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		**FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**
Case Reference	:	**LON/OOAJ/LSC/2013/0775**
Property	:	**2 Rosemount Lodge, Rosemount Road, London W3 9LX**
Applicant	:	**London Borough of Ealing (landlord)**
Representative	:	**Mr D. Harris (solicitor) with Mr B. Moody (project manager) and Mr C. Maguire (rechargeable works manager)**
Respondent	:	**Mr J. Irvine (leaseholder)**
Representative	:	**In person**
Type of Application	:	**Determination of service charges, (under s27A the Landlord and Tenant Act 1985)**
Tribunal Members	:	**Professor James Driscoll, solicitor, (Tribunal Judge) and Mr Peter Roberts, DipArch RIBA (Tribunal Professional Member)**
Date and venue of Hearing	:	**14 March 2014**
Date of Decision	:	**2 April 2014**

The decisions summarised

1. The tribunal is satisfied that the major works were carried out in full. However, the landlords failed to establish that it was necessary to replace the roof so that it is not reasonable to charge for the costs of the roof replacement. The total net costs of the works was the sum of £62,278.80 (the tribunal having also made some adjustments to the figures for management charges).

2. The tribunal determines that the leaseholder's share of this expenditure (16.6667%) is the sum of £10,379.82. This should be paid to the landlord by 31 May 2014.

3. As the landlord stated that its legal costs would not be added to any future service charge bills it was unnecessary to consider making an order under section 20 C of the Act.

Background

4. The applicants are the owners of the premises at Rosemount Lodge which is a block of six flats built around 1951, four of which are held on long leases originally granted under the right to buy provisions in the Housing Act 1985. The respondent is the leaseholder of flat 2 in the premises. He purchased the flat in August 2007. According to the landlords, during the course of the purchase, the leaseholder was sent a document called 'Pre-sale/re mortgage Enquiries' a copy of which was handed to us at the hearing. It contains a considerable amount of information including statements on service charges and details of the major works proposed at this time.

5. The application relates to the costs of major works to the building which included replacing the roof of the building. These works formed part of a large programme to properties owned by the landlords across their area under the 'Decent Homes Programme'. The works were completed in 2008 . The leaseholder has not paid anything towards these costs for which he has received a service charge demand for his share of the costs. This is because he believes that some of the works were unnecessary. He also contends that some of the works have not been completed and that other works were too expensive. All other leaseholders have paid in full.

6. Application was made to the tribunal on 7 November 2013 seeking a determination of service charges under the Act (the relevant provisions are contained in the appendix to this decision). Directions were given at a case management conference held on 3 December 2013. At that hearing, the landlords were represented by Mr Harris their solicitor who was accompanied by Mr MaGuire their works manager and Mr Lewis a paralegal working for the landlord. The leaseholder did not attend but the tribunal was satisifed that he was made aware of the hearing. He does not live in the

subject premises and at the date of the application the landlord believed that he lived at 49 Noel Road, London W3 0JG.

7. A bundle of documents was prepared by the landlord which included their statement of case, a copy of the lease, schedule of works, the consultation documents, witness statements, photographs and various other documents. No documents were produced by the leaseholder who did not comply with any of the directions given. The landlord's bundle runs to nearly 200 pages.

The hearing

8. At the start of the hearing the landlord was represented by Mr D. Harris their solicitor who was accompanied by Mr B. Moody the project manager) for major works and Mr C. Maguire their rechargeable works manager. However, the leaseholder was not present. We adjourned the start of the hearing in case the leaseholder was delayed in travelling to the tribunal. Later a case officer sent an email to the leaseholder reminding him of the hearing date. Our case officer received a reply from the leaseholder at 11.31 stating that as he was working in Scotland he could not attend the hearing. He added that he was unaware that the hearing had been arranged.

9. Mr Harris the solicitor representing the landlord told us that he had a telephone conversation with the leaseholder on 19 November 2013 at about 13.45. The leaseholder complained that no works had been done and that he intended to start a press campaign to help voice his concerns. He also complained of the landlord's decision to make the application to this tribunal. The leaseholder stated that he no longer lived at 49 Noel Road which is occupied by his wife. His current address is 5 Twyford Court, Twyford Avenue, London W3 9QE. Mr Harris sent the tribunal a copy of his typed note of that conversation after the hearing. A copy of the bundle of documents was sent to the Twyford Avenue address we were told on 15 January 2014 and this was not returned; also on 23 January a letter was sent to this tribunal and to Mr Irvine at the Twyford Avenue address which has not been returned. The leaseholder also told Mr Harris that he had received all documents from his wife. The tribunal sent a copy of the directions, which included the hearing date to the leaseholder at the Twyford Avenue address.

10. With this information and having inspected the case file and the correspondence we were satisifed that the leaseholder was made aware of the hearing. In those circumstances we decided to hear the evidence and the submissions of the landlord. We did not consider it necessary to adjourn the hearing.

11. First, we considered the statement of case dated 23 January 2014 signed by a Mr Robinson on behalf of the landlord. It states that the lease was originally granted in 1981 and that the current leaseholder purchased the flat on or about 10 August 2007. A decision to undertake major works to the block was taken following a statutory consultation under the Service Charge s (Consultation Requirements) (England) Regulations 2003. This

consultation took place before the leaseholder purchased the flat though the works did not start until after the purchase.

12. The leaseholder has always questioned the need for the works. He told the landlords that he had arranged for two roofing contractors to inspect the property and they both expressed the view that the clay tiled roof needed only the replacement of a number of damaged or worn tiles. In their view, the landlord did not have to go to the expense of replacing the roof. However, no statements have been received from either of these roofing contractors.

13. In addition the leaseholder questions whether all of the works were done; he argues that the costs are too high. He has not paid anything towards the cost of the works.

14. The statement of case refers to a meeting with the leaseholder on 7 June 2013 which was attended by Mr Maguire, Mr Moody and the leaseholder. Having heard his complaints the landlord decided to reduce the management charges element of the final bill. They did this because of their delays in dealing with the leaseholder's complaints and there were other items that they accepted were not recoverable. According to the landlords they consulted with all the leaseholders as required by the regulations. They note that the leaseholder has raised no objections to the consultation process itself.

15. Mr Moody, who attended the hearing relies on a statement he signed (but is not dated) a copy of which is the bundle and which he spoke to at the hearing. He attached photographs of both the interior and the exterior of the premises.

16. The landlords also rely on a written statement made by Ms R. Sheikh, one of their Home Ownership Officers which describes the dispute and the emails passing between the leaseholder and her office.

17. We were also provided with copies of the detailed specification, minutes of various meetings organised by a company called Tuffin Ferraby Taylor LLP who acted as the contract administrators for the whole of the programme to the various buildings which were the subject of the decent homes initiative including the subject premises across the borough.

18. Returning to the decision to carry out the major works we were told that as there was water leakage from the roof and given its age the landlords decided that it was necessary to replace the roof and to carry out other external and internal repairs and decoration. We were also told that three of the four leaseholders had paid their contribution to the costs through the service charge.

19. As to the quality of the works we were referred to several photographs of the exterior and the interior of the building. We did not consider it necessary to carry out our own inspection. Those representing the landlords agreed with us that an inspection was unnecessary.

20. It is unfortunate that the leaseholder was not present at either the case management conference or at the hearing. However, we had the landlord's accounts of their dealings with the leaseholder and copies of the email exchanges between him and the landlords. There were no statements from the leaseholder or from anyone on his behalf.

21. In summary, the leaseholder argues that it was unnecessary to replace the roof; that in consequence no scaffolding was needed; that works to the chimney stacks was not carried out; the water tanks were not replaced, the door entry system does not work, the communal lighting works were not carried out, the costs of both the internal and external decorative works are too high and that repairs to the gully and drainage were not carried out.

Reasons for our decision

22. We start by considering the terms of the lease and the consultation that preceded the commissioning of the works. Under the 8th schedule to the lease, which sets out the landlord's covenants, there is a covenant to repair and where necessary to replace and covenants relating to decorate the premises. In the usual way, there is a leaseholder covenant to contribute to the costs through service charge payments. That covenant is contained in clause 2 of the lease. Such costs are subject to the reasonableness and the other provisions in the Landlord and Tenant Act 1985.

23. Copies of the statutory consultation documents are contained in the bundle. This started before the leaseholder bought his flat but he was clearly aware of the proposed works as he questioned them. Details were also included in the document that was sent to the leaseholder when he was purchasing the flat. Although the leaseholder has questioned the scope of the works and has made other challenges, he has not challenged the validity of the consultation. Nothing we read or heard at the hearing suggested that the statutory consultation was not undertaken properly.

24. We would have found our decisions easier if we had heard from the leaseholder. Unfortunately he failed to attend the case management meeting on 3 December 2013 or the full hearing held on 14 March 2014. He did not file any statements in support of his case. We accept and understand that it may be difficult for an unrepresented leaseholder to deal with tribunal proceedings. In this case the leaseholder played no active role in the proceedings. Earlier in this decision we found as a fact that he was made aware of the hearing which he failed to attend. He may feel that the tribunal has only heard one side of the story but the landlords appear to us to have made every effort to inform the tribunal of their understanding of leaseholder's objections. We have also read his various emails to the landlords which set out his complaints. Following the meeting they had with him in 2013 they reduced the service charge demand. We also note that the leaseholder, whose flat would have benefited from the works, a flat which he holds as an investment, has paid nothing towards the landlords costs for major works that were carried out more than five years ago.

25. It is with these preliminary points in mind that we turn next to the individual items the leaseholder challenges beginning with the roof. To begin with we saw some merit in the leaseholder's submission that the roof (a clay tiled roof) did not need to be replaced but only repaired. Further having heard from Mr Maguire and Mr Moody and having studied the photographs we have concluded that the leaseholder's argument is to be preferred. The landlord did not provide any statements supporting his opinion that the existing roof needed to be replaced. There was no evidence, nor survey report provided by the landlord to establish the roof to be in a state of disrepair, and no evidence of the roof leaking could be established. In short, the landlord's works to the roof could not be shown to have been reasonably incurred.

26. Accordingly we disallow this element of work but in order to allow a reasonable sum for the costs of repair and replacement to a nominal number of roof tiles we have added back £1000. It was reasonable for the landlord to have scaffolding erected as the roof had to be inspected, some tiles replaced and some of the external works required scaffolding. .

27. As to the leaseholder's other objections we conclude these not to be founded. It was clear from the photographs that the re-pointing to the chimney stacks was carried out and we also had the landlord's employees evidence that following an inspection works to the water tank were carried out as were the internal lighting works,replacement of door entry system, internal decorations to the stairway and the repairs to the gully and the drains. As the leaseholder did not provide any alternative quotations we can see no basis for finding that the costs were too high.

28. In summary we are satisfied that the service charge demand as it has been reduced by the landlords, other than the works related to the roofing renewal, is reasonable and recoverable from the leaseholder. However, we have one qualification to make and this relates to the landlords 10% management charge. This has been applied to all items on the bill including the other management charges. We do not think it fair to add an additional charge for work carried out by others in supervising the project. Accordingly we have adjusted the figures as set out below and consider that the sum of £10,379.82 is recoverable from the leaseholder. Although this is a considerable sum of money these charges have been outstanding for several years so we determine that the leaseholder pays the charges by 31 May 2014.

Final Account figure	£70,462.18
Less renewal of roof covering	12,500.00
	£57,962.18
Add back roof repairs to tiling	£ 1,000.00
	£58,962.18
Professional fees @ 6.25% x 50% on £58,962.18	£ 1,842.57
Management fee @ 5% x 50% on £58,962.18	£ 1,474.05
Total	£62,278.80

Leaseholders proportion **£10,379.82**
@ 16.6667%

29. The leaseholder did not make an application for a costs order under section 20C of the Act. We simply record that Mr Harris, the solicitor representing the landlord told us at the hearing that any costs they incurred will not be sought in a future service charge.

Professor James Driscoll
Solicitor and Tribunal Judge
2 April 2014

Appendix of the 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
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.
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.
But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

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 leasehold valuation 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 a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.
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.

Schedule 11, Commonhold and Leasehold Reform Act 2002

Meaning of "administration charge"

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.

Reasonableness of administration charges

2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3

(1)
Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—
(a)
any administration charge specified in the lease is unreasonable, or
(b)
any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
(2)
If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.
(3)
The variation specified in the order may be—
(a)
the variation specified in the application, or
(b)
such other variation as the tribunal thinks fit.
(4)
The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.
(5)
The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.
(6)
Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.
Notice in connection with demands for administration charges
4
(1)
A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
(2)
The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
(3)
A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
(4)
Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to pay administration charges

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).

Interpretation

6

(1)

This paragraph applies for the purposes of this Part of this Schedule.

(2)
"Tenant" includes a statutory tenant.
(3)
"Dwelling" and "statutory tenant" (and "landlord" in relation to a statutory tenant) have the same meanings as in the 1985 Act.
(4)
"Post-dispute arbitration agreement", in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen.
(5)
"Arbitration agreement" and "arbitral tribunal" have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).