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

Case Reference : **MAN/00CZ/LSC/2013/0126**

Property : **Loft 3, Gladstones Corner, Wellington Mills,
Lindley, Huddersfield HD3 3BZ**

Applicant : **Viewstone Ltd t/a Heritage Lofts**

Represented by : **Mr Hill (Counsel)
Jeremy Cook (Ramsdens Solicitors)
Robert James Moore**

Respondent : **Mr Craig Barnett (representing himself)**

Type of Application : **Landlord & Tenant Act 1985 – Section 27A(1)**

Tribunal Members : **H A Khan (Tribunal Judge)
A Ramshaw FRICS**

Date of Decision : **8 August 2014**

Decision

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Background

1. The freehold of the property at Loft 3, Gladstone's corner, Wellington Mills, Lindley, Huddersfield HD3 3BZ ("The Property") is owned and managed by the Applicant, View Stone Properties Ltd. According to the office copy entries provided by the Applicant, Mr Barnett ("The Respondent") purchased the property on 30 July 2010.
2. On 3 April 2013, a claim for arrears of service charges was issued at Northampton County Court (claim number 3QT53439). According to the claim form, these were for quarterly service charge invoices for September 2012, December 2012 and March 2013. The amount claimed (minus court costs) was stated to be £1269.15.
3. The Applicant informed the Tribunal that the recovery procedure for service charges involved statements being sent out each month, telephone calls and a letter before action. It was after this action had been undertaken, that proceedings were issued.
4. On 13 August 2013 District Judge Barraclough transferred the case to the Tribunal, having given the parties the opportunity, if they so wished, to make representations. The order made by the judge reads;

The question whether the service charges claimed by the Claimant are reasonable are referred to the Tribunal for determination.

The Inspection

5. The Tribunal inspected the property on 30 January 2013. The inspection was carried out in the presence of representatives from View Stone Properties Ltd (Robert James Moore & Danielle Firth) and the Respondent. The development consists of 38 flats (this was clarified at the hearing on 25 April 2014) as well as commercial premises (located on the ground floor).

6. The development was referred to as Phases 1, 2, 3 and the Tower Block.
 - a. Phase 1, which included the property, had 24 flats and 25 commercial premises and one lift.
 - b. Phase 2, had 14 residential flats, and 8 commercial premises and one lift.
 - c. Phase 3, was relatively new and was not in place in the years subject to the service charge dispute.
 - d. The tower block was a block of offices.
7. The Applicant's representatives informed the Tribunal that the service charges only related to the residential flats. The property had the benefit of CCTV cameras and a lift. The Tribunal found the property to be well kept. The Tribunal was invited to inspect the inside of the Respondent's flat and found that, on all the outside walls, there was water ingress which had resulted in damage to the Tenant's plaster, walls and curtains. Mr Moore confirmed that it was a single brick wall with no cavity.
8. The Tribunal observed a workman undertaking some work on the outside wall. The communal areas were well maintained and the property had the benefit of 2 parking spaces which are located under what appeared to be the shell of an old building. The Tribunal observed that the tarmac floor of the car parking area appeared to be uneven. There was some damage to the ceiling above the parking spaces.

Transfer from the County Court

9. The provisions relating to the transfer of proceedings from a county court to the Tribunal are contained in paragraph 3 of Schedule 12 to the 2002 Act. This provides:
 1. Where in any proceedings before a court there falls for determination a question falling within the jurisdiction of a Tribunal, the court —
 - a) may by order transfer to a Tribunal so much of the proceedings as relate to the determination of that question, and
 - b) may then dispose of all or any remaining proceedings, or adjourn the disposal of all or any remaining proceedings pending the determination of that question by the Tribunal, as it thinks fit.
 2. When the Tribunal has determined the question, the court may give effect to the determination in an order of the court.
 3. Schedule 12 of 2002 Act makes it clear that the Tribunal can only deal with those matters falling within its jurisdiction.
 4. The President of the Upper Tribunal (Lands) in *Michael Stanley Staunton, and Norma Kaye and Alfred Taylor* 2010 UKUT 270 (LC) considered the construction of subparagraph (4) of paragraph 3 of Schedule 12 to the 2002 Act and its impact on the jurisdiction of the Tribunal in respect of transferred proceedings. He said at paragraph 21

"It does not appear that any procedure has been prescribed under sub-paragraph. It is clear that the power of the LVT in determining the questions in the transferred proceedings is no wider than that of the court. The court is limited by the terms of

the parties' pleadings, although it can, of course, give permission to a party to amend. The powers of the LVT in transferred proceedings are necessarily limited in the same way, but the LVT has no power to permit the pleadings to be amended and thus to widen the scope of the questions that it is required to determine under the transferred proceedings. The amended defence averred that the demand was invalid and as a consequence the amount claimed was not due for two reasons: firstly because of a failure to comply with section 47 and secondly because of a failure to comply with the consultation requirements. It was not part of the defendant's case in the county court that the amount was not due because the requirements of section 48 of the 1987 Act and/or of section 21B of the 1985 Act had not been complied with. It would not have been open to the LVT therefore to determine that the service charge was not payable because of either of those provisions, and it is not open to this Tribunal to do so either. The only potential bars to the appellant's liability are thus those related to section 47 and the consultation requirements"

5. The implication of the President's judgment is that the Tribunal is limited to considering the Respondent's defence, as pleaded in the County Court. This was set out in the defence and counterclaim dated 20 May 2013. This is a lengthy defence and the Tribunal does not seek to repeat it in its entirety, within this decision. It can be summarised to say that it raised issues in connection with the maintenance of the property, problems with water entering the property (and causing various problems), failure to carry out repairs, disputing the sum owed, and failure to provide itemised bills. In short, the Respondent was challenging the amount payable for service charges.

6. In the Respondent's written submissions, he reiterated the issues raised above. He complained about the following;
- (a) Rain water entering his apartment.
 - (b) Water running down window linings and walls causing damage
 - (c) He stated that he had reported these but nothing had been done.
 - (d) These problems have been going on for nearly 3 1/2 years.
 - (e) He denied preventing access.
 - (f) He had asked for an itemised list of what the charges comprised, but had not been provided with anything.

The Hearing

10. An initial hearing took place at Huddersfield County Court. The Applicant was represented by Robert James Moore and Danielle Firth. The Respondent attended in person. This hearing was adjourned in order to allow the Applicant a further period, which to comply with the directions. The Applicant had produced some documents, but these were not sufficient to allow the hearing to proceed. The Respondent also requested an adjournment to consider the additional material provided at the hearing.
11. Further directions were issued and hearing reconvened on the 25th of April 2014. At the hearing on the 25th April, the Respondent was represented by Counsel and the Respondent represented himself. Following that hearing, further directions were issued and the matter determined on papers on the 8 August 2014. The parties were agreeable to this course of action, although the directions did specify that either party could apply to have a hearing once they had additional information. Neither party chose to do so.

The Lease

12. The Tribunal were supplied with a copy of the lease dated 16 November 2007, between Heritage Lofts Limited (landlord), Phidias Patrikidis (Tenant) and V & P Limited (Buyer).
13. By clause 5 (1) the Tenant is covenanted to pay to the Landlord a Maintenance Charge being 4.43% of the expenses which the landlord in relation to the Estate reasonably and properly incurs in each Maintenance Year in complying with the covenants on its part contained in the 5th schedule.
14. The fifth Schedule sets out the landlord's obligations to the Tenant), subject to the payment by the Tenant of the Maintenance Charge...to keep in good repair and decoration {as appropriate) and to renew and improve as and when necessary
 - (i) The structure of the buildings on the Estate including: -
 - (ii) The roof and foundations
 - (iii) All the load bearing walls of the Buildings whether internal or external (but excluding the internal plaster tiles or other coverings of such walls)
 - (iv) The timbers joists and beams of the ceilings and roofs and the slabs of the floors in the Buildings
 - (v) The gutters rainwater and soil pipes of the Buildings

Decision

15. One of the biggest challenges for the Tribunal was to establish exactly what it was, that was owed by way of service charge, for the years 2012 and 2013. The Applicant informed the Tribunal that this was due to the difficulties which had arisen at purchase. The Applicant had purchased the property from the receivers and the previous owner had left little by way of information relating to the service charges. Furthermore, The Applicant

explained that the actual sums incurred were not the sums that were being sought.

16. The Tribunal did establish during the hearings that the various figures provided as being due for 2012 were incorrectly calculated. The Applicant had informed the Tribunal, that the service charge had been calculated through a method which did not accord strictly with the terms of the lease. What appeared to be the case was that the Applicant collected invoices and allocated sums due to all the residential premises in the property. The Applicant accepted that he should have prepared a separate service charge account for the 24 residential flats in the building.
17. Furthermore, the service charge accounts presented for 2012, included invoices which related to the other property (located elsewhere), owned by the Applicant, as well as including invoices which related to the refurbishment/decoration of the commercial offices. The Applicant accepted at the hearing on 25 April 2012, that the figures provided did not accord with the terms of the lease and agreed to provide the Tribunal with a full set of accounts, properly calculated, with supporting invoices for 2012 and 2013. A further order was made, requiring the Applicant to file proper accounts for the years in question. The Applicant provided some additional documents as did the Respondent.

Wages, National Insurance, Insurance, Light and Heat.

18. The Applicant informed the Tribunal that wages and national insurance related to the cost of the caretaker. The caretaker was contracted for 43 hours per week. The caretaker's role was to change light bulbs, clean the communal areas and undertake some maintenance work. A copy of the particulars of contract

was enclosed. The service charge account was credited with 66% of the total cost. The remaining cost was attributed to the commercial premises. The Respondent did not challenge these charges.

19. Insurance was the cost of the building. The Tribunal was informed that it was 66% of the total figure that was attributed to the service charge. The remaining figure was attributed to the commercial premises. The Respondent did not challenge these charges.
20. In relation to light and heat, the Applicant informed the Tribunal that some properties had individual meters whilst others did not. However, there was no dispute from the Respondent as to these charges.

Repairs and Renewals

21. The Applicant informed the Tribunal that these charges related to various repairs and renewals which had been carried out at the property. The Respondent challenged these charges on the basis that the repairs he had asked for, to the outside of his property, had not been carried out. He stated that he had been trying, since 2010, to get the outside walls repaired. This had caused him significant problems in that water was penetrating into his property and had damaged plasterwork inside the property. The Respondent informed the Tribunal that he had brought this to the attention of the Respondent's representatives as well as the previous owners. He provided email evidence to prove that he had in fact raised this.
22. The Tribunal found the Respondent to be a credible witness. His evidence was clear and consistent throughout. It was clear that he did not want to be involved in court proceedings but had,

reluctantly, withheld payment as he felt it was the only way in which the repairs would be carried out. He recognised and accepted that he needed to make payments towards the service charge but was largely frustrated at not getting the repairs done.

23. The Tribunal took into account the Respondent's difficulties in getting the repair work done and the length of time it had taken to do so. Whilst the Applicant had only taken over the property since 2012, they had not completed the repairs that were due to the Respondent's property.
24. Furthermore, the bundle of documents which contain the invoices before the hearing on 25 April 2014 contained invoices which related to other properties and which included maintenance/decoration to commercial premises. There was no credible explanation given as to why this was the case.
25. In addition, the accounts filed for the hearing on 8th August were confusing as it was not clear how service charge item was broken down and charged to the Respondent. The Applicant was given a number of opportunities to provide clear and understandable accounts that would make it clear as to what was being charged. However, despite this, the Tribunal and the Respondent were provided with documents and invoices and left to figure out what was owed. It was clear through the evidence of the Applicant, that they themselves were not entirely clear as to how the charges were calculated.
26. There was evidence from the Respondent that the repairs had not been undertaken and that the Respondent was still waiting for the repairs to be done in June 2014. Counsel for the Applicant, at the hearing on the 25 April, had pointed out the difficulties in carrying out repairs to an old building. He referred to the extensive consultation requirements that would

be needed to carry out major works to the roof. Whilst there are consultation requirements that are needed to be met, the Applicants cannot continue to use this to explain the reason for the works not to be undertaken.

27. The Tribunal determined that only 50% of the total claimed was reasonable and payable in the circumstances. It reflected the value of the work that was undertaken. The Tribunal took into account that the Respondent was not challenging all the service charge, but just the maintenance element, in particular the lack of repairs to the outside of his property. The Tribunal took into account the difficulties that the Respondent had in getting the repairs done. Maintenance charges are usually one of the largest percentage of a services charge and in the view of the Tribunal, the amount payable is appropriate to reflect the work undertaken and the difficulties the Respondent has had in getting them done.
28. The Tribunal noted that the Respondent wants this matter resolving so that he can consider his long term future. The Respondent has become so frustrated with the delays that he was considering selling his property. Whilst the Applicant may have had difficulties in obtaining the relevant information since taking over, they were given sufficient opportunities to get this in a presentable order. They have made an effort to do so, but it was still not in understandable format which supports what the Respondent has been saying about a lack of clarity.

29. The Tribunal therefore determined that:
- a. The Tribunal therefore determines that the service charges payable service charge in respect of September 2012, December 2012 and March 2013 was £634.75.
 - b. The Tribunal cannot make any order in relation to the £175 Court fee given it has no jurisdiction in the matter.
 - c. The matter is now referred back to the County Court.