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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LSC/2014/0629**
Property	:	**181 Campbell Road** **London E3 4DP**
Applicants	:	**Philip Hemmise** **Tina Hemmise**
Respondent	:	**London Borough of Tower Hamlets**
Representative	:	**Tower Hamlets Homes**
Type of Application	:	**Liability to pay service charges**
Tribunal	:	**Judge Nicol** **Mr KM Cartwright FRICS**
Date and Venue of Hearing	:	**1st July 2015; 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**8th July 2015**

DECISION

Decisions of the Tribunal

(1) A charge for the repair of a refuse chute door should be halved to £9.08.

(2) Charges for the repair of a refuse area door of £4.67 and £46.89 are not reasonable and so not payable by the Applicants.

(3) All other charges which the Respondent has continued to claim before the Tribunal are reasonable and payable.

Background

1. The Applicants have applied for a determination under section 27A of the Landlord and Tenant Act 1985 as to the payability of service charges for the years 2006-2014. On 20th April 2015 the Tribunal issued a preliminary decision on whether estate costs may be included in the service charge and further directions for the determination of the balance of the case.

2. The parties produced a revised Scott Schedule of the issues between them for the adjourned hearing on 1st July 2015 (albeit that the Respondent forgot to include a copy in their additional bundle of papers and had to have it faxed over to the Tribunal during the hearing). Some of those issues were repeated for different periods of time. The issues are dealt with in turn below. Relevant legislation is set out in an Appendix to this decision.

Service Charges for 2006/7 and 2007/8

3. The Applicants had been paying their service charges until 2013 when there was a significant increase. Previous years had hovered around £1,000 but in this one year their service charge rose over £1,400. They decided to query both this and previous years, finding what they believed were discrepancies.

4. The Applicants decided to challenge all their service charges back to 2006 because they did not trust the Respondent's figures. Unfortunately, the Respondent found it difficult to obtain information for the period before Tower Hamlets Homes took over management of their housing stock in 2008 (the Respondent and Tower Hamlets Homes are hereafter treated in this decision as synonymous). One of the reasons for adjournment on 20th April 2015 was that they still had not produced the information for 2006/7 and 2007/8 by that date.

5. The Tribunal's directions required the parties to co-operate on the preparation of bundles of papers for use at the hearing. Instead, just before the deadline of 23rd June 2015, the Respondent filed and served a new bundle of documents without consulting the Applicants. While the bundle did finally contain the service charge certificates for the two missing years, listing the categories of service charges and the costs incurred in each category, it also contained a large number of documents new to the Applicants. Mr Hemmise, representing the Applicants, complained that he had not had time to assimilate the new documents and, in terms of working out whether the service charges for 2006/7 and 2007/8 could be challenged, he had been provided with material which he could not comprehend without help.

6. The parties were invited to make submissions as to whether the hearing should be adjourned in the light of Mr Hemmise's understandable complaints but Mr Hemmise himself did not want an adjournment, preferring that the case should be disposed of as quickly as possible. If

the Tribunal had nevertheless felt that a fair hearing was not possible, the Tribunal could have adjourned over the parties' objections, possibly at the Respondent's cost given that it would have been their fault. However, the overwhelming majority of documents in the Respondent's new bundle were works orders which provided little, if any, useful information. Those new documents which were important were few in number and reasonably easy to assimilate so that the Tribunal was satisfied the hearing could still proceed fairly and to a just conclusion.

7. Mr Hemmise's main argument in relation to 2006/7 and 2007/8 was that he had identified a number of discrepancies in later years so that it was highly likely that there were similar discrepancies in these years. The problem with his argument was twofold. His complaints of discrepancies in later years did not hold up (see below) and he had no direct evidence of any problems with these two years. As far as the Tribunal could see, there was simply no evidence of any issues with the service charges for these two years and they must be upheld as reasonable and payable.

Rose bushes

8. The Applicants challenged a number of horticultural charges in the years 2008/9, 2009/10, 2010/11 and 2012/13 for the maintenance of rose bushes. However, Mr Hemmise conceded that he had been misinformed – some neighbours had told him that certain rose bushes were tended by them because they were contained within their private garden areas whereas Mr Hemmise now accepted that those rose bushes are within the communal garden areas. Therefore, he did not maintain the Applicants' challenge to those charges.

TV aerials

9. There is a communal aerial system available for use by tenants (although not all apparently make use of it). During the hearing, it became apparent from the evidence of Mr Gabriel Brown, a leasehold services manager with the Respondent, that the system which included the Applicants' property extended to some properties outside the estate area known as Lincoln 1B.

10. The Tribunal's preliminary decision of 20th April 2015 was that the Respondent was entitled to charge for costs incurred on the estate and to define the estate as Lincoln 1B. It follows that the Respondent may not define the estate as Lincoln 1B in relation to some charges but some other area in relation to other charges. Unfortunately, that is what they had been doing in this instance, dividing the entire cost of the communal aerial system equally amongst all the properties which benefit from it. What they should have done was to apportion the charge between Lincoln 1B and any other area and then charge the Applicants their proper proportion of the costs apportioned to Lincoln 1B. Fortunately, it should make no difference mathematically and so

this issue should not make any difference to the payability of the consequent service charge to the Applicants.

11. Mr Hemmise's objection to the aerial charges was, in any event, on another basis. He understood that the charges related to call-outs and repairs caused by problems to wires leading from the communal aerial to particular flats. He did not understand, therefore, why the charges did not fall on the particular flats which had those problems or which were served exclusively by the equipment causing the problems.

12. However, the entire system is communal in the communal areas, even wires which exclusively serve only one or a few flats. Further, Mr Brown explained that the majority of such complaints are dealt with by attending first to the communal system without even attending at the particular flat from which the initiating complaint was made. In the Tribunal's opinion, the Respondent is entitled to apportion the charges in the way they do, without trying to allocate particular call-outs or repairs to particular flats rather than charging them all to the communal system.

Rubbish Chute Door

13. In or about April 2009 the wooden door to the rubbish chute near the Applicants' property had come off. Mr Hemmise put it in the chute itself. When a workman came to fix it, Mr Hemmise pointed out where the old door was and the workman refixed it into position. The Applicants were then surprised to find out that the cost was as much as £194.12, of which their share was £18.16.

14. Mr Brown said he was inclined to believe Mr Hemmise but had checked with the contractor who proved to his satisfaction that a new door had been purchased for this job. Mr Brown conceded that the cost could not be justified unless this new door was part of that cost.

15. Mr Hemmise was the only person attending the Tribunal who was able to give direct evidence on this point. The Tribunal accepts his evidence. The Tribunal accepts that the Respondent incurred the cost of a new door but it wasn't used for this job and so the charge is unreasonably high. In the Tribunal's opinion, the charge to the Applicants should be halved to £9.08.

Defective lights

16. Mr Hemmise noticed that a charge for repairing defective lights was ascribed to the area "outside 110-121 Campbell Road". He pointed out that his side of the road consists only of odd numbers and, therefore, the reference to "110" would suggest the cost had been wrongly allocated.

17. However, on examining the Respondent's maps of the area, it would appear that the place where number 110 would be located is a park. There does not seem to be any number 110 Campbell Road. There is no

doubt that a charge was incurred and there is no reason to believe that it was done so wrongly. In the circumstances, the only rational conclusion is that the reference to number 110 is a typing error. There is no reason to think the charge is anything other than reasonable and payable.

Communal energy

18. The Respondent procures energy in bulk to supply the communal areas of the estate. The Applicants queried the fact that the charges listed often included many which were dated on the same day or only days apart, suggesting that charges relating to one block were being wrongly allocated to his.

19. In fact, the charges relate to the whole estate which is then apportioned across all the properties on that estate. The supplier's charges are not allocated to any particular block before they are apportioned to individual service charge payers. There is no reason to think that the apportionment is not done accurately. According to the service charge certificates, the Applicants are charged the same proportion as for other costs apportioned on an estate-wide basis. The Tribunal is therefore satisfied that the communal energy charges are reasonable and payable.

Bulk Waste

20. Mr Hemmise questioned why there were so many charges and whether they had been wrongly allocated to his block. He also pointed out that some rubbish outside his block was dumped there by residents of other blocks and was concerned that his block bore the cost. In fact, the Respondent charges for bulk waste collections across all the blocks, not on an individual block basis. Therefore, there is no basis to Mr Hemmise's objections.

21. In fact, the Respondent had conceded some bulk waste charges. This was because they identified some, such as bags of leaves, had been left by their own contractors, not by any residents or third parties. The Tribunal agrees that this was sensibly conceded as it is not reasonable for residents to pay for a contractor's failure to clear up properly after themselves.

Gate Repair

22. Mr Hemmise noticed that a repair to double timber gates had been put in the Respondent's records alongside the words, "Communal garden." He pointed out that the gates weren't near any communal garden and queried whether this was a proper charge. In fact, there is no doubt that the charge of £89.14 was incurred in 2011. Again, the only rational explanation is that the words "communal garden" were wrongly inserted into a record which is otherwise correct. The Tribunal accepts Mr Hemmise's assertion that such errors are confusing but they are not significant enough to have an effect on his service charge.

Repairs

23. The Applicants queried 13 repair items which resulted in service charges varying from 59p to £233.33. The Respondent conceded that an adjustment was required to the Applicants' service charges on six items. Therefore, the Tribunal looked at the remaining seven.

24. Mr Hemmise pointed out that there was a base price for some internal painting of £3,549.76 to which credits had been applied to reduce it to £2,494.44. He said that Mr Brown could not tell him what the credits were for. He pointed out that, without the credits, the cost would have exceeded the limit which triggers the consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. He also pointed out that the same area had been redecorated just one year later under the Decent Homes programme and was concerned about being charged twice for the same work within such a short period of time.

25. At the hearing, Mr Brown conceded that the credits were applied precisely in order to bring the cost for leaseholders below the statutory limit for the consultation requirements. He also explained that the Decent Homes works had not been and would not be charged so that there was no danger of the Applicants being charged again. In the light of these explanations, there would appear to be no justifiable objection to the service charge arising from the painting works.

26. The Applicants challenged a charge to repair the "DES" because they did not understand what it was for. DES means door entry system. There was no reason to doubt the validity of this charge.

27. A locked door to a refuse area was broken by contractors trying to get in. They had apparently not been told that Mr Hemmise had a key which he had allowed the Respondent's staff to use in the past. If the Respondent did not want the door to have a lock or if they just wanted to get in, they should have asked Mr Hemmise – there appears to have been a breakdown in communication. Unfortunately, there was a resulting repair cost which led to service charges of £4.67 and £46.89 to the Applicants. In the Tribunal's opinion, these costs were incurred unnecessarily by the default of the Respondent's own staff and are not reasonably chargeable to the Applicants.

28. Mr Hemmise queried why it would cost £363 to install a dog bin. It is understandable why this seems high but the Tribunal has no reason to believe this is not a reasonable charge for what is effectively a special item.

29. Mr Hemmise objected to the repair of a lamp post and a paving slab on the basis that they were near 26 Rounton Road which he understood was not on the estate. In fact that area is within the Lincoln 1B area and so properly chargeable to the Applicants.

30. Mr Hemmise's objections to further repairs involving a metal gully, renewal of tarmac, a defective column and more paving slabs must be rejected for the same reasons, namely that he had misidentified them as being outside the Lincoln 1B area.

Costs

31. Unlike the courts, the Tribunal has limited jurisdiction to decide who should pay any costs incurred in conducting proceedings before it. The Applicants applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs should not be added to his service charge.

32. The Respondent indicated that they did not intend to pursue their costs and so the Applicants would not appear to be at risk of paying them. Nevertheless, it is appropriate to consider whether to make an order in case the Respondent's position changes.

33. Having said that, the Applicants have lost on most issues. They have benefited from some concessions made by the Respondent but these matters do not make it just or equitable for the Tribunal to issue an order depriving the Respondent of any right they have under the lease to recover their costs. Therefore, the Tribunal refuses to make a section 20C order.

Conclusion

34. Of the charges which remained before the Tribunal after the preliminary decision of 20th April 2015 and the Respondent's concessions, a total of £60.64 is not payable by the Applicants but the rest are.

Name: NK Nicol **Date:** 8th July 2015

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 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.

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.