10775

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00LC/LSC/2014/0101**
Property	:	**45 Green Street, Gillingham, Kent, ME7 1AD**
Applicant	:	**Mr Armitt (Flat 1)** **Mr Seaden (Flat 2)** **Ms Sandhu (Flat 3)** **Mrs James (Flat 4)** **Ms Brown (Flat 5)** **Miss Bailey (Flat 6)** **Mr Whitehouse (Flat 7)**
Representative	:	**Ms Baker (Solicitor)** **for Ms Sandhu and** **Mr Whitehouse**
Respondent	:	**Cormorant Limited**
Representative	:	**Ms Hemans (Counsel)**
Type of Application	:	**s27A**
Tribunal Members	:	**Judge D Dovar** **Mr C Harbridge FRICS** **Ms L Farrier**
Date and venue of Hearing	:	**11th February 2015, Chatham**
Date of Decision	:	**5th March 2015**

DECISION

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1. This is an application under s27A of the Landlord and Tenant Act 1985 for the determination of the service charges payable for the years ending 2006 to 2014.

2. The application was originally brought by one of the seven leaseholders in the property, Ms Sandhu. Directions were given on 5th November 2014 which made provision for other leaseholders to be joined to this application. All of the other leaseholders have taken that opportunity and are now applicants.

3. The directions provided for the Applicants to provide their statement of case (including schedule of items disputed) with supporting documents by 26th November 2014, the Respondent to respond by 17th December 2014 and for any brief reply from the Applicant to be submitted by 7th January 2015. In addition provision was made for the exchange of witness statements of fact by 21st January 2015.

4. In their statement of case, the Applicants made a comprehensive challenge to the sums charged each year, complaining that they had not been provided with any evidence of expenditure. The Respondent provided the underlying invoices for each of the years in question. Further, Ms Sandhu has made a witness statement on behalf of the Applicants and Mr Case for the Respondent.

Inspection and hearing

5. The Tribunal inspected the Property on the morning of the hearing. They were accompanied by Mr and Mrs Sandhu, Mrs Whitehouse and Ms Baker the Applicants' solicitor and Mr Case the managing agent for the Respondent.

6. The Tribunal inspected the exterior and the common parts of the property. 45 Green Street is a three storey building with basement, built about 1930 which, the Tribunal were informed, was extended with a fourth floor and converted into its present configuration in the late 1980's. That configuration comprises seven, one-bedroomed, self-contained flats on the

upper floors with basement storage, and a commercial unit on the ground floor which also has a storage facility on the basement. The flats are accessed from Green Street to a lobby and hallway, and via staircases and landings. There is no lift, although a former lift-shaft has been retained.

7. Construction is traditional, with brick external walls, part clad with cement render and with stone faced elevations to Green Street. The Tribunal was advised the roofs were of flat design, and it was noted that there was a parapet at wall/roof junction at the corner of the building. Windows are single glazed and held in metal frames. Mains electricity is connected to the property, and metered in the ground floor hallway.

8. At the time of its visit the Tribunal noted the decorations in the communal areas were satisfactory, but that the entry-phone installation on the ground floor was disconnected. Scaffolding was noted to the front elevation which the Tribunal was advised, was in place to facilitate roof repairs.

9. At the hearing, Ms Hemans represented the Respondent and Ms Baker represented Mrs Sandhu and Mrs Whitehouse. Mrs Sandhu represented the other leaseholders of the property who had been joined to the proceedings, but did not attend.

10. Ms Hemans raised the issue that in relation to Mrs Sandhu's flat, flat 3, there was already a determination of the County Court in respect of the years ending 2007 to 2011. She stated that as a result, the Tribunal had no jurisdiction to determine those sums in relation to Flat 3. The Tribunal had noted this possibility in the directions given in November 2014, however, neither party had updated the Tribunal on those proceedings until the start of the hearing. Accordingly, in relation to Flat 3, this determination is subject to and does not displace any prior determination in relation to Flat 3 made by the County Court. However, given that the other applicants are not party to those proceedings, the Tribunal is able to go on to consider where necessary this application.

Issues in dispute

11. At the hearing, the parties reached agreement on all bar one issue between them; being the costs of water for the years 2007, 2012 and 2013. In respect of the other issues, for all the service charge years, the parties agreed that:

    a. All sums which had been transferred to reserves would be credited to the service charge account;

    b. The management fee for all years in question would be £1,400 per annum; i.e. £200 per unit;

    c. Save for the water charges referred to in this determination, the charges were agreed.

12. The Tribunal considers that this was a sensible agreement. The Tribunal was unsure as to how the landlord was entitled, under the terms of the lease, to demand any sums for a reserve account and it appeared that since 2010, rather than credit the service charge account when estimated expenditure exceeded actual, the landlord has simply transferred the surplus to reserves.

13. In relation to the water charges, the Applicants accepted that costs have been incurred and paid for. The challenge was on the basis that they were too high and that if the property had been properly management these charges would be reviewed and inspected so that an appropriate amount would be charged.

14. These were all one bedroom flats and the particular challenge to the 2007, 2012-2013 is that they are very high and no management has taken place to investigate the charges incurred; at the very least the Respondent was put on notice of the problem by these proceedings. It was suggested that Ms Brown had raised the issue in the summer of 2014, but her letter of December 2014, which raised a number of issues, did not mention the water charges.

15. The Respondent accepted that the bills were high to the extent that in May 2013, Mr Case had contacted the water company to investigate. However,

they never got back to him and he never chased them up. The bill that triggered his concern was for the period to April 2013 and was for £2,037. In fact there had been an earlier bill in October 2012 which was for the higher amount of £2,063.38. This quarterly bill was for an amount that was in excess of the whole of the preceding year. The Tribunal was of the view that such a high bill should have warranted earlier and more sustained attention in order to address what appeared to be an overcharge on the water bill. There was a lack of evidence before the Tribunal on this issue, however, it was clear that the Respondent had taken little and inadequate action in relation to these high charges. The bills showed that increase was due to consumption rather than tariff. The significant increase in charges means that they were not reasonably incurred in that the Tribunal is of the view that had proper steps been taken to address the issue, the consumption would have been lowered.

16. The two years that cause concern for the Tribunal were the years ending 2012 and 2013 when the bills were respectively £3,488 and £5,547. In order to work out an approximation of the correct bill the Tribunal has:

    a. Taken an average of the consumption for both supply and drainage for each quarter for the years ending 2009 to 2011;

    b. Then applied to those averages the revised tariff for the years 2012 and 2013;

    c. And added the other standing charges.

17. Adopting that method, the Tribunal determines that for the year end 2012, the allowable sum for water is £1,755.48 and for the year end 2013 it is £1,791.17.

18. The Tribunal is concerned that this matter may be continuing and considers that the Respondent needs to investigate and address the excessive consumption readings.

Section 20C, Application and Hearing Fee

19. The Applicants made a request for an order under section 20C and for the reimbursement of the application and hearing fee. The grounds for the application were that these proceedings were necessary to address the service charge problems.

20. The Respondent resisted both applications on the basis that had the Applicants instructed legal representatives earlier, the matter could have been resolved earlier. As the legal representatives had been able to narrow the issues to one point and reach agreement on the others. The Respondent further contended that the costs were recoverable either under clause 2 (5) which provided for cost recovery in respect of matters incidental to the service of a s146 notice or under the 6 paragraph of the fourth schedule which provided for the recovery of costs incurred in the management of the property.

21. The Tribunal considers that neither clause of the lease referred to is wide enough to encompass the costs of these proceedings. Clause 2 (5) is only applicable when the proceedings have been brought by the landlord in relation to the service of a s146 notice. However, in this case, it was not the landlord who brought the proceedings and no evidence has been adduced that they have contemplated the service of a s146 notice. Further, paragraph 6 of the fourth schedule is only wide enough to cover day to day management costs, not the defending of a section 27A application.

22. In any event, the Tribunal is satisfied that a section 20C order should be made. Although the parties did reach agreement on a number of issues, a significant sum has now been credited to the service charge account in relation to the sums that were transferred to the reserves. The Tribunal has commented on this above and considers that this late concession, at a hearing, when the issue was raised by the Applicants in correspondence has meant that it is the Respondent's fault that these proceedings were brought and continued up to a final hearing. Further, the Tribunal notes the reduction of management fees agreed, again only reached on the day of the hearing and notes that no offer was made by the Respondent prior to this. Finally, it also appears that the Applicants only conceded a number of

points after they had finally been given disclosure of the underlying vouchers and details of the costs incurred. There were unanswered letters and emails from Ms Brown dating back at least to March 2013 seeking that information.

23. For the same reason the Tribunal determines that the Respondent should reimburse the Applicants the application and hearing fee, totalling £440 by 27th March 2015.

Conclusion

24. The water charge for the year end 2012 should be reduced to £1,755.48 and for 2013 to £1,791.17.

25. An order is made under section 20C of the Landlord and Tenant Act 1985 preventing the Respondent from recovering the legal costs of these proceedings through the service charge.

26. The Respondent shall reimburse the application and hearing fee of £440 by 27th March 2015.

Judge D Dovar

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.