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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00ML/LIS/2013/0087**
Property	:	**Flat 6 Hereford Court, 9 Eaton Road, Hove, East Sussex BN3 3AF**
Applicant	:	**Seyed Hamid Erfani Seyed Pour**
Representative	:	**In person**
Respondent	:	**Hereford House 9 Eaton Road Limited**
Representative	:	**Mr Andrew Head of Sawyer & Co**
Type of Application	:	**Application under Section 27A of the Landlord & Tenant Act 1985 (Service and Maintenance Charges)**
Tribunal Members	:	**Miss T Clark (Judge)** **Mr. R. A. Wilkey (Valuer)** **Ms J Morris (Member)**
Date and venue of Hearing	:	**28th January 2014**
Date of Decision	:	**28th February 2014**

Summary of Decision

1. The Tribunal determined that the Respondent landlords in this case fully complied with their obligations to consult, and the Applicant took no issue with this.

2. The Tribunal further concluded that the works undertaken at the property were both necessary and reasonable and accordingly the Applicant is liable to

pay his proportionate share of the charges in accordance with the invoices rendered to him in the years 2009/10, 2010/11, 2011/12, and 2012/13. The Tribunal was satisfied that in each case the items comprised in the service charges were reasonable and hence the Applicant is liable to pay the charges as invoiced to him without reduction.

The Application:-

3. This is an application commenced in the Tribunal. The Application relates to maintenance charges in respect of the leasehold property, Flat 6 Hereford Court, 9 Eaton Road, Hove, East Sussex BN3 3AF owned by the Applicant.

4. Directions were given on the 26th September 2013.

5. Further and substantive directions were given on the 11th November 2013.

6. At the directions hearing both parties attended. The parties identified the issues to the Tribunal which were then clearly recorded in Paragraph 2 (i) to (iv) . Each party was then sent a copy of the directions.

7. The directions stated the following to be in issue;

   Paragraph 2
   (i) whether a service charge of £412.78 demanded on 1.10.2007 is reasonable and payable

   (ii) whether the sum of £2,069.22 professional fees for 200/2010 is reasonable

   (iii) whether £5,723.78 professional fees, £1,468.75 and £1,800 for management fees and £20,000 for damp works reserve for 2010/2011 are reasonable.

   (iv) whether £1,800 management fees and £15,689.34 damp works reserve for 2011/2012 are reasonable

   (v) whether £1,455 on account for 2012/2013 is payable given the dispute over budgeted expenditure in respect of professional fees, management fees repairs and reserve provision.

8. The Tribunal also directed that the Applicant was to send a signed statement of case to the Respondent and the Tribunal by 5.12.2013. This was to set out precisely why each of the matters listed in Paragraph 2 (i) to (v) was in

dispute. In addition he was to send all documents upon which he wished to rely including copies of relevant service charge accounts and demands, to be in bundle form with one copy to the Respondent and four copies to the Tribunal.

9. The Respondent was to respond by statement of case in reply and all documents upon which they wished to rely by 9.1.2014. The Respondents bundle was to be in the same format as that of the Applicant and a copy sent to the Applicant and four copies to the Tribunal.

10. It was directed that no party was to give evidence at the hearing unless a statement had been provided in accordance with these directions.

11. The matter was listed for 28th January 2014

12. The Applicant appeared in person at the Inspection and at the Hearing. The Respondents was represented by Mr Andrew Head for the new and current managing agents Sawyer & Co.

The Law:

13. Section 27A of the Landlord and Tenant Act 1985 (hereinafter called "the Act") provides for applications to the Tribunal to be heard for a determination by that Tribunal as to whether a service charge is payable and if so -
    1) the person by whom it is payable.
    2) To whom it is payable.
    3) The amount payable.
    4) The date by which it is payable.
    5) The manner in which it is payable.

14. In addition the Tribunal has the power to decide about the costs incurred for services, repairs, maintenance, improvements, insurance or management of any specified description and likewise as to -
    1) Whom payable
    2) By whom payable
    3) Date payable
    4) Manner in which payable.

    Section 27A (5) of the Act states that the tenant is not taken to have agreed or admitted any matter by reason only of having made payment.

15. Section 18 of the Act defines service charges and "relevant costs" and section 19 provides as follows;

"Relevant costs shall be taken into account in determining the amount of service charge payable for a period –
(a) Only to the extent that they are reasonably incurred, and
(b) (b) where they are incurred on the provision of services or the carrying out of works only if the services or works are of a reasonable standard.

16. Section 20 of the Act applies to qualifying works and provides that the relevant contributions of the tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either;
    a. complied with in relation to the works or agreement, or
    b. dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

17. The consultation requirements are set out in full.

The lease:

18. The lease is dated 21st August 2008.

19. Paragraph 2 sets out in full the obligation of the Tenant to pay rents and "other sums" and this includes "all rates taxes assessments charges impositions and outgoings which may at any times be assessed charged or imposed

20. Paragraph 4.2 imposes upon the Tenant the obligation to

"Pay the Insurance Rent and the Service charge herein reserved ..."

21. The Fourth Schedule states that;

"The Service Charge payable by the tenant to the Landlord shall be the yearly sum equal to one eight of the costs expenses outgoings and matters incurred by the Landlord in respect of the matters specified ...."

Inspection:

22. An internal and external inspection took place at the property prior to the Tribunal hearing. All parties were present.

23. The Tribunal noted a property divided into several flats. The Tribunal was asked to note the chimney stack outside the property, the existence of an external fire escape metal walkway and staircase. Internally the Tribunal was asked to view the Applicants flat and signs of damp on the internal wall of the chimney stack. The Tribunal was also shown the basement where recent works had been carried out and which we were led to believe from both parties included tanking of the basement.

The hearing:

24. Prior to the commencement of the hearing it was apparent that the Applicant had not fully complied with the directions in relation to providing bundles of documents upon which he wished to rely. The Respondents had also failed to serve any documents upon which they wished to rely.

25. It was also apparent to the Tribunal that despite a statement/document from the Applicant dated 18th December 2013 this did not fully address the issues identified at the directions hearing.

26. To summarise this statement; It challenged the item "professional fees" . It questioned the fact that scaffolding had been put up on three separate occasions to deal with repairs required to be undertaken to the chimney stack and yet the Applicant asserted that leaking was still an issue. The statement referred to works to be undertaken to replace the external fire escape. The statement also took issue with damp proofing that was alleged to have taken place in 2007.

27. The statement stated the Applicants position as follows;

He disputed the maintenance fee of 2007/2008
Requests had been made for professional fees and there was no transparency
The Landlords had asked for money for the fire escape although the work had been cancelled.
Repairs to the roof had been undertaken but it was still leaking.
Management fees were excessive.

28. Prior to hearing any oral evidence the Tribunal made sure that both parties had a copy of the directions before them , that they had been at the directions hearing (as recorded) and that they understood and could read the directions documents before them.

29. The Tribunal indicated that that it would hear oral evidence from both parties and that if any document was referred to that had not been previously sent to the Tribunal and the other party then a decision would be made as to how to treat such documents, in the interests of fairness to both the parties.

Applicant's evidence

30. The Tribunal first heard evidence from the Applicant.

31. The Applicant did not take any issue with any consultation requirements in relation to work undertaken.

32. He confirmed that he bought the leasehold of the property in August 2008 at auction. The Tribunal were told that his lawyer wrote to the landlord in response to a letter of 19.2.2009 in respect of payment of the sum of £412.78 due for the period 2007. The Applicant told the Tribunal that the landlord had agreed that the sum claimed was waived subject to a payment by the Applicant of £20.77p. When the Tribunal requested whether there was any documentary evidence of correspondence passing between he and his then solicitor and/or between the solicitor and the landlord (or their agent) the Applicant replied that "I have a bunch of letters but have not brought them I do have them". He stated that a Mrs White had been living in the flat which he purchased and had gone to live in a care home. The landlord put the property on the market for sale and he then purchased it at auction.

33. The Applicant moved on to explain his objection to the service charge including professional fees. He said "I don't understand what professional fees means. They were invoiced to me by Deacon & Co". The Tribunal noted that Deacon and Co were the former managing agents of the Landlord. The Tribunal asked whether the Applicant had copies of the service charges or the invoices available at the hearing (despite not having been sent in accordance with the directions) to which the Applicant responded that he had picked up the most important papers to bring to the hearing "like the service charge account" . He also said that "I didn't think it was necessary to bring them again" by which the Tribunal understood him to be saying that he had produced some documentation at the directions hearing.

34. In relation to Paragraph 2 (ii) of the directions the Applicant repeated that he did not understood what was meant by professional fees (amounting to £5,723.78). He said he had approached Deacon & Co. He said that their

response was that "you should pay everyone else pays. "He denied being shown copies of any invoices.

35. In relation to the management fees of £1,468.75 and £1,800 both charged in 2010/2011 the Applicant queried why there were two management fees and that no invoices had been provided. He did not confirm whether or not he had requested supporting documentation and no letters were produced confirming this.

36. In relation to the damp proof reserves of £20,000 the Applicant stated that damp proof works had been undertaken 4 to 5 years earlier. He questioned the competence of Deacon & co rather than the amount itself.

37. The Applicant then addressed the Tribunal on the 2011/2012 management fees and took issue with the management fee charge of £1,800 and the further damp works reserve of £15,689.34. In relation to the management fee he stated that management fees and professional fees were all tied up together and it was the amount he was querying. In relation to the damp works reserve he said that this was referred to in the service charge final account for 2012/13 and then produced this account. This was the first time the Tribunal had seen this document and there was a short adjournment whilst consideration was given to accepting it and then reviewing its contents. This was done in the interests of fairness.

38. Following the short adjournment the Applicant moved on to the charge on account for 2012/13 in the sum of £1,455 relying on his other stated concerns about charges generally.

39. The Applicant was invited to tell the Tribunal about his concerns about the fire escape, as he had indicated that this was an issue at the inspection. He confirmed that the works for the fire escape replacement should be taken out of service charges . He said that he was suspicious that monies were not spent on the building at all and that not more than 50% of monies were spent on actual work to the property and that sums claimed were "inflated in such a way that they raised suspicions on my behalf."

40. The Applicant told the Tribunal that works had been carried out the first year he was in occupation, that major works had been undertaken 3 times to the roof, scaffolding being put up on each occasion for "a week or two".

41. The Applicant said that on one occasion there had been a big hole the size of two square metres and the flat next door was leaking. There had been "blowers" in the flat for 2 months. The work was urgent and the flat was not occupied.

42. No notice was given of the work done however a note was left.

43. The Applicant told the Tribunal that he had paid various sums to the Landlords agent of £5,000 and that the credits on his account were obvious. When asked for evidence of this the Applicant produced a running account summary. The Tribunal considered this document. It did show some credits to the Applicant however none were in the sum of £5,000 and several were simply adjustments to the account rather than credits as had been asserted.

44. The Tribunal were also given copies of the 2011 2012 and 2013 accounts and a service charge statement for 2009/2010.

Respondent's Evidence:

45. The Tribunal next heard from Mr Andrew Head who represented the Landlords as their new Estate Manager Sawyer & Co. [hereinafter called "the Respondent".]

46. In relation to the 2007 service charge of £412.78 the Tribunal was told that the property was sold at auction and that part of the agreement at auction was that this liability was part of the overall purchase price, hence it being included in the service charge for the following year. The Respondent denied that there had ever been an agreement to limit the sum payable by the Applicant to £20.77 and this sum was not shown as having been credited to the Applicants account. The implication is that had this been an agreement then one would have expected the sum of £412.78 to be written off subject to the smaller sum being due and payable. The Respondent also told the Tribunal that nothing had been raised at the directions hearing about a sum of £20.77 and this was the first time this had been raised.

47. The Respondent agreed that this charge related to the period of time prior to the Applicant purchasing the tenancy but his evidence was that this had been part of the overall purchase of the leasehold interest and was never challenged until 2009. He told the Tribunal that this was an issue that the Applicant should have taken up with his solicitor and that he had never heard mention

of any agreement to reduce the charge to a sum of £20.77p. He confirmed from the account that no such sum of £20.77 had ever been claimed from the Applicant which would have supported the Applicants version of events. Nor had the figure of £412.78 ever been written off. No letter or conversations had ever taken place in which Mr Head had heard of the arrangement/agreement described by the Applicant in relation to the writing off of £412.78

48. In relation to professional charges the Respondent consulted the invoices which appeared to confirm that all professional charges related to Chartered Surveyors fees for work actually undertaken. The Tribunal challenged this evidence and on each occasion that they did so the Respondent was able to refer immediately to documents before him in support of his oral evidence and to make those documents available for inspection. Mr Head confirmed that all invoices were available for the Tribunal and that he had personally added them up to confirm their accuracy. The Tribunal satisfied itself that the Respondent was being honest and was not attempting to mislead the Tribunal or the Applicant in any way on these issues.

49. The Respondent also referred to a number of invoices which included invoices for solicitors fees of £75, an Environmental and Services fee, a fee for re-inspection of asbestos in the sum of £111.62, building survey invoice for 3 hours at £65 per hour and another for 1.2 hours at £65 per hour. The Respondent referred to an invoice from a Building Surveyor who prepared a specification for damp proof works, another solicitors fee, searches at the Land Registry and an invoice from a Malcolm Hollis for reinstatement costs. All the invoices referred to were produced by Mr Head from his file and were available at the hearing. These documents were also available to the Applicant and the Tribunal made it clear that if the Applicant wished to consider these invoices they would give time for him to do so. The Tribunal was entirely satisfied as to their existence and the veracity of the Respondents evidence on this point.

50. Mr Head confirmed that the two management charges in 2011 were a "catch up", the first sum of £1,468.75 relating to September 2009 to Sept 2010 and the sum of £1,800 relating to September 2010 to September 2011 in an attempt to convert to a current year basis for charging.

51. The £20,000 in respect of the damp works reserve related to the first contribution to the overall works which had been started in the latter part of 2012. The projected sum had been £26,247 hence the reserve of £20,000. The final cost of the works was in excess of £35,000 hence the initial charge and then the further charge.

52. The Respondent told the Tribunal that the service charges rendered to date did not include any amounts in respect of the fire escape, that there was no plan to replace it and that it was now redundant. The Tribunal was told that it needed to be taken away but that no quotations had been obtained as yet.

Conclusions on the evidence

53. The Tribunal were concerned that despite very clear directions having been given the Applicant had failed to provide any documents to support his oral evidence. At times his evidence lacked clarity and detail. On a number of occasions the Applicant told the Tribunal that he had not brought along documents in his possession.

54. The Applicant was unclear about the entitlement under the terms of the lease to charge for items related to the cost of works undertaken on the property. The Applicant could not satisfy the Tribunal that he had ever requested details of the sums that made up the service charges. When asked if he had ever written or telephoned he said he had nothing to show that he had done so. Where the Applicant challenged the quality of work undertaken and the necessity for works to be undertaken again the Tribunal were left unclear as to the year(s) that the Applicant asserted works had been undertaken, the type of work undertaken on each year and the documents which he had been sent.

55. The detail in the application itself varied significantly from details recorded at the directions hearing. In the application the Applicant had asked for a three year period to be considered and determinations given but had not specified which 3 years. He had also asked for the Tribunal to determine service charges for the current and future years of £1,000. The Application referred to "problems with the building so I would like the Tribunal to assistance (sic) who is ultimately responsible for the cost and how much."

56. Although some of these matters were clarified at the directions hearing the Applicant then failed to provide the Tribunal with the evidence of these service charges for each of the years under challenge.

57. Despite all these omissions it became clear to the Tribunal that the actual figures claimed were correct in that they had been claimed in the stated amounts. It was therefore for the Respondents to establish to the satisfaction of the Tribunal that such sums were properly due.

58. The Tribunal heard from Mr Head as described earlier in this decision. They concluded that Mr Head was a compelling and honest witness. He was clear in his responses to each of the matters raised and on each occasion was able to refer to documents in support of his oral evidence.

59. The Tribunal reached its decisions for the reasons set out.

Appeals

60. 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.

61. 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.

62. 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 the time limit, or not to allow the application for permission to appeal to proceed.

63. 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.

64. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.

T A CLARK (Judge)
28th February 2014