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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case Reference : LON/OOAZ/LSC/2013/0718

Property : 14 GRANGEMILL WAY LONDON SE6
3JU

Applicant : PHOENIX COMMUNITY HOUSING
ASSOCIATION

Representative : Ms S Russell and Ms S Wall, Home
Ownership Advisers

Respondent : MR A C MGBEDIKE

Representative : The Respondent did not attend and was
not represented

Type of Application : SECTIONS 27A and 20C LANDLORD
AND TENANT ACT 1985 ("1985 Act")

Tribunal Members : JUDGE T RABIN
MR P ROBERTS DipArch RIBA

Date and venue of Hearing : 5th March 2014 10 Alfred Place, London
WC1E 7LR

Date of Decision : 5th March 2014

DECISION

The application

1. The Tribunal was dealing with an application transferred from the County Court seeking a determination pursuant to s.27A of the 1985 Act as to whether the service charges demanded during service charge years 2008-2013, including arrears, were reasonable and payable by the Respondent. The application relates to 14 Grangemill Way London SE6 3JU ("the Flat"). The Applicant is the freeholder of the building of which the Flat forms part ("the Building") and the Respondent is the long leaseholder of the Flat.
2. Proceedings were originally issued in the Northampton County Court. The claim was transferred to the Tribunal by order of the County Court.
3. The relevant legal provisions are set out in the Appendix to this decision.
4. In view of the nature of the claim it was determined that an inspection was not necessary.

The Hearing and Evidence

5. The application was heard on 5th March 2014. The Applicant was represented by Ms S Russell accompanied by Ms S Wall. The Respondent did not attend.
6. The Respondent requested an adjournment on 4th March 2014 as he had been involved in a road accident the day before and had been told by his doctor to rest. He was advised to produce a doctor's certificate confirming he was unfit to attend the hearing. He produced a letter dated 4th March 2014 from Princess Royal University Hospital confirming that he had attended the urgent care centre on 3rd March 2014 and was there from 16.50 to 18.32 with an injury. There was no indication that he was unfit to attend the hearing.
7. The Applicant objected to the adjournment on the basis that the matter was long delayed and the Respondent had not complied with the Tribunal's directions. The Tribunal agreed to proceed with the hearing in the absence of the Respondent. When coming to this decision the Tribunal was mindful that the Respondent had failed to comply with the Tribunal's directions and had not filed a statement of case. He had agreed to mediation but failed to sign the mediation agreement in time.
8. The Tribunal had some difficulty in reconciling the sums demanded with the statements filed and Ms Russell and Ms Wall were given time to extract the correct figures. The Tribunal has no jurisdiction in relation to the ground rent and therefore the sum claimed is as follows:

Amount due on July 2013	£3,916.30
Major works contribution	£ 237.80
Total	£4,154.10
Less Paid since claim	£ 300.00
Ground rent	£ 50.00
Balance due	£3,804.10

9. The Tribunal was hampered by the Respondent's failure to attend the hearing or submit a statement of case. He completely failed to comply with the Tribunal's directions or to sign the mediation agreement that would have enabled mediation to take place. In his response to the county court proceedings he indicated that the matter could easily be settled if he were to discuss the arrears with the Applicant. Notwithstanding numerous requests by the Applicant to fix a meeting, these were all ignored.
10. The Respondent purchased the Flat on 5th March 2008. The lease under which the Flat is held requires a purchaser to serve a notice of assignment and enter into a deed of covenant directly with the Applicant. The Respondent failed to serve notice of assignment or enter into a deed of covenant. The Applicant sought to recover arrears amounting to £1,230.85 accrued prior to the sale to the Respondent and their land registry search showed that the Flat was now owned by the Respondent. The Respondent remains responsible for these arrears as they arise from a covenant that passes to the new owner on a sale of the Flat.
11. The Applicant wrote to Respondent to point out the need for a notice of assignment and deed of covenant on 2nd December 2008 and to date not notice of assignment or deed of covenant has been received.
12. Ms Russell told the Tribunal the Respondent did not give the Applicant his address in writing until 14th October 2009 and they have used that address since then. He has not complained about any of the works or costs, including the internal decoration of the common parts.
13. The Tribunal has considered the service charge items and note that for the highest year, the total cost, including ground rent, is £428.28. The Building consists of eight units, four of which are flats with communal entrance and stairs and the others are self contained maisonettes. The

lease allows for a reasonable proportion of the service charge to be paid by the Respondent and the proportion used is 25% .

14. Ms Russell explained the following:

- (a) Cleaning. The Applicant use their own internal service and half an hour a week is allotted to the Building for the cleaning of the common stairway. Prior to 2009/10 one hour a week was allocated. The cost is calculated by the actual cost of wages, cleaning materials, overheads etc to give an hourly charge. The charge for 2012/13 is £17.44 per hour.
- (b) Repairs are done as needed and the final statement sets out details of all repairs undertaken during the year. A sum of between £50 and £70 is estimated and the repairs rarely exceed this sum. The cost of repairs in each year is modest
- (c) Communal electricity is charged for the amount used in the communal area
- (d) Building insurance is through a block policy across all the Applicant's properties and the premium is divided between each of the units. The Respondent was liable for £46.73 in 2012/13
- (e) The management charge is £175 for street properties with some common parts and includes the costs of court proceedings and dealing with antisocial behaviour
- (f) Major works comprise redecoration of the communal entrance and staircase. This took place in 2009/10 and the Applicant said the Respondent's share was £237.80. Ms Russell produced a copy of the invoice showing a sum of £850 plus VAT. VAT was not payable by the Applicant and it was therefore not charged to the Respondent but a 10% management charge was added.

THE TRIBUNAL'S DECISION

- 15. The Tribunal considered that the service charges were very modest for a flat in Greater London. In particular, the management fees and insurance are at the very bottom of the range of charges.
- 16. The Applicant has explained how the service charges were arrived at and the Tribunal finds the method and costs reasonable. There was no evidence of any complaint about any of the individual charges by the Respondent and he has given no evidence to show that any of the charges were disputed or unreasonable.

17. The Tribunal noted that by applying 25% to the major works charge and adding 10% administration fee, the amount was £233.75 and not the sum of £237.80 claimed. The statement of account in 2009/10, the year the work was undertaken, shows the Respondent's share as £233.75. The statement of account for arrears of major works charges for 2012-2014 shows a sum of £237.80. The Tribunal considers that this discrepancy should be decided in favour of the Respondent, particularly as the sum of £233.75 follows the method described by Ms Russell.

Conclusion


18. The Tribunal are of the opinion that the service charges for each of the years in question are reasonable and payable by the Respondent, including the arrears arising prior to his ownership. The sum for the major works will be reduced to £233.75. This means that there will be a credit of £3.75 for the Respondent. These sums are overdue and payable immediately.

Refund of Fees

19. The Applicants sought refund of the hearing fee of £190. Since there was a hearing which the Respondent failed to attend and he failed to mediate as agreed or submit a statement of case, the Tribunal orders that he refund the sum of £190 to the Applicant.

Section 20C

20. The Respondent sought an order under Section 20C of the Act to the effect that the costs of these proceedings should not be regarded as qualifying costs when calculating the service charge. The Applicant said the costs were part of the management fee and not separately charged. The Tribunal does not consider that it would be appropriate to make a Section 20C order.


Judge Tamara Rabin

5th March 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.
- (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).