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

Case Reference : **LON/00/AJ/LSC/2016/0181**

Property : **Flat 2 42 Birch Grove Acton London
W3 9SS**

Applicant : **Southern Land Securities Ltd**

Representative : **Mr A Cutler of Counsel**

Respondent : **Mr M Poole**

Representative : **In person**

Type of Application : **S27A and s20C Landlord and
Tenant Act 1985**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mr K Ridgeway Bsc (Hons) MRICS
Mr M Cartwright JP FRICS**

**Date and venue of
paper consideration** : **10 Alfred Place, London WC1E 7LR
5 September 2016**

Date of Decision : **5 September 2016**

DECISION

The Tribunal declares that the sums demanded by the Respondent in respect of major works carried out between the years 2013 and 2015 are limited to the sum of £250 per flat.

The Tribunal makes an order under s20C Landlord and Tenant Act 1985.

REASONS

1 The Respondent is the tenant of the premises known as Flat 2 42 Birch Grove Acton London W3 9SS (the property) and the Applicant is the landlord of the property.

2 The Applicant issued proceedings against the Respondent in the County Court seeking recovery of the service charges, administration charges and sums due in respect of major works in respect of service charge years 2013- 2105. The matter was transferred to the Tribunal by an order of the County Court dated 20 April 2016.

3 Directions were issued by the Tribunal on 24 May 2016. and came before a Tribunal sitting in London on 5 September 2016 who considered the matter and made a decision in this case.

4 A bundle of documents was placed before the Tribunal for its consideration. Page references below relate to the relevant pages in that bundle.

5 The Tribunal did not consider that the issues in this case required them to inspect the property and neither party asked them to do so.

6 The issues in contention between the parties at the hearing were set out in a Scott Schedule commencing on page 159 of the bundle and are discussed below.

7 The Tribunal explained to the parties that it has no jurisdiction to deal with ground rent nor with the costs items for £115, £455, £608.00 and £190 set out on page 161 and that these matters will need to be considered by the County court following the Tribunal's determination. These amounts do not therefore form part of the Tribunal's consideration.

8 The Applicant conceded that all sums itemised on pages 159 and 160 relating to costs and totalling £740.47 were not recoverable from the Respondent. These amounts do not therefore form part of the Tribunal's consideration.

9 The sum of £5,470.64 claimed by the Applicant (page 159) was said to relate to major works carried out to the property between 2013-2015. The Respondent challenged the reasonableness of these charges on the basis that the Applicant's selection process for appointing a contractor had been flawed. Irrespective of that issue the Tribunal was concerned that the demand for this sum appeared to be unsupported by any evidence of proper service of a s20 notice, any tenders or schedules of works or detailed invoices to show that work had been carried out and paid for. Neither had the Applicant provided any service charge accounts in respect of any of the sums claimed by it.

10 The Applicant said that it had brought a copy of the s20 notice with it to the hearing and made an application to admit the notice in evidence. Having considered the matter the Tribunal declined to allow the late

submission of documents which the Respondent had not had the opportunity to see or consider. The Applicant is a professional landlord who has had the benefit of its own managing agents and solicitors in the preparation of its case. The late submission of documents in such circumstances is inexcusable.

11 An application was then made by the Applicant to adjourn the hearing. After having retired to consider that application the Tribunal refused to grant the adjournment request holding that it would not be in the interests of justice to postpone the hearing nor would it be proportionate to do so.

12 Returning to the consideration of the Applicant's claim for £5,470.64 for major works, the Tribunal concluded that as the Applicant had provided no evidence to show either that s20 had been complied with or of what works were carried out and paid for or that the works were within the landlord's repairing obligations under the terms of the lease the Tribunal was not in a position to declare either that the correct statutory procedures had been followed or that the sum claimed was reasonable and therefore the Applicant will be restricted to recovery of the maximum allowed without compliance with s20 of £250 per flat.

13 On page 160 the Applicant claimed the sum of £477.85 as an end of year balancing charge. They were able to produce a copy of the invoice (dated 31 March 2015) sent to the Applicant (page 47) but could not demonstrate that a copy of the tenant's rights notice (page 79) had been sent to the Respondent with this document. The amount on page 47 comprised an insurance premium with separate terrorism cover, the sum of £72 for repairs and management fees charged by the managing agents. The Respondent agreed that he was liable for these items and said that he had always paid these and similar items, including ground rent, on a regular basis. The only sums which he had declined to pay related to the major works and the Applicant's costs relating to them. A statement of account on page 84 showed that the Respondent had paid the sum of £500 to the Applicant on 30 April 2015 which the Respondent said was in respect of the invoice on page 47. Given the proximity in payment and similarity in amount the Tribunal accepts the Respondent's explanation which was not disputed by the Applicant. The sum of £477.85 on page 47 is therefore not recoverable by the Applicant as it has already been paid.

14 The Applicant claimed that sums of £24, £24, and £120 on page 161 were administration charges properly chargeable to the Respondent under the provisions of clause 3 of Schedule 4 of the lease dated 24 September 1976 under which the property is held. The charges related to pre-legal action letters sent by the managing agents to the Respondent (pages 82-83). The fourth schedule of the lease itemises the 'costs expenses outgoings and matters in respect of which the lessees are to contribute' and Clause 3 of the fourth schedule states: 'the cost of management of the estate'. The Tribunal does not accept the Applicant's argument that this generic wording entitles the landlord to recover an administration charge from a tenant and holds that the sums claimed (£24, £24, and £120) are not recoverable under this provision.

15 The remaining items of costs on page 161 all related to the Applicant's legal costs of pursuing this action in respect of which the Tribunal agreed with the Applicant that these were not within the Tribunal's jurisdiction and should be dealt with by the county court.

16 The Respondent asked the Tribunal to make an order under s20C which was opposed by the Applicant. Having considered the matter the

Tribunal makes an order under s20C. The Applicant has not substantively succeeded in its application and therefore should not be allowed to require the tenants to pay the costs associated with it.

17 This matter is transferred back to the county court to deal with any outstanding issues within its jurisdiction.

18 **The Law**

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).

Judge F J Silverman as Chairman
Date 5 September 2016

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking