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

Case Reference : LON/00AH/LSC/2013/0001

Property : Flats 1, 4 and 5
7A Vermont Road
London SE19 3SR

Applicants : Kate Tracey Anstey (1)
Francesca Dellamura (2)
Anne Pottle (3)

Representatives : The first and second Applicants
appeared in person; the third applicant
did not appear and was not represented.

Respondent : Permco Investments Ltd (a Jersey
registered company)

Representatives : Mr Oliver Judge and
Ms Chelsey Oliver of
HML Andertons

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

Tribunal Members : Charles Norman FRICS (Chairman)
Luis Jalero BSc FRICS
Clifford Piarroux JP CQSW

**Date and venue of
Hearing** : 17 July 2013
10 Alfred Place, London WC1E 7LR

Date of Decision : 18 August 2013

DECISION

Decisions of the Tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the First and Second Applicants through any service charge.
- (3) The Third Applicant has liberty to apply to the Tribunal to seek such an order within 28 days of the date of this Decision.

The Application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2012 and the amount of estimated service charges in respect of 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

3. The First and Second Applicants appeared in person. The Third Applicant did not appear and was not represented. The Respondent appeared in person was represented by Mr Oliver Judge and Ms Chelsey Oliver both of HML Andertons (managing agents).

The Background

4. The property which is the subject of this application is house dating from the early 20th Century converted into six flats.
5. Photographs of the building were provided at the hearing. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The Applicants each hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The Issues

7. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The reasonableness and payability of service charges for 2012 relating to
 - i. general maintenance and repairs of £144 and
 - ii. reserves for future external and internal redecoration of £2000 and £1000 respectively
 - (ii) The reasonableness and payability on account of estimated service charges for 2013 relating to
 - i. General repairs: £1000
 - ii. Health and safety risk assessment: £390
 - iii. Out of hours emergency cover: £24
 - iv. Management fee: £1405
 - v. Meetings and Inspections: £90
 - vi. Sundry (general reserve): £1500
 - (iii) Whether orders under s.20C of the Act should be made.
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Tribunal's Determinations

2012

9. The Tribunal determines that the amounts in dispute in respect of 2012 (general maintenance and repairs and reserves) were reasonably incurred and that the service provided (in respect of the drain) was of a reasonable standard and that that sums claimed are therefore payable by the Applicants.

2013

10. The Tribunal determines that the reasonable amount for estimated general repairs is £500, that the estimated health and safety risk assessment cost of £390 is reasonable and that the sundry (general reserve) of £1500 is reasonable.
11. The Tribunal considers that the out of hours emergency cover and cost for meetings and inspections form part of the management costs of the building which therefore total £1519. The Tribunal finds that this total would be payable if a reasonable standard of service had been provided. However, for the first six months of 2013 the Tribunal finds that the service has not been of a reasonable standard and for that period of time the estimated charge should be reduced by 25%.
12. However, the Tribunal considers that for the second six months of 2013 the full estimated cost of management should be payable as a payment on account (subject to the on account payment provisions under the lease).
13. The Tribunal determines that orders under s.20C should be made in favour of the Applicants present at the hearing who sought it and that the Third Applicant may apply within 28 days of the date of this Decision for such an order to be made.

Reasons for the Tribunal's decision

The lease

14. The provisions of the lease were not in dispute between the parties and the Tribunal can therefore deal with this briefly.
15. A sample lease was provided in respect of Flat 4. The lease is dated 21 February 1994 and is in modern form. The lease is for a term of 99 years from 1 January 1994.
16. The lease contains a specified percentage contribution in respect of which the Lessee is liable to contribute to the service charge.
17. Under clause 3 the Lessee covenants to perform the covenants in the Fifth Schedule. By this Schedule the Lessee covenants to pay a maintenance charge with reference to matters set out in the Eighth Schedule.
18. By clause 4 the Lessor covenants to perform the obligations in the Sixth Schedule. By this Schedule the Lessor covenants to keep in good repair

and condition the structure of the property, to redecorate, to keep clean the common parts and to insure the property.

19. The Eighth Schedule includes the matters set out in the Sixth Schedule. By paragraph 12, it also, permits the Lessor to accumulate a reserve fund as a reasonable provision against prospective costs.

2012

Repairs (drainage)

20. Documentary evidence was provided by the Respondents, very late in the day, at the hearing itself to support the repair work to a drain.
21. The Applicants accepted that a workman had attended the premises but stated that odours could still be noticed. However, the fact that a drainage contractor had attended the site and carried out work to a reasonable standard does not in itself mean that an odour problem will be solved, because it may have other causes or require additional work.
22. The size of the invoice is modest for drainage work in London and for these reasons the Tribunal finds that the cost was reasonably incurred and is payable.

Reserve Funds: Exterior and Internal Redecoration

23. It was common ground that the building is in need of significant expenditure. In addition, we were told by Mr Judge that the exterior included a significant amount of timber that required repainting, substantial exterior and interior maintenance and redecoration. This was supported by photographs in the hearing bundle.
24. Ms Dellamura stated that neither the interior nor exterior had been redecorated since she bought her flat nine years ago.
25. Mr Judge said that from other major works contracts he had seen on other blocks of flats, he would expect the cost of these works to be in the range of £20-£30,000. This was not seriously challenged by the Applicants. In addition, this would accord with our experience as a specialist Tribunal.
26. Further, it was accepted by the Applicants that the lease provided for reserve funds to be established. Mr Judge also commented that when his company took over the management in May 2011, no reserves at all had been accumulated.
27. Taking all these factors into account, the Tribunal is satisfied that the reserve provision was a cost reasonably and properly incurred and is therefore payable.

2013 (Estimated Charges)

General Repairs

28. The landlord has estimated this at £1000. During 2012 the actual cost was £144.
29. In view of the age of the building, the accepted need for major works, and the high cost of call-outs in London the Tribunal consider that the appropriate estimated amount is £500.

Health and Safety Assessment

30. The landlords consider that they have a statutory duty to carry this out. This was carried out on 10 January 2013 by HML Technical Services who produced a detailed and lengthy report running to some 37 pages.
31. This was not provided to the Applicants until the hearing who considered it over a short adjournment. Having done so, the Applicants accepted that it was a cost reasonably incurred.
32. The Tribunal would have found that it was a cost reasonably incurred and payable on the basis that a biennial inspection is required.

Management Fees, Meetings and Inspections and Out of Hours Cover

33. The Tribunal considers that these all form part of the management function and should be considered together for that reason.
34. The Tribunal considers that in aggregate the costs sought would have been reasonable if the management function had been provided to an acceptable standard. This is because it considers that provision for tenants' meetings and out of hours cover are necessary (noting that no such meeting has taken place).
35. However the Tribunal agrees with the Applicants that the level of communication to the lessees has been poor.
36. In particular there was no evidence before the Tribunal that the managing agents had provided any explanation to the lessees as to the quantum of reserve funds or the intended timescale for the resulting expenditure on the building. On the contrary, on 10 December 2012 HML Andertons' Property Manager wrote to Ms Anstey enclosing a demand for payment accompanied by a brief budget estimate. In respect of the reserve fund this simply stated "Sundry (general reserve) £1500".
37. Mr Judge accepted that the content of the letter of 10 December 2012 from the managing agents to the lessees was unsatisfactory. That letter

was extremely brief. The lack of explanation as to the nature and assessment of the reserve fund was understandably of concern to the Applicants.

38. On 19 December 2012 the managing agents again wrote to the lessees in these terms “When the budget was drafted for the period 1 January 2012 to 31 December 2012 we were looking to build up the funds over a period of time. We have now had a change of policy and are crediting any surplus identified on the year-end accounts.”
39. The Respondents in their submission frankly stated that “the text could have caused some confusion. In summary surpluses identified in the end of year accounts are to be credited back to leaseholders rather than transferred over to the reserve fund. Reserve monies are not credited back.”
40. In addition, the Tribunal was concerned that the fire and safety audit had not been provided to the Applicants prior to the hearing, although it concerned the building and they were collectively paying for it.
41. The Tribunal considers that effective communication with Lessees is a fundamental part of the role of a managing agent, particularly in respect of reserve funds. This is an entirely different issue from whether or not the provision and amount of reserve funds are reasonable.
42. Taking the above matters into account, the Tribunal considers that the estimated management fees for 2013 should be reduced for the first half of the present calendar year by 25% and it so finds.
43. However, in the expectation that following the Tribunal hearing levels of communication will improve, the Tribunal considers that the full amount will be reasonable as an on account payment (subject to the terms of the lease as to payability) for the second 6 months of 2013.
44. Either party will still have the right to make a further application to the Tribunal to make a final determination in respect of the year ending 31.12.2013 once the year has closed.

Sundry (General Reserve)

45. This is a reserve fund in connection with future major works. The Tribunal finds it reasonable and payable for the same reasons as for the 2012 reserves (see above).

Applications under s.20C

46. At the hearing, the First and Second Applicants applied for an order under section 20C of the 1985 Act.

47. In considering this, the Tribunal has given weight to the failure of the Respondents to include all the documents upon which they relied within their statement of case. This was in breach of Direction 4 which required the Respondent to serve such documents on the Applicants by 14 June 2013.
48. The effect of this was that First and Second Applicants were provided for the first time at the hearing with important documents. It was clear to the Tribunal that had these documents been served at the correct time, the matters in dispute would have been significantly reduced.
49. For that reason, taking into account the determinations above and having heard the submissions from the parties, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act.
50. The Respondent may not pass on any of its costs incurred in connection with the proceedings before the Tribunal through the service charge to the First and Second Applicants.
51. The Third Applicant is permitted to apply to the Tribunal in writing for such an order within 28 days from the date of this decision.

Right of Appeal

52. By virtue of Rule 36 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to set out the right of appeal against its decisions and the time within which, and manner in which, such right of appeal may be exercised. These matters are addressed in the appended Guidance Note.

Charles Norman FRICS

Chairman

18 August 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (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.

Section 19

- (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 provisions 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.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate 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 amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—

- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;
 - (b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property Tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the Tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.