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

Case Reference : **CHI/29UG/LSC/2012/0079**

Property : **5-7 Lansdowne Square, Northfleet
Gravesend, Kent, DA11 9LX**

Applicant : **(1) Mr D Noyes
(2) Mr Carpenter**

Representative : **Mr Noyes**

Respondent : **BM Samuels Finance Group plc**

Representative : **Mr Thornton of Hurford Salvi Carr**

Type of Application : **s27A determination**

Tribunal Members : **Judge D Dovar
Mr R Athow FRICS MIRPM**

**Date and venue of
Hearing** : **6th March 2014**

Date of Decision : **20th May 2014**

DECISION

Introduction

1. This is the final part of an application to determine the payability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') for the above property for the years ending 2009 to 2013. The first part of this decision is dated 6th June 2013 and should be read in conjunction with this determination.
2. In the first part, the Tribunal determined a number of general points of principle and then adjourned the matter for the parties to try and agree some, if not all, of the items claimed.
3. That exercise was carried out and at the hearing the Tribunal were presented with a list of items which had been agreed and not agreed. The Tribunal then went onto deal with the points that had not been agreed.
4. In reaching agreement on various items, the Applicants had relied on various statements made by the Respondent that certain items had never been applied to the service charge account for the Property. During the course of the hearing it transpired that those statements were not all accurate and that in some cases charges had been made for items which the Respondent had maintained had not been. Accordingly it became necessary for further directions to be made for the parties to consider any necessary revisions to their list of agreed / not agreed matters.
5. Those were provided to the Tribunal on 14th March 2014.

Management fees

6. The Applicants accepted that the Management agreement was not a qualifying long term agreement for the purposes of section 20 of the 1985 Act. Accordingly, there is no challenge to the management fees on this basis.

Service Charge by year

7. The Tribunal sets out below its determination on the service charges that are payable year by year. In doing so, the starting point is the full figure

claimed by the Respondent. From that figure deductions have been made either in accordance with the parties' agreement or upon determination by the Tribunal.

8. The problem with the approach taken by the Respondent in apportioning costs has been dealt with in the first determination. Most of the invoices referred to below were sums that were split equally across all four blocks. Therefore where such a sum has been found not to be payable, the correct adjustment is a reduction by a quarter of the sum shown on the invoice. This reflects the fact that the Respondent had only applied a quarter of the charge to block 5-7.
9. References in bold are references to pages in the Respondent's bundle where the total sum claimed is set out as well as the supporting invoices.

Year ending 2009

10. The total claimed for this year is £9,178 [**160**].
11. The items in dispute are:
 - a. Insurance of £1,072.25: The only invoice provided for this service charge year was for £5,552.84 [**585**] for the period 4th April 2009 to 3rd April 2010 for 1-8 Lansdowne Square; this amounts to £1,388.21 for 5-7 Lansdowne Square. The service charge year runs from 1st January to 31st December. Therefore only 9 months are payable. The Respondent could not point to any other insurance demands for the period 1st January 2009 to 3rd April 2009. In the absence of such evidence, the Tribunal is only prepared to allow for the proportionate part of the invoice which relates to this service charge year; being for the period 4th April 2009 to 31st December 2009 (272 days) £4,138.01; £1034.50 for 5-7 Lansdowne Square. Therefore a deduction of **£37.75**.
 - b. Cables and lights - £149.50 [**589**]; There was insufficient evidence to demonstrate that on the balance of probabilities this

charge related to the Property; therefore deduct the ¼ charged to the Property **£37.38**;

- c. Cupboard doors - £299 [**592**]; The invoice does not say whether they were block specific or not. The Respondent maintained that the auditor would have raised a query if they were not satisfied this covered all blocks. There is no evidence that that is the case, further this was different to the way in which the Respondent had described the auditor's methodology in the previous hearing (see paragraphs 33 and 34 of the first part of this determination). Accordingly the Tribunal is not satisfied that on the balance of probabilities these were incurred in relation to the Property. The parties agreed that the deduction should be **£75**;
- d. Gas meter door - £299 [**593**]; the same issues are raised as with the previous item and a deduction should be made of **£75**;
- e. Fire maintenance - £94.88 [**602**]; there was insufficient evidence to demonstrate that on the balance of probabilities this charge related to the Property; therefore deduct **£23.72**;
- f. Common part fitting - £177.50 [**611**]; there was insufficient evidence to demonstrate that on the balance of probabilities this charge related to the Property; therefore deduct **£44.37**
- g. Main doors - £303.16 [**612**]; there was insufficient evidence to demonstrate that on the balance of probabilities this charge related to the Property; therefore deduct **£75.75**
- h. Keys - £44.85 [**616**]; there was insufficient evidence to demonstrate that on the balance of probabilities this charge related to the Property; therefore deduct **£11.21**;
- i. Keys - £66.93 [**618**]; given the previous invoice for keys, although this invoice had no specific block mentioned on it, the Tribunal considers that on the balance of probabilities, this invoice related,

at least in part to the Property and therefore makes no deduction for this item;

- j. Maintenance visit - £120.75 [**619**]; there was insufficient evidence to demonstrate that on the balance of probabilities this charge related to the Property; therefore deduct **£15.09**;
 - k. Maintenance - £48.30 [**620**]; there was insufficient evidence to demonstrate that on the balance of probabilities this charge related to the Property; therefore deduct **£12.07**;
 - l. General maintenance - £449.65 [**621**]; this was dealt with in the previous determination (see paragraph 43 b. iii); a reduction of **£110.53**;
12. The total deductions are therefore **£517.87** and the total amount payable for this accounting period is **£8,660.13**.

Year ending 2010

13. The total claimed for this year is £8,691 [**170**].
14. The items in dispute are:
- a. Survey, specification and consultation notices - £837.19, £176.25, £70.50, £815.16 [**450-3**]; the Applicant said the costs were excessive and should be part of the management fee. The Respondent said that these fell outside of the management fee and that the charges were reasonable. The Tribunal considered that these were major works, fell outside the management fee and were reasonable;
 - b. Out of hours fire assistance - £193.88 [**454**]; there was insufficient evidence to demonstrate that on the balance of probabilities this charge related to the Property; therefore deduct **£48.47**;

- c. Call out charge for alarm faults - £387.76 [456]; there was insufficient evidence to demonstrate that on the balance of probabilities this charge related to the Property; therefore deduct **£96.94**;
- d. Call out charge for alarm faults - £141.01 [458]; this invoice made specific reference to 'Blocks 2-4' and therefore did not related to the Property; **£35.25**;
- e. Repairs to downpipe for 6-8 Lansdowne Square - £329.00 [472]. This was not for the Property; therefore deduct **£82.25**;
- f. Works to wall for 6-8 Lansdowne Square - £975.25 [474]. This was not for the Property; therefore deduct **£243.81**;
- g. Graffiti removal - £158.63 [476]. This appears to be specific to one block, but it is not clear which. Insufficient proof that this was for the Property; therefore deduct **£39.65**;
- h. Access for Tribunal Visit - £49.35 [480]. This visit related to a case involving one of the other blocks. This was not for the Property; therefore deduct **£12.33**;
- i. Obtaining Land Registry charge - £12 [481]. Insufficient proof that this was for the Property; therefore deduct **£3**;
- j. Dixons dispatch - £178.48 [482]. Insufficient proof that this was for the Property; therefore deduct **£44.62**;
- k. Health and Safety Inspection - £736.73 [527]. The Applicant considered that this should have been included in the management fee and was excessive in any event. The Respondent stated that it was outside the work covered by their fee. The Tribunal considered that this was outside the normal fee charged for managing and that it was reasonable;
- l. Replace release on block 1-3 - £117.50 [528]. This was not for the Property; therefore deduct **£29.37**;

m. Door and lock works - £99.87 [**530**]. Insufficient proof that this was for the Property; therefore deduct **£24.97**;

15. The total deductions are therefore **£660.66** and the total amount payable for this accounting period is **£8,030.34**.

Year Ending 2011

16. The total claimed for this year is £13,380 [**181**].

17. The items in dispute are:

- a. Call out for alarm - £186, £480 [**277-8**]. The Respondent maintains that these are not included in the service charge accounts for this year. However, that contradicts the assertion in their letter of 30th October 2013, that they are included. The Tribunal considers that they are included. The first invoice makes specific reference to blocks 1-3 and 6-8 and therefore does not relate to the Property. The second invoice makes no reference as to which block it is referring to and therefore there is insufficient evidence that it relates to the Property; therefore deduct **£166.50**;
- b. Fire and Health and Safety Inspection - £752.40 [**280**]. The Applicant considered that this should have been included in the management fee and was excessive in any event. The Respondent stated that it was outside the work covered by their fee. The Tribunal considered that this was outside the normal fee charged for managing and that it was reasonable;
- c. Lead work - £1,986 [**307**]. This sum appears to have been charged entirely to blocks 1-3 and therefore does not appear to have been included in the service charge for the Property;
- d. General works - £135 [**310**]. There is insufficient evidence that this work related to the Property; therefore deduct **£33.75**;
- e. Dixons dispatch - £233.04 [**311**]. Insufficient proof that this was for the Property; therefore deduct **£58.26**;
- f. Work in progress - £1,200 [**315**]. The Respondent agreed that **£300** should be deducted;
- g. Surveyor's expenses - £219 [**325**]. Insufficient proof that this was for the Property; therefore deduct **£54.75**;

- h. Excess insurance - £100 [336]. The Applicant claimed it was nothing to do with the Property. The Respondent accepted that but claimed that as there was one policy for the whole state the excess should be shared. The Tribunal did not agree, if it related to one item on another block, that block should pay the full excess; therefore deduct **£25**.
18. The total reductions for this year amount to **£638.26**, therefore the sum recoverable by way of service charge is **£12,741.74**.

Year ended 2012

19. The total claimed for this year was £8,488.07
20. The following items were challenged:
- a. Fire & Security Consultancy Invoices - £42, £42 [381-2]. Specific reference was made to block 5-7; therefore allowed;
 - b. Fire alarm call out - £102 [213]. This has been charged in full to blocks 1-3 and therefore the Tribunal considers that it did not form part of this years service charge for the Property;
 - c. Redecorations - £2,100 [236]. This does not show on the ledger of sums that constitute the service charge for this year. Therefore the Tribunal does not consider that it does form part of the charges and no adjustment should be made.
21. No reductions are made from **£8,488.07**.

Section 20 application

22. The Applicant made an application for an order under Section 20C. They stated that if they only won on one point that would be sufficient to warrant an order, otherwise it would put others off coming to the Tribunal.
23. The Respondent resisted such an order on the basis that this matter had been going on for a number of years and it took these proceedings to get the Applicant to come to their offices to talk over the items. The landlord should not be penalised, and no order should not be made so as to encourage leaseholders to talk first.
24. The Tribunal considers that a section 20C order will be made in respect of 75% of the Respondent's costs of the remainder of these proceedings

not covered by its previous determinations. Whilst the parties had agreed some amounts, of the majority of those that remained disputed, the Tribunal found in favour of the Applicant. Further, the Respondent was the cause of greater delay and confusion by wrongly asserting that certain items had not been charged to the service charge, when they had.

Conclusion

25. The Tribunal determines that for the following service charge years, the following sums were payable:
 - a. For the year ending 2009, **£8,666.88**;
 - b. For the year ending 2010, **£8,030.34**;
 - c. For the year ending 2011, **£12,741.74**;
 - d. For the year ending 2012 **£8,488.07**.
26. In addition, as per the previous determination in this matter, for the year ending 2012 £7,500 is payable in respect of the reserve fund.
27. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 limiting any costs recoverable by the Respondent in respect of this matter (which have not already been covered by a section 20C determination) to 75%.

Judge D Dovar

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.