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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00DA/LSC/2014/0089**
Property	:	**Flat 20, Britannia House, 16 York Place, Leeds LS1 2EU**
Applicants	:	**Vilnir Limited**
Representative	:	**Mr & Mrs Rivlin**
Respondent	:	**Irfan Shah**
Representative	:	**Metis Law**
Type of Application	:	**Landlord and Tenant Act 1985 – Section 27A Commonhold and Leasehold Reform Act 2002 Schedule 11, paragraph 5**
Tribunal Members	:	**Judge P A Barber** **Mrs A Ramshaw FRICS**
Date of Decision	:	**21 July 2015**

DECISION

DECISION

Service charges for the year 31 October 2013 to 30 October 2014 are reasonable and payable in the sum of £1208.30 (£1233.95 less £6.36 unwarranted and unavoidable expend; £5.17 out of hours fee).

Administration charges are payable in the sum of £463.60 as set out in the Scott Schedule at page 32 of the Applicant's bundle.

REASONS

The Application

1. The Application is made under section 27A of the Landlord and Tenant Act 1985 in relation to the payability and reasonableness of the service charges and administration charges for the service charge year 31 October 2013 to 30 October 2014. The application relates solely to "the structural services" which is defined in the lease by reference to Part II of the Sixth Schedule and to the "structural service charge" as defined in the lease by reference to clause 3.8.

Inspection

2. Whilst an inspection was not defined as part of the Tribunal process, we were invited by the parties to have a look at the outside of the building which was just across the road from the Tribunal and we went there in the company of the parties. The building is a white block of mixed residential and commercial premises. There did not appear to be any major works being carried out at the property but we note that one of the commercial occupiers was carrying out some work. Nothing turns on our inspection.

Submissions

3. The Tribunal had the benefit of submissions from the parties. We had a number of witness statements and the benefit of Mr & Mrs Rivlin who represented the interests of the Applicant and Mr Shah together with his legal team to represent the interests of himself, the Respondent.

4. Mrs Rivlin told the Tribunal that she was profoundly deaf and had to communicate by lip reading. We advised her that the proceedings are not tape recorded and she was content to proceed in the absence of any special arrangements as long as participants in the proceedings spoke clearly and slowly. As it turned out Mrs Rivlin appeared to have no difficulties in relation to hearing and understanding what was said at the Tribunal and her and her husband represented the interests of the Applicant effectively and efficiently.

Tribunal Findings and Reasons

5. Based on all of the available evidence we found as fact as follows, with reasons.

Structural Service Charge

6. In relation to the structural service charge elements as set out in the document identified as "service charge estimates for the period ending: 30 October 2014" we decided the following.

7. Cleaning external – this was not in dispute and is therefore reasonable and payable. Even if it were in dispute we are satisfied that this is a reasonable amount for external cleaning of the building and is apportioned appropriately.

8. External general repairs – again this was not in dispute and is therefore reasonable and payable. Again even if not in dispute it is a perfectly reasonable amount.

9. Fire alarm – this was in dispute. Mrs Rivlin told us that this was for the weekly testing of the fire alarms and charges associated with the maintenance of the fire alarm. Mr Shah told us that the fire alarm system was not tested in preceding years but it started again in June/July 2013. Accordingly for the period in question it appears that the fire alarm charges were appropriate as there was weekly testing and so we determined that the sum of £14.12 is reasonable and payable.

10. The balance of the structural service charge – shared, was not in issue.

11. Unwarranted and avoidable expend and out of hours fee – Mrs Rivlin was unable to let us know what these amounts were for and agreed that they should not form part of the service charge. Accordingly we determined that these amounts (£6.36 and £5.17) are not payable.

12. Roof maintenance fund – there was no dispute about payment of this and so it is reasonable and payable (£11.77).

13. Major works project (external) – this represents the main basis of the dispute between the parties.

14. £115,000 has been allocated by the Applicants to cover the cost of major works carried out on the property. A copy of the works schedule and specification is included in the papers. However, it appears that the works are not yet complete and signed off and that there may be other works in the pipeline (nothing was particularly clear). The Tribunal therefore had to determine whether the Applicants were entitled to charge as part of Mr Shah's lease a reserve fund to take account of those major works.

15. Part II of Schedule 6 to the lease defines the structural service charge as the "maintenance repair and renewal of the Structural Parts the foundations and exterior of the Building and the Service Media....".

16. The "structural service charge" is defined as "the amount or amounts properly certified in accordance with the provisions of clause 3.8 as being payable by the Tenant....". Clause 3.8 provides that the Landlord covenants with the Tenant that it will "at least once in every year...prepare an account showing the Structural Management Costs and [accountants or auditors should] certify the amount which in the opinion of the said auditors or accountants the Landlord should charge in respect of such ensuing year as the amount of the Structural Service Charge in respect of the Demised Premises and the other Flats....".

17. It seems to us and we find accordingly that Clause 3.8 is sufficiently wide to include provision for a reserve fund to be built up to cover the costs associated with any major structural works.

18. On the basis of the documents and the specification of works it seems to us that £115,000 is not an unreasonable amount to reserve for the works in question and the

Respondents share in the sum of £1353.09 is not unreasonable. However, it has to be borne in mind that the application before this Tribunal does not relate to the standard of works and the reasonableness of those works. That would be an impossible task given that the works are not complete, signed off and that the final balance for those works has not yet been devised. The application is solely about the reasonableness of charging Mr Shah in order to build up a reserve to cover the cost of works.

19. In fact it appears that there is already a sizeable reserve pool already in place (£35,401) which can be utilised to off-set some of the costs associated with the major works project and the Applicants have quite properly done this.

20. It follows that professional fees of £12,000 are again not an unreasonable amount for works of this nature but may of course reduce following completion of the works.

Administration Charges

21. These represent £463.60 as set out in a schedule at pages 97 and 98 of the Applicant's bundle. These represent, we are told, the costs associated with pursuing Mr Shah through the county court for unpaid service charges which was eventually successful, although in a reduced amount. No dispute has been raised about the payability of these administration charges and indeed it appears at the hearing that Mr Shah accepted that they were costs arising out of a court case for which he was unsuccessful. In those circumstances it follows that they are reasonable.

Conclusion

22. There is a lot of paperwork brought to the Tribunal by Mr Shah and his team in defending the application of Vilnir Limited for a determination in relation to the reasonableness and payability of the structural service charge.

23. Our conclusions do not relate to the question of the reasonableness and payability of the structural service charge following completion of the works. As was mentioned above, the works have not been completed and it would not be possible for the Tribunal to determine such an application at this stage. All we concerned ourselves with is whether the Applicant is entitled to charge a reserve amount to the Respondent in relation to those works and we have found that they are and that the amounts set seem reasonable for the extent of works we were told were being undertaken.

24. We have not had sight of the section 20 consultation process and neither have we had sight of the works specifications. It also did not strike us as necessary or proportionate to embark, at this stage, on an investigation into the issues of those works and the reasonableness of the service charges associated with those works. That will be an issue for the future if the parties decide to go down this route.