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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CX/LSC/2013/0145**
Property	:	**Flat 3, Ivebridge House, 59 Market Street, Bradford, BD1 1NE**
Applicant	:	**Amjad Nazir**
Represented by	:	**Khwaja Noorul Ameen**
Respondent	:	**Papillion Properties UK Limited**
Represented by	:	**Mr & Mrs Heeley**
Type of Application	:	**Section 27 A (1) of the Landlord & Tenant Act 1985 & Section 20C**
Tribunal Members	:	**H A Khan LLB.** **J A Jacobs MRICS** **Dr J Howell LLB. PhD**
Date of Decision	:	**3 November 2014**

Decision

Introduction

1. By an application dated 4 November 2013, Mr Amjad Nazir (the "Applicant") applied to the Tribunal for the determination of liability to pay and reasonableness of service charges for the years 2010- 2011, 2011- 2012, 2012 - 2013 and 2013 – 2014. The application was made pursuant to section 27A and section 19 of the Landlord and Tenant Act 1985. An application was also made for an order limiting recovery of legal costs.

2. The Applicant is the leaseholder of Flat 3, Ivebridge House, 59 Market Street, Bradford, BD1 1NE ("The Property"). The Respondent to the application was Papillon Properties UK Limited who were represented by Mr C Heeley & Mrs Heeley.

Inspection

3. The Tribunal inspected the property on 25 July 2014 in the presence of the Applicant and his representative, Mr Noorul Ameen. Mr and Mrs Heeley attended on behalf of the Respondent. The property is comprised within a block of residential flats above commercial units. It is one of 15 flats within the building. The property benefits from a door entry system with a lift in the entrance vestibule serving the residential flats. There is no heating to communal areas and the lighting system is controlled by a manual switch located on each floor. There is a plant room at the top of the building which had a new door fitted. The basement contains individual meters for the flats.

4. The Tribunal noted that, although refurbishment had taken place on the ground floor and the first floor, the general décor, elsewhere was poor. In some places there were stains on the walls as well as on the carpets in the corridors. There were scuff marks, as well as patch repairs, on the walls. The window on one floor was cracked and externally the windows appeared not to have been cleaned for some time. Furthermore, the window sills did not appear to have been cleaned and the skirting boards were filthy. There were burn marks above the lights.

The Lease

5. The Applicant is the owner of the leasehold interest in the property created by a underlease ("the Lease") dated 18th January 2002 and made between Ivebridge House Limited (1), Ivebridge (Bradford) Management Company Limited (2), David Shaun Marshall and Susan Lucey Marshall (3) and CHI (Bradford) Limited (4).

6. The Lease makes provision for the leaseholder to pay 1/15lh of the service charge as set out in Schedule 2 of the Head Lease. The Head Lease being a Lease dated 17th January 2002 made between CHI (Bradford) Limited (1) and Ivebridge House Limited (2) ("the Head Lease").

The Service Charge

7. The Tribunal was told that the accounting year runs from the 1st July to the 30th June of each year. According to the Respondent, the service charge is apportioned depending on whether the works affect (a) both the commercial premises and the residential premises or (b) only the residential premises. It is apportioned by percentage of floor space (57.15% of the total applying to the residential portion of the building) in relation to work undertaken which affects (a). This is referred to as Schedule 1 in the accounts. It is apportioned equally across the 15 apartments for work relating to (b). This is referred to as Schedule 2 on the accounts. For the benefit of consistency, the Tribunal have used the same format, as set out in the Respondents accounts, in specifying what its determinations are in relation to the items in question. However, whilst these headings have been used, it is by no means clear if these are the only items subject to the service charge.

The Law

8. Section 27A of the Landlord and Tenant Act 1985 provides:

"(1) An application may be made to a 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 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."

9. Section 18 of the Act provides that "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 cost of management..."

10. Section 19 of the Act provides that:

"(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 provision 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."

The Hearing

11. A hearing was held on 25 July 2014 at which both parties made oral submissions to the Tribunal. The first issue for the Tribunal was to deal with the Applicant's request for a postponement. The Applicant's reasons were that no statement of case had been filed by the Respondent. The Respondent objected to this on the grounds they were available to give evidence at the hearing. The Tribunal determined that as both parties were available to proceed with the hearing and the Respondent was giving evidence as to their case, it would be appropriate to proceed. It was during this hearing that it became evident that further documentary evidence was required to enable the Tribunal to make a determination. For example, it was difficult to ascertain what each category represented on the budget accounts. There appeared to be duplication in terms of what work was undertaken. In addition, neither the head lease nor was Applicants lease was produced, despite the earlier directions. The Tribunal, therefore, made further directions, with the agreement of the parties, for the provision of additional information so that the matter could be determined on the papers unless either party requested a hearing.

12. Following the hearing and in accordance with the directions, further written submissions were received from the parties. The Respondent also requested a hearing in order to respond to the points raised by Applicant. A further hearing took place on the 3rd October 2014 at at Phoenix House, Rushton Avenue, Thornbury, Bradford BD3 7BH. The Applicant was again represented by Mr Noorul Ameen and Mr and Mrs Heeley attended the hearing on behalf of the Respondent. The Applicant's submissions in general related to the reasonableness of the service charges rather than whether or not they were payable. It was clear from what was said at both hearings, that the relationship between the parties was somewhat strained.

13. The Tribunal experienced great difficulty in ascertaining which of the Respondents' Companies was doing what work and under what category the charges were being made. The Respondent appeared unclear as to what was being charged and this might be explained by the fact that most of the major headings of expenditure were incurred by companies interlinked with the Respondent. Furthermore, invoices did not detail the work undertaken and the record keeping appeared inadequate, for example, there did not appear to be a reconciliation of budgets and accounts each year by the Respondent. The result of this was that the Respondent really did not know what the service charge accounts position was at the end of each year.

Management charges

14. The Tribunal was informed by the Respondent that this involved matters such as arranging insurance, general management of the building, arranging meter access and checking the building once a week. The Respondent's

representative, Mr Heeley, believed that this was an appropriate charge as he was involved with other buildings, where the charge was higher. The Applicant objected to this on the grounds that it was unreasonable. He made reference to the overlap with the administration fee, which is covered later. The Applicant referred to another property, a bigger property, which was located close by, namely Landmark House, containing 98 flats. Whilst no documentary evidence was provided, he suggested that there was a lower management charge, although he could not specify an exact figure.

15. The figures provided, verbally at the hearing, by the Respondent to the Tribunal as representing the charge for management were greater than the invoice in the bundle supplied by the Respondent. For example, for the year 2010-2011, the Respondent informed the Tribunal that the charge was £3774.36. However, the invoice supplied was for £3000. The Tribunal allowed the charges for the management as invoiced, which was £3000 per service year for all the years in issue. This charge is reasonable taking into account the size of the building and the fact that most properties have been purchased on a buy to let basis, acknowledging that the short term nature of the occupation of the tenants may lend themselves to some difficulties with the management. Nevertheless, this is not a large area to manage and sums invoiced are at a level appropriate to the standard of management provided.

Audit/Legal

16. The Respondent had, initially, claimed that these charges included the preparation of service charge accounts as well as the Respondents company accounts and were therefore recoverable under the lease. However, after supplying the Tribunal with copies of such accounts, he accepted that no certified accounts had been prepared in relation to the service charges. The accounts produced related, solely, to the cost of preparing company group accounts for the Respondent.

17. The Tribunal, therefore, determined that the audit fee is not payable. Whilst the Lease allows for the recovery of such a charge, it is in relation to complying with requirements relating to service charges and not for the Respondent's costs of preparing its own accounts.

Fire Alarm Maintenance

18. The Respondent explained that this charge included a weekly test, supply of the log book, quarterly service of the fire alarm system and weekly check of the internal doors and fire exit. There were also additional charges imposed if it involved a callout. It also included the annual evacuation drill. However, despite submitting in its explanation of services that this included the annual fire extinguisher test and replacement as necessary they conceded that this was covered under Fire Service Maintenance by an external company.

19. The Applicant's objections were that the fire alarm maintenance contract had been awarded to Heeley Maintenance Ltd. This was a company that was owned by Mr and Mrs Heeley. Furthermore, the charges were high and there was no evidence that there had been a tendering process.

20. The Tribunal determined that whilst there was no reason as to why the contract could not be awarded to companies linked to the Respondent, this should have been provided as part of the maintenance charge. It was not clear as to why there needed to be a separate contract for fire alarm maintenance and why this was not covered by the maintenance element of the service charge. There were weekly visits under the maintenance services element of the service charge. This included weekly testing of the emergency lighting systems. It was not clear why the weekly fire alarm test and the weekly check of the internal fire doors could not be undertaken at the same time. The Company providing the service was the same Company which provided the service under the maintenance element. The Tribunal therefore determined that this charge was not reasonably incurred.

External Maintenance and Repairs

21. There were no charges imposed for external maintenance and repairs. The Respondent informed the Tribunal that external repairs were carried out but recorded under the other headings listed below. It appeared unnecessary and confusing to have a category on the service charge budgets which was not being charged to.

Maintenance Company

22. The Respondent informed the Tribunal that the contract (with Heeley Services) had been in place before they took over the management of the building. It had been awarded through a competitive process in 2006, after which, it has become a rolling 12 month agreement. It must be said that this was when the freehold was held by another party.

23. The maintenance contract included weekly visits, walking around the building and *"checking everything"*. It also included replacing lamps (when replacement bulbs were held in stock) and checking the fire extinguishers. The contract included labour but did not include the cost of any materials which was charged separately. There would be additional charges made if there was a call out. These varied depending on whether the call out was during office hours or in the evenings and on weekends.

24. The Applicant's objections to these charges were on the grounds that the contract had been self awarded and there was a lack of maintenance in the building. He pointed to the common areas, including the state of the carpets, walls and corridors as evidence of the fact there wasn't a proper maintenance service at the property. His representative accepted that the Applicant did

not stay at the property and had let his flat out. However, both the representative and the Applicant were regular visitors to the property.

25. The Tribunal determined that it appeared that there was some maintenance that had been carried out to the property such as light bulbs being replaced. However, the poor state of the property, as witnessed by the Tribunal on inspection led the Tribunal to conclude that the service charge claimed was high. The condition was somewhat poor considering there were weekly inspections, which *"checked everything"* and which should have resulted in the property being in a better state than it was at the inspection. The Tribunal allowed a reduced sum, which in its view, reflected the work that appeared to be undertaken.

Fire Service Maintenance

26. The Respondent informed the Tribunal that this related to payments made to Rapid Fire Services. This was a separate arrangement with an external company to maintain the fire equipment at the property. The property had a number of fire extinguishers located on each floor of the property and the Tribunal determined that the charge made in connection with their maintenance was reasonable. However, it was noted by the Tribunal that these charges were in excess of that which was charged by Rapid Fire Services. The Respondent informed the Tribunal that these were additional charges incurred as a consequence of having to provide access for Rapid Fire Services so that they could undertake the relevant works such as ensuring that the fire extinguishers were appropriately filled. In the view of the Tribunal, the management fee should cover access. For the avoidance of any doubt, the Tribunal has only found those sums payable to Rapid Fire Services as being reasonably incurred under this heading.

Internal and Window Cleaning

27. The Respondent had initially hired external cleaners (Enviro Clean) until problems arose and then employed L H Cleaning. LH Cleaning was run until recently by Lewis Heeley, who is the son of Mr and Mrs Heeley. This had then changed and Mrs Heeley was now undertaking the cleaning and had been for the last few months. Mrs Heeley informed the Tribunal that this involved a weekly visit, vacuuming all common areas, cleaning main entrance doors, monthly internal window cleaning, monthly external window cleaning on the second floor, clearing unwanted mail and a weekly check of the building, both internally and externally. Mr Heeley stated that there was a particular problem with individuals leaving rubbish in the communal areas, particularly around Flat 3. In their explanation of services, they specified that there was an additional charge for litter pick and for the clearance of rubbish from the building. The Respondent claimed that the current arrangement resulted in savings when compared to the previous cleaning contractor.

28. The Applicant objected to the charges on the grounds that no cleaning had been done up until December 2013. He and his representative were visiting the property around 7 to 8 times a month and they had never seen anything done. He claimed that it was only the application to the Tribunal which had prompted the cleaning.

29. The Tribunal took the view that the charges were on the high side taking into account the floor area and the standard of cleaning seen at the inspection. There were water stains and dirty marks on some of the walls in the common areas and the skirting boards were filthy. The Tribunal finds that the standard of cleaning is not appropriate to the amount being charged to the leaseholders and has therefore reduced the sum to reflect the area being cleaned and the standard of cleaning.

Electricity

30. The Tribunal was informed that the Applicant had no objection to these charges. The Tribunal determined that, in the circumstances, the amount claimed was reasonably incurred.

Lift Maintenance

31. The Tribunal was informed that there was a lift maintenance contract in place with an independent company called Orona Limited. The Applicant had provided a quote from a different independent lift maintenance company. The Applicant claimed that this demonstrated that he could obtain lift maintenance services considerably cheaper. However, while the quote was cheaper, it was not clear whether a proper inspection had taken place prior to the quotation being provided, nor, was it exactly clear as to what it included.

32. The Tribunal found that annual cost of the lift maintenance contract with Orona was reasonable and in line with what would be payable for the maintenance and servicing of the lift. The costs of Orona limited have been allowed in full as they were reasonably incurred. For the avoidance of any doubt, no other charges, such as, for example, inspection and reporting of faults to Orona have been allowed.

Internal Repairs

33. The maintenance and repair work is provided by Heeley Maintenance Limited. Mrs Heeley informed the Tribunal that this included a weekly maintenance of around 1-2 hours per week. It also included inspecting the building, checking the lift and quarterly check of the emergency lighting together with an annual three-hour drop test of the emergency lighting. It also included maintaining the flat roof by sweeping and clearing it of any weeds. The Respondent informed the Tribunal that these costs related to problems such roof leaks and general upkeep of the building. For example,

this included the cost of a new door to the plant room at the top of the building.

34. The Tribunal noted on the inspection that the décor was poor in some places. There were dead light bulbs in the foyer area, together with one light fitting hanging from the ceiling and there was a missing bulb from the entrance of the lift on the first floor. Furthermore, there were burn marks above the lights. The flat roof did not appear to be swept recently and weeds were present. However, the Tribunal allowed the sums claimed by the Respondent on the basis that they have supplied the invoices for the works undertaken, which included a new door to the plant room on the roof and the replacement of light bulbs. The difficulty the Tribunal had was that the invoices supplied, whilst referring to work done, did not itemise the costs of the materials and subsequent labour and without such information it was difficult to say that these were high. It is also impossible to say, at this point, whether all the works were carried out, and whether or not some of the many invoices for replacement lamps might more reasonably have been carried out under the Maintenance Company contract.

Administration Charges

35. The Respondent accepted that these were management charges. They covered the cost, of Mrs Heeley in producing extra paperwork relating to the management of the premises. The Respondent informed the Tribunal that in future, these would be classed as management charges. On that basis, the Tribunal determined that the Services provided by under the admin charges were essentially covered by the management fee. Therefore such extra costs were not payable.

Sinking Fund

36. The Respondent has been using the various heads of expenditure, referred to above, on the service charge budget to collect for a sinking fund. The Respondent claimed in evidence to have collected for such a fund, through for example, the maintenance charge. However, the Respondent cannot identify clearly how this was calculated, how much was collected and the amount accumulated to date as it is not kept in a separate account. The Tribunal found it hard to accept that sums were being collected for the sinking fund, whilst the Applicant and presumably other leaseholders had no idea that this was the case. They did not know what had been collected and what it had been spent on. Furthermore, it is clear that the Respondent does not have any idea of where the collected sums have been spent. The collection of a sinking fund is for planned major works but the Respondent was clear in that although it had been collected, there was no surplus anywhere in the service charge accounts.

37. Whilst the Respondent is entitled to request a sinking fund under the terms

of the Lease, the Tribunal determined that given it could not be identified nor had it been communicated to the tenants, it would not be payable. Whilst it would be appropriate to collect money for a sinking fund, the works which the fund is to cover should be determined, costed and programmed in advance and any money collected and deposited in a separate sinking fund account to be used for those items as they fall to be repaired or replaced. The sinking fund should be shown as a separate item in the service charge demands.

Section 20C

38. In respect of the application made pursuant to Section 20C of the Landlord and Tenant Act 1985, the Tribunal determined that this application should be granted. The Applicant had succeeded on the majority of the points raised before the Tribunal and consequently the Tribunal determined that the Respondent shall not be entitled to treat the costs of dealing with this application, before this Tribunal, as relevant costs for the purposes of determining the amount of service charge payable by the Applicant. Given the difficulties that the Tribunal and the Applicant experienced with understanding the accounts, going forward, the Respondent may consider budgeting for the year ahead, informed by the actual costs of the year past, and at the end of each service charge year, carry out reconciliations of the accounts and send this information out to leaseholders.

Summary of the Decision

39. The Tribunal therefore determines that the service charge amounts payable by the Applicant for the years in question and the items in question are as set out in Schedule 1.

40. The Section 20C application is granted.

Schedule 1 - The Service Charge amounts payable by the Applicant for the service charge years in dispute.

SERVICE	2010/11	2011/12	2012/13	2013/14
SCHEDULE 1				
MANAGEMENT FEE	£3,000.00	£3,000.00	£3,000.00	£3,000.00
AUDIT FEE	£0.00	£0.00	£0.00	£0.00
FIRE ALARM MAINTENANCE	£0.00	£0.00	£0.00	£0.00
EXTERNAL MAINTENANCE	£0.00	£0.00	£0.00	£0.00
MAINTENANCE COMPANY	£3,000.00	£3,000.00	£3,000.00	£3,000.00
TOTALS	£6,000.00	£6,000.00	£6,000.00	£6,000.00
PAYABLE BY APPLICANT (57.15%/15)	**£228.60**	**£228.60**	**£228.60**	**£228.60**
SCHEDULE 2				
FIRE SERVICES MAINTENANCE	£100.46	£197.40	£177.00	£159.60
INTERNAL & WINDOW CLEANING	£2,600.00	£2,600.00	£2,600.00	£2,600.00
ELECTRICITY	£2,192.01	£2,007.48	£3,134.13	£2,812.29
LIFT MAINTENANCE	£586.09	£732.43	£1,000.28	£673.94
INTERNAL REPAIRS	£1,718.96	£2,379.71	£1,710.00	£2,357.80
ADMINISTRATION FEE	£0.00	£0.00	£0.00	£0.00
TOTALS	£7,197.52	£7,917.02	£8,621.41	£8,603.63
PAYABLE BY APPLICANT (1/15)	**£479.83**	**£527.80**	**£574.76**	**£573.58**
TOTAL PAYABLE BY APPLICANT	**£708.43**	**£756.40**	**£803.36**	**£802.18**