10784

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LSC/2014/0646**
Property	:	**7 Georgian Court, Park Close, London E9 7TW("the property")**
Applicant	:	**Ms Claudine Watson-Miller**
Representative	:	**Mr Jon Watson- Miller**
Respondents	:	**Sinclair Gardens Investments (Kensington)Ltd**
Representatives	:	**Mr Jason Popperwell(Blue Property Group, managing agent)**
Type of Application	:	**Application for a determination under Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Ms M W Daley LLB (Hons)** **Mr M Taylor FRICS** **Mrs L Walter MA**
Date and venue of Hearing	:	**10 April 2015 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	04 June 2015

DECISION

Decision of the tribunal

1. **The Tribunal determines that the service charges for all the years prior to 2013 cannot be recovered, pursuant to section 20B of the Landlord and Tenant Act 1985.**

2. **The Tribunal grants an order under Section 20C of the Landlord and Tenant Act 1985.**

The application

1. The Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985, for the reasonableness and payability of service charges, for the periods 2006 to 2013.

2. Directions were given on 20 January 2015. The Tribunal identified the following issues (i) Whether demands for the period 2006 onward were sent/ demanded (ii) whether section 20B (i) is engaged if the demands were not made within 18 months.

The background

3. The Applicant holds a long lease of the flat. The premises are a Ground floor 1 bedroomed property in a purpose built block, on a small estate comprising 2 six floor blocks. The Respondent is the freehold owner. Pursuant to a lease dated 9 June 1983the Respondent leaseholder is required to contribute towards the cost of the services, by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The hearing

4. The Applicant was represented by Mr Jon Watson-Miller, the husband for the Applicant. Mr Watson-Miller informed the Tribunal that he was representing his wife, and that his wife had been unable to attend the hearing, as the Applicant had childcare responsibilities and lived on a farm in Wales. The Respondent was represented by Mr Jason Popperwell of the managing agent's Blue Property Group, also in attendance on the Applicant's behalf was Mr Rickettsa witness on behalf of the Applicant (a tenant of the Applicant).

5. The Applicant in her Statement of Case stated that the Respondent was claiming 9 years arrears of service charges for the periods September 2006 to January 2015. The arrears came to light when the Applicant asked for an additional key and the Respondent refused on the grounds that the Applicant was in arrears of service charges. The Applicant stated that she made payments of all the monies that she was informed were outstanding.

6. The Applicant stated that she asked for information to support the fact that there were arrears. The Applicant stated in her Statement of Case, that she had not received the demands in the post and as a consequence doubted that they had been served upon her as required by the Applicant. The Tribunal was informed that the Respondent's managing agents had failed on request, to provide proof that the service charges had been demanded. The Applicant stated in the Statement of case that although she had provided the Respondent with two addresses and an email address she had not received any service charge demands.

7. In her statement Ms Watson-Miller stated-: *"BPM have failed when requested to provide any supporting evidence to support the postage of any correspondence be that in the form of certificates of postage, internal email or statements from members of staff. It is considered that it is impossible that so many letters to 3 different addresses could go missing..."*

8. Mr Watson-Miller stated that the Applicant had a correspondent address of Holloway Road in 2005. In 2006 the Applicant had updated the Freeholder of her address change to 330 St James Road, London SE1.

9. The Tribunal were informed that 330 St James Road consisted of a small courtyard in the middle of premises comprising live/work units. The Tribunal were informed by Mr Watson-Miller's witness Mr Ricketts of the arrangements regarding the post.

10. Mr Ricketts stated that he worked in the yard at 330 St James Road where he owned a motorbike shop prior to becoming the Applicant's tenant. He stated that he still ran his business from the yard; as such he was at the premises every day. Mr Ricketts stated that all of the post for the premises is delivered to a post box adjacent to his unit . He would take the post and sort it; as such he was aware of all the post coming into the premises. This included the Saturday post.

11. Mr Ricketts stated that if post had come in for the Applicant he would have forwarded it to the Applicant. He stated that he was satisfied that if post had come for the Applicant, he would have been aware of it.

12. Mr Watson-Miller stated that this was also the position for the flat at 7 Georgian Court. He stated that correspondence concerning the ground rent and copies of correspondence concerning the AGM had been received in Wales. Given this he queried why correspondence such as demands would not have been received at his wife's residential address in Wales.

13. Mr Watson-Miller stated that nothing had been received from the landlord concerning any service charges or any letters chasing up payment of the outstanding service charges. All documents that had been received had been sent by email, and the only time that his wife had received the demands was in the last 6 months, following the Landlord's claim that she was in arrears.

14. Mr Watson-Miller informed the Tribunal that the arrangements for payment of the service charges had been that the leaseholder made a monthly payment of £50.00 per month; Mrs Watson- Miller had set up a direct debit, and had increased this payment as requested. The Tribunal were referred to minutes of the meeting dated 22 March 2012. The minutes of the meeting noted under service charges, that-: "*It was agreed that the monthly service charge payments would be increased to £80.00 per month with effect from 1st May 2012. If paying by standing order, please amend your standing order accordingly...*"

15. Mrs Watson- Miller had increased her payments in line with the agreed increases firstly from £50.00 and then the payment had increased when Mrs Watson-Miller became aware of the increases.

16. The Tribunal asked the Applicant about the arrangements for the post in Wales. Mr Watson- Miller explained that because of its remoteness, the postman would drive up to the farm and place it in the office on the desk.

17. Mr Watson- Miller stated that he was concerned about the accounts, and the service charges as all of the work had been undertaken by the Blue Property group such as Blue Property management, Blue Property maintenance, Blue Property risk and Blue Property accounting. This meant that all of the work had been carried out by agents of the landlord and contractors who were not independent from the Landlord

18. In paragraph 17 of the Respondent's Statement of Case the Respondent stated-: "*... We request the Tribunal disregard the reason provided by the Applicant in relation to her failure to pay the service charges. The Applicant claims not receiving any of sent post. We appreciate that it may happen that some of the sent correspondence may be lost in the post or by any other reason fail to reach the destination; however, it is simply hard to understand as to how the Applicant may claim that none of the sent post has reached her. Any such allegations are utterly*

unreasonable. Also, the Applicant has failed to chase the correspondence, which was allegedly not received by the Applicant..."

19. Mr Popperwell stated that the audit had been carried out by Mr Hansen a sole trader of D W Harrison. The Blue Property group operated from a five storey office in Nottingham, although there were also offices in Greenwich, Essex and Manchester. Mr Popperwell is the sole person based at the Greenwich office.

20. There were 15 people in the Nottingham office, who were responsible for administration, accounting services, and admin work. As property manager Mr Popperwell was responsible for liaising with leaseholders organising day to day work, and dealing with the management of the premises from his office in Greenwich.

21. The service charge demands were prepared by the Nottingham office, there were normally up to four people who were responsible for dealing with the demands, they were then sent out by the Nottingham office. Although Mr Popperwell could log onto the system, he stated that if a service charge demand was sent out or alternatively not sent out he would not know about it. He also did not receive copies or store them on file.

22. The Respondent had enclosed copies of demands which were addressed to the Applicant, at both her St James Road address and her Pembrokeshire address. The bundle also included notices which had been served in compliance with the Section 20 notice. The Tribunal were also referred to the Demand for the major works in the sum of £301.25.

23. Although Mr Popperwell was not able to say how and when the documents were served, he did however consider that the documents had been served on the Applicant. In the Respondent's statement of case, the Respondent stated that the Applicant had included information in their statement of case that they claim not to have received.

24. Mr Watson- Miller did not accept that service had been affected, and referred to the request which had been to increase the payments at the AGM which his wife had complied with, he also stated that they had asked for proof of the service charges, and had not been satisfied with the information sent by the Respondent. He considered that if the letters had been sent to St James Road then they would have come to his attention.

The Tribunal's determination on the Application

25. The Tribunal having considered all of the oral and documentary evidence, the Tribunal noted that the issue in this matter was whether the demands had been served, the implications for the Respondent was that if the demands were not served within 18 months of the cost being incurred then unless the Respondent had notified the Applicant within 18 months that they would be required to make a contribution to the cost, then the Respondent would be unable to recover any cost which had been incurred over 18 months ago.

26. The Tribunal needed to determine on a balance of probabilities whether the demands had been served. In doing so the Tribunal considered all of the correspondence, of most assistance was the email correspondence as this had come directly to the Applicant's attention. The Tribunal had noted the informal nature of the correspondence. The Tribunal considered in particular the email dated 10 May 2012, concerning the window repairs.

27. The Tribunal have also noted that the service charge accounts were audited for 2009, 2010, 2011, 2012, 2013 and 2014 all at once, this meant that these accounts were not available for service before 2014. This means that the Respondent could not have served these documents before 2014.

28. There is also nothing in the correspondence which suggests that the arrears where chased up by the Respondent or that there were systems in place for recovery of arrears. Mr Popperwell in his evidence stated that the finances were dealt with by the Nottingham office, however he was unaware of the procedure for service, and there was no evidence to confirm how service would have been affected.

29. By contrast Mr Watson-Miller gave evidence and his witness gave evidence of mail delivery systems and practices which were in place both in Pembrokeshire and St James Road which would have ensured that at least some of the demands were served and received by them. The Tribunal also noted that there was a system in place for regular payment of service charges by standing order. In these circumstances it was not surprising that the Applicant did not make any additional enquires of why demands for payment had not been made by the respondent.

30. Accordingly the Tribunal finds on a balance of probabilities that the demands were not served until after October 2013. Accordingly the

Applicant is liable to pay only the cost which has been incurred within 18 months of the demands being served.

31. The Respondent should prepare a schedule for the Applicant's agreement within 28 days, confirming the outstanding balance on her account.

32. The Tribunal determines in all the circumstances that it is just and equitable to grant an order under Section 20 C in respect of the cost.

Chair Ms M W Daley **Date 04 June 2015**

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(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.

Section 19

(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 provisions 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.

Section 27A

(1) An application may be made to a leasehold valuation 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 leasehold valuation 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.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]