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

Case Reference : CHI/00ML/LSC/2013/0044

Property : EMBASSY COURT, KINGS ROAD,
BRIGHTON, BN1 2PX

Applicant : BLUESTORM LIMITED

Representative : Mark Newman
Carolyn Lewis both of Clifford Dann
Andrew Birds, Director of Applicant

Respondent : Mr. A. Rashand

Representative : No attendance

Type of Application : Section 27A of the Landlord and Tenant Act
1987

Tribunal Members : Judge D. R. Whitney LLB(Hons)
Mr. A. O. Mackay FRICS
Miss J. Dalal

**Date and venue of
Hearing** : 18th July 2013
The Holiday Inn, Kings Road, Brighton

Date of Decision :

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DECISION

1. This is an application by the freeholder, Bluestorm Limited, of Embassy Court, Kings Road, Brighton ("the Property") to determine the actual service charge for the year ending 31st December 2012 and to determine the estimated service charge for the year ending 31st December 2013 in respect of Flat 84 at the Property and owned by the Respondent, Mr A. Rashand. The application was dated 20th March 2013 and directions were given dated 24th April 2013. The Applicant, acting by its managing agents Clifford Dann LLP, filed a statement of case dated 29th May 2013 and supporting documents. Nothing has been filed by the Respondent who has taken no part in these proceedings.

INSPECTION

2. The Tribunal inspected the Property on the morning prior to the hearing. The Tribunal were accompanied by the Applicants representatives who attended the hearing. The Tribunal knocked on the door to Flat 84 (the Respondents property) but no response was received.
3. The Property is an art deco 11 storey block. It is primarily of concrete construction with metal window frames and each flat has to its front (which is either at the front of the building overlooking the seafront or to the side elevation) a balcony area. The Property occupies a corner location and the Tribunal was advised that it is Grade II* listed. Internally there are 72 flats laid out over 10 floors. To the rear there is a garage block and various parking spaces. The block has three passenger lifts and one service lift. The Flats themselves are accessed from the rear via covered walkways.
4. The Applicants representatives pointed out from the 8th floor the garage roofs which had been recently re-roofed. From ground level the Tribunal inspected the front and side elevations. These had recently been re-painted and works to repair and refurbish the windows had been undertaken as part of this project.

THE LAW

5. The relevant sections for this application are sections 19 and 27A of the Landlord and Tenant Act 1987. The Tribunal had regard to these sections and also section 20 of the Landlord and Tenant Act 1985 in reaching its decision.

THE HEARING

6. At the start of the hearing the Applicants were asked if they had audited accounts for the year ending 31st March 2012. The Applicants advised that generally they did not prepare audited service charge accounts for this building. Accounts with a certificate signed by a chartered surveyor member of Clifford Dann LLP would be prepared but these were not included within the bundle and the Applicants representative did not have these with them.
7. The Applicants relied upon the terms of the lease dated 21st May 1975 made between Mervest (Sloane) Limited and Elizabeth Mitchell Baker. The Applicants stated that the current owner was the Respondent.
8. The Applicants sought to rely upon clauses 1(xi) and 1(xii). The Tribunal reminded them that these were definition clauses only. The Applicants also looked to rely upon clause 4(A), The Fifth Schedule Part I and III and the

- Sixth Schedule. A copy of the lease had been lodged with the application although a copy was not included in the bundle prepared by the Applicant.
9. The Applicant confirmed that the percentage of the total service charge recovered from the Respondent was 1.39% as per the terms of the lease.
 10. Mr Newman explained that each year a budget was set by his firm in consultation with the Applicant and its Directors and this was then sent to each leaseholder. Mr Newman confirmed that a "statement of tenants rights and obligations" was printed on the reverse of all demands sent out.
 11. Mr Newman then took the Tribunal through each of the amounts claimed using the headings on the Schedule provided as part of the Applicants bundle and with the initial application. The bundle for the hearing contained copies of all the invoices claimed:

INSURANCE

The building was insured for £5.5 million by AXA. The figure of £15,063.30 for insurance included both the buildings insurance and also lift engineering insurance, which were £13,734.13 and £1,329.17 respectively. Invoices for all were included in the bundle. The buildings insurance was sourced via an independent broker called Ferndale Insurance Services who test the market each year and from whom no commission is received. Directors insurance is taken out separately by the Applicant company and not included within the service charge.

ELECTRIC COSTS

The invoices were included in the bundle. This is charged to the year in which the invoice is received and not the period for which it relates. The costs of £10,850.27 cover the costs of communal lighting, lifts and any other electric used in the communal areas.

LIFT MAINTENANCE

There is a rolling contract for servicing and also call out charges for any additional call-outs required throughout the year for the sum of £11,255.50. The Applicant is also gradually replacing the doors to the service lifts aiming to replace one or two a year to keep the costs reasonable.

ENTRYPHONE

Again there is a maintenance contract of £3303.90 and in the year 2012 the front door panel needed replacement.

GAS CHARGES

These relate to a boiler for the office on the ground floor used by the caretaker and also a small number of radiators in the main foyer of the Building for the sum of £1,168.62.

SECURITY

The building is patrolled daily in the evening due to problems the block has faced with unwanted visitors, at the cost of £12,500.

WAGES

These are the costs incurred in employing a full time caretaker who is on site Monday to Friday but does not live in. He undertakes minor repairs and assists with cyclical maintenance. Generally Mr Newman meets with him on site twice a week to discuss and agree any specific tasks he needs to undertake.

CLEANING SUPPLIES

This cost of £14,181.55 covers any materials which the caretaker has to purchase to ensure he can clean the communal areas.

TELEPHONE

These costs of £1,822.51 relate to the lines required for each of the three lifts for use in an emergency and also two lines for the two offices used by the caretaker and Mr Newman when visiting the block together with broadband for the caretaker to use in placing orders etc. Mr Newman confirmed that in 2013 he had negotiated a new contract for the supply of these services.

MINOR REPAIRS

This cost of £8,243.37 covers any matters which generally the caretaker will undertake. By way of example this could be replacing bulbs in the communal lighting, buying bags of grit in the winter and also there is a current project for replacing the keys and locks for the riser cupboards.

CCTV

The building has a full system for all the communal areas with the caretaker monitoring and having access to the system. The costs of £9,598.75 are for any repairs which are required and which are charged on an ad hoc basis.

WATER

There is an external tap in the car park which is used by the caretaker in undertaking his duties, at a cost of £261.37.

PROFESSIONAL FEES

This cost of £766 included the costs of accountants undertaking the payroll for the caretaker. Other items included within this head were the costs of having a Health and Safety report for the building and also an insurance excess which had to be paid. The last item was included here as supposedly the accounts system had no other heading for the same.

FIRE ALARM MAINTENANCE

It was explained that a resident on site is paid £25 for each time he needs to re-set the fire alarm when it has been activated. It was also confirmed that there is a maintenance contract for the fire alarm system which includes sensors in each and every flat as well as having fire extinguishers serviced annually. The Fire Maintenance cost is £4,699.37.

MANAGEMENT FEE

This fee of £18,863 is agreed annually by the Applicants with Clifford Dann LLP who have acted as managing agents for a number of years. The fee is payable quarterly in advance. The fee for 2012 was approximate to about £216 plus VAT per flat. Mr Newman explained that he visits the property at least twice a week as well as preparing budgets, service charge accounts and dealing with the management generally including managing the caretaker.

MAJOR WORKS

The bulk of the costs claimed in 2012 related to major works of £169,697. It was explained that the amount budgeted for 2012 of about £70k for this item in effect was the payment being sought for the reserve fund held although no figures as to the amounts within this fund were provided to the Tribunal. In the actual costs for 2012 this included what was invoiced in that year for the major works of redecoration and repairs to the windows which had been pointed out at the Inspection.

Mr Newman explained that 2012 included the period of consultation for which copies of the various statutory notices served were included in the Applicants bundle. The work had been project managed by Conran & Partners. Initially they had undertake certain test works which John Allen Building Consultants undertook under a separate contract. This was to test the proposed methodology. Subsequently tenders were obtained and the contract was awarded to John Allen Building Consultants who provided the cheapest quote. Certain other invoices for CDM works and Health and Safety were also charged. The balance of the works were completed in the 2013 service charge year and all works were completed by June 2013.

12. All the costs charged were supported by invoices.

13. With regards to the Budget charges for 2013 Mr Newman explained that the process for calculating the figure is to have regard to the previous years amounts spent. He will then assess whether there were any unusual features in the expense or if he is aware of any other items which are likely to cause the amounts to rise. Typically he will use the same headings as those which the Tribunal was taken to for 2012.

14. Mr Newman explained for external repairs this was really a reserve fund contribution to ensure that sufficient monies were collected to cover works which it is anticipated being undertaken. A major works survey had been undertaken some years previously which set out recommended reserve fund contributions and this was the figure which Mr Newman had adopted. Unfortunately this report was not before the Tribunal.

15. The Tribunal questioned over the amounts charged for telephones. Whilst Mr Newman said he had now renegotiated this contract this had not been undertaken at the time the budget was set hence he had used the old figures.

16. In respect of the minor repairs figures this included repairs to the garage roofs which had been replaced. This work had now been completed and Mr Newman advised had cost about £7,500. Also the Applicant was looking at undertaking certain works which may be required due to changes relating to individual heating systems in the flats.

17. In the professional fees Mr Newman had left this at the higher figure originally budgeted on for 2012 as the Applicant had employed a structural engineer to review a movement joint and further works might be required.

18. The budget also included at the bottom an amount by way of an overspend.

DECISION

19. The Tribunal were concerned about some of the headings adopted by the Applicant within their budget and the service charges claimed. In particular the fact that it appeared that the budgeted figures claimed for major works were in fact a reserve fund payment although in the accounts the figures set out were the actual expenditure. The Tribunal felt that the reserve fund should be collected as a separate item, and not as major works item, as this was misleading. The Tribunal referred Mr Newman to the RICS Service Charge Code.

20. Further it was explained that it may be more useful if future applications are made to ensure that the statement of case deals specifically with the lease terms and sets out the particular items claimed and some explanation including referencing the relevant invoices rather than simply including a bundle of 350 pages of invoices.. This would assist the Tribunal and reduce the time taken for dealing with the application.

21. The Tribunal finds that in respect of the charges for the service charge year 2012 that it is not satisfied that the Applicant has complied with the lease terms. As a result the sums claimed are not currently payable. The Applicant is reminded they must comply with the terms of the lease to recover these amounts.

22. As to the total amounts claimed for that year 2012 totalling £313,216.79 the Tribunal finds that these sums are reasonable. What sums are due from the Respondent will need to reflect what amounts have been taken from any reserve fund, details of which the Tribunal did not have.

23. The Tribunal was satisfied that all the monies claimed had been properly spent by the Applicant in undertaking works under the lease and were properly recoverable as service charge items. The Tribunal had seen the

results of the major works when it inspected the building. It was clear that the works were extensive and a proper statutory consultation had been undertaken.

24. The Tribunal was a little concerned about the amounts claimed for telephone lines. The Tribunal were concerned that these seemed expensive but Mr Newman explained the contract had been renegotiated. As a result the Tribunal was satisfied that these sums were within the band of reasonableness although very much at the upper end.

25. The Tribunal determines that the Budgeted costs claimed for the year ending 31st December 2013 totalling £223,714 are reasonable. The Tribunal finds that in computing the figures claimed the Applicants and their managing agents undertook a reasonable exercise. The Tribunal reminds the Applicant that this determination is simply that the estimated amounts by way of payments in advance are reasonable and the Tribunal makes no findings, as it had no evidence, as to whether the ultimate sums to be claimed for the service charge year ending 31st December 2013 will be reasonable. Such a determination, if required, would need to be for a separate application once the accounts for that year have been prepared.

Judge David Whitney LLB(Hons)
Chair

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.