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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2014/0381**
Property	:	**Flat 2 , 298-300 Commercial Way London SE15 1QN**
Applicant	:	**Mr J and Mrs M Corlis**
Represented by	:	**In person**
Respondent	:	**Wandle Housing Association**
Represented by	:	**Ms T Bird**
Type of Application	:	**Sections 27A and 20C Landlord and Tenant Act 1985**
Tribunal Members	:	**Mrs F J Silverman Dip Fr LLM** **Mr A Manson FRICS**
Date and venue of paper consideration	:	**6 November 2014** **10 Alfred Place London WC1E 7LR**
Date of Decision	:	**6 November 2014**

DECISION

The Tribunal declares that the amounts payable by the Applicants in respect of service charge years 2008-13 (both years inclusive) are as set out in paragraphs 16-24 below.
The Tribunal makes an order under s20C Landlord and Tenant Act 1985.

REASONS

1 The Applicants are the tenants of the property situate and known as Flat 2 , 298-300 Commercial Way London SE15 1QN (the property). The property is one of six flats in a modern low rise block owned and managed by the Respondents. They made an application to the Tribunal on 2 July 2014 asking the Tribunal to assess the payability and reasonableness of certain aspects of their service charges for the years 2006-2019 (both years inclusive)

2 Directions were issued by the Tribunal on 28 July 2014 as varied on 25 September 2014.

3 The matter came before a Tribunal on 6 November 2014 at which the Applicants represented themselves and the Respondent was represented by Ms T Bird .

4 The Applicants' claim is based on s27 Landlord and Tenant Act 1985, relating to the payability of and reasonableness of service charges as between landlord and tenant. Such a matter falls within the jurisdiction of the Tribunal. Given the nature of the Applicants' application the Tribunal did not consider it necessary to inspect the property.

5 The Tribunal explained to the Applicants that it had no jurisdiction to deal with issues pertaining to service charge years 2006 and 2007 as any claims arising out of those years was now statute barred.

6 Similarly the Tribunal is unable to deal with the years 2015 onwards in respect of which no budgets or estimates have yet been drawn up. Some of the issues below relating to the Respondent's accounting procedures and to chargeable items will however be relevant to all service charge years both past and future.

7 By clause 2 (3) of the lease dated 10 December 1990 and made between Grange Housing Association Ltd and the Applicants under which the Applicants hold the premises, they covenanted jointly and severally to pay the service charges set out in the third schedule of the lease .

8 The Respondent is now entitled to the reversion expectant on the lease and assumes responsibility for repairs and insurance under covenants contained in Clause 4.

9 The issues which the Applicants wished the Tribunal to consider were identified as follows: management fees ; the sinking fund and the period to be covered by each set of accounts . They confirmed that they were not querying the charge for insurance which was therefore not further discussed.

10 In relation to the period to be covered by the accounts, it is clear from the lease that the 'service charge year' (Schedule 3 clause 1 (1)) is to run concurrently with the calendar year, commencing on January 1 and terminating on December 31 in each year. The Respondent said that there had been a brief period when the accounting for the property had been based on an April-March year in order to fit in with the Respondent's general accounting systems. That practice had now ceased and it was acknowledged that the dates set out in the lease must be observed .

11 Three distinct areas were identified in relation to the discussion of management fees (sometimes described in the accounts as an 'administration fee'). The lease provides in Schedule 3 clause 7 (7) that the landlord may charge a management fee of 10% of the service charge in circumstances where the landlord does not engage separate managers or accountants. The Respondents do not employ separate accountants but had in the years under discussion charged a management fee of 15% to the tenants. They are not entitled to do this , any management (or other fee) can only be charged to the tenants in circumstances and at a rate authorised by the lease. Any overpayment by the tenants of 5% for each relevant year must therefore be re-credited to the tenants' service charge account and future accounts must only charge a maximum fee of 10%.

12 In service charge year 2013 the Respondent had charged the Applicants a management fee for enforcing the covenants in the lease . Except in relation to the service of a notice under s146 Law of Property Act 1925 (Clause 2 (13)) such a charge is not permitted by the lease. The Respondent argued that the solicitors' letter on p116

of the hearing bundle represented a first step towards forfeiture and therefore fell within this provision. The Tribunal does not accept this argument and determines that any payment made by the tenant in relation to this charge must be re-credited to the Applicants' service charge account. Neither party was able to identify other examples of the same charge in the accounts for the other years under discussion. In so far as they exist all of these charges must be re-credited to the Applicants' service charge account.

13 The final element of the management fee issue was the imposition by the Respondent of an 'audit charge' . This has been imposed in addition to the ordinary 'management fee' (see paragraph 11 above) and contrary to the provisions contained in Schedule 3 clause 7 (7) of the lease. The Respondent accepted that this charge had been incorrectly levied . The Tribunal determines that all audit charges levied in the service charge accounts for the years under discussion must be re-credited to the Applicants' service charge account and that such a charge must not be levied in future years.

14 The Applicants had each year been required by the Respondent to contribute to a reserve fund (described by the Respondent as a 'sink' fund) . They stated that the accounts were unclear as to the use and purpose of this fund and asked the Tribunal to consider this issue.

15 By Clause 8(1) of the third Schedule of the lease the landlord is entitled to ask the tenants to contribute to a reserve fund which is set up for the purposes said to be set out in Clause 12 of the same Schedule. The third schedule to the lease does not contain a Clause 12. That being so there is no defined purpose for a reserve fund and the Respondents have no right to demand contributions from the Applicants.

16 In so far as payments to a reserve fund have been made by the Applicants it appears that those funds have been wrongly accounted for (and not misappropriated) by the Respondent. The funds which have been spent have been used for the cyclical maintenance of the property. If the funds had not been paid by the Applicants in advance, the Applicants would in any event have had to pay equivalent sums as ordinary service charge to pay for redecoration etc. As at the date of the hearing the Applicants' reserve fund is in credit to the agreed sum of £877.67. That sum must be credited to the Applicants' service charge account and no further sums must be demanded for contributions to a reserve fund under the terms of the lease as presently drafted.

17 The Tribunal adjourned for an hour during the hearing to allow the parties to reconcile the accounts in the light of the Tribunal's comments. As a result the parties agreed the reserve fund figure as above and the following figures as set out below. The figures set out below exclude the reserve fund contributions.

18 For service charge year 2008 the Applicants' liability for management fees and insurance is £237.12.

19 For service charge year 2009 the Applicants' liability for management fees and insurance is £135.12.

20 For service charge year 2010 the Applicants' liability for management fees and insurance is £316.50.

21 For service charge year 2011 the Applicants' liability for management fees and insurance is £156.73.

22 For service charge year 2012 the Applicants' liability for management fees and insurance is £128.86.

23 For service charge year 2013 the Applicants' liability for management fees and insurance is £131.96.

24 The computation of service charge year 2014 cannot be concluded as the year has not yet ended.

24 The Tribunal expects the Respondent to adjust its accounts to take account of the figures in paragraphs 16-24 above. Any resulting overpayments by the Applicants must be immediately re-credited to their service charge account.

25 The Tribunal observed that there was a general lack of clarity and detail in the Respondent's accounting paperwork . For example, page 38 of the bundle contains a summary account in which a composite sum is charged to the Applicants for

maintenance without any description of the works to which that sum relates. Similarly some items of expenditure eg that for communal lighting appeared to be excessive (the Tribunal had not been asked to comment on these items) and the Tribunal recommends that in future the accounts are prepared and sent to the Applicants in such a form that sufficient detail and explanation is provided to enable them to understand what works have been carried out and thus what they are being asked to pay for.

26 It appeared to the Tribunal that the lease under which the property is held is defective in that it fails to deal validly with the provision of a sinking fund and also contains some provisions (such as accounting and payment dates) which are incompatible with the Respondent's accounting systems. The Tribunal recommends that the Respondent carries out a review of the leases in this block with a view to obtaining a consensual variation to correct these errors . The Tribunal explained to the Applicants the purpose of the sinking fund and suggested that if a variation was proposed by the Respondent they should seek legal advice on its terms.

27 The Applicants asked the Tribunal to make an order under S20C of the Act. They said that they had been forced to proceed with their application because of the opaque accounting methods of the Respondent and the latter's intransigence in supplying clarification of the Applicant's queries. The Respondent said that they did not intend to put any charges back on to the service charge account. Having heard both parties' submissions the Tribunal, on the balance of probabilities, considers that this is a case in which it is reasonable and proper to make such an order.

28 **The Law**

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the

amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Judge F J Silverman as Chairman
Date 6 November 2014

Note:
Appeals
1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking