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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00AF/LSC/2013/0658
Property	:	FLAT 60, ANDORRA COURT, 151-155 WIDMORE ROAD BROMLEY, BR1 3AE
Applicant	:	MR WILLIAM PRATT
Representative	:	MRS LORRAINE ENTECOTT
Respondent	:	RETIREMENT LEASE HOUSING ASSOCIATION
Representative	:	MS LORRAINE COLLIS – Chief Executive MISS LIZ JOYCE – Area Manager MISS HANNAH ELMS, - Assistant
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	TRIBUNAL JUDGE SHAW MR R. PERCIVAL MR M. TAYLOR FRICS
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	17th March 2014

DECISION

Introduction

1. This case involves an application made by Mr William Pratt ("the Applicant") in respect of the property at Flat 60, Andorra Court, 151-155 Widmore Road, Bromley, Kent BR1 3AE ("the Property"). The Applicant is the leasehold owner of the property which forms part of a block of retirement flats owned by Retirement Lease Housing Association ("the Respondent"). The application is for a determination as to the reasonableness of service charges for the years 2006 to 2013. The application is made pursuant to Section 27A of the Landlord & Tenant Act 1985 ("the Act").

2. The background to this matter is that the Applicant is a 90 year gentleman who, in keeping with other leaseholders, owns his flat at Andorra Court as referred to above. There are 70 units within the building, and there is a further flat which is designated for a residential warden. The Respondent, as its title suggests, is a Housing Association, but this particular building within its portfolio, is privately owned by the individual leaseholders, and service charges are levied in the ordinary way. Although the Applicant seeks a determination in respect of the years referred to above, the issue which is challenged, and replicated each successive year, is the same issue. That issue, as crystallised at the hearing, really sub-divided into 2 points as are articulated by Mrs Entecott on behalf of her father:

   (i) In the circumstances as they now exist at the building (to be explained below), is the correct proportion of the service charge to be allocated to

the Applicant (and the other leaseholders) one seventieth, or one seventy-first?

(ii) Is the rent received by the Respondent from the present occupier of the warden's flat at the building, properly accounted for in the Respondent's accounts?

3. In order to explain the position in more detail, it is appropriate to set out first some of the relevant clauses within the lease, which will appear below.

Relevant clauses in the lease

4. The lease is dated 23rd October 1986 and appears at the end of the helpful bundle prepared by the Respondent as supplemented by the Applicant. The lessee's covenants appear at Schedule 6 to the lease and paragraph 29 of Schedule 6 provides that:

> *"The lessee shall pay and contribute to the landlord by way of further and additional rent an equal proportionate part of the costs and expenses outgoings and matters incurred by the landlord in carrying out the landlord's obligations under the Seventh Schedule hereto such part to be not more than one seventieth part of the whole or such lesser part to be determined according to the number of flats (other than the warden's flat) leased on similar terms on the estate and any extension or enlargement thereof from time to time."*

5. The lease provides that:

> *"The lessee shall pay and contribute to the landlord by way of further and additional rent an equal proportionate part of the costs and expenses outgoings and matters incurred by the Landlord in carrying out the Landlord's obligations under the Seventh Schedule hereto such part to be not more than one seventieth part of the whole or such lesser part to be determined according to the number of flats (other than the Wardens flat) leased on similar terms on the Estate and any extension or enlargement thereof from time to time"*

6. The covenants on the part of the landlord are listed in the Seventh Schedule to the lease and contain the usual repairing obligations and certain other fairly familiar provisions. Of particular relevance in this case is paragraph 12 of the Seventh Schedule which provides that:

> *"The landlord*
> *(a) may employ and engage such agents and contractors as it considers necessary or desirable for the performance of its obligations under this schedule and pay their wages commission fees and charges; and*
> *(b) shall, so far as practicable, use its best endeavours to employ, engage and maintain the services of a resident warden in order that the facilities and amenities of the estate should be maintained to their best advantage and to require him to reside in the warden's flat and to give such directions for the proper discharge of his duties as may be necessary from time to time and will charge to the accounts:*
> *(i) the rent of a flat on the estate if so provided for the warden or the cost of providing accommodation for him; and*
> *(ii) his wages and expenses; and*
> *(iii) the cost of providing such motor vehicle (if any) as the landlord shall think necessary for the better performance of his employment and duties including all capital and running costs in respect thereof ..."*

The Parties' Respective Cases

The Respondent's case

7. The Respondent gave its evidence to the Tribunal both in writing and orally at the hearing. Indeed both sides had prepared full and helpful written Statements of Case, and a Statement in Reply by the Applicant, all of which appears in the hearing bundle. So far as the oral evidence of the Respondent was concerned, this was given by Ms Lorraine Collis, who is the Respondent's Chief Executive. She told the Tribunal that Andorra Court is one of a number of properties in the Respondent's property portfolio. Many of the Respondent's properties are let to tenants by the Respondent in the usual way of a housing association. However, Andorra Court is entirely owner-occupied, with the exception of the

warden's flat to which reference will be made. Accordingly, as indicated above, all the flats are owned on long leases, often extended long leases, by retired persons.

8. Although Ms Collis has been the Chief Executive only since July 2011, she was able to inform the Tribunal of the background in respect of the years under consideration in this application. Those years are 2006 to 2013. Ms Collis told the Tribunal that in 2005 the resident warden became unwell and was off work for some time. She in due course came back to work but only for 20% of the time, and was hampered by ill health thereafter. In 2007 she returned to work but sadly for her, her health did not improve, and ultimately she retired on medical grounds during 2007.

9. Flat 31 at the property had been the flat occupied by the resident warden. A new warden was engaged but she did not occupy the warden's flat. Ms Collis told the Tribunal that during the period when the former resident warden was unwell, in other words the period during 2006 and 2007, the Respondent was nonetheless obliged to pay her sick pay and keep the accommodation available for her in the hope that she may be able to return. However as indicated above, this was never the case and instead a non-resident warden was obtained and employed on a full time basis. The engagement of a non-resident warden was intended, originally, to be a temporary arrangement pending the finding of a suitable "live-in" warden, who would then take up residence in Flat 31. In the event, although several possible candidates were interviewed, it proved impossible to find a suitable resident warden.

10. Meanwhile, the non-resident warden arrangement appeared to be working well. The residents were consulted as to whether they wished to return to a resident warden or whether they were happy with the non-resident warden. The result of the ballot, said Ms Collis, was that two thirds of the residents wished to continue with a resident live-in warden. There were further attempts at finding such a person, but once again the Respondent was unsuccessful.

11. Ms Collis informed the Tribunal that agreement was reached with a committee representing the residents at the home, that they would continue with the non-resident warden, because the system appeared to be working well, and she (that is to say the non-resident warden) was well liked by the residents. She was engaged on a 9am - 5pm basis, from Monday to Friday. This took place in 2008.

12. During the period that a non-resident warden was being used, for the reasons indicated, the flat reserved for the warden was for a period of time unoccupied and thus producing no revenue for the Respondent. This situation changed (after confirmation of the non-resident warden's appointment) in that the Respondent let the property, that is to say the vacant flat, on a standard assured shorthold tenancy to an elderly occupier. That person has occupied Flat No. 31 ever since.

13. This meant that the Respondent was receiving an appropriate rental income from the flat, and the income was shown transparently in the Respondent's

accounts as both a credit, but then also a debit so that the position was neutral as far as the 70 other leasehold owners paying services were concerned. Ms Collis informed the Tribunal that this arrangement was set up before she started her employment with the Respondent, and she told the Tribunal that the accounting was done in this way so as to make it clear that the Respondent was not hiding the revenue income from the remaining residents, but neither was it setting it off against service charge costs. The Respondent held a further ballot with the residents of the home in August 2012 and Ms Collis told the Tribunal that the result was the leaseholders voted overwhelmingly to continue with the non-resident warden arrangement.

14. Moreover, the majority of the residents (apparently the Applicant in this case included) felt that it would be unfair to give notice to the elderly person occupying Flat 31, and everyone has been agreeable to allowing her to continue to occupy for so long as she wishes, or for the duration of her life. Once her tenancy comes to an end, the Respondents will consider either selling the property on a long lease (like the rest of the flats in the block) or alternatively renting it under a different form of tenancy agreement which makes provision for payment of service charges. The current tenancy makes no such provision, and the occupying tenant makes no contribution to the service charges.

The Applicant's case

15. The Applicant's case was presented by Mr Pratt's daughter Mrs Lorraine Entecott. Mrs Entecott has no legal training or background, but nonetheless

presented the case with great competence and cogency. She also prepared the helpful bundle to which I have referred.

16. Mrs Entecott on behalf of her father, prepared detailed documents in the form of a Statement of Case together with several appendices and a reply to the Respondent's case, together with various other documents, which were included in the bundle and presented to the Tribunal. No disrespect is intended to Mrs Entecott, if as is the case, the Tribunal summarises the two main heads of objection that she raised to the arrangement in respect of the warden's flat.

17. The first main objection was in respect of the rent received by the Respondent in relation to this flat. Mrs Entecott said that there is no contractual entitlement under the terms of the lease for the Respondent to charge a rent for the warden's flat. She told the Tribunal that *"We believe that the Respondent has not shown that they can recover a rent from the occupier of the flat, and not charge service charges".* She emphasised that her father pays approximately £200 a month by way of service charge, and she considered that it was right that the occupier of the warden's flat should pay a service charge likewise. *"They have to pay, so why shouldn't she?"* The essence of the argument was that the Applicant, instead of paying a seventieth of the overall service charge, should be paying a seventy-first proportion, with the tenant of the warden's flat making a seventy-first proportionate contribution.

18. The second point taken by the Applicant, through his daughter, was in respect of the accounts produced by the Respondent, and the manner in which the

rental income was dealt with in those accounts. The rental income was in fact set out in the accounts but, as mentioned above, it appeared both as an item of expenditure, which was then given a contra-entry, because the same or a similar figure appeared in the income section of the accounts. As understood by the Tribunal, the rental income was accounted for in some years in that way and in others it may have been included as an item of expenditure within the warden's salary.

Analysis and Findings of the Tribunal

19. The Tribunal determines this point against the Applicant and in favour of the Respondent. The reason for so finding is essentially based upon the terms of the lease and specifically paragraph 29 of the Sixth Schedule (lessee's covenants) as set out in full above. By virtue of that provision, the lessee is obliged to pay a service charge which is "*not more than one seventieth part of the whole or such lesser part to be determined according to the number of flats (other than the warden's flat) leased on similar terms on the estate ...*" Accordingly, the warden's flat is expressly excluded from the calculation of the proportion to be paid by the lessees. The only qualification is that it must be "*not more than one seventieth*" of the overall cost. On behalf of the Applicant it was argued that the Respondent has no right to rent out No. 31 as it is. It was contended by Mrs Entecott that "*They could sell it*" or alternatively the present occupier should be occupying under a lease which makes provision for a contribution to service charges from her.

20. The evidence given by the Respondent was that the residents were balloted on at least two occasions. The first, to discover whether they wished to have a resident or non-resident warden. The result of this was that they opted to have a resident warden. However, when it proved impossible to find a suitable candidate, the residents agreed to have a non-resident warden. The Tribunal accepts this evidence, and found Mrs Collis' account credible. In any event, it seems to the Tribunal that in conducting ballots, and consulting the residents, the Respondent acted reasonably with a view to how to approach the quantum of the service charges. If, however, the Tribunal is wrong in this finding, it is appropriate to consider what the impact upon the service charge would have been from the point of view of the Applicant. The total expenditure in the estimated service charge expenditure or budget produced in the supplementary bundle by the Applicant, for the year ending 30th September 2013 is £156,164. That figure divided by 70 amounts to £2,230.91. If the same figure is divided by 71 (as contended for by the Applicant) the figure produced is £2,199.50. The difference between these figures is £31.40 per annum. The result therefore would be that even if the Applicant's contention were well-founded, which the Tribunal finds it is not, it would amount to a saving of 60p a week for the Applicant which in the circumstances, the Tribunal considers de minimis. The difference is not such, in the judgement of the Tribunal, as to render the charges made anything other than *"reasonable"* for the purposes of the Act.

21. So far as the accounting point taken by the Applicant is concerned, ("the second point") again the Tribunal finds against the Applicant and for the Respondent. Once again, it does not seem to the Tribunal that there is any

contractual or other obligation against the factual background given above for the Respondent to give credit for this relatively small income received from the flat which would otherwise have been allocated to a resident warden. The majority finding when the residents were consulted about the matter, was to the effect that the current provisions of the assured shorthold tenancy, which make no provision for service charge payments, should continue, and the elderly resident in the warden's flat should not be required to have the terms of her tenancy changed. Even if the position were otherwise and this income were included in the accounts so as to boost the income and decrease the expenditure, the Tribunal's calculation dividing the figure by 71, is to the effect that it would have an impact of slightly over £1 weekly on the service charge which is made to the Applicant. Once again, it does not seem to the Tribunal that this is such as to render the charge presently made unreasonable for the purposes of the Act.

Conclusion

22. For the reasons indicated above, the Tribunal finds against the Applicant and for the Respondent on the two main issues which crystallised at the hearing and as set out above. Since these were the only real points of challenge pursued on behalf of the Applicant, it follows that the effect of the Tribunal's finding is that, for the service charge years concerned (2008-13), the Tribunal finds that the services charges claimed are reasonable and payable. In the application there is also an application for a Section 20C order to the effect that the Applicant should not be required in some subsequent service charge to pay any of the costs of this application and hearing. The Respondent, when asked

about this matter, indicated immediately that it did not propose raising any such charge and accordingly, by consent such a determination in favour of the Applicant is made.

Tribunal Judge: **S. Shaw**

Dated: **17th March 2014**