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

Case Reference : **LON/00BB/LSC/2013/0317**

Property : **Flat 6 Darwin Court, 172 Balaam Street, London E13 8RB**

Applicant : **Mrs I Levy**

Representative :

Respondent : **Haywood & Wells**

Representative : **Hexagon Property Company Ltd**

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

Tribunal Members : **Mr D Banfield FRICS (Chairman)
Mr M Martynski (Solicitor)**

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

Date of Decision : **9 July 2013**

DECISION

Decisions of the tribunal

The following amounts are determined as payable (if not already paid) when properly demanded;

1.	Actuals from 1 February – 31 December 2012	£81.78
2.	Budget from 1st January to 31 December 2013	
	Block	£809.05
	Estate	£110.00

Any sums paid in excess of the above amounts should be credited to the lessee forthwith.

Background

- (1) This is an application under S.s 27A and 20C of the Landlord and Tenant Act 1985. The Applicant is the long leaseholder of Flat 6 Darwin Court a development of 24 flats and garages.
- (2) The freehold of the building is owned by the Respondent company which acquired the property on 7 January 2013. In addition to the purchase price the Respondents paid a further sum of £4,605.41 to the previous freeholder in respect of service charges for the period 1 February 2012 to 31 December 2012.
- (3) By way of a letter dated 31 January 2013 Hexagon Property Co Ltd managing agents for the freeholder requested payment of the sum of £191.89 being 1/24th of the total.
- (4) Service charge budgets were issued on 30 January 2013 amounting to £14,406 for block costs of which the Applicant's 12th share was £1,200.50 and £5,980 for estate costs the Applicant's 24th share being £249.17.
- (5) In her application to the tribunal the applicant challenges the amounts included for postage and stationery (2012 only) accountancy and management fees on the grounds that the lease does not provide for such payments.
- (6) With regard to the budget for 2013 the applicant further challenges the inclusion of an item "S.20 Major Works Consultation Fee" in the sum of £1,200 on the grounds that she has not been provided with any details of the proposed works or need for them.
- (7) On 3 May 2013 the tribunal directed that the matter would be determined on the basis of written representations unless either party requested a hearing. No such requests have been received and the

matter has therefore been determined on the bundle of documents received.

- (8) In their statement of case the respondents said that major works were to be carried out to the property hence the need for including consultation fees in the budget. In support of this they referred to a Condition Survey report carried out by GH Chartered Surveyors dated 14 February 2013. They said that the costs of the works would be in the region of £60,000 to £70,000 plus VAT and referred to page 9 of the report. Unfortunately this page had not been included in the bundle.
- (9) They considered that Part IV of the Fourth Schedule of the lease entitled them to charge "its normal expenses and costs thereof if any repairs, redecorations or renewals are carried out at the property" and suggested that management and accountancy fees formed part of these expenses.
- (10) They listed the duties undertaken by Hexagon in their role as property managers and said that without management the buildings would be in disarray.

The issues and the Tribunal's decisions

- (11) The following extracts from the lease are considered relevant;

Section 1 defines the lessee's demise as "all that flat numbered 6 and being on the top floor of the building... (including the floor joists of the Flat the internal and external walls of the Flat above the same level and the roof of the building so far as it constitutes the roof of the Flat)

Section 4. The Lessee covenants to;

- (i) keep the demised premises and all walls party walls sewers in good and tenantable repair....
- (ii) To pay 1/12th of the costs in Part I of the Fourth Schedule and 1/24th of those mentioned in Part II.

Section 5 The Lessor covenants to;

- (c) maintain repair decorate and renew (i) the roofs main structure boundary walls fences gutters and rainwater pipes of the Mansion (ii) gas and water pipes etc (iii) the main entrances passages etc. (iv) the access way grounds and turning surface shewn on the plan annexed hereto ...Provided always that in this

paragraph the expression "Mansion" does not include the garages.

- (d) Keep clean the common parts
- (e) Decorate the exterior.

The Fourth Schedule refers to expenses...in respect of which the Lessee is to contribute;

Part I

1. The expenses of maintaining repairing redecorating and renewing (a) the roofs main structure boundary walls fences gutters and rainwater pipes of the block (b) the gas and water pipes...(c) the main entrances
2. Cleaning.....
3. Decorating the exterior...

Part II.

Expenses of maintaining etc the boundary walls (not being part of a garage) fences etc...

Part IV

The lessor shall be entitled to add the sum of 10% to any of the above items for administration expenses....."

- (12) It is clear to the tribunal that the lease envisages that all administration and management costs are met from the 10% chargeable under Part IV and that no additional charges for accountancy and management can be made.
- (13) With regard to the budgeted sum for a S.20 consultation fee we are somewhat hampered by the missing page of the surveyor's report where presumably an estimated cost is provided. We do note however that in the conclusion at para 13.1 of the report Mr Rahman states "In general the property is deemed to be in a reasonably good condition, however there are some repair and maintenance requirements as advised and in particular the grounds and boundaries. A specification of works should be prepared

detailing the extent of repairs, renewal and redecoration necessary which contractors can provide detailed and more accurate costs”

- (14) It may well be argued that a number of the defects referred to in the above report relate to matters that are within individual lessee’s demise and are not therefore service charge items. The costs of those items remaining are unclear and the tribunal therefore consider it premature to add any costs relating to S.20 matters in the budget for 2013.
- (15) After making the adjustments referred to in paras 12 and 14 above the following sums are allowed;

1 February to 31 December 2012

Communal Electric	£322.75
Repairs and maintenance	£1,461.60
Sub total	<u>£1,784.35</u>
Add 10%	£178.44
Total	<u>£1,962.79</u>

1/24th share is **£81.78**

1 January to 31 December 2013

Block A

General Maintenance	£1,200
Health and Safety Assessment	£420
Fire Risk Assessment	£420.00
Building Insurance	£2,550
Site Survey	£1,440
Communal Cleaning	<u>£2,796</u>
Sub Total	£8,826
Add 10%	<u>£882.60</u>
Total	<u>£9708.60</u>

1/12th share is **£809.05**

Estate

General maintenance etc.	£2,400
Add 10%	<u>£240</u>
Total	<u>£2,640</u>

1/24th share is **£110.00**

Any sums paid in excess of the above amounts should be credited to the lessee forthwith.

It should be noted that the sums allowed for 2013 are based on budget figures only and may be the subject of a further application when the actual expenditure is determined.

Section 20C Landlord and Tenant Act 1985

- (16) The lease does not contain a provision whereby any costs incurred relating to proceedings before this tribunal can be charged to the service charge account and there is therefore no need for an order under S 20C to be made

Name: D D Banfield FRICS

Date: 9/7/2013

Appendix of relevant legislation

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 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.

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.