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

Case Reference : LON/OOAU/LSC/2013/0182

Property : 3 DOLPHIN COURT 43, CARLETON
ROAD LONDON N7 0ER

Applicant : EL-GAMAL & CO LTD

Representative : MR R EL GAMAL and Mr G GLASS

Respondent : MISS TARYN HILL

Representative :

Type of Application : SECTION 27A LANDLORD AND
TENANT ACT 1985 ("the 1985 Act")

Tribunal Members : MRS T RABIN
MR N MARTINDALE
MR A RING

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR on 1st
and 2nd July 2013

Date of Decision : 11th JULY 2013

DECISION

The application

1. The Applicant issued an application to the Tribunal on 8th March 2013 seeking a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to whether the proportion of service charge demanded in respect of the service charge years 2006/2007 to 2011/2012 was reasonable and payable by the Respondent. The application relates to Flat 3 Dolphin Court 42 Carleton Road London N7 0ER (“the Flat”). The Applicant is the freeholder of Dolphin Court aforesaid (“the Building”) and the Respondent is the long leaseholder of the Flat. The issues before the Tribunal were:
 - (a) Whether the Tribunal has jurisdiction in relation to service charges for the year 2006/7.
 - (b) Whether the service charges for service charge years 2007/8 to 2011/12 are reasonable and payable by the Respondent
 - (c) Whether the service charges for service charge year 2009/10 are not payable due to the operation of Section 20B of the 1985 Act
 - (d) Whether the Tribunal should make an order under Section 20C of the Act to the effect that the costs of these proceedings should not be regarded as proper costs to be included in the service charges
2. In the light of the failure of the Applicant to comply with the Tribunal’s directions, the Tribunal issued a notice of intention to dismiss the application under Regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.
3. The Applicant objected to the dismissal so the Tribunal considered this objection prior to proceeding with the hearing. In the light of the views of both parties, the fact that the Applicant had complied to some degree with the directions, and that the Respondent wanted the matter to be determined, the Tribunal proceeded to hear the application.
4. Since the Applicant had not prepared a bundle for the hearing, the Tribunal requested that a bundle with four copies be prepared in accordance with the directions and adjourned until 2 pm on 1st July 2013 to allow for this to be undertaken. In the interim, the Tribunal inspected the Building.
5. The bundle when produced was unsuitable and the hearing was therefore adjourned until 2nd July 2013 at 10 am in order that proper bundles compliant with the directions could be prepared.

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

Inspection

7. The Tribunal inspected the Building on 1st July 2013 in the presence of Mr El Gamal and Miss Hill. The Building was a four level block of eight flats situated with a pitched front roof and a flat roof to the rear addition in a quiet residential road. The Building was brick built with original metal framed windows. It had a concrete forecourt in very poor condition with many weeds and deep cracks. There was a large communal rear garden accessed through a side passageway. This was badly overgrown and contained a number of large trees.
8. Entry to the block was by means of concrete front steps leading to a wooden front door in poor condition with signs of rot. Inside the communal lobby there was carpeting that extended to the stairs and upper landings. There were electricity meter cupboards on the ground floor. The internal common parts were in poor condition with peeling plaster and paintwork, mould, dirty scuffed walls, carpet in poor condition, ill fitting stair nosings where the carpet was loose and a trip hazard. Communal lighting was provided by one light on each floor. On the top floor there was an unsecured hatch leading to the loft space.

The Evidence

9. The Applicant provided an itemised annual statement of costs with supporting invoices for each of the years in question. The Tribunal pointed out that there were a number of discrepancies between the amounts claimed in the application and the amounts demonstrated in the invoices. Mr El Gamal said that these were the result of human error. He acknowledged that the Building was in a poor state of repair but intended to instigate a programme of works later this year. He himself is the long leaseholder of four of the flats in the Building.
10. The Respondent complained that the Applicant did not manage the Building and did not respond to her numerous requests for information and documentation. She made the point that she was happy to pay for service once she was satisfied that items had been properly invoiced and undertaken. Mr El Gamal was consistent in failing to provide the information she needed. The entryphone was not working from October 2010 until 3rd May 2013. She wrote twice and said other occupants had also complained. Mr El Gamal said no complaints had been received and that his brother occupied one of the ground floor flats during the period in question and had not reported any problem.
11. The Respondent stated that she had not received the demand for 2009/10 until August 2012 but Mr El Gamal said that he had sent the

demand in February 2011 and produced a letter to demonstrate this dated 14th February 2011.

12. The Tribunal considered the terms of the lease under which the Flat was held by the Respondent. This was an outmoded lease granted in 1962 which did not adequately allow for the modern management currently required. It did not allow for payments on account. The management charge was limited to 10% of the costs of maintaining the Building. There was no provision for the preparation of accounts or for the establishment of a sinking fund.
13. Mr El Gamal waived a number of the charges as he was unable to produce invoices for all of them and others were of limited value and he did not wish to take up the Tribunal's time on low cost items.

THE TRIBUNAL'S DECISION

14. The Tribunal considered whether the 2009/2010 account were unrecoverable, having been demanded more than 18 months after being incurred contrary to Section 20B of the Act. Mr Glass said that a demand letter dated 14th February 2011 had been sent to the Respondent. Since the Applicant has produced a copy of that letter and service by post at the registered address is good service, on the balance of probabilities the Tribunal finds that the letter dated 14th February 2011 was sent, even though it may not have been received by the Respondent. Accordingly Section 20B does not apply

15. The Tribunal considered each of the years in dispute separately:

2006/7

16. The Tribunal does not have jurisdiction as the service charges for this year were the subject of an earlier Tribunal determination dated 7th April 2008 under number LON/OOAU/LIS/2007/0067& 6 (see Section 27A(4) (c))

17. Having heard the parties and considered the documents the Tribunal makes the following determination in respect of the service charges for the service charge years in question:

2007/8

Entry phone	£ 239.32
Electricity	£ 90.89
Building Insurance	£ 834.34

Terrorism Insurance	waived by Applicant
Cleaning	waived by Applicant
Gardening	waived by Applicants
Accountancy	Not recoverable under the lease
Management	10% of maintenance £23.93 + VAT
2008/9	
Entryphone	£ 241.87
Electricity	£ 146.55
Building Insurance	£ 838.34 (including broker's commission)
Terrorism Insurance	£ 317.36
Cleaning	waived by Applicant
Gardening	waived by Applicants
Roofing	£ 350 including VAT
Accountancy	Not recoverable under the lease
Management	10% of maintenance £59.19 + VAT
18.	2009/10
Entryphone	£ 245.15
Electricity	£ 166.87
Building Insurance	£ 933.32
Terrorism Insurance	not claimed in application
Accountancy	Not recoverable under the lease
Management	10% of maintenance £24.52 + VAT

2010/11

Entryphone	£ 61.39 to cover first quarter *
Electricity	£ 165.13
Building insurance	£ 828.32
Lighting maintenance	£ 20.00
Accountancy	waived by Applicant
Management	10% of maintenance £8.14 + VAT

19. **2011/12**

Entryphone	No charge as not working
Electricity	£ 95.89
Building Insurance	£ 870.50
Maintenance	waived by Applicant
Management	10% of maintenance - nil

* There was conflicting evidence about the operation of the entryphone but the Tribunal noted that the Respondent had written complaining it was not working from October and Mr El Gamal and Mr Glass agreed it had been repaired in May 2013. The Tribunal has disallowed the charges for entryphone for the period from 1st October 2010 to May 2013

20. The sums determined by the Tribunal are payable now, subject to allowance being made for any sums paid, including the amount paid for insurance in 2008.

SECTION 20C

21. The Respondent made an application under Section 20C of the 1985 Act requesting that the costs of these proceedings should not be considered relevant costs for the purpose of calculating the service charge. The lease does not allow for recovery of such costs but, in the

light of the Tribunal's findings, an order under Section 20C is considered appropriate.

PENALTY COSTS

22. Under Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") the Tribunal may determine that a party to proceedings shall pay costs incurred by another party in connection with the proceedings where the party has in the opinion of the Tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. The Tribunal's power to award costs was limited to £500 for applications prior to 1st July 2013 and unlimited thereafter. Since this application was commenced prior to 1st July, the Tribunal's jurisdiction is limited to £500.
23. The Tribunal has considered the Applicant's conduct of its application. No one attended the pre-trial review, but Mr El Gamal explained that there was a medical emergency and this fully explains his absence.
24. The Respondent said that she was self employed undertaking background work in the television industry for which she was paid £120 per day. She explained that she had an agent who provided her with work and had informed her agent that she would be unavailable for 1st and 2nd July 2013 and this meant that she was not be offered work. In addition, she had incurred £20 photocopying charges and £10 fares.
25. Mr El Gamal was asked to respond to the Respondent's submissions on costs and said he had no other option but to bring these proceedings in order to recover monies owing.
26. The Tribunal noted that the Respondent has consistently said that she would pay monies properly due. The Tribunal is satisfied that the Applicant has not responded to enquiries and such information made available was demonstrated at the hearing to be frequently inaccurate and with important documents missing.
27. The Applicant failed to comply with the Tribunal's directions. Had these been complied with, the hearing would have taken no more than one day and many, or even all, of the issues could have been resolved prior to the hearing. Although Mr El Gamal was unable to attend the pre trial review, the Tribunal's directions were clear and there is no excuse for the Applicants' subsequent failure to comply.
28. The Tribunal is of the opinion that the Applicant has acted unreasonably in the conduct of these proceedings resulting in a waste of the Respondent's time and public money. In the circumstances The Tribunal determines that the Respondent should be paid the sum of

£240, representing 2 days lost work, and refund her expenses of £30. This sum is due from the Applicant immediately.

CONCLUSION

29. The Tribunal noted that the Building was a pleasant block in a good location and could be made into an attractive property. However, there is evidence of long standing neglect by the Applicant and it has been allowed to fall into a shabby state. Since the Applicant owns four flats in the block itself, it would be in all owners' interest for the Building to be properly maintained and it appears to the Tribunal that the Applicant is in breach of a number of its obligations under the lease for which the Respondent could commence proceedings for enforcement in the County Court.
30. Mr El Gamal demonstrated that he does not manage the Building in a satisfactory manner by failing to maintain proper records, by ignoring the Respondent's requests for detailed information and commencing proceedings to recover expenditure where the figures were often incorrect.
31. The lease is unsatisfactory and does not allow for on account payments or full recovery of costs. The sensible way forward is for Mr El Gamal and the Respondent to discuss the future and agree what steps can be taken to improve the Building. If there is positive action on the part of the Applicant, the Respondent may well pay sums not provided for in the lease on the basis that she cannot expect the Applicant to fund services and refurbishment without being in funds from the Respondent and other long leaseholders. A positive attitude on the part of the Applicant will lead to an improvement in landlord and tenant relationships

Tamara Rabin

THE SCHEDULE

Landlord and Tenant Act 1985

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 20C(1) of the Act provides that 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 leasehold valuation

tribunal 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.

Section 20C(3) of the Act provides that the tribunal may make such order on the application as it considers just and equitable in the circumstances.

Section 27A

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.
- (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).