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

Case Reference : **LON/00BB/LSC/2013/0322**

Property : **18 Sullivan Avenue, Custom House,
London E16 3LJ**

Applicant : **London Borough of Newham**

Representative : **Wilkins Chapman Grange
Solicitors**

Respondent : **Ms Sophie Modupe Wahab**

Representative : **In Person together with Ms Ola
Matthews**

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

Tribunal Members : **Mr S Carrott LLB
Mr F L Coffey FRICS
Ms J Dalal**

**Date and venue of
Hearing** : **10 September 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **5 March 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £1179.58 is reasonable and payable by the Respondent.
- (2) The claim for the administration fee of £40 is disallowed.
- (3) Interest and costs are remitted to the County Court for determination.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 "the 2002 Act") as to the amount of service charges [and (where applicable) administration charges payable by the Applicant in respect of the service charge years 2006 to 2011.
2. Proceedings were originally issued in the Northampton County Court under claim no. 3YJ25425. The claim was transferred to the Bow County Court and then in turn transferred to this tribunal, by order of District Judge Dixon on 22 April 2013.
3. The sum claimed in the schedule to the Particulars of Claim were in respect of estimated service charges as follows –
 - (i) 2006/2007 - £426.39 (balance due £282.50)
 - (ii) 2007/2008 - £454.21 (balance due £367.32)
 - (iii) 2008/2009 - £470.15 (balance due £344.1)
 - (iv) 2009/2010 - £493.51 (balance due £493.51)
 - (v) 2010/2011 - £446.98 (balance due £446.98)
 - (vi) 2011/2012 - £448.45 (balance due £448.45)
 - (vii) Administration fee - £40.00
4. The total claimed was therefore £2,140.36 with regard to estimates.
5. In paragraph 1 of the Particulars of Claim the figure pleaded was £2490.36. This being the actual expenditure claimed. However at the

hearing the actual figure in dispute was slightly more, namely £2497.29 and this was the sum the Applicant requested at the hearing.

The hearing

6. Ms J Gilmore agent for Wilkin Champman Grange Solicitors appeared for the Applicant together with Ms Zoe Buckley the service charge recovery manager. The Respondent, Ms Sophy Modupe Wahab appeared in person together with Ms Ola Matthews, a friend.
7. At the hearing Ms Gilmore informed the Tribunal that the actual figure for insurance was £994.89. Ms Wahab admitted the claim for insurance and the parties agreed that Ms Wahab would pay this sum in instalments of £99.95 from 10 October 2013.
8. However when the Tribunal retired to consider the actual figures based on the Statement of Actual Service Charge provided by the Applicant, the total sum for insurance for 2006 to 2011 was £848.54. The excess of £146.35 will be deducted from the Tribunal's determination below.
9. In addition, in a letter dated 9 September 2013 the Applicant's Solicitors wrote to the Tribunal confirming that the block does not have a tv ariel and accordingly those costs were not chargeable under the service charge account. The Applicant therefore conceded that the sum of £42.24 should not form part of the Tribunal's determination.

The background

10. The subject property is 18 Sullivan Avenue, Custom House, London E16 3LJ. The Respondent Ms Wahab holds a long lease of the property the terms of which oblige her to pay service charges including interim service charges.
11. A pre-trial review took place on 30 May 2013. Although the Respondent Ms Wahab was present, the Applicant did not attend. The procedural Chair at paragraph 6 of the directions noted that the structure of the lease was that the landlord was obliged to provide certain services and the tenant was to contribute to the costs incurred. He recorded the service charge year as being from 1 April to 31 March. Prior to the year the landlord estimated the costs likely to be incurred. The tenant was then obliged to pay that sum on account. After the end of each year the landlord was to certify the actual costs incurred and there were provisions for dealing with the resulting debt or credit balance as the case may be.
12. The procedural chair noted on that occasion that the account attached to the Particulars of Claim set out the estimated sums claimed but made no reference to the actual costs incurred or to the resulting debit or

credit balances. As a result the tribunal ordered that the service charge accounts for the years in issue be provided with key documents relating to each specific item of service charge expenditure in issue.

13. In particular at paragraph 10 of the directions the procedural chair ordered that the Applicant should serve on the Respondent a statement of case attaching the year end certificates for each of the years in issue and a cash account showing all debit and credit entries together with copies of the demands for all the debit entries.
14. The Applicant however chose not to comply with this direction and only provided service charge accounts. Ms Gilmore for the Applicant informed the Tribunal that the Applicant was not requested to produce the above documents. However the directions are quite clear and indeed were received by the Applicant.
15. The absence of the material specified in paragraph 10 of the directions made it more difficult for the Tribunal to reconcile the figures and unnecessarily prolonged the hearing.

The issues

16. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Whether the Respondent is liable to pay service charges in respect of repairs.
 - (ii) Whether the Respondent is liable to pay service charges in respect of management fees.
17. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the issues as follows.

The tribunal's determination

18. The Respondent stated that she did not understand what the figures for repairs were and that she has not seen any invoices and was therefore unable to understand why she should make payment.
19. Ms Gilmore told that Tribunal that if a total cost did not exceed £250 then an invoice would not be provided. However job sheets were provided for the actual repairs chargeable to the Respondent as follows – 2008 £12.57, 2009 £18.87 and 2011 - £111.12 (although the service charge statement refers to a figure of £122.53. For 2006 the actual service charge statement refers to service charge sum of £330.31,

however there is no job sheet or invoice. In the service charge statement there was a nil balance for 2007 and 2010.

20. The Tribunal therefore allowed the amounts in the job sheets/invoices provided which totals £142.56.
21. As regards the management fees the Respondent said the management fees were too high because the Applicant had only carried out minor repairs and therefore should be proportionate to the work carried out.
22. She also complained because the management fee was increased annually and that in 2009 she noticed that the management costs included other departmental costs which she did not understand and therefore disputed.
23. Ms Gilmore stated that the reality was that the management fee had gone down. Ms Gilmore stated that the actual management fee was £1502. She said that in 2008/09 the management team was restructured into a leasehold services team, a neighbourhood services team, repairs team and resident involvement team and the way in which the payments were calculated was broken down for transparency. However it did not affect the overall management fee. The actual management figures from the documents provided by the Applicant showed a total figure of £1183.37.
24. The Tribunal accepted the evidence of the Applicant on the issue of management fees and considered that they were reasonable and payable by the Applicant.
25. The insurance issue having been compromised, the Tribunal determined that the two items payable are the management fee of £1183.37 and the sum of £142.56 for repairs making a total sum £1325.93. However the sum of 146.35 should be deducted from amount figure leaving a balance payable of £1179.58. The reason for this deduction is because the actual insurance figure agreed to be paid by the Respondent is more than the sum due.
26. There was an additional claim for an administration charge of £40. No evidence was called by the Applicant on this issue and accordingly the claim is rejected.
27. It is clear from the above determination that the figures presented in the claim form, including actual and estimated figures were not strictly speaking correct and that this contributed to the confusion on the part of the Respondent. Given the lack of accuracy of the figures and non-compliance with directions, if the matter was left to the Tribunal the Tribunal would have disallowed costs. However the issue of costs is for

the County Court and is therefore remitted to the District Judge to make the appropriate determination.

28. Likewise, the issue of interest is remitted to the County Court since the Tribunal has no jurisdiction to make such order.

Name: S Carrott LLB

Date: 5 March 2014