FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00/00AZ/LSC/2019/0273**
Property	**:**	**5 Veronica House, Wickham Road, Brockley, London SE14 1NQ**
Applicant	**:**	**Angus Thompson**
Representative	**:**	**Self**
Respondent	**:**	**London Borough of Lewisham**
Representative	**:**	**Prince Evans Solicitors LLP**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Judge Hargreaves** **Duncan Jagger MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**21st October 2019**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £1,117.92 is payable by the Applicant in respect of that element of the service charge for the year 2019 which is attributable to 5 Veronica Court for the cost of replacing paving slabs in a communal garden.

(2) The tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of one item claimed by the Respondent in the current service charge year 2019. No s20C application was made.

2. It should be noted that the tribunal has not been supplied with any invoices or service charge accounts. There is, on our analysis, no issue as to whether the proper s20 consultation process was carried out. There is one question for determination, which is whether the sum of £1,117.92 is reasonable and payable by the Applicant as his share of the costs of removal and replacement of paving slabs.

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

The respective submissions

4. The parties have agreed to a decision being made on the papers. No bundle has been provided so reference will be made to relevant documents as appropriate. The tribunal has the benefit of a statement of case from the Respondent, with two witness statements, one from Sandra Simpson, the other from Hugo Marais. There is unnecessary and wasteful duplication of exhibited documents in these statements, as well as repeat statements of facts and lease provisions. To that extent we agree with the Applicant: one copy of the basic documentation (including the lease) would have sufficed, as would one statement of the facts.

5. The Applicant has not filed a statement of case or evidence as such. His basic point in correspondence is that the Respondent has opted for an over-expensive option and is critical of the consultation process. It is clear that the Applicant wrote to the Respondent after receipt of the s20 notice and a site manager arranged a meeting with the Applicant to discuss his concerns and a response to them. See paragraphs 6 and 7 of

Hugo Marais' statement, and paragraphs 18 -21 of Sandra Simpson's statement. However that evidence was not accurate: the Applicant points out that Keith Miller did not meet him as planned, but he did have a telephone conversation with him, though it was pointless as no-one returned to him with an answer to his request that cheaper alternatives be considered and after a few months he issued his application (apparently on the advice of a local councillor). From the tribunal's point of view, cheaper alternatives are not necessarily the best nor necessarily reasonable within the meaning of ss18-27A LTA 1985 (see Appendix below).

6. The property which is the subject of this application is a maisonette in a block which was built around 1950. The front of the building was laid out to garden plots with footpaths leading to and round them. There are photographs of the footpaths before they were replaced (exhibit 2 to the Applicant's statement of case, but as these are in black and white, they were, to be frank, unhelpful).

7. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The lease is dated 4th December 1989 and it demised Flat 5, part of the "Building" situated in the "Estate" which includes the "gardens" (First and Second Schedules). It is not clear from the documentation supplied that any particular "garden ground" was specifically demised with Flat 5: see the last sentence of the Fourth Schedule. The gardens are also "Reserved Property": Third Schedule. By clause 5 the Applicant is bound to pay service charges in respect of the matters set out in Parts I and II of the Tenth Schedule. By clause 6 the Respondent covenanted to carry out the obligations set out in the Ninth Schedule.

8. The Applicant does not dispute that the provisions of the lease require him to contribute to the paving works in principle. The Respondent's liability to repair and maintain the paving slabs is set out in the Ninth Schedule paragraph 1 of which provides that the Respondent shall "maintain in good and substantial repair and condition (and whenever reasonably necessary rebuild re-instate renew and replace all worn or damaged parts)" including (paragraph 4) "ALL such parts of the Reserved Property not hereinbefore mentioned".

9. That is the contractual test which applies to the need (if any) to replace the paving stones. Much has been said by the Respondent and witnesses as to "availability" standards applicable for maintenance as set out in the qualifying long term agreement between Pinnacle psg Regetner and Rydon Maintenance Limited, but the real determinant as to whether works can be carried out by the Respondent in terms of recovering service charges is the contractual one so far as the Applicant is concerned.

10. However, it does appear from the evidence in paragraph 15 of the statement of case, paragraph 14 of Sandra Simpson's statement, paragraph 3 of Hugo Marais' statement that repair and replacement works were required and that these were done to the cheapest specification.[1] Because of various provisions in contractual arrangements between Rydon and the Respondent a "like for like replacement was required." It transpires (paragraphs 14 and 15 of Sandra Simpson's witness statement) that 240 slabs and 500 edging pieces were removed and replaced.

11. On 5th March, in response to the s20 notice dated 12th February, the Applicant queried the price in a letter which is exhibited (pointing out that the money could be better spent elsewhere). Regenter replied (19th March), slightly missing the point about what the lease states, that "The area defined as requiring works falls within the responsibility to maintain under [the Rydon] contract … it potentially fails the agreed level of repair and therefore not meeting the contractual obligations to keep this area in line with health and safety standards … the specification of work has allowed for the removal of the paving as there may be only 50 broken but when they are removed it is estimated that there will be 75% of the existing paviours [*broken?*] thus they have allowed for complete renewal."

12. It may well have been the case that, as the Applicant contends, this was unnecessary, or unnecessary in part. It may well have been the case that another contractor could have done the job more cheaply or that cheaper slabs were available. But the problem for the Applicant is this: having raised the issue of reasonableness, the tribunal has cogent evidence from the Respondent that the paving needed repair and maintenance (within the terms of the lease provisions), and has explained its position with reference to the sums set out in its evidence (by reference to which we have made our determination).[2] The Applicant has failed to answer the Respondent's case and evidence by raising any argument or producing any evidence that the works were unnecessary (in whole or part) or unreasonable in terms of cost ie what (on his case) a cheaper response might have consisted of.

13. Without such evidence, the Applicant has failed to discharge the burden of proof that he has to overcome to succeed in his application. It follows that both on the evidence produced by the Respondent and the fact that it is unchallenged (except as to the fact that questions are raised about it by the Applicant), the Applicant cannot succeed in his challenge to

[1] As "Head" of operations of Rydon Maintenance Limited it is questionable whether the evidence in this statement is based on first hand knowledge as opposed to being derived from the relevant papers

[2] Not with reference to the increased figure of a share of over £24,000 referred to by the Applicant, there being no evidence relating to this sum in the Respondent's evidence

the reasonableness of the service charge levy in relation to his share of the paving slabs.

Judge Hargreaves
Duncan Jagger MRICS
21st October 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

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

   and the amount payable shall be limited accordingly.

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

Section 27A

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

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

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

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

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

Section 20

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

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

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

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

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

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

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

Section 20B

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

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

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

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

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

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

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

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

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

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

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

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

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

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).