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

Case Reference : LON/00AH/LSC/2013/0820

Property : Flat 4, Bradley Court, 104 Denning Avenue, Croydon, Surrey, CR0 4DF

Applicant : Sarum Properties Ltd

Representative : Ms F J Barnet, Head of Property Management of Remus Management Ltd

Respondent : Ms M Pereira

Representative : In person

Type of Application : For the determination of the reasonableness of and the liability to pay a service and/or administration charges

Tribunal Members : Judge I Mohabir
Mr M Cairns MCIEH

Date and venue of Hearing : 26 March 2014
10 Alfred Place, London WC1E 7LR

Date of Decision : 2 June 2014

DECISION

Introduction

1. The Applicant had commenced proceedings in the Croydon County Court against the Respondent for service charge arrears in the sum of £6,951.99, statutory interest thereon and legal costs in the sum of £313. Subsequently, the claim was transferred to the Tribunal to adjudicate upon the amounts claimed by the Applicant.
2. On 14 January 2014 a case management conference took place. By Directions dated 15 January 2015, the Tribunal identified the issues to be determined were:
 - (a) the reasonableness of the annual buildings insurance premium (£4,640.51) and professional fees (£838.32) for the year ended 23 June 2012.
 - (b) whether any administration charges are payable.
3. The matters agreed are set out at paragraph 6 of the Tribunal's Directions and need not be repeated here.

Relevant Law

4. This is set out in the Appendix to this Decision.

Decision

5. The hearing in this matter took place on 26 March 2013. The Applicant was represented by Ms Barnet who is the Head of Property Management of Remus Management Ltd ("Remus"), the managing agents. The Respondent appeared in person.
6. For the avoidance of doubt, at the commencement of the hearing, the Tribunal ruled that it had no jurisdiction to make any determination in relation to the claim for statutory interest and the declaration sought by the Applicant as to breach of the lease by the Respondent's non-payment of service charges. This is because statutory interest is not a "service charge" within the meaning of section 18 of the Landlord and Tenant Act

1985 (as amended) (“the Act”) below. In addition, the Tribunal has no declaratory powers. Both of these matters are remitted back to the County Court.

7. The Respondent, helpfully, confirmed that the professional fees of £838.32 were agreed by her and, consequently, the Tribunal also no longer had jurisdiction in relation to this matter.

Buildings Insurance Premium

8. Ms Barnet confirmed that the actual overall premium for the year ended 23 June 2012 was £4,640.51, of which the Respondent had a liability of £327.94.
9. She confirmed that the insurance is arranged directly by the Applicant under a block policy and the premium is invoiced by Remus through the service charge account. She referred the Tribunal to a letter dated 24 February 2014 from the insurance brokers, Ferndale Insurance Services Ltd, which confirmed that the property was insured with Towergate Insurance under a block policy. It also confirmed that the block policy is put out to tender each year and that Towergate Insurance provided the most competitive tender.
10. The Respondent said that the Applicant had not obtained an individual policy quote for the building as a cross check. She had not been able to obtain such a quote because she was unable to answer a number of questions raised by various insurance companies. She confirmed that she had not requested a copy of the insurance policy schedule from Remus, which may have provided the requisite information she needed to obtain an alternative quote.
11. The Tribunal had little difficulty in concluding that the buildings insurance premium claimed by the Applicant for the year ended 23 June 2014 was reasonable. The Respondent had not produced any evidence to show that it was unreasonable. The Tribunal was satisfied that the policy

had been competitively tendered by the insurance brokers and that the cheapest tender was accepted. There was no evidence before the Tribunal that single policy quote would have been cheaper and it was satisfied that there is no obligation under the terms of the Respondent's lease for the Applicant to do so. It is only obliged to insure the building, which it did. Accordingly, the Tribunal finds that the Applicant's service charge liability for the buildings insurance premium in the sum of £327.94 is due and payable.

Administration Charges

12. Two amounts of administration charges are claimed by the Applicant. These are:
 - (a) the sum of £313 incurred between 20 September 2010 and 16 August 2011 for attempts made to recover the Respondent's total service charge arrears.
 - (b) legal costs from August 2011 to 4 December 2013 totalling £3,184 (including VAT and disbursements) incurred in prosecuting the Respondent's service charge arrears.
13. The Tribunal accepted the submission made by Ms Barnet that the Applicant has a contractual entitlement under clause 3(19) or, alternatively, under clause 8 of the Respondent's lease to recover the administration charges.
14. The Respondent submitted that the administration charges were not reasonable because she had made a number of proposals to pay the arrears claimed by instalments but these had been rejected by the Applicant even though it had accepted payment by this method in the past.
15. The Tribunal accepted the submission made by Ms Barnet that the service charges arrears owned by the Respondent were significant and the Applicant was entitled to pursue payment from her. The Tribunal

accepted that there was no obligation on the part of the Applicant to accept payment by instalments from the Respondent, even if it had done so historically. Therefore, the Tribunal found that the costs in principle had been reasonably incurred.

16. Turning to the amounts claimed, the sum of £313 did not strike the Tribunal as being unreasonable having regard to the preliminary steps taken by the Applicant before litigation to recover the service charge arrears owed by the Respondent. Accordingly, the sum of £313 was allowed as being reasonable.
17. As to the legal costs of £3,184, Ms Barnett said that conduct of the litigation had been undertaken by a Mr Ian Singleton, who is a Partner at the firm of Trethowans LLP. She was unable to say what hourly rate was applied by him.
18. The Tribunal found that it was not reasonable for relatively straightforward debt recovery litigation of this kind to be conducted by a Partner, who is a Grade A fee earner. The appropriate level of fee earner is a Grade C at an hourly rate of £151 for a firm of solicitors in the location of Wiltshire. A calculation at this rate reveals that a total attendance of approximately 16.5 hours was claimed in respect of this case. As stated above, this is a relatively straightforward matter and the Tribunal found this level of attendance was excessive. Based on its own knowledge and experience, the Tribunal allowed a total attendance of 8 hours at £151 per hour making a total of £1,208 profit costs plus VAT at 20% of ££241.60. The total disbursements of £268 are allowed as claimed. Therefore, the total legal costs allowed as reasonable is the sum of £1,717.60.

Section 20C & Fees

19. The Respondent made an oral application under section 20C of the Act at the hearing. Essentially she relied on the same reasons set out at paragraph 14 above.

20. For the same reasons set out at paragraph 15 above, the Tribunal does not consider it just or equitable to make an order under section 20C of the Act. Also for the same reasons, the Tribunal orders the Respondent to reimburse the Applicant the fees of £265 it has paid to the Tribunal to have the application issued and heard within 28 days from the date this decision is sent to her.

Judge I Mohabir

2 June 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 a leasehold valuation 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 a leasehold valuation 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.