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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/33UE/LSC/2015/0068**
Property	:	**37 Minster Court,** **Kings Lynn,** **PE30 4XN**
Applicant	:	**Anthony Michael George Matten**
Respondent	:	**The Hyde Group**
Date of Application	:	**19th August 2015**
Type of Application	:	**To determine reasonableness and payability of service charges**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS**

DECISION

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1. In respect of £17.59 per week claimed from the Respondent for service charges in the year commencing 6th April 2015 or whatever has been demanded for that period, the Tribunal determines that the amount actually payable is nil.

2. The Tribunal also orders that the Respondent shall reimburse the Applicant for the application fee paid of £90 within 28 days from the date of this decision.

Reasons

Introduction

3. The Applicant as an assured tenant of the Respondent and part of the amount he pays per week is specifically allocated to service charges. On the 23rd February 2015, the Respondent sent a letter to the Applicant stating that his weekly payment for service charges was to be increased from £8.36 per week to £17.59 per week as from the 6th April 2015. The parties refer variously in correspondence to a further demand having been made to increase that further to £19.02 but the Tribunal has not seen that demand.

4. He challenged that and was told that the main reason for the large increase was that the cost of the 'caretaking service (scheme staff cost)' had been wrongly apportioned between the Respondent's development at Windmill Court and this property at Minster Court. The most information available to the Tribunal is in a

copy of a letter written by the Respondent to Henry Bellingham MP dated 17th July 2015. This purports to set out the apportionment of such costs between Windmill Court and Minster Court for the years 2013/14 (£4,933.43 and £14,248.35 respectively) and 2015/16 (£27,116.58 and £42,112.56 respectively).

5. There is no mention of the year 2014/2015 and no explanation as to why the proportion being paid by Windmill Court has actually increased i.e. approximately 35% of the total in 2013/14 and 64% in 2015/16. What appears to have happened is that the total cost of the 'caretaking service (scheme staff cost)' has increased dramatically during that 3 year period without any explanation.

6. The Tribunal issued a directions order on the 2nd September 2015 timetabling the case to a conclusion. It said that the Tribunal was content to deal with the case on a consideration of the papers only on or after the 14th November but offered the option of an oral hearing if either part wanted one. Neither the Applicant nor the Respondent requested an oral hearing.

7. It was one of the provisions of the directions order that the Respondent should provide the bundle of documents to enable the Tribunal to make its decision. The reason for that was because large landlords are better placed to provide such bundles, as they almost invariably contain much technical information about service charges. However, the Respondent did not supply a bundle of documents for the Tribunal as ordered. In fact they did not provide any statement justifying the service charges despite being ordered to do so by the 18th September 2015,

8. This has caused the Applicant much anxiety and he has written a series of letters to the Tribunal office. That office has done what it can to placate the Applicant but, at the end of the day, the Tribunal has no power to force people to put their case. If they choose not to do so, they obviously have to face the consequences. The Respondent has been copied into this correspondence and has therefore been clearly put on notice both that it has breached Tribunal orders and that it was causing distress to the Applicant.

The Inspection

9. As the point in issue seemed to be the apportionment of the service charges between buildings and the Tribunal had not seen any paperwork to back up the claims being made, no pre-hearing inspection of the property was considered by the Tribunal to be necessary and none was requested by the parties. Also, of course, there was no issue over whether the services had been carried out or whether they had been reasonably, as a whole.

The Lease

10. The tenancy agreement has a date on it but it is difficult to read. It appears to be 23rd May 2012 and it is describe as a starter tenancy. It says that *"for the first 12 months it will be an assured shorthold tenancy for an initial term of one week and continuing weekly thereafter until determined"*. It then says that after the 12 month period, a conversion notice will be served and it would then become an assured periodic tenancy but with the same terms and conditions. There is no indication about whether such a notice was served but it will be assumed that it was.

11. The agreement makes it clear that there will be a rent, a service charge and a support charge which totalled £76.50 per week in the agreement. By the time the letter of the 23rd February 2015 was written, this appeared to have reduced to £75.67 although there was no demand for a support charge. For 2015, the total was £86.36, again without mention of a support charge.

12. As to the service charge, the relevant term is clause 2, sub-paragraph 7 which reads:-

> "*We will make charges for services we provide. We may charge, add to, extend, reduce or withdraw theses services, if we consider it necessary, by giving you at least four weeks' notice. We will charge you for these services either on the basis of reasonable costs we have had to pay during the previous accounting year or of estimates for the current or next accounting year. We may carry forward the difference between any estimate and the actual cost to the next financial year. This is what is known as a 'variable' service charge. Services we provide are set out in the 'Details of tenancy*".

13. The Tribunal has also seen a schedule dated 1st February 2015 headed "Annual Service Charge Estimate from 1st April 2015 to 31st March 2016" which sets out the estimated charges for each item of service charge broken down into a weekly cost. There is also one for the previous year and the letter of the 23rd February confirms that there is an annual review. Such review is clearly based on the actual costs but without information from the Respondent it is difficult to see whether there is an annual reconciliation statement, as such.

14. Clause 12, sub-paragraph 1 of the agreement says, as is the case, that "*a summary of a tenant's rights and obligations must accompany any demand for the payment of a service charge*". In his letter to his MP, the Applicant says that he has no knowledge of any Tribunal and the Respondent wrote to the MP on the 17th July 2015 saying that the Applicant "*has not been provided with advice on how to challenge the charges at the First Tier Tribunal*". The Tribunal can only conclude that the statutory notice was not served with the letter advising of the increase in service charges.

The Law

15. Section 18 of the **Landlord and Tenant Act 1985** ("1985 Act") defines variable service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'. It is the Tribunal's view that the agreement in this case is that the service charges are variable.

16. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

17. Section 21B of the 1985 Act says that each demand for service charges must be

accompanied by a summary of the rights and obligations of tenants.

Conclusions

18. Although the main issue seems to be the cost of the 'caretaking service (scheme staff cost)', the Tribunal is concerned about the payability of the whole service charge for 2015/2016. As the Tribunal concludes, from the limited evidence supplied, that no proper demand has been made for service charges with the required statutory information, none are payable. In view of this, the application has been reasonably made and in view of the complete non-cooperation of the Respondent, they must reimburse the fee paid to the Tribunal.

19. However, the Applicant should not think that this is the end of the matter. If the Respondent should serve a compliant demand then reasonable service charges will be payable. Unfortunately, the Tribunal had insufficient evidence to determine whether the costs set out in the annual statement are reasonable or not.

20. The criteria are not, as the Applicant suggests, based on the level of increase since the last demand. That is irrelevant. The only way of determining the reasonableness of service charges is to look at the demand and the documents supporting such demand and determine whether the costs claimed are reasonable or not. This may be subject to an assurance apparently given by the Respondent in some sort of leaflet that increases will not be more than £100. The Tribunal has not seen that leaflet and such a provision is not in the tenancy agreement itself.

21. If a compliant demand is served, the Applicant would be well advised to exercise his right under section 21 of the 1985 Act to inspect the accounts, receipts and other documents supporting the service charge summary and obtain copies of those relevant to the matter in dispute. He should then take advice which he may have to pay for. If he just makes another application to this Tribunal, he should know that it will be up to him to establish that the amount of a particular service charge is unreasonable on the face of it.

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Bruce Edgington
Regional Judge
14th November 2015

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.