11502

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BH/LSC/2015/0484**
Property	:	**Flat 2 Iqra Court, 750A High Road, Leytonstone, London, E11 3AW**
Applicant	:	**Mr Nadim Chouhdry**
Representative	:	**In Person**
Respondent	:	**Meadow Development Limited**
Representative	:	**Mr Robert Kuszneruk, surveyor of McDowalls Surveyors, managing agents**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge E Samupfonda** **Mr K.M Cartwright**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**27 April 2016**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that all of the costs incurred by the Respondent in respect of the service charges for the years 2010, 2011, 2013, 2014 and 2015 are reasonable and payable by the Applicant.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(3) Since the tribunal has no jurisdiction over County Court costs, ground rent and fees, this matter should now be referred back to the Bow 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 2010-2015.

2. Proceedings were originally issued in the Bow County Court under claim no. A03YM709. The claim was transferred to this tribunal, by order of Deputy District Judge Glen on 17 January 2016.

The hearing

3. The application was heard on 14 April 2016. The Applicant appeared in person. Mr Kamran Hussain, lessee of Flat 1 Iqra Court gave evidence in support of the application, accompanied him. Mr Robert Kuszneruk, Surveyor of McDowalls Surveyors, the Respondent's managing agents represented the Respondents. Ms Lisa Curran his assistant accompanied him.

4. At the commencement of the hearing, the tribunal considered Mr Chouhdry's application for Mr Hussain to be permitted to give evidence in support of the application. He referred the tribunal to a "statement" dated 8 December 2015 drafted by him on behalf of other lessees in the subject Building. He stated that 6 lessees had signed the statement including Mr Hussain. Mr Choudhry said that he submitted the statements to the tribunal at the case management conference on 19 January 2016. Mr Kuszneruk expressed his concern that he had not had prior notice of this application and Mr Hussain had not provided a signed witness statement. However, he did not oppose the application provided Mr Hussain limited his evidence to the matters that had been referred to in the document dated 8 December 2015. The tribunal then

acceded to the application but limited the parameters of Mr Hussain's evidence accordingly.

The background

5. The property, which is the subject of this application, is a ground floor single bedroom flat.

6. 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.

7. The Applicant previously held 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 property was sold by the Applicant in December 2015.

The issues

8. At the start of the hearing the tribunal and parties identified the relevant issues for determination were those identified at the case management conference held on 19 January 2016 namely:

   (i) The payability and/or reasonableness of service charges for the years 2010, 2011, 2012, 2013, 2014 and 2015 relating to the entrance door lock, wiring/lights, rebuild of path wall, new gas/electrical boxes, roof repair, chamber lid, carpet wash and building insurance.

9. In compliance with the said directions the parties completed a Scott Schedule of the items in dispute and gave their evidence and submissions in respect of each item as outlined below following the Scott Schedule.

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal determined that all of costs incurred and claimed in respect of the service charge items in dispute are reasonable and payable by the Applicant for the reasons set out below.

Entrance door lock: Block cost £258.00

11. Mr Chouhdry told the tribunal that he considered that the sum of £258 incurred by the Respondents in changing the Yale lock to the communal entrance door was unreasonable. He said that a Yale lock only costs £10 and 3 keys are provided within this cost so it was unreasonable for the Respondents to ask for 20 keys when there are

only 5 flats in this block. He added that the handle was not replaced as asserted by the Respondents. Mr Hussain agreed that the handle was not replaced. Mr Chouhdry did not provide the tribunal with any other evidence in support of his claim.

12. Mr Kuszneruk referred the tribunal to the invoice from AFS Security Limited dated 9 September 2014 in respect of this work. He explained that following an inspection of the Building, works of repair were identified and a Notice under section 20 of the Act was served on all the leaseholders outlining the proposed remedial work. The existing locking mechanism on the main entrance door was found to be faulty and the handle too short. AFS Security provided the cheapest quote and was awarded the contract. Mr Kuszneruk produced photographs of the lock and handle in support of his claim. He added that the cost incurred was reasonable and the Respondent requested 20 keys in order that it had a sufficient number for all concerned with the Building.

Wiring/Lights: Block Cost £810

13. Mr Chouhdry stated that the communal lighting supply was cut off because the previous landlord failed to pay the electricity bill. The emergency lighting circuit was also disconnected. He therefore challenged the need to carryout any remedial work that had been identified by the Respondent as part of the proposed remedial works pursuant to the s20 Notice served. He said that in the Notice the cost for electrical work was stated to be £405 but when the invoice was issued it rose to £810 without any explanation. He stated that the works were wholly unnecessary as the wiring and lighting were in working order.

14. Mr Kuszneruk referred the tribunal to the invoice dated 28 August 2014 from Townsend Electrical for £810. He stated that the sum of £405 was quoted for the proposed electrical work that had been identified in the s20 Notice exclusive of VAT at 20%. Once the work was underway it became apparent that the emergency lighting circuit did not conform to the required regulations and additional work to reinstate the emergency circuit cost in the region of £300 was required. This and VAT led to the cost of the work increasing. Mr Kuszneruk said that he could not provide the electrical reports or copies of any regulations in support of his assertions at the time of the hearing.

Re-Build of Pathway Block cost £1740

15. Both Mr Chouhdry and Mr Kuszneruk produced sets of photographs depicting a pathway with old dirty broken brickwork. They agreed that the broken brickwork was replaced and photographs were produced. The sum of £1740 was invoiced for the work carried out by D & G Lettings Ltd. The work identified under this invoice included "paint

with external masonry weather protection paint with a 5-year guarantee on paintwork" and this was the issue in dispute. Mr Chouhdry and Mr Hussain stated that the brickwork was not painted whereas Mr Kuszneruk argued that it was. He relied on the invoice.

Gas meter boxes

16. In addition to rebuilding the pathway, the invoice from D & G included work to supply and install 3 new gas meter boxes and 1 new electric meter box (repaired others by replacing some of the holding clips.) Photographs of the gas meters boxes prior to and post-remedial work were produced. Mr Chouhdry explained that the issue for him was that two of the boxes replaced belonged to Flats 6 & 7 and the service charge cost was charged to the Building containing Flats 1-5 and as he did not derive any benefit from the boxes this was inappropriate. The meters serving Flats 1-5 were not replaced or repaired.

17. Mr Kuszneruk referred the tribunal to the lease and explained that the layout of the Building is such that there are 3 different service charge schedules; maintenance costs for the external part of the Building are levied to all 7 flats, maintenance costs for the communal areas serving flats 1-5 and flats 6-7 are charged accordingly. He relied on clause 3 (1) of the lease.

Roof repair: Block cost £360

18. Mr Kuszneruk explained that a complaint of water ingress into Flat 5 emanating from the roof was received from Flat 5. In response, Advanced Roofing Systems were appointed to attend the site and carry out remedial work as identified in their invoice dated 15 April 2013. Mr Choudhry stated that no roof work was ever done. He stated that he had made his own enquiries with the lessee of Flat 5 who denied making a complaint of water ingress. Therefore Mr Chouhdry challenged this cost on the basis that in his view the work was never carried out.

Inspection Chamber lid: Block cost £85

19. Photographs were produced of the lid to an inspection chamber. The dispute between the parties centred on whether a new lid was installed or not. Mr Chouhdry and Mr Hussain asserted that the lid was never replaced and Mr Kuszneruk asserted that previously an old dead plant in a pot covered the chamber and this was replaced.

Carpet Wash: Block cost £140

20. Mr Chouhdry and Mr Hussain contended that the carpet in the communal area was not deep cleaned as claimed by the Respondent.

Mr Kuszneruk referred the tribunal to the minutes of the general meeting of the lessees of the Building held on 11 September 2014. He stated that neither Mr Chouhdry nor Mr Hussain attended. He said that the minutes show the repairs that were carried out and discussed and that included the chamber lid, deep cleaning of the carpet and covers to the meter boxes.

Building Insurance

21. Mr Chouhdry explained that he gave his mortgage company Kensington, the insurance schedules that the Respondents had given to him each year and the mortgage company rejected them. He produced letters from his lenders Kensington dated 21 June 2010, 5th July 2011, 18th October 2013 and 3rd October 2014. He stated that Kensington rejected the buildings insurance schedules Kensington had identified a number of errors that were contained on the policy details and these included the Building address being described as Igra Court, as a commercial and not residential property and a lack of postcode. He explained that he discussed each error annually and Mr Kuszneruk was too slow to respond. Consequentially, the lenders arranged a lenders interest only insurance to protect their interest in the property and charged him between £30-33 per month. He argued that he should not be liable to contribute towards the Building insurance cost arranged by the Respondent as this would amount to him paying twice. He confirmed that he sold the property in December 2015. Mr Chouhdry produced a copy of the official Land Registry Register edition dated 30 March 2006 and this showed that Title Number EGL501544 for the leasehold of Flat 2 Iqra Court, 748 High Road, Leytonstone, London E11 3AW as being the address for the property.

22. Mr Kuszneruk acknowledged that there were errors with a number of insurance schedules but they were rectified once they were brought to his attention. He stated that he spoke to Kensington customer service team on 11 May 2015 and was told that he did not have authority to discuss the matter. On examining the letters from Kensington rejecting the schedules, he noticed that the address was given by Kensington was Flat 2 Iqra Court, 748 High Road Leytonstone London E11 3AW whereas the records held by the Respondents and the information given to the insurers identified the property address as Flat 2, Iqra Court 750A High Road, Leytonstone London E11 3AW. Ms Curran stated that she had made enquiries with the Land Registry, using her phone she read out the details contained in the register and this revealed that Flat 2 750A High Road was sold on 4 December 2015 and the registered Title number was EGL501544. Mr Chouhdry did not object or challenge this evidence. He confirmed the sale of the property. In answer to questions from the tribunal on this issue he told the tribunal that he did not know when he first became aware of the Building being known as 750A. Mr Kuszneruk referred the tribunal to a copy of the Royal Mail entry for postcode finder-find an address and

stated that the postal address for the Building was identified as 750A High Road.

The tribunal's decision and reasons

23. The tribunal heard evidence from Mr Hussain. Whilst he did his best to assist us, the tribunal gave less weight to his evidence because he acknowledged that lived in his flat intermittently and visited the Building occasionally. He was not an expert witness and we did not have a signed witness statement from him. The tribunal then considered the parties' submissions and documentary evidence provided. The tribunal decided that all of the costs incurred by the Respondents in respect of the service charge items in dispute were reasonably incurred and are therefore payable by the Applicant because Mr Chouhdry did not produce any evidence to support his case. Mr Chouhdry outlined in some detail the reasons why he had challenged the costs incurred and occasionally asserted that the Respondents had made fraudulent claims. The tribunal was not provided with any evidence to substantiate that claim and mere assertions are not enough for the tribunal to be satisfied that the costs incurred were not reasonably incurred. The tribunal considered the invoices provided. It accepted Mr Kuszneruk's submissions that the contractors appointed by the Respondents to carry out the work challenged by the Applicant raised the invoices having done the work as contracted. The tribunal had no reason to doubt the veracity of that statement or those invoices. We were not provided with any evidence to demonstrate that the invoices were fraudulent. The tribunal found the parties' photographs of some assistance as they gave context to the parties' assertions and gave the tribunal an opportunity to examine the evidence visually.

24. With regards to the Building insurance, the tribunal found that the letters from Kensington to Mr Chouhdry were addressed to Flat 2, 748 High Road and one of the reasons given for rejecting the insurance schedules provided by Mr Chouhdry was stated for example in the letters dated 2nd October 2012 and 3rd October 2014 as "please ensure that the address of the property insured is the same as the mortgaged property address". The address for the Building held by the Respondents and provided to the insurers was 750A High Road as evidenced by the documents produced by Mr Kuzsneruk. The Land Registry Title Number EGL501544 refers to Flat 2, 748 High Road in the edition dated 30 March 2006 and the details shown following the sale of flat 2 in December 2015 identify the address as being 750A High Road under the same title number. Neither party could explain to the tribunal how or when this situation arose. Ms Curran surmised that Mr Chouhdry's solicitors might have caused the error when he purchased the flat by incorrectly handwriting the address as being 748 High Road but there was no evidence to support this. The tribunal decided that the costs incurred by the Respondents in respect of the insurance were reasonable and payable by the Applicant because it was evident that the subject flat had two addresses and was known as by the Applicant as

Flat 2, Iqra Court, 748 High Road and Flat 2, Iqra Court 750A High Road by the Respondent. The tribunal did not have any evidence presented to it from which it could conclude that the costs incurred by the Respondents in respect of insuring the Building were unreasonable in any of the service charge years in dispute. Mr Chouhdry challenged the costs incurred primarily on the basis that he believed he had incurred the additional costs of the lenders insurance as a result of the Respondents failing to correctly address the insurance schedules in each year. The tribunal acknowledged the errors referred to by Mr Chouhdry. However, on examining the letters from Kensington, the tribunal is satisfied that the fundamental error that concerned the lender was the provision of insurance schedules that had the same property address as the mortgaged property. It was clear from this correspondence that Kensington knew the Building as 748 and not 750A as stated in the schedules. The postcode finder-find an address document from the Royal Mail indicates that the building is identifiable as 750A High Road. Since 750A appears to be the correct address for the Building and was so identified by Mr Chouhdry and used by him in some of his documents submitted to this tribunal, the tribunal concluded that the Respondents could not be held responsible or liable for the additional costs incurred by Mr Chouhdry as there had been what appears to be a misunderstanding between the parties as to the Building's address, the tribunal received no evidence indicating that this was attributable somehow to the Respondents' conduct. Although Mr Chouhdry stated that he did not now when he first became aware of this misunderstanding, the tribunal observed that the correspondence sent to him by the Respondents bore the address as 750A High Road and this seems to have not been raised or queried by either party until now. The tribunal also observed that in the lease dated 15 March 2006 for Flat 2, the typed note of the address for the Building was 750A High Road but this was crossed out and 748 hand written across it. The mortgage deed for Flat 2 of the same date also referred to 748 High Road.

Application under s.20C

25. At the end of the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions 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 not to be made under section 20C of the 1985 Act, so that the Respondents may pass the costs incurred in connection with the proceedings before the tribunal through the service charge. The tribunal was informed that an arrangement had been made as part of the sale of the property for the costs incurred in these proceedings to be settled by Mr Chouhdry should the tribunal not make an order.

The next steps

26. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Bow County Court.

Name: Judge Evis Samupfonda **Date:** 27 April 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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.