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

Case Reference : CHI/00HN/LAC/2014/0001

Property: 9 Sealands House, 28 Argyll Road,
Bournemouth, BH5 1ED

Applicant : Paul Osborne

Representative : N/A

Respondent : Mr B Ramsey & Mr R Garner

Representative : N/A

Type of Application : Determination of administration charges
(Schedule 11 to the Commonhold and
Leasehold Reform Act 2002)

Tribunal Members : Judge S. Lal

**Date and venue of
Hearing** : 8th April 2014, Chairman's home

Date of Decision : 16th April 2014

DECISION

Application

1. On 24th December 2013, the Applicant applied to the Tribunal under section 11 of the Commonhold and Leasehold Reform Act 2002 (the "Act") for a determination as to whether an administration charge is payable under a lease and if so, the reasonable amount payable.

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2. The Tribunal issued Directions on 3rd January 2014. The Directions made it clear that the Application is to be dealt with on the paper track on the basis of written representations without a formal Hearing. Neither party has objected to this procedure.

3. The Tribunal has been asked to take into account the Tribunal's Decision of 14th December 2012 relating to an application by the Applicant against the Respondent under section 27A of the Landlord and Tenant Act 1985. In this Decision, the Tribunal concluded that the service charge demands in question had not been properly served, as the demands should have contained the landlord's and not the managing agents' address. The Tribunal, however, gave an indication as to what its findings would have been had the service charge demands complied with the provisions of sections 47 and 48 of the Landlord and Tenant Act 1987. The Tribunal indicated that the management charges for the years 2006 to 2011 should be reduced as set out in the Decision.

Applicant's Case

4. The premises comprises a former guesthouse converted in the 1980's into nine self-contained flats let on 99 year leases. The Applicant is the owner of flat 9, (the "Property") which is held on a lease dated 26th February 1988 made between (1) DJW Gould and (2) Miss J Willding and Miss JA Jones.

5. Following the Tribunal's Decision on 14th December 2012 (referred to above) the Applicant is now seeking reimbursement for the administration charges, which relate to the invalid service charge demands. The Applicant claims that for the period 2007 to 2012, the amount he should be reimbursed is £939.25.

6. The Applicant has sought advice from the Leasehold Advisory Service in relation to this Application and has been advised that it is not reasonable for a party to recover administration charges in relation to any invalid service charge demand. The Applicant claims that since the Tribunal's Decision of 14th December 2012, concluded that the service charges demands were invalid, then the administration charges relating to these demands should not have been payable by the Applicant.

Respondents' Case

7. The Respondents claim that their failure to comply with section 47 of the Landlord and Tenant Act 1987 in respect of the service charge demands did not prejudice the Applicant in any form and at no time did the Applicant request details of the landlord in connection with the service charge demands.

8. The Respondents quote the words of George Bartlett QC, the president of the appeal hearing in the case of **Beitov Properties v Martin [2012] UKUT 133 (LC)** to support their case:

"I should add that it is my view generally inappropriate for a tribunal to take on behalf of one side in what is a party and party dispute a purely technical point, by which I mean a point that does not go to the merits or justice of the case..."

8. The Respondents claim that they had to chase the Applicant on nine occasions for the payment of outstanding accounts and, in respect of four of the service charge demands, the matter was passed to an external debt collecting agency to pursue the Applicant for the outstanding sums.

9. The Respondents claims that at no time did the Applicant challenge the validity or reasonableness of the administration charges.

10. The Respondents believe that the administration charges are reasonable for the work carried out to ensure that the service charge payments were received and are comparable to those of other managing agents.

The Tribunal's Decision

11. The Tribunal has considered all of the evidence before it, including the Application Form, the Tribunal Decision on 14th December 2012 and all of the accompanying papers and correspondence from the Applicant. The Tribunal has also considered the Respondents' statement of case and points of dispute and all of the accompanying papers and correspondence from the Respondents. The Tribunal has, in addition, considered the provisions of Schedule 11 to the Act and the case of *Beitov Properties v Martin* referred to above and in the Tribunal Decision of 14th December 2012.

12. The Tribunal acknowledges the Respondents' argument that the Applicant did not at any time request details of the landlord in connection with the service charge demands nor did the Applicant at any time prior to this application challenge the reasonableness of the administration charges, which, on a reading of the papers and in the opinion of the Tribunal, were reasonable in themselves.

13. However, the Tribunal's opinion is, and consistent with the Decision of 14th December 2012 that the service charge demands for 2006 – 2011 were invalid, that any administration charges relating to these ineffective demands are not payable by the Applicant. The case of *Beitov* does not assist the Respondent because the principle cited, which the Tribunal accepts as a valid observation in a party versus party dispute, is not applicable to the facts of this case in respect of the matters in dispute. The Tribunal has had regard to the principle of judicial comity and this decision is consistent with the decision of the 14th December 2012. Accordingly, the Tribunal finds in favour of the Applicant in this case and he should be refunded that which he has paid.


14. The Tribunal makes no further order.

15. 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. 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.

16. 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.

17. 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

Judge S. Lal



Date

16/4/14