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

Case Reference : **LON/00AQ/LSC/2013/0463**

Property : **18 Elizabeth Gardens, Stanmore,
HA7 4UG**

Applicant : **Mrs Neeta Vadgama**

Representative : **In person**

Respondent : **Home Group Ltd**

Representatives : **Ms Elise Longman
Mr Richard Hards
Ms Angela Powell**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Judge Timothy Powell
Mr Richard Shaw FRICS**

**Date and venue of
Hearing** : **6 November 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **3 December 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the amounts payable by Mrs Vadgama in respect of the management charges for 2012-13, in the sum of £226.00, and for 2013-14, in the estimated sum of about £232, are reasonable and payable by her; and
- (2) The previous apportionment of service charges for the period 2005-06 to 2010-11 (i.e. equally between the flats) should not be disturbed and there should be no "back-dating" of service charges or management charges for those years, simply by reason that a new method of apportionment has been adopted from 2011-12 onwards. The charges levied for the period 2005-06 to 2010-11 are reasonable and payable by Mrs Vadgama.

The application

1. The applicant, Mrs Vadgama, seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by her in respect of the service charge years 2005-06 to 2013-14.

The hearing

2. Mrs Vadgama appeared in person and the respondent, Home Group Ltd, was represented by Ms Elise Longman, commercial and compliance manager, Mr Richard Hards, head of leasehold and Ms Angela Powell, operations manager.

The background

3. The property which is the subject of this application, 18 Elizabeth Gardens, is a one-bedroom flat in a purpose-built block of flats, details of which are given below. Mrs Vadgama holds a long lease of the flat, which requires the landlord to provide services and the tenant to contribute towards their cost by way of a variable service charge. The service charge year runs from 1 April to the 31 March in each year. The specific provisions of the lease will be referred to below, where appropriate.
4. The Home Group Ltd is a registered provider of social housing managing 55,000 properties spread across England and Scotland. There is a headquarters office in Newcastle, which deals with business, legal and financial concerns. The subject block of flats, 1-46 Elizabeth Gardens, is situated within the Home South region, which is served by a regional office in northwest London and 10 local management offices around the region.

5. The structure of the property is a 3-storey single block of brick construction, with private parking and limited grounds, built circa 1980. It is a mixed-tenure scheme consisting of 46 flats with four entrance stairwells, where 34 of the flats are 2-bedroom units and the remaining 12 are 1-bedroom units. The scheme is managed by the Eastcote local office. Six of the flats are leasehold, having been purchased originally through the Right to Buy scheme; the remainder are tenanted.
6. Neither party requested an inspection and the tribunal did not consider that one was necessary; nor would it have been proportionate to the issues in dispute.

The issues

7. At the start of the hearing, the parties identified the relevant issues for determination, as follows:
 - (i) Whether an increase in the management fee, from around £60 per year up to 2011-12, to £226 in 2012-13 and to an estimated £232 in 2013-14 and increasing thereafter by the Retail Prices Index (RPI), was reasonable;
 - (ii) Whether the apportionment of service charges between flats in the block had been reasonable for the past six years; and
 - (iii) Whether Mrs Vadgama was due back-payment of service charges and management fees over the past six years, if a fairer apportionment of the service charges was determined.
8. 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.

The increased management fee

9. Between 1 April 2005 and 30 March 2011 the management fee in respect of 1-46 Elizabeth Gardens was charged to tenants and leaseholders alike at a flat rate of 15% on top of the service charges for the particular year.
10. The 15% flat rate was the usual rate applicable normally only to tenants of properties owned by Home Group. Leaseholders in other properties were charged at a much higher rate, reflecting the actual costs of management but, for historic reasons, 1-46 Elizabeth Gardens was an exception. It was the only block in the southern region at the time where leaseholders were charged a management fee as if they were

tenants. As a result, the leaseholders of the subject block were charged very much lower amounts than leaseholders elsewhere.

11. On average, the annual management charge payable by Mrs Vadgama for the period 1 April 2005 to 30 March 2011 was £60 per year. In 2011-12, Home Group decided that it would need to change the basis of charging management fees to the leaseholders of Elizabeth Gardens. In that year, the company notified leaseholders at Elizabeth Gardens that the cost of management, which they should have been charged was £216.00, but for that year only they would still only be charged the “usual” 15% on top of service charges, which then amounted to £50.80.
12. However, in 2012-13, Home Group sought to charge the “normal” leaseholder management charge of £226 and then, in 2013/2014, an estimated £232. It was explained that each year the leaseholder management charge goes up by the Retail Prices Index (RPI).
13. Mrs Vadgama complained that the management charge to leaseholders was not at all reasonable and she disputed how it had been calculated. She also complained that the increase of the management fee for 2012-13 and 2013-14 was not a fair and reasonable increment.

Decision of the tribunal

14. The tribunal determines that the amounts payable by Mrs Vadgama in respect of the management charges for 2012-13, in the sum of £226.00, and for 2013-14, in the estimated sum of about £232, are reasonable and payable by her. The amounts payable in respect earlier years are dealt with later in this decision.

Reasons for the tribunal’s decision

15. In order to justify its management fees, Home Group relied upon several documents, including: a statement by Elise Longman, a document headed “Management Fee Justification of charge based on actual figures from: 01 April 2012 – 31 March 2013” and a “Schedule of Management Services”.
16. The services which are covered by the leaseholder management fee include: employment costs, providing management information to residents, property inspections, day-to-day repairs, management of complaints, supervision of works, consultation, collection of rents and service charge payments, financial administration, preparation and distribution of service charge budgets and accounts, holding meetings, arranging insurance on the buildings, managing plans for communal areas, paying invoices and other services directly benefitting leaseholders.

17. The documents explained how the actual costs of management were calculated. The key points were that the leaseholders were charged less for general management and property management compared with the rented stock but, because the management of leasehold stock is entirely self-funding (and it is not covered by net rent receipts like the rented stock), it must be collected as a specific fee from leaseholders included within the gross service charge.
18. The leasehold stock management fee is charged in three bands according to the level of services provided in any given block. As Mrs Vadgama's flat receives a full level of service, it is in the highest of the three bands and is subject to the maximum charge, estimated at £232 for the current year. However, the calculations provided by Home Group appear to show that the *actual* cost of leaseholder services for that period is £346, so that the receipts from the leaseholders do not currently meet the landlord's actual costs adequately.
19. The tribunal is satisfied that the management costs have been properly explained and calculated by Home Group, and that therefore they are justified. The estimated sum of £232 for the current year is well within the range of reasonable management fees that the tribunal sees. Given the extensive services provided to leaseholders, the management fee does not appear to be excessive.
20. Furthermore, it is clear that had the full costs of management been passed on to the leaseholders, the management fees would have been very much higher. Since there was no criticism of the management services, the tribunal saw no reason to disturb the management fee for the past and current years.
21. Increasingly, social housing providers are separating costs and charging the full amount to leaseholders. While the tribunal considers that the current charges are reasonable and that increasing the management fee by the RPI for the years determined is a reasonable method, the tribunal makes no comment on the applicability of the RPI increase in future years.

Apportionment of the service charges between the flats

22. After discussion, it became clear that in the future Home Group will distinguish between one- and two-bedroom flats in the apportionment of leaseholder service charges, and the tribunal considers this to be a reasonable distinction to make.
23. It also became clear that Mrs Vadgama would accept and agree that for 2011-12, 2013-13, the current year and future years she should pay 1.89% of the service charges in her block. This is the amount applicable

to a one-bedroom leasehold flat, compared to 2.27% for two-bedroom flat.

24. Agreement on this point left the issue as to whether the 1.89% apportionment of service charges should be applied to earlier years, as Mrs Vadgama wished, or whether the previous formula of dividing the cost equally between the flats should remain.
25. Allied to this, was the demand by Mrs Vadgama that the 1.89% of apportionment be back-dated for the past 6 years, so as to reduce her historic liability both for service charges and management fees for the period 2005-06 to 2010-11.

The tribunal's decision

26. The previous apportionment of service charges for the period 2005-06 to 2010-11 (i.e. equally between the flats) should not be disturbed and there should be no "back-dating" of service charges or management charges for those years, simply by reason that a new method of apportionment has been adopted from 2011-12 onwards. The charges levied for the period 2005-06 to 2010-11 are reasonable and payable by Mrs Vadgama.

Reasons for the tribunal's decision

27. By clause 4(b)(i) of the lease, the leaseholder covenants to pay "a fair and reasonable proportion for service charge", which is assessed in accordance with Schedule G of the lease. That schedule indicates that the service charges payable for the running costs of the services and facilities in Schedule B (the full range of services that one would expect in a lease), the making good of structural defects, maintenance and repair, the cost of management and insurance.
28. The previous historical method of charging for service charges satisfied the "fair and reasonable proportion" test. The tribunal notes that Mrs Vadgama was charged during those years as if she were a tenant, not as if she were a leaseholder. The total sums were reasonable in amount, especially the management fee which was a mere £60 per year.
29. The previous service charges were a banded 1/46 of the total, which the applicant paid without demur each year. However, it was clear from Home Group's document named "Summary & Statements of Service Charge Costs (Re-proportioned); Account periods April 2005-2011" that during this period the leaseholders, including Mrs Vadgama, had paid considerably less by way of service charges under the 1/46 apportionment, than they would have paid had the actual leaseholder costs been charged and had the costs been re-apportioned in the (now) agreed 1.89% and 2.27% proportions.

30. On the face of it, the service charges for 2005-06 right through to the current period are reasonable and payable. There is no basis for Mrs Vadgama's back-dating claim, either for service charges or for management charges. Although both parties referred in their evidence to Home Group's without prejudice offer of a credit refund to Mrs Vadgama for the financial years 2005-06 to 2010-11, their offer was rejected by Mrs Vadgama and it was subsequently withdrawn by Home Group. It has therefore been ignored by the tribunal in its deliberations.
31. Had a proper recalculation been done, and had the historic service charges been fully costed and charged, they were likely to have been much higher than those actually paid by leaseholders at Elizabeth Gardens. Therefore, there is no reason that the Tribunal can see to disturb the historic service charges or management fees.

Costs and fees

32. There is no application for payment of costs or for the refund of fees. There was no application under section 20C of the Landlord and Tenant Act 1985.



Name: Judge Timothy Powell

Date: 3 December 2013