10162

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LSC/2014/0347**
Property	:	**45a Conyers Road, London SW16 6LS**
Applicant	:	**H. & S. Bhundia**
Representative	:	**In person**
Respondent	:	**Primeview Developments Limited**
Representative	:	**Jaimin Property Management**
Type of Application	:	**For the determination of the reasonableness of a service charge**
Tribunal Judge	:	**Ms N Hawkes**
Date and venue of Paper Determination	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**15th August 2014**

DECISION

Decisions of The tribunal

(1) The Tribunal determines that the management fees claimed by the respondent in respect of the service charge years 2006-2015 inclusive are reasonable and payable.

(2) The Tribunal makes does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The Tribunal does not make an order for costs against the applicants pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules.

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 the applicants in respect of the service charge years 2006 to 2015 inclusive.

2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application appears to be a flat in a two storey, mid terraced house.

4. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

5. The applicants hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

The issues

6. In Directions which were drawn up on 3rd July 2014, the Tribunal identified the relevant issues for determination as follows:

    (i) The reasonableness of the service charges for years 2006-2015 inclusive relating to the management fees.

(ii) In their application, the applicants have also applied for an order pursuant to section 20C of the Landlord and Tenant Act 1985.

(iii) Further, in its Statement of Case, the respondent makes an application for costs against the applicant on the grounds of alleged unreasonable conduct.

7. Having considered the documents provided, I have made determinations on the various issues as follows.

The Management Fees

The applicants' case

8. It is not in dispute that management fees are payable; the sole issue for the Tribunal to determine is whether or not the level of the fees which have been charged is reasonable.

9. The applicants state that the management fees charged by the respondent for the period 2006 to 2015 have ranged from £175 to £250 per year and that, apart from carrying out a health and safety inspection in 2008, the managing agents have done nothing other than arrange buildings insurance.

10. The applicants submit that the cost of providing this service should be no more than £25 per year but they have not provided any alternative quotations from.

The respondent's case

11. A Statement of Case has been prepared by Rajesh Tankaria, a director of the respondent company. He has provided copies of management agreements for the period 2009 onwards. This is the period during which Jamin (Management) Limited has been the managing agent.

12. Mr Tankaria refers to the services set out in paragraph 3 of these management agreements and states: "although all of these may not have been required in each and every year, when agreeing the management fee it would be based on the position that the managing agent may be required to provide these services."

13. Paragraph 3 of the management agreements provides:

In consideration for the payment referred to in paragraph 2 above with regard to the Property the Managing Agent will:

(a) *Prepare and issue service charge budgets, ground rent and service charge demands on behalf of the Freeholder as required under the terms of the leases.*

(b) *Receive and bank all payments of ground rent and service charge received from leaseholders of the Property.*

(c) *Chase all Leaseholders in default with regard to service charge payments and issue fixed fee reminders (said fee to be paid by defaulting leaseholder) if required.*

(d) *To prepare and serve fixed fee notices pursuant to section 146 of the Landlord and Tenant Act 1925 (said fee to be paid by defaulting leaseholder) in the event of a default on the part of leaseholders.*

(e) *Receive and process fixed fee notices of assignment, charge and sub-letting (said fee to be paid by party providing said notice)*

(f) *Receive and respond to fixed fee sellers enquiries of landlord prior to a leaseholder selling their flat (said fixed fee to be paid [sic] party requesting the replies to enquiries)*

(g) *Process leaseholders claims on the freeholders insurance policy*

(h) *Receive and respond to leaseholders general enquiries with regard to the management and maintenance of the Property.*

(i) *Arrange minor repairs as required, liaise with contractors, arrange routine maintenance and services such as cleaning and gardening and monitor the same for quality ensuring work done effectively, appoint and negotiate fees for such repairs and maintenance and provide the Freeholder with invoices and bills for the Property to be paid.*

14. The Tribunal understands that clause 3 is in identical terms in each of the management agreements from 2009 onwards.

15. Mr Tankaria states that, as regards the pre-2009 agreements, a search has been undertaken. However, as a result of the time which has passed and the fact that the relevant company is no longer the managing agent and has been dissolved copies of these copies of these management agreements have not been retained. He confirms that the services provided under the pre-2009 agreements would have been of a similar nature to those provided from 2009 onwards.

16. As regards the qualifications of the people who are to provide the services under the management agreements, Mr Tankaria states that all financial and numerical work would be undertaken by a qualified chartered accountant of the managing agent; the drafting of demands, ensuring compliance with statutory requirements and reviewing and advising on the terms of the leases would be undertaken by the managing agent's in-house solicitor; and other management tasks would be undertaken by the accountant, the solicitor or by another suitably qualified member of staff.

17. The respondent has referred the Tribunal to *Parkside Knightsbridge Limited v Horwitz (1983) 268 EG 49 CA* in which it was said in relation to the computation of management and supervision fees:

"It seems to me that the evidence of Mr Chiltern, referring to the four quotations from other estate agents, is strong evidence, in the absence of rebuttal, that the figure of £12,400 charged by McKay to Parkside was a reasonable charge to make for the services which McKay were giving to Parkside in connection with the flats, for all those quotations are substantially in excess of the amount charged.

Precisely how that amount was arrived at is not, in my opinion, of significance. The question is whether the amount can be said to have been a reasonable charge, and a comparison with the quotations of other estate agents indicates that it was a reasonable charge..."

18. The respondent relies upon a witness statement dated 18th July 2014 prepared by Steven Newman who is a director of D & S Property Management. Mr Newman states that, since 2009 when D & S Property Management came into existence, he has pitched for the management business of all of the freehold reversions owned by the respondent.

19. Mr Newman states that the rates at which D & S Property Management would have been prepared to take over the management of the property were £250 per flat for the years 2009/10, 2010/11 and 2011/12; £275 per flat for the years 2012/13 and 2013/14; and £300 per flat for the year 2014/15.

20. The respondent also relies upon a letter dated 8th April 2014 to Mr Tankaria from Homes Property Management in which they offer to undertake the standard management of the respondent's properties at the rate of £350 plus VAT per flat.

21. The respondent says that up to 2009 the management fee charged was £175; that the current fee is £215 plus VAT (VAT has only been charged in the last two years); and that the increase in the net management fee has been modest.

22. The respondent submits that the Tribunal may only made directions based on evidence and that it cannot make "random deductions". The respondent relies upon *London Borough of Hackney v Zahra Akhondi [2012] UKUT 439 LC*, in particular, paragraphs 24-29 and 35-42.

23. The respondent states that the applicants have inserted a low figure in their application with no supporting evidence and that the only evidence of the rates charged by managing agents is that provided by the respondent.

The Tribunal's decision

24. The only evidence before the Tribunal as to the sums which other managing agents would charge for managing the property is that provided by the respondent. There is no evidence before the Tribunal that a managing agent would take on the management of the property for a management fee lower than that claimed by the respondent or that another managing agent would reduce their management fee to a sum lower than that claimed by the respondent if their actual workload in respect of the property in a given year or years was low.

25. Having considered all of the evidence before it, the Tribunal finds as a fact that the management fees charged by the respondent in respect of the years in question are reasonable and payable.

Application under s.20C and refund of fees

26. In the application form, the applicants have applied for an order under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act"). Having regard to the Tribunal's finding that the management fees which are the subject of this application are reasonable, the Tribunal does not consider it to be just and equitable for an order to be made under section 20C of the 1985 Act, so that the respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

The respondent's application for costs

27. The Tribunal's power to make a costs order is contained in rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which provides:

13. (1) The Tribunal may make an order in respect of costs only—(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in – (i) an agricultural land and drainage case; (ii) a residential property case, or (iii) a leasehold case...

28. Such an order can be made where proceedings were started on or after 1 July 2013, the date on which the new Tribunal Rules came into effect, so it applies to this case where the proceedings were started after that date.

29. Before this new costs power came into effect, the Tribunal had the power to make a costs order under paragraph 10, Schedule 12 of the Commonhold and Leasehold Reform Act 2002 limited to a maximum order of £500 (or other amount to be specified in procedure regulations). Under rule 13 of the new rules there is no upper limit on the amount of the costs that a party can be ordered to pay.

30. Rule 13 costs should, in my view, be reserved for cases where on an objective assessment a party has acted unreasonably. This is the test which has been applied. The Tribunal is essentially a costs-free jurisdiction where parties should not be deterred from using the jurisdiction for fear of having to pay another party's costs simply because they have failed in their application.

31. This is a case in which the applicants have unsuccessfully sought to challenge costs which appeared to them to be very high relative to the amount of work which the applicants could see was being undertaken. Whilst I have, on the balance of probabilities, accepted the assertions in the respondent's Statement of Case regarding the period prior to 2009, I note that the respondent has not provided disclosure in respect of this period. Having considered all of the circumstances of this case, I find that the applicants been unsuccessful in their application but that their conduct does not amount to unreasonable conduct within the meaning of rule 13.

Judge Naomi Hawkes

15th August 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 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.