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

Case Reference : **BIR/00CN/LSC/2014/0021**

Property : **Flat 2, 22 Carpenter Road, Edgbaston,
Birmingham B15 2JN**

Applicant : **Mr Vasilije Stepanovic**

Respondents : **Trident Housing Association**

Type of Application : **Application under Section 27A of the
Landlord and Tenant Act 1985**

Tribunal Members : **Judge Dr A Verduyn
Mr N Wint FRICS**

Date of Decision : **25th March 2015**

DECISION

The Tribunal dismisses the application of Mr Stepanovic in respect of the disputed sums of £576 and £736.53, for the reasons set out below, but nevertheless holds that, pursuant to Section 20C of the Act, the Respondent's costs of the application shall not be added to the Applicant's service charge in this case.

REASONS

INTRODUCTION

1. Mr Vasilije Stepanovic is the leasehold proprietor of Flat 2, 22 Carpenter Road, Edgbaston B15 2JN, which is a two-bedroom ground floor flat and Trident Housing Association is lessor ("**Trident**"). He is successor in title to the original lessee, Pauline Ann Bowser. The lease is dated 31st March 1988 for a term of 99 years less 3 days from 25th March 1964 (referred to as "**the Lease**" below).
2. On 14th November 2014 Mr Stepanovic's application was received by the Tribunal to determine his liability to pay, and reasonableness of, service charges, under Section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**"). He also made an ancillary application under Section 20C of the Act that all or any of the costs incurred by the Respondent Landlord in connection with these proceedings are not to be taken into account in determining the amount of any service charge payable by him.

THE RELEVANT LAW

3. The relevant law is as follows:

Landlord and Tenant Act 1985

18.— Meaning of "*service charge*" and "*relevant costs*".

(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.

19.— Limitation of service charges: reasonableness.

(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.

20C.— Limitation of service charges: costs of proceedings.

(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 leasehold valuation tribunal or the First-tier 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— ...

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal ...

(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.

27A Liability to pay service charges: jurisdiction

(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.

Commonhold and Leasehold Reform Act 2002 Schedule 11

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— ...

(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.

(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 ...

Reasonableness of administration charges

2A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

5(1) An application may be made to the appropriate 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 the appropriate 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.

THE APPLICATION AND STATEMENTS OF THE PARTIES

4. Mr Stepanovic contested liability for service charges in 2014. Directions were given on 28th November 2014 and he provided a statement of case

on 12th December 2014. His case focuses on three main issues, set out in his application form: "1. Trident's legal charges of £576 ... 2. The validity of undefined charges of £736.53 that first appeared on the annual statement dated 25th September 2014 ... 3. The background to charges listed in the statement (as I was constantly denied access to the Trident accounts relating to those charges)." Trident provided a detailed statement of case in response dated 8th January 2015. The Tribunal has considered carefully all the submissions made to it and the documents appended to both side's statements of case.

5. The Tribunal finds that there is a good deal of background material relevant to the charges added to Mr Stepanovic's account. Some of this appears not to have been adequately explained to Mr Stepanovic. In 2013 Trident issued County Court proceedings against Mr Stepanovic for service charge arrears to 25th June 2013, and the claim amounted to £2,763.47. Proceedings were not progressed pending resolution of complaints by Mr Stepanovic, that were eventually concluded before the Housing Ombudsman. Judgment was then obtained in the sum of £3,074.83, including interest and costs. An application to set aside judgment was dismissed on 20th February 2014. When payment was not made, a Section 146 Notice was prepared preliminary to forfeiture of the Lease (under Section 146 of the Law of Property Act 1925) and sent to Mr Stepanovic on 27th May 2014. The legal costs relating to this notice comprise the £576 in dispute (item 1 in Mr Stepanovic's list).
6. On 27th May 2014 Mr Stepanovic contacted Trident and Trident insisted on payment of the judgment debt and the costs of the Section 146 Notice. This telephone conversation was followed by a letter dated 16th June 2014 in which Trident confirmed it would accept £3,500 "in full and final settlement" of the judgment debt and its costs in relation to the application to forfeit the Lease. A cheque for £3,500 was received from Mr Stepanovic on 20th June 2014 and duly presented by Trident.
7. It is at this point that significant confusion appears to arise, because Trident's accounting methods were not simple and, it appears, were not entirely understood even by some of their own staff. The service charge account of Mr Stepanovic contained within it the arrears for which a judgment had been obtained. These were the sum of £2,763.47, and the balance of the judgment comprising interest and costs which did not appear on the service charge account. It follows that Mr Stepanovic was entitled to a credit of £2,763.47 on this account. Trident, however, chose to express this by crediting the cheque of £3,500 it had received and then deducting £736.53 (item 2 in Mr Stepanovic's list). This deduction will have been credited elsewhere against legal costs for the County Court proceedings (£222) and the drafting and service of the Section 146 Notice (£576) (these figures, of course, collectively total more than £3,500, but the payment was received by way of compromise of the slightly larger sum and interest). It appears that some of Trident's own staff did not understand this accounting process, although Mr Martyn Ruscoe, in-house solicitor to Trident, did write to Mr Stepanovic to explain it on 21st October 2014.

8. Since the issue of Court proceedings further service charges have accrued and payments have been made by Mr Stepanovic, but these sums are not before the Tribunal. Mr Stepanovic has been accused by Trident of having an "abusive attitude" towards Trident staff at times and, in the context of the "long and complex history of his complaint" it was Trident's decision that there should be a single point of contact for Mr Stepanovic in the person of Mr Ruscoe. This decision was communicated to Mr Stepanovic by email dated 3rd November 2014; although other correspondence shows that the decision had been taken and communicated to Trident staff before that date. For his part, Mr Ruscoe denies withholding information from Mr Stepanovic. The Tribunal finds that there is no evidence that material was withheld, and the difficulty seems to have been the product of Mr Stepanovic not understanding the complicated approach to the service account adopted by Trident.
9. From a letter of 19th January 2015 to the Tribunal from Mr Stepanovic it is clear that he takes great offence at the suggestion that he has behaved inappropriately at any point, and he considers himself victimised by Trident in general and Mr Ruscoe in particular. These are matters that are not within the jurisdiction of the Tribunal and would require a hearing to determine as a matter of fact. The Tribunal, therefore, declines to make findings upon the conduct of the parties. The Tribunal does, however, consider that it has received sufficient evidence by way of statements and documents to resolve the issues properly before it. These issues are of some complexity and the Tribunal observes that in respect of these, Trident cannot be criticised for insisting that communications regarding them were handled by one person, who fully understood the circumstances in which they arose. To that extent, the criticism of Trident by Mr Stepanovic is unwarranted.
10. In respect of the charges of £576 for the preparation and service of the Section 146 Notice, this is not a service charge within the meaning of provisions of the 1985 Act set out above. It is payable under paragraph 30 of Schedule 8 to the Lease (Covenants of the Lessee to the Lessor) and is properly an administrative charge under Paragraph 1(1)(d) of the Commonhold and Leasehold Reform Act 2002 ("**the 2002 Act**"). Any challenge to it requires an application under the jurisdiction of paragraph 5 of Schedule 11 to the 2002 Act. The provisions of paragraph 5 are essentially identical to those under 1985 Act and there is sufficient material before the Tribunal to consider this jurisdiction. This is the case notwithstanding that the correct form of application has not been made, given the over-riding objective of the Tribunal (set out in paragraph 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013) to consider cases fairly and justly, and the obvious need to resolve the true disputes between the parties as comprehensively as possible.
11. In considering the reasonableness of the charge for the Section 146 Notice Trident apply an hourly rate of £192 per hour using the Solicitors Guideline Hourly Rate (last updated in 2010) and assert that

approximately 3 hours was spent on the document. The Tribunal notes that the document comprises two pages, the first setting out relevant provisions of the Lease and the second the failure to pay the judgment debt. The Notice contains the necessary formal provisions and gives 21 days for payment. Mr Stepanovic complains that this work did not warrant the time taken or the level of fees charged per hour. The Tribunal finds that the rate charged is reasonable for the services of Mr Ruscoe, but does consider that 3 hours was too long for the work in hand and a reasonable period of time for someone charging at such a rate would be two hours, a sum of £384. This, however, is not the end of the matter. The Tribunal cannot entertain an application under paragraph 5 of Schedule 11 in respect of a matter that "has been agreed or admitted by the tenant" (paragraph 5(4)(a)). The Tribunal finds that the fees charged for the Section 146 Notice were agreed by Mr Stepanovic in the compromise of the claims against him by payment of £3,500. Indeed, the actual payment by Mr Stepanovic was less the sum of the judgment debt and charge for the Section 146 Notice, especially since interest was included in the judgment itself and would have accrued on the judgment debt. It follows that, even had an application been made in the correct form, the Tribunal would not have interfered with this element in dispute. The application in respect of the sum of £576 accordingly fails.

12. In respect of the complaint at £736.53 being deducted from the £3,500 credit to the service charge account, this is adequately explained by the accounting procedures of Trident. The suggestion that this is some sort of false or even "fraudulent" accounting is misconceived. The correct sum in outcome was applied to the Service Charge account and the balance of the £3,500 paid, that is to say £736.53, was properly a matter of legal and administrative charges credited elsewhere. As with the dispute over £576 resolved above, this is also a case where the sums have been agreed by the tenant when he paid the £3,500 pursuant to the terms of the telephone conversation and letter from Trident dated 16th June 2014 and no application under Section 27A of the 1985 Act can be made accordingly under Section 27A(4)(a). Although the accounting method is somewhat obscure, it does no more than give effect to the agreement reached, and there is no question as to the reasonableness of the outcome or the propriety of the crediting of sums paid under the agreement.
13. It follows that the application of Mr Stepanovic is dismissed. In respect of Section 20C, however, the Tribunal considers that the accounting process of Trident was undoubtedly difficult to understand for any tenant and the approach taken could have been more clearly documented. To refer to the balance of £3,500 as a "cheque received" - £736.53 was plainly apt to confuse. In these circumstances it would not be reasonable to add any costs of this application to the service charges payable by Mr Stepanovic, and they are disallowed under Section 20C of the 1985 Act accordingly.

APPEAL

14. If any party is dissatisfied with this decision, application may be made for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2)) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge Dr A Verduyn

Dated 25th March 2015