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

Case reference : **LON/00AZ/LSC/2018/0310**

Property : **41 Thurbarn Road SE6 3QD**

Applicant : **Phoenix Community Housing Association**

Representative : **Ms Karen Blake (service charge managing officer)**

Respondent : **Ms Ngozichukwuka Uche**

Representative : **N/A**

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

Tribunal members : **Judge Carr
Mr Jarero BSc FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **19th December 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £3,549.19 is payable by the Respondent in respect of the service charges for the major works carried out between 2010 and 2012.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) 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.
- (4) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the 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 and (where applicable) administration charges] payable by the Respondent in respect of the service charges relating to major works carried out between 2010 and 2012.
2. Proceedings were originally issued in the County Court Business Centre under claim no. E5QZ186G. The claim was transferred to the tribunal by the County Court at Bromley.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Karen Blake, Service Charge managing officer, at the hearing and the Respondent appeared in person.

The background

5. The property which is the subject of this application is a flat purchased under the Right to Buy.
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 Respondent 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

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability of service charges for major works which were the subject of the county court claim. In particular the Respondent argues
 - a. That she has overpaid the amount of the claim and that the Applicant owes her monies.
 - b. That the administrative fees relating to arrears management are not payable because she was in dispute with the Respondent and there was no clarity on what was owed
 - c. Whether the amount outstanding, if any, should be reduced by a sum of £448 in respect of damage to the kitchen at the property.
9. 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.

Has the Respondent overpaid in connection with the charges for major works.

10. The Applicant has carried out three tranches of major works to the property. The first related to the installation of UPVC windows. These took place in 2010/11 and the total payable by the Respondent was £2584.09. The Respondent was offered a loan in connection with this expenditure but she did not take up the offer.
11. There was a second tranche of work carried out during 2011/2012. The estimated cost of these works was £11,727.68. The final account reduced this estimate by £2886.43. The Respondent was offered credit for this amount which she took up.

12. The third tranche of works related to major works for the installation of lateral electricity mains in 2016/7.
13. The Respondent made some payments some of which got credited to the Respondent's general service charge account, others of which got credited to the Respondent's major work account.
14. As there was a considerable sum outstanding the Applicant issued proceedings for a sum of £4164.19. This sum was made up of a sum of £2828.51 which represents a balancing payment on the major works, a sum of £1260.68 in respect of major works for the installation of lateral electricity mains and a £75 administration fee which arose as a result of administrative work done in connection with arrears.
15. The Respondent's case is that she has been making regular payments on the instalment plan and is not satisfied that these payments have been properly accounted for. She also agreed that the Applicant was entitled to the sum of £1260.68 for the lateral mains.
16. The tribunal spent some time getting to grips with the figures and the Respondent's accounts. It became clear that the Respondent did not think that the sum claimed included the works done to the windows, which she argued were statute barred as there had been no claim in relation to these. Her argument is that the first she knew of the windows being included was through the course of these proceedings.
17. The Applicant said that the Respondent was well aware that her debt was £14079.41 as she had in March 2017 signed a loan agreement for that amount of money.
18. The Respondent said that she never accepted the total on the loan agreement, that she had only signed the agreement to help out the Applicant as its records were defective, and that she had sent emails to the Applicant explaining this.
19. On questioning by the tribunal it became clear that the loan agreement that the Respondent had been asked to sign, retrospectively, in 2017 was a loan agreement for both the windows and the second tranche of major works. As the Respondent had never taken out a loan agreement in relation to the windows, it is difficult to understand what the Applicant was purporting to do. At the very least this was irregular and seems to have been the source of much confusion.
20. The Applicant conceded the set off in relation to the damage to the kitchen.
21. The Respondent argued that the charge of £18 for checking the need for works at the time should also be reimbursed.

The tribunal's decision

22. The tribunal determines that the Respondent is required to pay a total sum of £3,549.19. This comprises the sum of £1260.68 for the works to the lateral mains, and the sum of £2828.51 which is the sum outstanding from the first two tranches of major works. The tribunal deducts from the claim the sum of £100 which is made up of two charges for the administration of arrears. It also deducts the sum of £448 as this was conceded by the Applicant in connection with the claim for a set off.

Reasons for the tribunal's decision

23. After some work between the parties the Respondent's payments appear to have all been accounted for.
24. The amount in dispute between the parties is £2828.51. This represents the amount outstanding from the works to the windows. The Respondent considers she does not owe any money because she did not understand that the charges for the windows were part of the outstanding major works arrears.
25. The argument in connection with the works to the windows being statute barred does not hold for two reasons. First the Applicant always considered that they were part of the total debt and did take action in connection with the arrears and secondly that for debts under a lease the 12 year limitation rule applies.
26. The tribunal considers that the Applicant was entitled to the monies for the windows and was entitled, in the absence of any indication from the Respondent that she did not intend to pay for the works to the windows, to apply the monies it received to all of the outstanding major works charges.
27. The Respondent has accepted her liability for the lateral mains works.
28. The Applicant has conceded the sum of £448 as a set off for damage caused to the Respondent's kitchen. There is no clarity about what the sum of £18 which the Respondent still disputes was for, and the tribunal is not inclined to investigate further taking into account the considerable passage of time and the small amount of the charge.
29. The tribunal considers that there is some substance to the Respondent arguing that the Applicant's system was extremely confusing. It also considers that the retrospective paperwork in connection with the loan, whilst not relevant to the sums in dispute, was very confusing to the Respondent. In the light of this the tribunal deducts the sums of £75 and £25 which were charges relating to the administration of arrears.

Application under s.20C

30. In the statement of case Respondent 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, and in particular the confusion around the charges, the tribunal 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 Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

The next steps

31. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Bromley County Court. The tribunal draws the attention of the Court in any claim relating to costs that the Applicant's behaviour over the loan agreements was extremely confusing and irregular and has contributed to the misunderstandings in this case.

Name: Judge Carr

Date: 19 December 2018

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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.

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).