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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2013/0350**
Property	:	**23 Beulah Crescent, Thornton Heath, Croydon CR7 8JL**
Applicant	:	**Donald Facey (Flat A)** **Darae I A Palmer (Flat B)**
Representative	:	**In Person**
Respondent	:	**Gala Properties Ltd.**
Representative	:	**LMD Management**
Type of Application	:	**Liability to pay service charges**
Tribunal Members	:	**Judge F Dickie** **Mr A Lewicki, FRICS**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**22 January 2014**

DECISION

Decisions of the tribunal

(1) The Tribunal has no jurisdiction in respect of Mr Palmer's service charges for the years 2009 – 2011.

(2) Service Charges are payable by Mr Facey for those years as follows:

2009 – nil

2010 - £279.03

2011 - £517.91

(3) For the year 2012 service charges of £782.59 are payable by each Applicant.

(4) On account service charges for the year 2013 are payable by both Applicants in the sum of £296.55. The insurance premium obtained in June 2013 is reasonable. The landlord will be entitled to a 15% management charge on recoverable expenditure.

(5) The Respondent shall refund £125 in fees to the Applicants within 28 days. The tribunal makes an order under s.20C of the Act. There is no other order as to costs.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by them in respect of the service charge years 2009 to date.

2. The service charge for the years prior to 2012 consisted only of each lessee's share of the buildings insurance. That cost for the years 2009, 2010 and 2011 had been £1324.78, £1427.72 and £1551.54 respectively (a service charge of £441.59, £475.91 and £517.18 respectively to each tenant). The 2012 service charge expenditure was buildings insurance £1660.67, insurance excess £250 and management fee £285.10, totalling £2185.77 (£782.59 per flat). On account service charges for the year 2013 were demanded in the sum of £296.55. All these service charges were in dispute.

3. The property which is the subject of this application is a Victorian house converted into three flats. The tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

4. The Applicants each hold a long lease of one of the flats in the building, by which they covenant (in clause 2.5) "to pay and contribute one third of the costs and expenses of making repairing and maintaining and of the costs of insuring the Building." Clause 5.1.2.4 provides for the Lessor "to employ a managing agent to manage the building and to collect the rents and maintenance charges who are entitled to levy a

management charge of 15% of the total sums involved." The building is currently managed by LMD Management.

5. An oral case management hearing was listed for 29 August 2013, but unfortunately no-one attended on behalf of the Respondent. The application was listed for a hearing on 13 November 2013, but the Applicants failed to prepare any bundles in accordance with the tribunal's directions. Their assertion that the landlord had not served its statement of case on them was disputed, and there was on the tribunal's file a copy of that document. The tribunal refused the Respondent's request to strike out the application and issued further directions. The hearing of 13 November was postponed to 11 December 2013, and was listed before a new tribunal.

6. County Court proceedings for unpaid service charges had previously been issued against both Applicants. The Claim against Mr Facey made in 2009 did not proceed to judgment against him after he paid the sum claimed. There was no evidence or argument that sums claimed in those proceedings included any that are the subject of the present application, or that the tribunal lacked jurisdiction to determine any sums in respect of which Mr Facey brought his application.

7. Judgment was entered against Mr Palmer after a hearing, though no copy of that judgment was produced to the tribunal. Palmer was aware that the claim related to the whole of the service charges for the years 2009 – 2011. The tribunal therefore has no jurisdiction in respect of his service charges for those three years, since pursuant to section 27A(4) of the 1985 Act the tribunal has no jurisdiction in respect of a matter that has been the subject of a determination by a court.

The Hearing

8. The Applicants appeared in person at the postponed hearing, as did the Respondent's director Mr Clacy, though he arrived 10 minutes after the hearing had begun. The tribunal took time to identify the issues in dispute owing to their inadequate presentation. The hearing bundle did not include the landlord's first statement of case. A short adjournment took place while the Applicants considered that document at the hearing.

9. The Applicants had been directed to send to the landlord a schedule of items in dispute with reasons, but their brief schedule was not within the hearing bundle, and was not brought to the attention of the tribunal until the hearing was substantially complete. Also absent from the hearing bundle was each Applicant's statement of case, to which the Respondent has replied on 31 October 2013. Since the hearing bundle had been sent to the managing agent and not to the landlord, Mr Clacy said he had not seen it before the postponed hearing. In spite of these

difficulties, no party requested an adjournment and the tribunal did not consider it reasonable to order one.

The Disputed Issues

Administration Charges

10. Mr Facey disputed costs in relation to the 2009 court proceedings, and Mr Palmer disputed charges demanded from his mortgage lender in respect of the service of notice under section 146 of the Law of Property Act 1925. However, there was no application before the tribunal for a determination as to administration charges payable (Schedule 11 of the Commonhold and Leasehold Reform Act 2002). The tribunal confirmed as a preliminary that the only matter within its jurisdiction on the present application was the determination of the service charges payable.

Buildings Insurance

11. The Applicants disputed the buildings insurance premiums as they considered that they were too high, and the figures were difficult to understand as each spanned two service charge years. Mr Palmer said that the service charge for buildings insurance is similar in amount to the entire service charge for another flat that he owned. Mr Clacy explained that the building was insured under a block policy which included higher risk properties. The Applicants did not accept that they should pay a higher premium in these circumstances.

12. Mr Clacy relied on a letter dated 22 May 2013 from the insurance broker (3 Dimensional Insurance Ltd.) regarding the June 2013 renewal offered by Aviva on the same index linked terms as the previous year. This letter explained that the broker's practice was to obtain alternative quotations on a three yearly basis, but in the past three years quotations had been obtained annually in light of a rise in the number of claims for the portfolio and their individual costs having led to an increase in premiums. The broker summarised the response from eight insurers to the provision of a five year claims history, none of whom were able to match this year's quote from Aviva.

13. The Applicants relied on a quotation for buildings insurance they had obtained on the basis of a history of no claims. In fact, there was evidence that there had been an insurance claim. The excess of £250 charged in 2012 related to this claim, which was for a leak from Flat B into Flat A. The Applicants complained that the landlord's broker's report did not include any comparable quotations.

14. Mr Palmer had disputed the expenditure on buildings insurance because he had asked Mr Clacy to provide further information about it

but did not believe he had been provided with sufficient information on that inspection. The tribunal understands that Mr Palmer expected to be able to inspect alternative quotations.

15. Mr Clacy said that when Mr Palmer came to see him he did not make it clear what information he sought. As a result of the meeting he asked the broker at the next renewal to explain in writing the process he had followed to obtain insurance on the market, which he did in May 2013. The tribunal noted that Mr Palmer had not made it clear in his preparation for the hearing what information he sought and the specifics of his objection to the insurance premium. Where the service charge comprises only buildings insurance, the documents in support of that expenditure would be very limited.

16. Mr Clacy said that LMD take a 7.5% commission on the insurance since they do the claims handling for the insurers, but the landlord itself did not take a commission.

Decision on Buildings Insurance

17. A landlord is permitted to make a commercial decision to insure its properties within a portfolio and may recover as a service charge a premium competitively obtained in accordance with market rates even if higher than could be obtained by an owner occupier *Forcelux Ltd. V Sweetman [2001] 2 EGLR 173*. The block policy covers a large portfolio and the tribunal accepts it makes commercial sense for it to be insured in block policy. The landlord's statement of case set out in detail the approach taken in seeking to reduce premiums rising owing to increased claims – selling off properties with a poor claims history and increasing the policy excess. It is clear the landlord and broker have actively sought to obtain a competitive market rate. The tribunal considers that the single quotation of the Respondents does not demonstrate that the premiums are unreasonable, and the managing agent's commission is justifiable. The tribunal is satisfied that all service charges for insurance are reasonable and payable (except for those irrecoverable by virtue of section 20B – see below).

Statement of Rights and Obligations

18. The Applicants disputed that the service charge demands were sent with a statement of rights and obligations (pursuant to section 153 of the Commonhold and Leasehold Reform Act 2003). Mr Palmer said the demand dated 14 April 2012 was the first to enclose this, but Mr Clacy disputed this. The landlord produced copies of all demands, end of year accounts and insurance certificates (which ran from June to June), as well as a copy of the managing agent's Summary of Rights and Obligations issued prior to July 2013 and the amended version issued from July 2013. The tribunal notes that during the period 2009 to April 2012 no point was taken by the tenants on the absence of any such

documentation. It is for the tribunal to determine this issue on the balance of probabilities. Since professional agents were managing the building the tribunal considers it is likely that they complied with the relevant obligation to send out a Summary of Rights and Obligations. In any event, demands issued were cumulative and it is acknowledged that the Summary has been sent in 2012. The tribunal therefore rejects the Applicants' case on this point.

Section 20B

19. It was the Applicants' case that the demand for buildings insurance dated 5 April 2011 was out of time by application of s.20B of the Landlord and Tenant Act 1985. Mr Clacy confirmed that this was the first demand. It demanded insurance for the period from 1 January 09 to 31 December 2009 (which was comprised of part of the insurance for each of the years ending June 2009 and June 2010) and for the period from 1 January 2010 to 31 December 2010 (which was comprised of part of the insurance for the year ending June 2010, as well as of the subsequent year's policy).

20. On the evidence, the tribunal could see that the relevant insurance policies were taken out on dates in October 2008 and June 2009 and finds that these are the dates when the expenditure was incurred. The tribunal does not accept Mr Clacy's submission that section 20B only applies to expenditure which would be otherwise unexpected. The tribunal finds that the cost of both insurance policies was incurred more than 18 months before the demand (that is, before 5 September 2009) and is therefore irrecoverable as a service charge by virtue of section 20B. However, this cannot affect Mr Palmer's liability since it appears these service charges formed part of the County Court judgment made against him. The relevant sums irrecoverable from Mr Facey are as follows:

Buildings insurance 1 January 2009 – 31 December 2009 - £441.59

Buildings insurance 1 Jan 2010 to 1 June 2010 - £1427.72 / 151 days / 3 = £590.65 / 3 - £196.88

Management Fee

21. The Applicants disputed the new management fee charged in 2012 because they had never seen such a charge before and because Mr Palmer had not received answers to his enquiries. However, when Mr Clacy drew the attention of the tribunal to Clause 5.1.2.4 of the lease, which requires payment of a 15% management charge, Mr Palmer accepted that they were liable to pay this.

Insurance Excess

22. The Applicants only dispute regarding the insurance excess was that they had seen no supporting documentation for the claim, which was satisfied by its production by the landlord for the hearing. The tribunal finds this sum is recoverable as a service charge as a cost of insuring the building.

Application under s.20C and refund of fees

23. The Applicants made an application for a refund of the fees that they had paid in respect of the application and hearing[1]. In his revised statement of 28 October 2013 Mr Clacy said he did not attend the case management conference because "it would be waste of time and money." It was a judicial decision to list this application for a case management conference rather than issue directions on the papers. The tribunal therefore finds Mr Clacy's view totally unacceptable.

24. Mr Clacy felt that the need for a postponement could have been avoided if the Applicants had prepared a hearing bundle. However, he did not consider that they had been frivolous or vexatious - rather that they had been overwhelmed by the procedure – and he did not pursue the application for an order for costs against them which was made in his revised statement of case.

25. Taking into account that they are litigants in person, the Applicants failed without good reason to comply with the tribunal's directions as to preparation for the hearings. Taking all this into account, having heard the submissions from the parties and considering the determinations above, the tribunal orders the Respondent to refund 50% of the total fees of £250 paid by the Applicants.

26. The Applicants 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 considers it just and equitable to make an order that none of the landlord's costs in these proceedings may be added to the service charge.

27. The Applicants sought an order against the Respondent for costs, since they felt that the matter could have been resolved without an application to the tribunal if the landlord had provided better information. The application was dated 15 May 2013. However having considered all of the circumstances set out above the tribunal declines to made such an order under Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. The Respondent has responded in detail to the case put forward, in spite of the manner of its presentation.

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[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Name: F Dickie **Date:** 22 January 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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) a leasehold valuation 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.