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

Case Reference : **LON/00AF/LSC/2013/0648**

Property : **Flats 10,11, 27,32,40 and 47
Seychelle Court, 24 Foxgrove Road
Beckenham BR3 5XU**

Applicant : **A. Karim t/a AK Management**

Representative : **Mr D Richard of Counsel**

Respondent : **Seychelle Court Management Co
Ltd**

Representative : **Ms J Lee of Counsel**

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

Tribunal Members : **Dr Helen Carr
Mr Stephen Mason BSc FRICS
FCI Arb
Mr Paul Clabburn**

**Date and venue of
Hearing** : **20th January 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **27th January 2014**

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the Respondent is not able to utilise paragraph 9 of the Sixth Schedule to the lease to claim the legal costs it incurred in defending a previous application made by the Applicant against the Respondent.
- (2) The Tribunal determines that charges for electrical works demanded in the service charge year ending March 2013 are reasonable and payable.
- (3) The Tribunal determines that all the other costs demanded by the Respondent in the service charge year ending March 2013 are payable and reasonable
- (4) The Tribunal determines that the estimated service charge demand for the service charge year ending March 2014 is payable and reasonable.
- (5) The Tribunal determines not to make a costs order against the Applicant.
- (6) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (7) The Tribunal makes the determinations as set out under the various headings in this Decision

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years 2013 and 2014.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Mr D Richard of Counsel at the hearing and the Respondent was represented by Ms J Lee of Counsel. Also in attendance on behalf of the Respondent was Miss Burt and Mr Truslow, both Directors of the Respondent management company and Mr Marsh of HML Andertons, the managing agents of the property.

4. Immediately prior to the hearing Ms Lee applied to the Tribunal for permission to rely upon a supplemental witness statement which had been served on the Applicant on 16th January 2014. The Respondent argued that the additional witness statement was required to respond to various matters raised by the Applicant in his witness statement.
5. Mr Richard argued that it was not in the interests of justice for the Tribunal to admit the witness statement as the Applicant had only received it on the 17th January 2014 and had not had the opportunity to respond or to give instructions on the matter.
6. The Tribunal determined to accept the witness statement as it was mindful that fresh matters had been raised by the Applicant in his witness statement. However, in the interests of justice, it adjourned the case for half an hour to allow the Applicant to instruct his counsel on the matter.

The background

7. Seychelle Court comprises two blocks of flats each of four storeys, the larger block has 32 flats and the smaller block 16 flats. The blocks are situated within extensive grounds, in a desirable location. The blocks have the benefit of garages set out in blocks to the rear of the property.
8. The tribunal inspected the property before the hearing in the presence of the Applicant and Mr Marsh from the Respondent's managing agents and Ms Lee, counsel for the Respondent. The tribunal found the blocks dated from the mid 1970s and appeared well maintained. The tribunal was not able to access the roofs of the blocks of flats but did observe that repairs had been carried out to the roofs of the garages.
9. The Applicant holds long leases of six two bedroom flats within Seychelle Court which require 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 Applicant trades as AK management and rents out his flats on short term residential lettings.
10. The Respondent is a leaseholder owned management company. Each flat within Seychelle Court entitles the leaseholder to a share in the company. The directors and the secretary of the management company are volunteers who are leaseholders. The management company appointed a managing agent, HML Andertons, in July 2013.

The issues

11. At the start of the hearing the parties identified the relevant issues for determination as follows:

- (i) The payability and/or reasonableness of charges for legal costs and electrical costs.
 - (ii) The Applicant also sought clarification in connection with some other invoices demanded during the service charge year ending March 2013
 - (iii) An explanation of the increase in service costs from 2012 of 42%
 - (iv) The payability and/or reasonableness of estimated service charges for the service charge year ending March 2014.
 - (v) The s.20C application
 - (vi) An application for a costs order made by the Respondent on the basis of the Applicant's conduct
12. 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.

Legal costs totalling £3716.40

13. The Applicant referred to 4 invoices received from PJH Solicitors which he believes relate to legal costs arising from previous applications to the Tribunal. He submits that these costs are not payable under the lease.
14. The Respondent confirmed that the charges were the legal charges incurred by the Respondent in connection with defending the Applicant's previous application to the Tribunal. That application was originally settled by the parties following mediation but is now the subject of county court proceedings.
15. The Respondent argued that the legal costs were payable under paragraph 9 of the sixth Schedule to the lease. That paragraph provides as follows: 'The lessee will pay to the Management Company or the developer on demand all expenses (including legal costs and surveyors fees) which may be reasonably incurred by the Management Company or otherwise become reasonably payable by the Management Company or the Developer under or in contemplation of any proceedings in respect of the Demised Premises or any part thereof under Section 146 or 147 of the Law of Property Act 1925 in the preparation or service of any notice thereunder notwithstanding that forfeiture is waived or avoided otherwise than by relief granted by the Court'

16. The Tribunal asked Miss Burt what her instructions were to the solicitors when she had received the application to the Tribunal. She said that the Respondent's instructions were to defend the application.

The Tribunal's decision

17. The Tribunal determines that the legal costs are not payable under the lease.

Reasons for the Tribunal's decision

18. Paragraph 9 of the 6th Schedule enables the Respondent to claim legal costs in connection with forfeiture proceedings including those steps which are necessary prior to forfeiture proceedings. However not all legal steps taken by a litigant can be understood to be in contemplation of forfeiture proceedings. The Tribunal considers that there needs at least to be some evidence of intention to institute forfeiture proceedings.
19. In this particular case, not only is it difficult to understand defending rather than making an application as being in contemplation of forfeiture proceedings, but the Respondent did not provide evidence that it had any intention to take forfeiture proceedings.

Charges for electrical works totalling £946.00

20. The Applicant refers to two invoices of DEC (Electrical Contractors) for the sum of £946.00 for replacing light bulbs and light fittings. In his opinion the charges are excessive.
21. The Respondent said that DEC was used to carry out electrical repairs including replacing lamps and faulty fittings. DEC is locally based and a loyal contractor with a long record of service to the management company. They are instructed once there are several electrical issues to make it economic for the lessee owned company.

The Tribunal's decision

22. The Tribunal determines that the amount demanded in connection with electrical works is payable and reasonable.

Reasons for the Tribunal's decision

23. Although the Respondent was vague about the charging rates of DEC and did not appear to have done any market testing in connection with electrical works, it had clear reasons for employing DEC. Moreover the Applicant provided no evidence that the charges were unreasonable.

Various other invoices

24. The Applicant raises concerns about various invoices in connection with service charges.
25. The Respondent gave evidence that the works charged for under these invoices had been carried out, that the contractors had been employed over a period of time by the Respondent and that they all had a good record of quality work and rapid responses to requests for estimates etc.

The Tribunal's decision

26. The Tribunal determines that the amounts demanded by the Respondent in connection with all the invoices queried by the Applicant are reasonable and payable.

Reasons for the Tribunal's decision

27. The Tribunal accepts the evidence of the Respondent that the works invoiced for were carried out by the various contractors. Whilst the Miss Burt for the Respondent was sometimes vague about invoices and charging levels, the Respondent was clearly trying to act in the best interests of the property.
28. The Applicant provided no evidence to dispute this.

The increase in service costs from 2012 of 42%

29. The Applicant considered that the increase in service charge costs of 42% from 2012 was excessive and had not been explained by the Respondent.
30. The Respondent argued that the increase was reasonable. It arose from the need to build up reserves to deal with anticipated roof replacement, new anticipated emergency lighting works and the anticipated redecoration of the exterior.

The Tribunal's decision

31. The Tribunal determines that the increase in service charge demands is reasonable.

Reasons for the Tribunal's decision

32. The Tribunal considers that it is proper and prudent management to build up sufficient reserves to deal with anticipated repairs. The amount that was being asked of lessees appears to be a reasonable sum in view of the age of the property and the likelihood of significant works being carried out in the relatively near future.
33. However the Tribunal has some concerns about the practices of the Respondent in connection with this quite considerable increase in service charge costs. The Respondent did not provide evidence of any written explanations to the lessees of the change in practice. Nor was the evidence given by the Respondent of the reasons for the build up of the reserve costs clear or useful. For example the Respondent at one point said that the reserves were necessary to pay for a replacement roof, but then later said that this was not currently planned. The Respondent also said that the reserves were to be used to pay for exterior decorating, but then a large sum was included for exterior decorating in the estimated service charge demand for the year ending 2014. In addition the Respondent indicated that the reserves would be spent on installing emergency lighting, but it appeared that this decision was reached long after the demand for increased payments to the reserve fund were made.
34. It appeared to the Tribunal that the increase in reserve funds was at the heart of the Applicant's concerns. Indeed he made the point explicitly in his original application to the Tribunal. He had clearly planned his future income and expenditure on the basis of anticipated outgoings and it is reasonable to expect these to remain relatively steady unless there is a clear explanation for a substantial variation.
35. The Tribunal considers it would be prudent for the Respondent to set out a 10 year plan for the property and build up reserves to fund that ten year plan. This plan could then be explained to the lessees and future misunderstandings would be avoided. No doubt, now that the Respondent has employed a professional managing agent, these suggestions will be put into practice.

The estimated service charge demand for 2014

36. The Applicant argued that as the estimated charges for the year ending March 2014 were based upon the previous year's actual charges, and he considered those charges to be excessive, then it followed that the estimated service charge demand was unreasonable.
37. The Respondent argued that it was reasonable to base its estimate upon the actual service charges of the previous year.

The Tribunal's decision

38. The estimated charges for the year ending March 2014 were reasonable and payable.

Reasons for the Tribunal's decision

39. The Respondent had prepared its demand based upon the actual charges of the previous year. This is a reasonable action and as the Tribunal had found that those charges, other than the legal charges, to be reasonable and payable it followed that the estimate was also reasonable and payable.

Application for costs against the Applicant

40. The Respondent applied to the tribunal for costs against the Applicant pursuant to Rule 13(1) (b) of the Tribunal Procedure Rules. The Respondent argued that the Applicant was a vexatious litigant who had brought the proceedings unreasonably and because of the allegations the Applicant made in his witness statement. For instance he alleged that there may have been fraud in the preparation of invoices and he used intemperate language.
41. Counsel for the Applicant argued that the 42% increase in service charges was the cause of the application. He pointed out that the Applicant had not had the benefit of legal advice when he wrote his application and witness statement. The Applicant was not a vexatious litigant. Counsel pointed out that following the adjournment the issues between the parties had been substantially narrowed which is not indicative of a vexatious litigant.

The Tribunal's decision

42. The tribunal determines not to make a costs order against the Applicant.

Reasons for the Tribunal's decision

43. The Tribunal does not consider that it was unreasonable for the Applicant to bring the current application to the tribunal. An increase in service charges of 42% needs to be explained properly and clearly to those who are being required to pay. This is particularly the case when the monies are going into reserve funds and the Applicant is not aware of any specific plans to spend the money. The Tribunal also notes that following legal advice the Applicant narrowed the issues and did not pursue matters once reasonable explanations had been provided.
44. The Applicant has used intemperate language in his application. He should realise that this is not at all helpful. The Respondents are

volunteers who are doing their best to act in the best interests of the property. He should be aware that people get upset and defensive when vague allegations of theft and fraud are made. He should certainly be more careful in future. However the Tribunal also considers that the Respondents should not take the language used personally. In the experience of the Tribunal people often use emotive and indeed abusive language when they are angry and frustrated. Clearly there are limits to what should be tolerated, but the Tribunal does not consider that the Applicant in this particular case has crossed those limits. The Tribunal is mindful that he was not represented.

Application under s.20C and refund of fees

- 45.** In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines not to make an order under section 20C of the 1985 Act,

Name: Helen Carr

Date: 27th January 2014

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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of 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) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).