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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AU/LSC/2017/0271**
Property	:	**Flat A, 7-8 Remington Street, London N1 8DH**
Applicant	:	**7-8 Remington Street Ltd**
Representative	:	**Ms Susan Brand (Director)**
Respondent	:	**Ms Sezay Osman**
Representative	:	**In Person**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge Robert Latham** **Miss Marina Krisko BSc FRICS**
Venue	:	**18 October 2017 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**20 November 2017**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that the following service charges are payable:

(i) £1,744.08 for major works executed in 2009/10;

(ii) £365.60 for an advance service charge payable for the 9 month period 1 April to 30 November 2016;

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(iii) £269.67 in respect of the service charges for 2016/7; and

(iv) £1,204.53 in respect of the advance service charge for 2017/8.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that the sum limited to £158.50 in respect of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(3) The Tribunal determines that the Respondent shall pay the Applicant £150 within 28 days of this Decision, in respect of the reimbursement of 50% of the tribunal fees paid by the Applicant.

The Application

1. By an application dated 22 July 2017, 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 Respondent.

2. On 10 August 2017, the tribunal gave Directions. The Tribunal identifies the following issues:

   (i) Issue 1: £1,744.08 claimed by the Applicant in respect of major works executed by the London Borough of Islington ("Islington") in 2009/10;

   (ii) Issue 2: £365.60 claimed in respect of an interim service charge for the period 1 April to 30 November 2016;

   (iii) Issue 3: £446 for service charges for 2016/7; and

   (iv) Issue 4: £1,495 in respect of an interim service charge for 2017-8.

3. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

4. The Applicant was represented by Ms Susan Brand who is a director of the Applicant Company. She no longer lives at her flat, but sub-lets it. She has provided a Statement of Case. The Applicant was responsible for preparing the Bundle of Documents for the hearing. This was not paginated as required by the Directions. Ms Brand gave evidence and was questioned by the Respondent.

5. The Respondent appeared in person. She has produced a Schedule identifying the Service Charge items in dispute and a hand written Statement of Case. She gave evidence and was questioned by the Applicant.

The Background

6. The property at 7-8 Remington Street is two former Georgian town houses which were combined in a lateral conversion in the 1970s to create three flats. The Respondent is the tenant of Flat 7A which is on the basement floor. Ms Osman is the tenant of Flat 7B on the ground floor. Islington are tenants of Flat 8 which is on the first floor.

7. The Respondent derives her interest from a lease dated 26 June 2006. At that time, the freehold was held by Islington and the Applicant acquired her 125 year leasehold interest under the statutory Right to Buy.

8. The first two service charges arise from the period that the freehold was held by Islington, the Respondent's then landlord. Issue 1 relates to major works upon which Islington originally served their Stage 1 Consultation Notice on 24 May 2007. Issue 2 relates to an interim service charge for the period 1 April to 30 November 2016.

9. The change of landlord has occurred because Ms Brand and Ms Osman decide to exercise their statutory right to acquire the freehold of the property. Because Flat C was occupied by a secure tenant, this flat was a non-participating tenant in the enfranchisement process. Ms Brand was the leading light in this venture. 7-8 Remington Street Ltd, the Applicant Company, was set up as the nominee purchaser of the freehold. A purchase price of £6,500 was agreed, in respect of which Ms Brand was to pay £3,900 and Ms Osman £2,600.

10. Difficulties arose as the date for the completion of the enfranchisement approached. The enfranchisement was completed on 21 November 2016 when the Applicant Company acquired the freehold from Islington. Ms Brand contends that Ms Osman failed to come up with her contribution towards the costs of the acquisition. In a letter, dated 31 October 2016, Ms Brand calculated the Respondent's contribution to be £7,295.77. This sum included not only the Respondent's contribution towards the freehold purchase price, but also costs relating to the enfranchisement and outstanding service charges due to Islington.

11. There is no evidence that Ms Osman came up with the funds necessary to satisfy her proportion of the enfranchisement costs. In order to enable the enfranchisement to proceed, Ms Brand therefore paid all the costs and is now purporting to act as the sole director of the Applicant

Company. It has not been appropriate for this Tribunal to lift the corporate veil to analyse how the company has been operated.

12. It is sufficient for these proceedings to record that Ms Brand, on behalf of the Applicant Company, paid the Respondent's share of the enfranchisement costs in order to enable the enfranchisement to proceed. The significant document is the Deed of Assignment date 21 November 2016 which is attached to the Application Form. Islington, as Assignor, assigned to the Applicant a debt of £2,109.68 which was owed by Ms Osman to Islington. This debt related to two service charges: (i) £1,744.08 in respect of the major works (Issue 1) and (ii) £365.60 in respect of the advance service charge payable to Islington for the period 1 April to 30 November 2016 (Issue 2). It is open to the Respondent to raise any argument relating to the payability and reasonableness of these service charges which she could have raised against Islington.

13. On various dates, including 30 December 2016 and 18 January 2017, the Applicant has demanded these sums from the Respondent. On 1 February 2017, TWM Solicitors demanded these sums. The Respondent does not seem to have responded in writing to these letters.

14. Issue 3 and 4 relate to service charges payable after the enfranchisement. It is apparent that Ms Osman is far from satisfied with the manner in which Ms Brand is managing the Applicant Company and has a strong sense of grievance that she was not permitted to participate in the enfranchisement. These are not matters for this Tribunal.

15. This Tribunal is concerned with the payability and reasonableness of these two service charges pursuant to the terms of the Respondent's lease. The Respondent complains that the service charges demanded by the Applicant are considerably higher than those charged by Islington. A particular complaint is that the Applicant is charging for services, such as cleaning the communal staircase and gardening, which Islington did not consider necessary. In the past, the tenants had maintained the common parts and garden areas themselves. The issue for this Tribunal is whether the landlord is entitled to charge for these services, and, if so, whether the charges are reasonable.

The Lease

16. Flat 7A is wrongly described in the Particulars of the lease as being on the "1st floor". The floor plan annexed to the lease clearly indicates that the flat is on the basement floor. It consists of two bedrooms, a living room, a kitchen and a bathroom. The demise is edged red on the location plan and red and green on the floor plan. Each flat is demised one third of the garden. Although in practice the tenants seem to have shared the whole of the garden, this cannot be described as "common parts". There is no obligation on the landlord to maintain gardens

demised to the tenants and if the landlord chooses to do so, this cannot be recovered through the service charge.

17. Although paragraph (i) of the Third Schedule of the lease refers to the "upkeep of gardens and amenity land" as a service charge for which the landlord can charge, it is difficult to identify any significant area of land edged yellow on the location plan. This rather seems to be a standard local authority lease which has not been adequately adapted in respect of this demise.

18. The Tribunal highlights the following provisions of the lease:

(i) The tenant is required to pay a service charge (Clause 3(1));

(ii) The landlord covenants to insure the demised premises (Clause 7(1)). The tenant covenants to pay the "insurance rent" in respect of this (Clause 1(3)).

(iii) The services for which the landlord charge are set out in the Third Schedule. Part 1 specified the "building element" and Part 2 "the management element". The building element includes cleaning the common parts (para (e)). The management element includes the administrative and other costs relating to the collection of the service charges" (para (a)).

(iv) The tenant share of the service charges is specified in Clause 5(F). The tenant has been required to pay 1/3. No issue has been taken on this.

(v) the landlord may create a reserve fund (Clause 5(F)(C)).

(vi) The service charge is payable in advance on 1 April (Clause 5(E)).

(vii) the landlord is entitled to charge interest at 4% above the base rate in respect of any arrears (Clause 3(1)).

19. 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.

<u>Issue 1: £1,744.08 in respect of major works in 2009/10</u>

20. On 7 January 2016, Islington invoiced the Respondent for the sum of £1,744.08 in respect of major works. These related to external repairs and decorations. On 7 August, 2009, Islington had invoiced the Respondent £7,367.69 for these works. However, Islington subsequently agreed to make a number of deductions reflecting their

recognition that the works had not been executed to an acceptable standard. These deductions were made on 22 July 2011 (£121.97), and 17 January 2013 (two sums of £2,750.82). It may be that only one of these sums of £2,750.82 should have been credited to the Respondent's account. If so, the Respondent has no cause for complaint. On 21 November 2016, Islington assigned this debt to the Applicant.

21. There is a long history to these works. On 24 May 2007, Islington had served a Notice of Intention pursuant to the Consultation Regulations. The Works were to be executed pursuant to a Long Term Qualifying Agreement. The Respondent's contribution was estimated at £7,367.69. The works are set out in a statement of total estimated expenditure dated 29 May 2008.

22. The Respondent stated that she had refused to pay this sum because of the quality of the works. She complained of Islington's failure to remedy the damp within her flat. The problem that the Respondent faces is that this contract did not relate to problems of rising or traumatic damp affecting her basement flat. The major items related to roof repairs, structural repairs, repair and decoration of all windows and external doors and decoration of the common parts. Only a small part of this contract related to rendering, less than £300.

23. The Tribunal is satisfied that there have been damp problems affecting the Respondent's flat and that Islington has made various attempts to abate this. We were referred to a separate Notice of Intention dated 5 June 2009 in respect of damp proofing works. However, this is not a service charge which this Tribunal is required to determine. It seems that this may be a service charge which Islington has decided not to enforce.

24. Islington have agreed to reduce the original bill in respect of the external repairs and decorations by 75%. The Respondent has made no criticism of most of the works. Even if some reduction were to be justified in respect of the rendering works, a more than sufficient adjustment has already been made.

25. The Tribunal is satisfied that this service charge of £1,744.08 which Islington invoiced to the Respondent on 7 January 2016, was reasonable and payable by the Respondent. Islington has assigned this debt to the Applicant and the Applicant is entitled to enforce it against the Respondent.

Issue 2: Interim Service Charge of £365.60 for period 1 April to 30 November 2016

26. On 15 April 2016, Islington invoiced the Respondent for £570.36 in respect of the interim service charge for 2016/7. The significant items

were building insurance (£244); a management fee (£235.07) and external and communal repairs (£50). All these are service charge items for which Islington was entitled to charge.

27. The Respondent has not criticised any of these service charge items. She rather suggests that she was paying by direct debit. However, the Tribunal is satisfied that the direct debit was cancelled and that no part of this invoice was paid. Islington's Service Charge account suggests that the last direct payment was made on 29 December 2015. The payment made in January 2016 was not cleared.

28. On 21 November 2016, the Applicant acquired the freehold interest. This claim therefore only relates to the period of 8 months payable between 1 April and 30 November 2016 which is claimed in the sum of £365 (it seems that this sum has actually been apportioned up to 21 November 2016). The Tribunal is satisfied that this interim service charge was reasonable and payable by the Respondent. Islington has assigned this debt to the Applicant and the Applicant is entitled to enforce it against the Respondent.

<u>Issue 3: £443 for service charges for 2016/7</u>

29. On 5 July 2017, the Applicant invoiced the Respondent £446 for the service charges due for the period 21 November 2016 to 31 March 2017. £3 relates to ground rent and is not a service charge.

30. We allow the following sums, the Respondent's portion being 1/3 of the total):

(i) Buildings Insurance: £227. We have been provided with an invoice from Adler Insurance Group for the period 30 November 2016 to 29 November 2017 in the sum of £745.18. There was later a refund of £62.84.

(ii) Directors' Insurance in the sum of £37. We have been provided with an invoice from Adler Insurance Group for the period 7 December 2016 to 6 December 2017 in the sum of £111.24

(iii) Repair light fitting hallway: £45.

(iv) Reserve Fund Contribution (4 months): £500. We accept that the landlord is entitled to build up a reserve fund and this sum is reasonable having regard to the repairs and maintenance that may be required. The Applicant will hold any sums in the reserve account on trust for the tenants.

31. We disallow the following sums:

(i) Accountancy: £180. We have not been provided with audited service charge accounts. The invoice from Jonathan Ford & Co relates to the accounts for the Applicant Company for the period to 31 July 2016. This was before the enfranchisement. This is a cost to be borne by the Applicant Company and is not a service charge matter.

(ii) Gardening Services: £180.74 and £160. We are satisfied that the rear gardens do not form part of the common parts. They are demised to the individual tenants. It is for the individual tenants to maintain their proportion of the gardens. If the tenants choose to share the garden area, this is a matter for them. It is not a service charge items.

32. We therefore allow a total of £809, in respect of which the Respondent's 1/3 share is £269.67.

Issue 4: £1,495 in respect of an interim service charge for 2017-8

33. On 5 July 2017, the Applicant also invoiced the Respondent £1,495 for an advance service charge for the period 1 April 2017 to 31 March 2018. £10 relates to ground rent and is not a service charge.

34. We allow the following sums, the Respondent's portion being 1/3 of the total):

(i) Buildings Insurance: £682.34. This is consistent with the sum paid for the previous year.

(ii) Directors' Insurance in the sum of £111.24. This is consistent with the sum paid for the previous year.

(iii) Hallway Cleaning bi-monthly in the sum of £720. We have been provided a quote from K&V Cleaning dated 27 June 2017. The communal parts are modest. Islington did not consider it necessary to arrange for the staircase to be cleaned and the tenants arranged to do this themselves. However, we conclude that the landlord is entitled to charge for this service and the costs is modest, namely £20 a month for each tenant. If this service is not provided to a satisfactory standard, the Respondent will be able to challenge it at the end of the financial year.

(iv) Carpet to the Communal Hall: £600. We have been provided with an invoice from Icebanks Carpet Centre Ltd dated 7 April 2017. This carpet does not benefit the stair to the Respondent's basement flat. It only benefits the hallway and the staircase upstairs to Flat 7B. Ms Brand did not consult the Respondent about the carpet. We have allowed this item with some reluctance concluding that this staircase is

part of the common parts. There was no statutory duty to consult. However, this would have been a matter of good practice.

(v) Reserve Fund Contribution: £1,500. We accept that the landlord is entitled to build up a reserve fund and this sum is reasonable having regard to the repairs and maintenance that may be required. The landlord will hold this fund on trust for the lessees.

35. We disallow the following sums:

(i) Accountancy: £180. Again this seems to relate to the accounts of the Applicant Company and is not a service charge item.

(ii) Gardening Services: £180.74 and £480. We are satisfied that the rear gardens do not form part of the common parts.

36. We therefore allow a total of £3,613.58 of which the Respondent's 1/3 share is £1,204.53.

Application under s.20C and refund of fees

37. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. It has paid a total of £300. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund 50% of the fees, namely £150, paid by the Applicant within 28 days of the date of this decision. The Applicant has failed on a number of items. She has decided to charge for a number of service charge items which Islington did not consider to be necessary. We consider that the charges levied in respect of the carpets, gardening and cleaning could have been dealt with more sensitively.

38. At the hearing, the Applicant applied for an order under section 20C of the 1985 Act. On the other hand, the Respondent sought to recover her expenses of £318.65 against the Respondent. £158.50 related to the Applicant's costs of preparing for the hearing and £160.15 to Ms Brand's travelling and overnight stay.

39. This Tribunal is normally a no costs jurisdiction. A successful party is not entitled to recover their costs against the unsuccessful party unless they can establish the high threshold of "unreasonable conduct" under Rule 13(1)(b) of the Tribunal Rules. In this case there has been no clear winner, and neither party would be able to establish the high threshold of unreasonable conduct by the other.

40. However, the lease does permit the landlord to pass on administrative and other costs relating to the collection of service charges through the service charge account, each tenant being liable for 1/3 of those costs. Having heard the submissions from the parties and taking into account the determinations above, 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 only pass on part of its costs, namely the sum of £158.50 incurred in connection with the proceedings before the tribunal through the service charge.

41. The Respondent has a strong sense of grievance relating to the circumstances in which she was excluded from the enfranchisement. The Applicant Company is now her landlord under the control of Ms Brand. Both parties must recognise that the relationship of landlord and tenant is likely to last for a number of years into the future. The Applicant must manage the property having regard to the terms of the Respondent's lease. The Respondent must pay the sums due under her lease. The management of this property would be more satisfactory for all parties, were there to be more effective communication between them. Both parties should look forward to the future, rather than back to the problems of the past.

Judge Robert Latham
20 November 2017

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 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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 13

(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b)if a person has acted unreasonably in bringing, defending or conducting proceedings in ... a residential property case......

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.