



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

Case Reference : LON/00AH/LSC/2014/0367

Property : Flat 7, 279 Church Road, Crystal Palace London SE19 2QQ

Applicant : C P Property Management Ltd

Representative : Circle Residential Management Ltd

Respondent : Ms Helen Onwona Yeboah

Representative : None

Type of Application : For the determination of the liability to pay a service charge under section 27A Landlord & Tenant Act 1985 (the "Act")

Tribunal Members : Judge Pittaway
Mr R Shaw FRICS

Date of Decision : 23 September 2014

Determination without an oral hearing in accordance with Regulation 31 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

DECISION



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DECISION

Decision of the tribunal

1. The tribunal determine that the respondent is liable to pay an Interim Charge under the terms of her lease.
2. The tribunal determine that the Interim Sum demanded by the applicant for the service charge year 2014 is reasonable.

The application

1. By an application dated 7 July 2014 the applicant seeks a determination under section 27A of the Act as to liability to pay and reasonableness of interim service charge for the service charge year 2014 in the sum of £3,499.40.
2. The Tribunal issued directions on 1 August 2014 in which they requested, among other matters,
 - 2.1. that the respondent tenant provide a schedule of the items of service charge contested, why the amounts are disputed and the amount the tenant would pay for such items, to be accompanied by alternative quotes and a statement setting out the relevant lease provisions and any legal submissions.
 - 2.2. that the applicant landlord should complete the respondent's schedule responding to the issues raised, providing copy invoices for the disputed items and a statement setting out the relevant service charge provisions from the lease and any legal submissions to be made;
3. In their directions the tribunal
 - 3.1. stated that failure to comply with the directions could result in serious detriment to the defaulting party
 - 3.2. indicated that they considered the matter suitable for determination on paper; that is without an oral hearing or inspection, unless any party requested an oral hearing. No oral hearing was requested.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background and evidence

1. The tribunal has had regard to the bundle dated 8 September provided by the applicant in reaching its decision. No bundle was received from the respondent.

2. The respondent is the lessee of the Property under a lease dated 27 September 2007 for a term of 125 years from 1 January 2007. The lease contains a covenant at Clause 3.2.4 for the tenant to pay an Interim Charge; a sum to be paid on account of Service Charge, being a fair and reasonable interim payment having regard to anticipated expenditure in the next Accounting Period with reference to costs to be incurred by the landlord in performing its obligations under clause 5(5) of the Lease.
3. The respondent did not comply with the tribunal directions and provided no bundle to the tribunal.
4. In the applicant's statement of case Lizzie Walpole, on their behalf, submitted that
 - 4.1. The amount which the applicant is seeking is an Interim Charge and that therefore the issue for the tribunal to decide is whether the sum demanded is "no greater amount than is reasonable" under s19(2) of the Act;
 - 4.2. The sum should be considered in its totality, rather than as costs per budget item, although individual cost headings may be provided as a guide to the tenant and each cost heading should be reasonable; and
 - 4.3. That the reasonableness is applied at the time the budget is prepared. It is a test of reasonableness of likely costs, plus contingencies and reserves and not a test of reasonableness of actual expenditure.
 - 4.4. the estimate in question insofar as it related to maintenance included an element of contingency
 - 4.5. the interim service charge should be and had been "bench marked" against similar properties;
 - 4.6. that payment of the interim service charge does not prejudice the tenant's ability to challenge the actual costs subsequently; and
 - 4.7. that as the tenant pays 5% of the Service Charge it is reasonable for the applicant to seek to recover 5% of the interim payment from the respondent..
5. The applicant's statement of case included
 - 5.1. a copy of the interim service charge demand
 - 5.2. details of the service charge budget with a commentary on the sums demanded under each budget heading; and

5.3. details of the property expenditure for the service charge periods 2010-2013.

The tribunal's reasons.

1. The applicant is entitled to demand an Interim Charge and the respondent has not denied this liability.
2. The respondent has not raised any objection to the sum demanded on the ground of it being unreasonable.
3. The tribunal have made their decision, in the absence of any case by the respondent, on the evidence provided by the applicant.

Name: Judge Pittaway

Date: 23 September 2014

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.