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

Case Reference : CAM/26UH/LSC/2013/0143

Property : Flats 1, 2, 3, 5 & 7, 1 Market Place
and Flats 1, 2, 3, 5, 7a Market
Place, Stevenage SG1 1DG.

Applicants : Various. Mr. Green (Flat 2)
represented himself and the other
tenants at 1 Market Place. Mr.
Kenneth McGrath of [(Flat 4)]
represented himself and the tenant
of Flat 3. Miss S. Davidson (Flat 2)
represented herself as did Mr.
McKeown (Flat 1).

Respondent : Sony Estates Ltd.
The Respondent did not appear and
was not represented.

Type of Application : To determine the reasonableness
and payability of service charges.

Tribunal Members : Chairman: Judge Graham Wilson
Members: Mr. Roland Thomas MRICS
Mr. Adarsh Kapur

Date of Inspection : 12 March 2014

Date of Decision : 12 March 2014

DECISION

Decision

- (1) The Tribunal determined for the reasons appearing below that no service charges were payable in respect of the service charge years 2011 and 2012 and that the *estimated* service charges for the service charge year 2013 would not be payable.
- (2) The Tribunal made an order under Section 20C of the Landlord and Tenant Act 1985 to the effect that any costs incurred or to be incurred by the landlord in connection with the proceedings before the Tribunal

shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants.

- (3) The Tribunal made an order that the Respondent should reimburse to the Applicants the Tribunal fees that they had paid.

Reasons

The Application

1. The Applicants applied under Section 27 of the Landlord and Tenant Act 1985 for a determination as to the reasonableness and payability of service charges. The terms of that Section are set out below.

The Property

2. The flats were one-bedroomed or studio flats in a single block to which there were separate entrances (1 and 7a).

The freeholder of 1 Market Place was a company, Ocean Cruise Ltd., of whom the Respondent was the intermediate tenant and the landlord of the flats in 1 Market Place and of the communal areas.

The freehold of 7a Market Place was owned by a Miss Dolan. Again, the Respondent had a lease of flats on the second floor comprising Flats 1, 2, 3 and 5 and the related communal areas.

It appeared that the Respondent acquired its leases in late 2009 at a cost of several hundred pounds (so it appeared from the Land Registry entries) and had, according to one of the Applicants, acquired the leases at auction.

Inspection

3. The Tribunal inspected the communal areas in the presence of the tenants who appeared at the hearing. The Tribunal found the communal areas to be in poor decorative order. The carpets were dirty and in need, because of heavy staining, of replacement.

The Tribunal observed that a number of fire extinguishers were available, but did not appear to have been inspected in the recent past.

There was a considerable amount of exposed electrical wiring. The windows were dirty. The Tribunal were informed that there had been a leak of sewage into one of the communal areas and it was plain that the area in question had not been redecorated.

There was an emergency exit via the back staircase. The emergency exit was very dirty. It was explained that a broken door had, for a time, allowed birds to get in. The intercom system, so the Tribunal were informed, did not function.

In summary, there was evidence of poor, if non-existent, management.

The Law

4. This is to be found in Section 27A of the Landlord and Tenant Act 1985, which reads as follows:-

- (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 of 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.

These, in other words, were the terms of reference.

The Hearing – the evidence of the parties and the Tribunal's findings

5. Those who appeared at the hearing are recorded above. The Respondent did not appear and was not represented. The Applicants had prepared a Hearing Bundle.
6. At page 7 onwards of the Hearing Bundle there appeared service charge accounts for the years 2011 and 2012, which appeared to be final accounts, and accounts for 2013, which were estimated accounts.
7. The Applicants challenged all of the service charge items and these the Tribunal dealt with in turn. Where a service charge item appears in more than one year, then (unless it appears otherwise) the Tribunal's decision applies to each year where the item appears.
8. The items challenged appear below. There were in the Hearing Bundle ten witness statements by the parties. Miss Davidson handed in her statement on the day of the hearing. It would suffice to record that the Tribunal were able to accept the substance of the Applicants' evidence in connection with the various items, as follows:-
 - 8.1 *Cleaning.* The Tribunal heard that, with one exception, the landlord had not arranged for the communal areas to be cleaned since 2011. Early in 2011 one of the tenants had volunteered to do the cleaning on the basis that he would render an invoice for the work. He did so for two periods but when the Respondent failed to pay him he stopped doing the work.

The Tribunal was satisfied, on the basis of the Applicants' evidence, that no cleaning had been carried out. The Applicants' evidence was supported by the Tribunal's own observations. The service charge item for cleaning would be disallowed.

- 8.2 *Chubb Alarm.* The Applicants' evidence was to the effect that, with the possible exception of one short period in 2011, the alarm had not functioned. Certainly, there was no evidence in the form of invoices from the Respondent of the alarm having been serviced. For that reason, the claim would be disallowed.
- 8.3 *Reserve Fund/Sinking Fund.* There was no provision within the lease appearing in Hearing Bundle for either item. This item would be disallowed.
- 8.4 *Electrical Works.* The Applicants' evidence was to the effect that over the years in question the landlord's work was limited to replacing one switch and two lights. On the basis of that evidence, the service charge items were unjustified. Certainly there were no invoices to support the item.
- 8.5 *Electricity Accounts.* The Applicants' evidence was to the effect that the landlord had not paid the power company for the supply. In consequence, the service was cut off. The Applicants then clubbed together to pay the outstanding bill and to get the supply reconnected. In the circumstances, this service charge item would be disallowed.
- 8.6 *Management Time.* There was no provision within the lease for this item and it would be disallowed.
- 8.7 *Insurance.* There was no evidence within the Hearing Bundle that the policy actually existed. No evidence had been provided by the Respondent. While it would be rare for a Tribunal to disallow a claim for insurance completely, this item would be disallowed.

It is convenient to record at this point that in the absence of any evidence of management "on the ground" or evidence in the form of invoices etc. to substantiate the service charges was such as to persuade the Tribunal that the Applicants' suggestion that the Respondent was behaving fraudulently may be warranted. That was not to say, however, that the evidence before the Tribunal was in itself sufficient to substantiate such an allegation.

- 8.8 *Roof Repairs.* Although this item was claimed, the Applicants' evidence was to the effect that the neighbouring freeholder had in fact paid for the repair and was attempting, unsuccessfully, to recover a proportion from the Respondent. In the absence of material to support this item, it would be disallowed.
- 8.9 *Management Fee.* The management fee was fixed by the lease as a percentage of the service charges. No such charges having been allowed, no fee would be payable.

There were contained in the Hearing Bundle a number of specimen service charge demands. The demands did not comply with Section 21

of the Landlord and Tenant Act 1985, in that they did not contain the requisite information. In the circumstances, however, that was of marginal relevance.

Costs

9. In the event, the Tribunal had no hesitation in granting the tenants' request that it made an order under Section 20C of the 1985 Act and which was to in effect recorded at the beginning of this Decision.
10. The Applicants also applied for an order that the Respondent pay the Applicants' Tribunal fees of £630. The landlord did not engage with the application in any way. Further, according to one of the Applicants, it had appeared to reject material posted to it. The case was one of the worst examples of egregious behaviour by a landlord that members of the Tribunal had seen. The Tribunal made an order for reimbursement of fees.

Conclusion

11. The Tribunal observed that the Applicants may wish to consider the options available under statute to remedy the plight in which they found themselves.

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G. WILSON
Chairman

12 March 2014.