

FIRST TIER PROPERTY CHAMBER DECISION



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CHI/00HH/LIS/2019/0024  
CHI/00HH/LDC/2019/0071

**Property** : Flat 2 Grantham Hall,  
Lincombe Road, Torquay TQ1 2HJ

**Applicants** : Michael Julian Walley  
William Kinstree  
Tina Louise Germaine

**Respondent** : Owen Robert Hill

**Representative** : Wollens  
:

**Type of Application** : For the determination of the reasonableness of  
and the liability to pay service charges.:  
Section 27A of the Landlord and Tenant Act  
1985, and Schedule 11 to the Commonhold and  
Leasehold Reform Act 2002, and

For an order limiting payment of Landlord's  
costs: Section 20C  
of the Landlord and Tenant Act 1985, and

For the dispensation of the consultation  
requirements provided for by Section 20 of the  
Landlord and Tenant Act 1985, pursuant to  
Section 20ZA as amended.

**Tribunal Member(s)** : Judge T. Hingston  
Barrister at Law

**Date of Decision** : 7<sup>th</sup> October 2019

## **Decisions of the Tribunal.**

This decision is made further to the Directions made in the previous Decision dated 13<sup>th</sup> August 2019, upon receipt of the additional Application as above, and in response to the further written submissions from both parties.

1. Having considered the Application lodged by Mr. Walley on the 3<sup>rd</sup> September 2019 and supported by the two other freeholders as above, and having read the supporting documentation and the Response from Mr. Hill (undated), the Tribunal determines that in all the circumstances of the case it is reasonable to dispense with the consultation requirements of Section 20 of the said Act.
2. Accordingly the Tribunal determines that the £6,360 contribution to service charges as demanded for the year 2018 was reasonable and the tenant Mr. Hill was liable to pay that amount in full.
3. Because of the landlord/freeholder's failure either to comply with the consultation requirements or apply to dispense with them, the Tribunal considers that the original Application had some merit, and therefore an order is made that the landlord's costs in connection with these proceedings are not to be regarded as 'relevant costs' and cannot be recovered by way of service charges.
4. Although the calculation of the tenant's percentage contribution should have made a distinction between 'repairs' and 're-decoration', the Tribunal is satisfied that the difference of £3 is 'de minimus' and therefore the full sum of £6,360 is reasonable.

## **Reasons for the Decision.**

5. The correspondence between the parties, as exhibited to the Tribunal and referred to previously, demonstrates that Mr. Walley behaved reasonably in terms of warning Mr. Hill of the likely costs of works to the property, asking whether formal consultation was necessary, and explaining what actions he was taking.
6. Although Mr. Hill claims that he never received any specification for the works nor the letter referring to such specification (said to have been emailed to him by Mr. Walley on the 12<sup>th</sup> July 2018), it is notable that the detailed email from Mr. Walley which accompanied the 'Invoice' or service charge demand of 19<sup>th</sup> February 2019 specifically refers (in the 4<sup>th</sup> paragraph) to the July correspondence, and to the 'specification' which had been supplied. Mr. Hill has not provided evidence of any response from himself to that February letter with its demand, nor any challenge to the statement about the 'specification'. Following receipt of the demand he then authorised (whatever the precise circumstances) payment of the £6,360 from the proceeds of sale of the flat.

7. It is agreed between Mr. Hill and his ex-wife Tina Louise Germaine that the £6,360 service charge was paid out of the proceeds of sale of the flat and the remainder was then split equally between them.
8. Mr. Hill has not produced any evidence to suggest that, at the relevant time (in February 2019) he disputed that he had received the specification, queried the content of Mr. Walley's letter, or sought a breakdown of the costs.
9. Between the time of the email correspondence in June/July 2018 and the receipt of the demand for payment in February 2019, Mr. Hill had ample time to instruct his own contractors to give estimates if he wished to do so, to query the quality of the work being done once it began, and/or to challenge Mr. Walley about his decision to undertake much of the labour himself. The Tribunal has received no evidence to suggest that Mr. Hill did any of these things.
10. Despite the correspondence in June and July of 2018, no evidence has been produced to the Tribunal that Mr. Hill requested sight of any invoices or receipts for the works done during the winter of 2018/19.
11. At no time did Mr. Hill contest the quality of the work, nor has he challenged Mr. Walley's evidence that the 2018/19 works actually included additional items which had not formed part of the previous redecoration.
12. Whilst Mr. Walley should have (and could have) provided details of the tenders or estimates which he had received, and has failed to date to provide any receipts in support of the amount claimed for the completed repairs and redecorations, the Tribunal is satisfied that there is no evidence of any bad faith on the part of Mr. Walley or of prejudice to Mr. Hill as a result of these failures.
13. The figure for similar works in 2009 was not challenged by Mr. Hill except as to the total calculation in arriving at the 2019 figure. The Tribunal finds that this figure, as adjusted for inflation, was correctly calculated at £15,900 not £14,900. The proportion of costs attributable to labour was the same as before and was not unreasonable.
14. In the absence of any evidence challenging the quality of the works as performed personally by Mr. Walley, the Tribunal finds that there was no prejudice to Mr. Hill as a result of the decision for Mr. Walley to undertake the works himself.
15. So far as the invoice of 19<sup>th</sup> February 2019 is concerned, the Tribunal is satisfied that that 'service charge demand' did set out the landlord's full name and address as required by Section 47 of the Landlord and Tenant Act 1987 (incorrectly referred to as the '1985' Act in Mr Hill's witness statement of the 2<sup>nd</sup> May 2019).

16. It is right that the landlord Mr. Walley did not supply a summary of the tenant's rights and obligations with the demand, as required by Section 21B of the 1985 Act, but if this matter is rectified within 21 days of today's date (**i.e. by 28th October 2019**) then the requirement will be deemed to have been complied with.
17. The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985 that none of the Landlord's costs of the Tribunal proceedings may be passed to the Lessees through any service charge.
18. It is presumed that the parties will make their own arrangements in respect of the £250 overpayment by Mr. Hill.

**Name: Tribunal Judge T. Hingston**

**Date: 7<sup>th</sup> October 2019**

## **RIGHTS OF APPEAL**

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

## **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).

