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

Case Reference : MAN/00BN/LSC/2012/0148

Property : Apartment 4, Joiner Street, Manchester M4 1PP

Applicant : Mr.R.Neilson

Respondent : Lighthouse (Manchester) Management Ltd

Represented by : Blue Property Management UK Limited

Type of Application : Landlord and Tenant Act 1985 - Section 27A and Section 20C

Tribunal Members : Mrs.C.Wood
Mr.J.Faulkner

Date of Decision : 13 November 2014

DECISION

Decision

1. The Tribunal determines as follows in respect of the disputed items of service charge expenditure set out in the Scott Schedule dated 4 June 2014 and contained in File 3 submitted to the Tribunal:
 - 1.1 that the charge of £1000 for painting (Robert Costello) is unreasonable (1.2.2);
 - 1.2 that the expenditure on emergency lighting itemised in the Scott Schedule as 1.3.1, 1.4.3 and 1.4.7 is reasonable;
 - 1.3 that the expenditure on the car parking sign, (1.3.7), is not properly incurred as service charge expenditure and is, therefore, unreasonable;
 - 1.4 that the expenditure incurred on cleaning the exterior of the Building, repairing the entrance doors and replacing a bricklight, (1.3.5, 1.3.11, 1.3.12 and 1.4.4) is reasonable;
 - 1.5 that the amount incurred in respect of the provision of concierge services in the service charge year ended 31 March 2010 is unreasonable and is reduced to £12375;
 - 1.6 that it is fair and reasonable in the circumstances to grant the Applicant's application under section 20C of the Landlord and Tenant Act 1985, ("the 1985 Act"), restricting the Respondent from charging as service charge any costs incurred by it in respect of the Application;
 - 1.7 that, pursuant to Rule 13(2) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, ("the Rules"), the Respondent is ordered to reimburse the Applicant with the application and hearing fees of £70 And £150 respectively.

Background

2. By an application dated 20 October 2012, ("the Application"), the Applicant sought a determination as to the liability to pay, and reasonableness of, service charges for the years 2011/12 to 2012/13 (inclusive).
3. Following a Case Management Conference held on 12 March 2014 at which both parties attended/were represented, directions dated 14 March 2014, ("the Directions"), were issued, in response to which written representations were received from both parties.

Inspection

4. The Tribunal inspected the Property at 10am on Monday 29 September 2014 at which the Applicant attended in person and Mr.P.Evans and Ms.T.Gifford of Blue Property Management UK Ltd attended on behalf of the Respondent.
5. The Property is 1 of 107 flats in the Lighthouse building located over 19 floors. 50 of the flats are residential; the remainder are flats which form the Lighthouse Aparthotel. On floors 1 – 14, there are 7 flats per floor; on floors 15 -17, there are 2 flats per floor; and, on floors 18 -19, there are 3 duplex apartments.

6. The hotel reception is on the ground floor; the hotel apartments are located on floors 6, 8, and 10 – 19. In the basement, there is car parking for the hotel and 2 spaces which have been bought by the owner of Apartment 60 in the adjacent Pall Mall building, bike storage facilities, plant room, and store rooms (including one which is used as a housekeeping facility for the hotel).
7. There is limited pedestrian or bicycle access to the car park for the residential leaseholders of the Lighthouse building as the roller shutter door is only accessible with a fob or key code. The Tribunal was advised that, if residential leaseholders wished to use the bike storage facilities, they would usually bring bicycles through the main entrance and down in the lift to the basement.
8. The residential apartments can be accessed through the hotel reception although it was suggested by the Applicant that this was discouraged. The hotel reception, the restaurant and the gym are separately metered for electricity.

The Lease

9. The lease is dated 21 May 2008 and made between Capitalclimb Limited (1), Light House (Manchester) Management Limited, (“the Company”)(2) and the Applicant (3), (“the Lease”).
10. Under clause 5.2, the lessee covenants to pay the Interim Charge and the Service Charge.
11. The following terms are defined in Schedule 4 of the Lease:
 - 11.1 “Service Charge” means “...such percentage of the Total Expenditure as is specified in the Particulars or such other percentage as may be notified to the Lessee...pursuant to paragraph 10...” of the Schedule;
 - 11.2 “Total Expenditure” means “...all costs and expenses whatsoever incurred by the Company in any Accounting Period in carrying out its obligations under clause 6 of this Lease...”
12. The Service Charge Percentage specified in the Particulars is 0.795%
13. The Company’s covenants under clause 6 include:
 - 13.1 to insure the Structure of the Building and all Dwellings...and all Common Parts of the Estate;
 - 13.2 to take all reasonable steps to maintain and keep in good and substantial repair and condition and to clean:
 - (i) the Structure of the Building, and all Dwellings and the Common Parts;
 - (ii) all water pipes, tanks, drains, radio and television aerials, security systems, fire alarms and electric cables and wires;
 - (iii) all walls and fences;

- 13.3 to paint at specified intervals the exterior and interior of the Building and the Common Parts;
 - 13.4 to keep the Common Parts lit and clean;
 - 13.5 to keep clean the exterior windows in the Common Parts of the Building and the exterior of the glass in the balconies of the Building and furnish the main entrances, passageways and stairs;
 - 13.6 to employ personnel as required;
 - 13.7 to do all such other things as may be necessary or advisable for the proper maintenance safety and administration of the Estate;
 - 13.8 to pay rates assessed on the Dwellings and/or the Estate;
 - 13.9 to take all reasonable steps to provide (a) caretaker services for the Building; and (b) rubbish removal services for the Building.
14. Each of the terms “Building”, “Common Parts”, “Dwellings”, “Estate” and “Structure” are defined in clause 2.1.

The Law

15. Section 18 of the 1985 Act provides:
- (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.
16. Section 19 provides that –
- (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 provision 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.

17. Section 27A provides that:
- (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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
 - (2) Subsection (1) applies whether or not any payment has been made.
 - (3)
 - (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
18. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

The Hearing

19. At the commencement of the hearing scheduled to begin at 11am, the parties indicated that they were in the course of negotiations and requested further time to see if it was possible to reach agreement on the disputed items within the service charges. The Tribunal agreed to an adjournment until about 1:30pm in order to allow the negotiations to proceed.
20. On resumption at 1:20pm, the parties confirmed that agreement had been reached on all of the items in dispute save as listed below (The numbers refer to the item numbers in the Scott Schedule dated 4 June 2014 contained in File 3 submitted to the Tribunal.):
- | | | |
|------|--------|--|
| 20.1 | 1.2.2 | Robert Costello Painter - £1000; |
| 20.2 | 1.3.1 | Replaced light fitting to hotel lobby and lamps - £359.93; |
| 20.3 | 1.3.5 | Jet washed front of building and steps to hotel - £90.00; |
| 20.4 | 1.3.7 | Hotel car park sign needs screwing back into place - £88.13; |
| 20.5 | 1.3.11 | Front doors fail to close in hotel reception - £479.86; |
| 20.6 | 1.3.12 | Clean front of hotel windows and doors - £42.00; |

- 20.7 1.4.3 To replace fault emergency light in gym area - £106.50;
- 20.8 1.4.4 Brick light damaged by hotel customer, fix brick light - £126.00;
- 20.9 1.4.7 Replace fault emergency light fitting in shower room/spa - £381.82;
- 20.10 2. Concierge costs.

21. The parties made the following submissions in respect of each of the above items:

- 21.1 1.2.2: the Applicant contends that this work was needed to complete works that the developer should have done. The Respondent maintains that this was re-decoration work required 3 years after they had taken over management of the Building;
- 21.2 1.3.1, 1.4.3 and 1.4.7: the Applicant contends that the hotel entrance, gym and spa are areas used exclusively by the hotel residents and therefore the costs associated with them should be borne by the hotel. The Respondent maintains that there is one emergency lighting circuit for the Building; further that the reference in 1.3.1 to the "hotel lobby" is to the communal area outside the lifts on the ground floor which is accessible to all residents. There are separate lighting and emergency lighting circuits for the hotel reception and restaurant;
- 21.3 1.3.7: the Applicant contends that the hotel car park sign is nothing to do with the residents, and that none of the Lighthouse leaseholders have any car parking spaces in the car park. The Respondent maintains that this was a "directional sign" distinguishing between car park spaces for residents and hotel guests;
- 21.4 1.3.5, 1.3.11, 1.3.12 and 1.4.4: the Applicant contends that as all of these relate to areas not used by residents, the costs should be borne by the hotel. The Respondent maintains that they constitute part of the "Common Parts" as defined in the Lease and the costs associated with their repair and maintenance are therefore properly chargeable as service charge. Further, with regard to 1.4.4, it is irrelevant that the damage was caused by a hotel guest as the position is the same however and whoever caused the damage; also the cost of the repair was below the insurance excess of £350;
- 21.5 2: the Applicant contends that the increase in the concierge costs from £6494 in the service charge year ended 31 March 2009 to £24,650 in the service charge year ended 31 March 2010 reflected the additional concierge services provided for the benefit of hotel guests rather than for the benefit of leaseholders generally. The Respondent maintains that the

increase was because, at that time, the Building was being targeted for vandalism and needed to improve the security for the benefit of all residents. Following the construction of the separate hotel reception in or about February 2010, no concierge fees have been charged in subsequent service charge years to the leaseholders; the hotel reception is manned 24 hours and the security staff do “walk arounds” of all the internal communal areas.

22. The Applicant made an application pursuant to section 20C of the 1985 Act and the Tribunal indicated that it would consider making an order for reimbursement of fees pursuant to Rule 13(2) of the Rules.

Tribunal’s Deliberations

23. The Tribunal made the decisions set out in paragraph 1 of this Decision, having regard to the following matters:
- 23.1 the Applicant had lived at the Property since 2007, whilst the Respondent took over the management in or about 2009/10. The Tribunal accepted the Applicant’s evidence that the developer had failed to satisfactorily finish off some of the internal parts and that the works related to this and not re-decoration as suggested by the Applicant;
 - 23.2 under clause 6.3.2 of the Lease, the Respondent covenants to “[T]ake all reasonable steps to maintain and keep in good and substantial repair and condition and (where appropriate) to clean....
 - 6.3.1 the Structure....;
 - 6.3.2 all such....electric cables and wires in under and upon the Estate as are enjoyed or used in common by the owners or lessees of the Dwellings on the Estate...”;
 - 23.3 the definitions in clause 2.1 of the Lease of “Common Parts” includes “the entrance...” whilst the “Structure” includes “...all exterior and other load bearing walls...” of the Building;
 - 23.4 in accordance with Schedule 4 of the Lease, all costs and expenses incurred by the Respondent in carrying out its obligations under clause 6 form part of the service charge expenditure;
 - 23.5 with regard to the hotel car park sign, the Tribunal accepted the Applicant’s evidence that this was expenditure incurred purely for the benefit of hotel guests and should not form part of service charge expenditure;
 - 23.6 that the significant increase in the cost of provision of the concierge services in the service charge year 2009/10 was directly related to the use of part of the Building as a hotel which appeared to be in conflict with the intentions of the Lessor as set out in clause 4.1 of the Lease. In particular, the Tribunal noted that it was intended that all leases of Dwellings on the Estate should be granted subject to the Regulations set out in Schedule 3 of the Lease, where Regulation 1 is a restriction on the use of a Dwelling “...other than as a private Dwelling occupied as a

single household...”. To the extent that the use of Dwellings within the Estate other than in accordance with the Regulations increased the expenditure incurred by the Respondent, the Tribunal considered that to be unreasonable. Specifically, the Tribunal considered that an almost 4x increase in concierge fees from £6494 in the service charge year 2008/09 to £24650 in the service charge year 2009/10 was unreasonable and must relate to some degree to the additional services required to provide for the needs of hotel guests. It was accepted that the provision of a concierge service per se was permitted within the terms of the Lease; and,

- 23.7 on the matters determined by the Tribunal, whilst findings were made in favour of both parties, the most significant determination in terms of cost was the reduction in the amount determined to have been properly incurred by the Respondent on the provision of concierge services in the service charge year 2009/10. For this reason, it was considered appropriate to grant the Applicant’s application under section 20C and to make an order under Rule 13(2) of the Rules requiring the Respondent to reimburse the application and hearing fees paid by the Applicant.