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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00/BG/LSC/2013/0271**
Property	:	**7 Hanover Place, London, E3 4QD**
Applicant	:	**Mr D Hartley**
Representative	:	**In person**
Respondent	:	**Magri Developments Ltd**
Representative	:	**Mr J Goldmeier, Marcus King & Co, Managing Agent**
Type of Application	:	**s.27A & s.20C of the Landlord & Tenant Act 1985**
Tribunal Members	:	**Judge Ian Mohabir** **Mrs A Flynn** **Mr P Clabburn**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**22 August 2013**

DECISION

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Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of his liability to pay and/or the reasonableness of various service charges in relation to each of the years ended 31 December 2009 to 2012.

2. The Applicant is the lessee of the property known as 7 Hanover Place, London, E3 4QD pursuant to a lease dated 22 March 2000 made between the Respondent and Joao Pedro Silva Cameira Costa and Carla Maria Viegas Goncalves Bom for a term of 125 years from 29 September 1998 ("the lease"). The Applicant took an assignment of the lease on 6 Mach 2010.

3. For reasons that will become apparent below, it is not necessary to set out the relevant contractual terms that give rise to the Applicant's service charge liability.

4. The service charges in issue are the sum of £1,785.74 claimed as an excess service charge for the cost of major works, water supply and cleaning and lift maintenance charges incurred in the year ending 2009. The challenge made by the Applicant is that he was not the lessee at the time these costs were incurred and, as a matter of contract, he has no liability for them.

5. The Applicant also challenged the lift maintenance and cleaning costs incurred in the years 2010 to 2012. He contended that he had no liability greater than £100 in each year for the lift maintenance and cleaning costs because the relevant contract in each instance was a qualifying long term agreement and that the Respondent had failed to carry out statutory consultation in relation to each contract.

The Relevant Law

6. The Tribunal's determination is made under section 27A of the Act. In making a determination under this section, the Tribunal must apply the statutory test of reasonableness under section 19 of the Act. In short, the Tribunal must be satisfied that the service charges claimed have been reasonably incurred and are reasonable in amount.

Decision

7. The hearing in this matter took place on 22 August 2013. The Applicant appeared in person. The Respondent was represented by Mr Goldmeier from Marcus King & Co, the managing agent appointed by the Respondent.

2009

8. Mr Goldmeier conceded that the Applicant had no contractual liability for any of the service charges claimed in respect of 2009 because he was not the lessee at the time the costs had been incurred. He confirmed that this concession was being made with the benefit of independent legal advice he or his firm had obtained on the point prior to hearing. It was, therefore, not necessary for the Tribunal to go on to consider any other arguments advanced by the Applicant about the failure to carry out valid statutory consultation in relation to the major works or the reasonableness of the other service charges claimed in respect of this year.

2010-2012

Lift Maintenance Costs

9. It was also conceded by Mr Goldmeier that the contract under which the lift maintenance costs had been incurred was a qualifying long term agreement and that statutory consultation had not been carried out in relation to this contract. He confirmed that no application had been made under section 20ZA of the Act seeking retrospective dispensation from the requirement to consult and that, consequently, the Applicant's liability was at present limited to £100 for each year. The Tribunal was

of the view that if the Applicant contended for a lower figure than £100, those arguments could be made if and when any application was made by the Respondent under section 20ZA.

Cleaning Costs

10. The Applicant repeated the same submission he had made regarding the lift maintenance costs for the costs incurred under the cleaning contract and that his liability was limited to £100 for each year also. He said he was not challenging the reasonableness of the costs that had been incurred.

11. The Tribunal had before it an e-mail from the cleaning contractor, Beechwood, dated 6 June 2013, which confirmed that its contract was for a term of 11 months in each year and Mr Goldmeier said it was automatically renewed on an annual basis unless it was terminated by either party. This was *prima facie* evidence of the annual term of the contract.

12. As the term did not exceed 12 months in any given year, the Tribunal found that it could not amount to a qualifying long term agreement and, therefore, there was no requirement on the Respondent to carry out statutory consultation under section 20 of the Act. The Applicant did not challenge the reasonableness of the costs and they were allowed as claimed by the Respondent.

Section 20C & Fees

13. The Applicant had made an application under section 20C of the Act for an order that the Respondent be prevented from recovering all or part of the costs it had incurred in responding to this application.

14. The Tribunal had little difficulty in concluding that it was just and equitable to make an order preventing the Respondent from recovering all of the costs it had incurred in this matter. It did so because it was abundantly clear from the correspondence in the hearing bundle that

the Applicant had been making real attempts to resolve the issues that formed the subject matter of the application for some time. It was also clear that the Respondent had failed to either respond at all or to make the concessions on the majority of the issues that it did in the course of these proceedings at an earlier stage. The Applicant had been obliged to make this application, which could have possibly been avoided. It cannot be right, therefore, that the Respondent by reason of its conduct should be entitled to recover costs that could have been avoided altogether.

15. For the same reasons set out above, the Tribunal also orders that the Respondent reimburse the Applicant within 28 days the fees of £250 he has paid to the Tribunal to have the application issued and heard.

Name: Judge Ian Mohabir
Date: 22 August 2013