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

Case Reference : **LON/00AG/LSC/2017/0478**

Property : **Flat 6, 133 West End Lane, London
NW6 2PH**

Applicant : **Mr. Hatem Sellami**

Representative : **Mr. Ivor Dore**

Respondent : **Blockventure Resident
Management Ltd.**

Representative : **Ms C Manton of Property
Maintenance & Management
Services Ltd.**

Types of Application : **Liability to pay service chargers**

Tribunal Members : **Judge Tagliavini
Mr. M C Taylor FRICS**

**Date and venue of
Hearing** : **26 April 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **25 May 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the following sums are payable by the Applicant to the Respondent in respect of:
 - (i) £4,263.67 (2015 major works)
 - (ii) £1,110.49 deficit balance from 2016/2017 (subject to any final adjustment by the Respondent as to the correct percentage to be applied and any credit for sums already paid by the applicant)
 - (iii). £2,734.19 (estimated service charges for 2017/2018).
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) The tribunal does not make an order under paragraph 5A of the Commonhold and Leasehold Reform Act 2002.

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 2016 to 2017 and 2017 to 2018.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Mr. Ivor Dore at the hearing and the Respondent was represented by Ms Manton. The Applicant and Mr. Dore arrived ten minutes after the start of the hearing, which had been delayed twenty minutes until 10.20 a.m. in order to allow the Applicant and his representative to attend. On their attendance, the tribunal was informed that their attendance had been delayed due to transport problems. The tribunal resumed what had occurred at the hearing before their arrival and requested the applicant to present his application.

The background

4. The property which is the subject of this application is a lower ground floor three bedroom flat with garden in a Victorian end of terrace house converted into six flats all let on long leases.
5. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and reasonableness of service charges for 2016/2017 (including major works) and 2017/2018.
 - (ii) The issue above in relation to major works had in part been determined by a previous tribunal in decision LON/00AG/LSC/2016/0220 (dated 12 September 2016), but did not make clear the amount that was to be paid and made those amounts conditional on the landlord seeking legal advice as to their payability. Therefore, this tribunal is required to determine whether the sums demanded comply with the previous decision and are payable and in what amount.
 - (iii) Whether an order under section 20C of the 1985 should be made. Under para 5a of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 should be made ("the 2002 Act")
 - (iv) Whether an order for reimbursement of application/hearing fees should be made.

The Applicant's case

8. In a Statement of Case with a number of exhibits attached, the Applicant asserted that he had been assured by the Respondent that his service charges equalled 1/6th contribution of the total amount i.e. an equal share among all of the flats in the building. As a result of what the Applicant regarded as unreasonable demands, he initiated

proceedings in the First-tier Tribunal which determined that he had a liability to pay service charge demands. The Applicant stated that he is being required to pay for services that are not being performed such as cleaning of the communal areas which are plagued by rats and mice and foul smells from the communal bins. Mr. Sellami complained particularly of the rubbish left in the communal areas by other residents and visitors, which he had on several occasions spent time clearing up himself.

9. Further, Mr. Sellami asserted that the building insurance had not been in place for seven months between May 2017 to December 2018 (sic) and that in any event it should be less than the £3,000 demanded from the lessees for the service charge year 2017/18 and more in the region of £2,100. Mr. Sellami asserted that scaffolding to the roof had been erected unannounced and which had meant the scaffolders had accessed his garden without notice or permission and had caused three panes of glass to become broken at a replacement cost of £762.00 plus VAT. Mr. Sellami queried the £2,300 and £3,000 service charges for routine and future repairs and reserve fund respectively. The Applicant also asserted that the management fees of £1,446.00 per annum are unreasonable. The Applicant also challenged the Directors and Officer Insurance of £147.00 to be unreasonable and asserted it should have been included in the management fees. Mr. Sellami also queried the percentage of service charges he was required to pay as instead of the 1/6th he had been asked to pay from 2009, the more recent demands by the new managing agents appointed in May 2017, showed his contribution to be calculated at 24.67% as per the estimate of expenditure for the period 01/04/2017 to 31/03/2018.

The Respondent's case

10. The tribunal was provided with a witness statement and heard oral evidence from Ms Manton, a senior property manager at PMMS, the Respondent's representative. Ms Manton explained that the Respondent Maintenance Company had been formed on 26 February 1987 and as a party to a tripartite lease is responsible for the provision for all elements of the building management. Until February 2017 the Respondent had self-managed the subject building until it had appointed the present managing agents (PMMS) with effect from 13 February 2017.
11. Previously the service charges had been incorrectly calculated as being 1/6th of the total although the lease provides for their collection by reference to the rateable values of the flats. After enquiry, Thames Water had provided rateable values of which the Applicant's is 24.67% and therefore an increase on the 1/6th sum previously charged to Mr. Sellami. Consequently, a fresh demand for service charges for major works was made to Mr. Sellami for the sum of £4,263.67 as set out in a letter dated 11/11/2016.

12. Ms Manton told the tribunal that the roof had been subject to water ingress and as a result Mr. Sellami had been notified by letter dated 28 July 2017 of the need for access to his garden for scaffolding to be erect in accordance with the terms of his lease which, stipulated that reasonable notice be given at clause 3(8) or on 48 hours written notice notices pursuant to clause 8(D). Access to Mr. Sellami's garden was duly obtained although the Respondent had been unaware they had gained access by jumping over the garden wall and had not been notified of any damage caused by the contractors. In any event, clause 10 of the lease excluded any liability on the part of the Respondent for their contactor's actions.
13. Ms Manton told the tribunal that a budget of £600 per annum had been provided with which, to provide a fortnightly cleaning service. After some searching, a cleaning service had been found for that budget. Subsequently, an independent cleaner attended the property fortnight at £12 per visit with effect from 1 February 2018.
14. In respect of the buildings insurance, Ms Manton stated that the £3,000 includes April to August of the current insurance (the renewal date being 3 September); the anticipated premium from September (allowing for a 6% increase) and an allowance for interest if the premiums are to be paid by instalments as had been the previous practice.
15. The figures for general repairs maintenance is an estimated sum as already repairs to the roof and new carpets will account for much if not all of this sum. As the lease allows for the collection of a reserve fund (see Fourth Schedule), it is good management to collect funds for major works that will be required at a future date.
16. Ms Manton told the tribunal that management fees of PMMS are based on a flat rate of £180 plus VAT per flat (£216) equating to an annual fee of £1,296. A one-off fee for the setting up of a new client of £125 plus VAT (£150) is also payable giving a budget figure of £1,446. In contrast Mr. Sellami had provided an alternative quote of £450 per unit plus £600 per annum for Company Secretarial Services and a total figure of £3,300. PMMS recommend Director and Officer Insurance as good management practice, which is not covered by its own fees
17. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the issues as follows:

Service charge item & amount claimed

18. The tribunal finds that the sum of £4,263.67 claimed by the Respondent for major works is reasonable and payable by the

Applicant. The tribunal finds that the estimated service charges of £2,734.19 for 2017 to 2018 are also reasonable and payable by the Applicant. Further, the tribunal also finds that the service charges for 2016/2017, including any deficit is also reasonable and payable by Mr. Sellami subject to any adjustment for the proper percentage being charged and any credit for sums already paid by Mr. Sellami.

Reasons for the tribunal's decision in respect of the major works and 2017/18 service charges.

19. The tribunal finds that the service charge percentage of 24.67% due from Mr. Sellami has been correctly calculated in accordance with the terms of the lease and has led to an increase in his service charges. The tribunal finds that the cost of the major works to be reasonable and Mr. Sellami liable to pay his share as demanded by the Respondent. The tribunal also finds that the cleaning costs are reasonable and payable by the Applicant and notes that much of the uncollected rubbish, relates to areas demised to Mr. Sellami rather than communal areas, although it appears to emanate from other occupiers or visitors to the premises.
20. Further, the tribunal finds that the maintenance costs and the reserve fund are reasonable and payable under the terms of the lease. Similarly, the tribunal accepts the managing agent's fees are reasonable and compare favourably to the more expensive quote relied upon by Mr. Sellami. The tribunal accepts the Respondent's claims in respect of the building insurance and finds that this too is both reasonable and payable by Mr. Sellami as is the Directors and Officers insurance cost, which the tribunal regards as both reasonable and prudent.

Reasons for the tribunal's decision in respect of the service charges 2016/2017

21. The tribunal accepts the Respondent's claims that any deficit from this service charge is payable by Mr. Sellami. However, the tribunal finds that this sum is yet to be finalised by the Respondent in light of the previous miscalculation of the service charge percentage and the late deliverance of the relevant paperwork to the managing agents by the Respondent. In order to avoid a third application to the tribunal in respect of the service charge demands for 2016/2017 and the previous lack of objection made by the Applicant to the items of service charge as recorded in the tribunal's previous decision, the Respondent should ensure that any revised demand for these service charges are finalised, in the correct percentage, takes into account sums already paid by Mr. Sellami and complies with the statutory requirements.
22. The tribunal finds that although the lease allows for access to Mr. Sellami's garden on notice, it finds it regrettable that the contractors thought it appropriate to climb over the wall and rest their scaffolding on Mr. Sellami's glass roof. However, the tribunal accepts that the

Respondent is not liable for this damage and finds it regrettable Mr. Sellami did not chase up this matter as soon as it had occurred.

Application under s.20C and refund of fees

23. In the application form 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 not just and equitable for an order to be made and therefore, declines to do so.
24. The tribunal also declines to make an order under paragraph 5A of Schedule 11 of the 2002 Act prohibiting the Respondent from seeking to recover any administrative costs, if allowed by the terms of lease.

Signed: Judge Tagliavini Dated: 25 May 2018

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 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 11, paragraph 5A

- 5A (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph—
 - (a) "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—

- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.