted that the cost was too high for the actual works carried out. Both parties agreed at the hearing that £200 was reasonable and payable.

Structure and fabric repair £606.68

21. The respondent stated that this covered the cost of brick repairs / replacement, re-pointing, chimney stack re-pointing, fascia and soffit, and fire break / curtain (page 153).
22. The applicants stated that none of the works had been done. The fascia and soffit did not need to be changed and were not in fact changed as they were in good condition. The applicants stated that they did not see 9 linear metres of re-pointing, although they stated that they had not measured this.
23. The respondent stated that re-pointing work had been carried out and was obvious to see during the inspection. Likewise, it was obvious that some bricks had also been replaced. The schedule on page 145 referred to brick repairs and re-pointing works, which was prepared by Mr Parker and Mr Gulvin when they agreed what works were required.
24. Mr Gulvin stated that the soffit and fascia on the whole block were replaced. The schedule of works on page 139 confirmed that the works had been carried out. Mr Gulvin stated that he signed the inspection report on page 142 confirming that he had physically checked that the soffit and the fascia (under the heading "rainwater goods") had been replaced.
25. Mr Gulvin stated that he had made the decision, having inspected the soffit and fascia, that they needed to be replaced. Mr Gulvin stated that he had his own record of why they needed to be replaced but he did not have that record to put before the tribunal.
26. The tribunal accepts that some brick work had been replaced and re-pointing work had been carried out. This was consistent with the notes

/ diagram the tribunal was referred to on page 145 and what the tribunal had noted during its inspection.

27. The tribunal accepts that the soffit and fascia had been changed. This is consistent with the evidence from Mr Gulvin who stated that he had checked that they had been changed before he signed the inspection report.
28. However, on balance, the tribunal was not satisfied that the soffit and fascia needed to be replaced. The evidence from the applicants was very clear, namely, that they were in good condition and did not need replacing. The tribunal noted that the soffit and fascia are easy to observe from the ground and that non-experts can observe whether they appear to be in good condition or not. Mr Gulvin stated that he decided, having inspected the soffit and fascia, that they needed to be replaced. However, his evidence as to why they needed to be replaced was not specific or detailed. Mr Gulvin explained what the condition *may* have been, i.e. he was generalising as to why he may have decided that they needed to be changed. Mr Gulvin was unable to state what he had actually noted and which led him to the conclusion that they needed to be changed. Mr Gulvin stated that he had his own record of why they needed to be replaced. However, he did not have that record to put before the tribunal.
29. In the circumstances, the tribunal found the cost of replacing the fascia and soffit in the sum of £166.67 (page 153) is not payable. The tribunal found the balance of £440.01 (£606.68 minus £166.67) to be reasonable and payable.

Roof repairs £300.00

30. Mr Gulvin stated that after a close inspection of the roof from the scaffolding, he decided that the roof did not need replacing and that repairs would be adequate. He inspected the rear hip at close level and recollected problems with the cement and fixing, which resulted in his decision that this needed to be replaced. He inspected the other hip and found it to be in good condition. The applicants had only been charged for the hip replacement and were not charged for replacement of the missing tiles.
31. The applicants stated that they could not state how many tiles had been missing and replaced. Some tiles had previously been replaced. They accept that the hip had been replaced but questioned whether it was necessary based upon the rest of the roof being in good condition. The applicants stated that they had viewed the roof from ground level only and did not have any knowledge or background concerning roof repairs.

32. On balance, the tribunal accepts that the hip needed to be replaced. Unlike the soffit and fascia, the condition of the roof cannot easily be determined from ground level by non-experts. The fact that the whole roof did not need replacing does not mean that a part of the roof may not have needed attention. Mr Gulvin gave detailed and specific evidence regarding his clear recollection of the condition of the hip, which he was able to inspect closely, to explain why this particular hip needed to be replaced. The tribunal found the amount reasonable and payable.

External plumbing £498.00

33. The respondent stated that this concerned the complete replacement of the guttering all the way around the property and the replacement of the top sections of two of the down pipes. The cast iron bottom sections of the down pipes were kept and painted as they were in good condition and more robust than plastic. Mr Gulvin stated that he had checked to confirm that the works had been completed before signing the inspection report on page 142. When asked what evidence there was to show that the guttering and down pipes needed to be replaced, Mr Gulvin stated that he did not have any records to say what condition they were in prior to being replaced.
34. The applicants stated that they disputed that any works to the guttering and downpipes took place. The applicants stated that the respondent had replaced one of the down pipes in 2009 after a complaint was made about the pipe being loose. The guttering and the other pipe were in good condition at the time and since then, therefore, they did not need to be changed.
35. The tribunal accepts, having considered the evidence from Mr Gulvin and having observed during the inspection what appeared to be new guttering and re-painted cast iron pipes, that the relevant works were carried out.
36. However, the tribunal is not satisfied that the works were reasonably required. The applicants were clear in their evidence that the guttering and pipe works were in good condition. They stated that they had a problem in 2009, which was remedied and that they did not have any further problems. The evidence from Mr Gulvin, concerning why the works were necessary, was generalised and non specific, unlike his evidence concerning the roof. Mr Parker had not stated in his witness statement what condition the guttering and pipe works were in. The respondent was unable to provide any report or record to show what state / condition the guttering and pipe works were in such that they needed to be changed.
37. The tribunal therefore determines that none of the external plumbing costs are payable by the applicants.

TV upgrade £500.00

38. The applicants stated that all the flats used to have individual aerials / dishes and there was no communal aerial. The applicants did not have TV aerials and therefore there was nothing to upgrade. Whatever works were done, the wires have been left hanging loose outside their windows and therefore they cannot benefit from the upgrade. The applicants stated that they did not know whether the upgrade / work was permitted under the lease but it was not something that they wanted.
39. The respondent stated that it took down all the aerials and satellite dishes on the building and replaced them with a communal digital system allowing occupants to pick up satellite and TV signals. The works were required by Lewisham Council as they wanted to reduce the number of aerials and satellite dishes on buildings. The cables were coiled up outside the applicants' windows as the respondents contractors were unable to gain access into the applicants' properties to drill the necessary holes. The respondent stated that under paragraph 5.3 of Part One of the Tenth Schedule, which referred to the "Provision repair and maintenance" of "communal television aerials", the work was permitted and the charge was recoverable. Furthermore, under paragraph 6.2 of the Fifth Schedule, the applicants had the right to "connect any wireless or television apparatus in the Demised Premises with any aerials for the time being provided by the Lessor (if any)".
40. In reply, the applicants stated they accept that under the terms of the lease the respondent was allowed to provide a communal TV aerial but that they were "disappointed".
41. The tribunal found that it was reasonable to carry out the upgrade in view of the requirement by Lewisham Council and the provisions of the lease. The fact that the applicants may not have wanted the upgrade and were not at present benefitting from the upgrade is irrelevant. The lease allows for such work to be carried out and for the costs to be recovered by way of a service charge. Recovery of such costs is not dependent upon the applicants benefitting from any such works.
42. The tribunal found this charge to be reasonable and payable.

Statutory fee £48.66

43. The applicants stated that they no longer disputed this item of expenditure.

Project overheads £945.06

44. The respondent stated that this covered the cost of site managers, liaison officers, welfare facilities (such as a cabin and toilet and canteens), and a site office. It was agreed with the contractors that the charge for the project overheads would be 18.5% of the works.
45. The applicants stated that the charge was excessive for what was needed for their block. The applicants thought the charge should be about £500.00. They did not have any background in this particular area or have any alternative quotes but felt that the charge was excessive.
46. In view of the contract being awarded after a tendering process and in the absence of any persuasive evidence from the applicants to support their assertion that the charge is excessive, the tribunal determines the agreed percentage charge to be reasonable and payable. The tribunal, having adjusted some of the charges above, calculates the cost of the works in the sum of £2,921.95. The sum payable by the applicants is therefore £540.56 (18.5% of £2,921.95).

Head Office overheads and profit £179.96

47. Both parties agreed that this should be 3% of the overall costs. The tribunal calculates the overall total cost at £3,462.51 (£2,921.95 plus £540.56), therefore the amount payable by the applicants is £103.88.

Administration fee

48. Both parties agreed that this should be 10% of the overall costs. The tribunal calculates the overall total cost at £3,566.39 (£2,921.95 plus £540.56 plus £103.88), therefore the amount payable by the applicants is £356.64.

2014-2015 management fee £206.05

49. The applicants stated that the charge was £45.00 in 2007-2008 and £100.00 in 2013-2014. Therefore the charge of £206.05 was too much. They would be happy to pay £100.00. The applicants stated that they did not know whether the lease allowed for such a charge.
50. The respondent stated that it managed 818 leasehold properties at a total cost of £172,066 (page 156). The management fee covered the staffing cost (two leasehold managers and one admin staff), printing & stationary & postage, leasehold involvement (the cost of hiring venues for leasehold events), and office overheads (lease, cleaning, security, utilities, IT, HR & training, and finance). The management fee covered,

amongst other things, the cost of dealing with leaseholders and their enquiries, issuing service charge demands, obtaining relevant insurance cover, dealing with anti social behaviour, and dealing with repairs. The respondent stated that the management costs were recoverable under paragraph 5.16 of Part One to the Tenth Schedule, which states under "Service Charges", "The costs of managing the Building or Estate including the costs of managing agents if appointed".

51. The tribunal found the management fee, payable by each of the applicants in the sum of £206.05, to be reasonable and payable. The respondent is providing a management service and the lease allows for the cost of providing that service to be recovered. The fact that the management fee in earlier years had been significantly lower does not in itself suggest that the fee for the current year is unreasonable. The applicants have failed to provide any alternative quotes to show that the management fee being charged is excessive or unreasonable.

Application under s.20C and refund of fees and costs

52. Although the respondent had won on most of the disputed issues, the applicants had managed to significantly reduce their service charges.
53. Taking into account the determinations above, the tribunal orders the respondent to refund any tribunal fees paid by the applicant within 28 days of the date of this decision.
54. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless 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: Judge Rahman

Date: 17.8.15

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 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.