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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AR/LSC/2015/0155** **LON/00AR/LSC/2015/0112**
Property	:	**65 Victor Close Hornchurch, Essex RM12 4XU (1)** **63 Victor Close, Hornchurch, Essex, RM12 4XU (2).**
Applicant	:	**Hastoe Housing Association**
Representative	:	**Stephens Scown LLP.**
Respondent	:	**Mr. C.S. & Mrs. R. V. Lammin (1)** **Mrs. Laskor (2)**
Representative	:	**In Person**
Type of Application	:	**Liability for service charges under S27A of the Landlord & Tenant Act 1985.**
Tribunal Members	:	**Ms. A. Hamilton-Farey** **Ms. S. Coughlin MCIEH**
Date of Decision	:	**21 August 2015.**

DECISION IN RELATION TO S.27a LANDLORD AND TENANT ACT 1985.

Decisions:

a. The tribunal determines that the amount claimed in relation to the balcony works is reasonable, has been reasonably incurred, and is payable by the respondents.

b. The tribunal determines that the amount claimed in relation to the television aerial works is reasonable, has been reasonably incurred, and is payable by the respondents.

c. At the hearing, Mr. Lammin conceded that the other amounts claimed in this matter were reasonable and reasonably incurred, and that he was liable to pay them.

Background:

1. The tribunal received an application for a determination of the respondent's liability to pay service charges, for several years. The matter was heard on 13 July 2015 at which Mr. Lammin on behalf of himself and his wife attended. There was no appearance on behalf of Mrs. Laskor, and the tribunal had been informed that she would be unlikely to attend.

2. In addition to making a S.27a claim, the landlords also made a claim under S.20ZA of the Landlord & Tenant Act 1985 in relation to the consultation process for the balcony repairs in this block.

3. The tribunal has already made a determination that the applicants, on balance, had complied with the requirements to consult and this documents sets our reasons for that determination:

Section 20 process:

4. Mr. Lammin told us that he had not received the notices under S.20 and that although he had asked the applicants for copies, these had not been provided, until they were lodged in the hearing bundles.

5. He said that he kept the majority of the letters sent to him by the applicants, and would certainly have kept anything headed up 'Notice'.

6. He drew our attention to the fact that the Notice of Intention had been properly addressed to himself and his wife, whereas all other correspondence (including the Notice of Estimates) referred to his wife by her maiden name. He said that he had contacted the applicants about this error on several occasions and the records had not been changed. He felt that the Notice of Intention had been produced for the tribunal proceedings, as he said that he had not seen it previously.

7. With respect to the Notice under Paragraph (b) (the Notice of Estimates) he could see that that Notice was improperly addressed again, and was adamant that they were invalid, because they were

addressed to the wrong people, and secondly that they had not been received in any event.

8. Mr. Cruice, on behalf of the applicants, informed us that he personally arranged for the Notices to be prepared by his administrators. He did not prepare them himself, but telephoned through his requirements. He did not post or hand delivery them, but was certain that the letters had been properly served; although there was no record of posting in the bundle.

Decision on S.20 Consultation:

9. We find that, the incorrect naming on the Notices did not invalidate them, it was clear to Mr. Lammin and his wife that any correspondence addressed in this way was for them, because they had had various conversations requesting that the systems be changed.

10. Although the applicants could not produce any evidence to say when and how the Notices were served, on balance we find that they were and that the S.20 consultation was properly undertaken in relation to the balcony works on this block. We say this because we have not been provided with any evidence that it was not.

11. We find that it is extremely difficult for any party to prove a negative, i.e. that letters were not received. Mr. Lammin admitted to us that they received a volume of correspondence from the applicants in the course of a financial year, and although he was adamant that he would have taken special care with anything headed up 'Notice' we are not persuaded by this argument.

12. We do not say that Mr. Lammin is not telling the truth, more that it would be easy for a resident to miss a letter such as this, and then try to recall receipt some 7 years after the event, as in this case.

13. As far as Mrs. Laskor is concerned, Mr. Lammin agreed that he had given her his defence to assist her, and it appears that she has copied it entirely. Without having the benefit of any evidence from Mrs. Laskor, we are unable to determine that she did not receive the S.20 consultation notices. We did however receive correspondence from Mrs. Laskor's solicitors, they informed us that she had received letters which were incorrectly addressed, having been addressed to Mrs. S. Laskor (her husband's initials), whereas as she was the tenant, they should have been addressed to Mrs. J. Laskor. It appears from the problems with addressing letters, that the applicants do not amend their computer records in a timely fashion. Whilst not incorrect, it would have been more transparent for Mrs. Laskor to have received post in her own name. We do not consider that the way in which she was addressed in the correspondence has prejudiced her in any way, and we have no doubt that she received the Notices.

14. We have also had regard to previous decisions on this development, where residents stated that they had not received the Notices. During some of the previous hearings, they accepted that they 'might have', and whilst not detracting from Mr. Lammin's evidence on balance we consider that the applicants did comply with S.20. Having come to that conclusion, we find that we are not required to make a determination under S.20ZA.

Liability for the works:

15. At the start of the hearing, Mr. Lammin very helpfully conceded certain charges, including those in relation to the fire and electrical testing, repairs to gutters and the general service charges.

16. He disputed the reserve fund calculations, the balcony repairs and the installation of digital television.

17. In relation to the reserve fund, the applicants informed us during the hearing that these charges had been removed from the leaseholders' statements. This was because the applicants were aware that they had not complied with the lease which required any reserve to be certified by an accountant.

18. We were informed that the figures were with the accountant at the date of the hearing and would soon be certified and circulated to the leaseholders. The tribunal is therefore no longer required to determine the amount of the reserve as it considers this part of the application to have been withdrawn. This does not limit the parties' ability to make a further application to the tribunal if the reserve fund cannot be agreed.

19. With respect to the digital television aerial, Mr. Lammin informed us that there had always been an aerial at the property, and that he had subscribed to a digital aerial system for some years, not using the communal supply. He also said that the Government had a scheme whereby anyone who was unable to afford a 'digibox' could obtain one for free or at a very reduced cost and that there was therefore no need for the aerial system to be changed.

20. The landlord said that as part of the digital switchover, it was necessary for them to upgrade the aerial systems in their blocks so that everyone could receive digital television. Mr. Cruise informed us that it was necessary to upgrade the aerial wiring itself because even if the residents had been given digiboxes, these would not work properly without a digital aerial.

Decision:

21. On the basis that Mr. & Mrs. Lammin have not actually claimed that the cost of the works was unreasonable, or that they were carried out to an unreasonable standard, we are satisfied that the amounts claimed are reasonable and payable by Mr. & Mrs. Lammim.

22. With respect to the television aerial, we consider it to have been reasonable for the landlords to upgrade the existing installation to enable residents to have access to a digital signal. There has been no dispute between the parties that the landlords were not entitled to provide aerial installations. On this basis we find that Mr. & Mrs. Lammin are due to pay the charges claimed in relation to this installation, even though they have their own Sky facility.

Mrs. Laskor:

a. The tribunal determines that the services charges claimed by the landlord are reasonable, have been reasonably incurred and are payable by Mrs. Laskor.

Reasons for the Decision:

23. Without a statement of case it is difficult for this Tribunal to determine why the respondent leaseholder disputes her liability to pay service charge.

24. As noted above, Mr. Lammin confirmed that he had given his defence to Mrs. Laskor, and it appears that she used this to defend the application against her, but this was not expanded on in any way.

25. In the circumstances, it was for Mrs. Laskor to present evidence to the tribunal as to the unreasonableness of the charges claimed and as she has not done so, we determine that she is liable for the full amount claimed. This excludes the cost of the major works, for which the landlord had already obtained a judgment in the County Court.

Name: A. Hamilton-Farey **Date:** 21 August 2015