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

Case Reference : CHI/00MR/LIS/2015/0048

Property : Apartment 5, Goodman Court,
22 Hampshire Terrace, Southsea PO1 2QF

Applicant : Paul Edward Longmore

Representative : Dack Property Management

Respondent : Mark Anthony Pickering

Representative : Mr C. Brookes, Counsel
Instructed by Glanvilles, solicitors

Type of Application : Liability to pay service charges

Tribunal Member(s) : Judge D Agnew
Mr P D Turner-Powell FRICS

Date and venue of hearing : 16th December 2015 at the Tribunal's
offices, Chichester

Date of Decision : 29th March 2016

FINAL DETERMINATION

Background

1. On the 5th January 2016 the Tribunal issued its interim determination in this case. Directions were given for the parties to make their submissions as to the legal implications of the findings and decisions of the interim determination. Those representations were to be received by 5th February 2016. The reason why an interim decision was issued was that Mr Dack, the Applicant's representative, had felt unable, as a chartered surveyor and not a lawyer, to deal with the legal consequences of certain decisions the Tribunal was being asked to make by the Respondent. The Tribunal was anxious that he should have the opportunity of referring the interim determination to the solicitors who had previously been instructed by the Applicant before a final determination was made.
2. Representations were received from the Respondent's counsel on 2nd February 2016. A curious letter was received by the Tribunal from Dack Property Management dated 28th January 2016. This stated an intention to re-issue service charge demands in a form compliant with the lease. It was suggested that each party bear their own costs "provided that the Respondent accepts to pay on demand the service charges on receipt of a notice compliant with the lease".

The Tribunal's final determination

3. The Tribunal reminds itself and the parties that this is a case where certain specific matters were transferred to it for determination by the County Court as part of proceedings issued by the Applicant in that jurisdiction. The Tribunal is therefore required to determine matters as they stood when those County Court proceedings were issued.
4. The Tribunal has already found that the two levies for external decoration, the first for £377.97 and the second for £2301.52, had been made part way through the service charge year and Mr Dack had conceded that the lease made no provision for such levies being permissible. The lease sets out the route down which the landlord must travel in order to recover service charges. It is not a particularly difficult or onerous route and this has not been done in the case of these two charges. The Tribunal determines, therefore, that as at the date of the issue of the County Court proceedings those two charges were not recoverable by the landlord.
5. With regard to the two annual service charge demands, the first made on 1st December 2013 for the 2013/14 in the sum of £622.91 and the second made on 1st December 2014 for the 2014/15 service charge year, the Tribunal has already determined that these were payments on account which, under the lease, were restricted to £500 unless the

procedure for seeking a higher sum on account was followed. The Tribunal has also already found that this procedure was not followed in this case. The Tribunal therefore determines that as at the date of the issue of the County Court proceedings the amount recoverable by the landlord for each of those years was £500. It should be noted that at the hearing there was no challenge by the Respondent as to the reasonableness of the amounts claimed. The whole amount of £500 for each year was, therefore, payable.

Summary

6. Of the amount of £6102.75 in the County Court proceedings it was conceded by the Applicant's representative that £130.49 for pump failure and the £30 administration fee were not recoverable by the landlord. The Tribunal has no jurisdiction to deal with ground rents and the parties agreed that the items claimed for costs and interest were matters for the County Court rather than the Tribunal. The two items of external decoration in the sum of £377.97 and £2301.52 are not recoverable by the landlord under the County Court proceedings. £500 only is recoverable under the County Court proceedings for the on-account charges for each of the years 2013/14 and 2014/15 (i.e. a total of £1,000) instead of £622.19 and £1138.41 respectively.

Appeals

1. 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.
2. 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.
3. 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.
4. 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.

Dated the 29th March 2016
Judge D. Agnew (Chairman)