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

**Case Reference** : **LON/00AZ/LSC/2015/0129**

**Property** : **First Floor Flat, 26 Farley Road,  
London SE6 2AB (“the property”)**

**Applicant** : **Raman Limited**

**Representative** : **Circle Residential Limited**

**Respondents** : **Alexander Franklyn James and  
Myles Filburt James**

**Representative** : **None**

**Type of Application** : **Liability to pay service charges**

**Tribunal Members** : **Miss A Seifert FCI Arb**

**Date of Decision** : **7<sup>th</sup> May 2015**

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**DECISION**

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### **Decision of the Tribunal**

- (1) The sum of £1,191.63 claimed has not been shown to be due under the lease (alternatively this part of the claim has been compromised).
- (2) The two sums of £297.91 have not been shown to be due under the lease.
- (3) No order for reimbursement of fees is made.

### **The tribunal's decision and reasons**

#### **The background and the application**

1. The application was made in respect of First Floor Flat, 26 Farley Road, London SE6 2AB ('the property'). 26 Farley Road is a two storey terraced house converted into two flats.
2. Circle Management Limited, the landlord's managing agent, issued an application, dated 6<sup>th</sup> March 2015 and stamped received by the tribunal on 13<sup>th</sup> March 2015. The landlords under the lease of the property are Raman Limited.
3. The application was for the determination of liability of the tenants to pay, and reasonableness of service charges, pursuant to section 27A of the Landlord and Tenant Act 1985.
4. The tenants and respondents to this application are Alexander Franklyn James and Myles Filburt James.
6. The application stated that it concerned the service charge year 2015. The maintenance year end date in each year was 31<sup>st</sup> December.
7. In the application form it was stated that the items in issue were:

Building Repairs - £240

Buildings Insurance - £1,123.26

Year End Accounting - £300

Management Fee - £720

It was alleged that under the lease the respondents are liable for 50% of the above budgeted costs of £2,383.26, being £1,191.63.

8. A copy of the lease of the property, dated 26<sup>th</sup> October 2007, was provided. This was between DT Property Services Limited as landlord and John Junior Fortune as tenant. The term of the lease was 125 years from 1<sup>st</sup> September 1999. The ground rents were set out in the lease and were payable by equal instalments on the usual quarter days. The 'Maintenance Rent' was 'One half of the costs and expenses that the [landlord] incurs pursuant to its covenants contained in the Second Schedule hereto'.
9. Directions were issued by the tribunal on 23<sup>rd</sup> March 2015, in which it was stated that the tribunal may have no jurisdiction to accept the application as:
  - a) The lease provides for an on account payment of £250 payable by four equal instalments on the usual quarter days, so that the first instalment is not due until 25<sup>th</sup> March 2015.
  - b) When the application was made it appears that nothing was payable by the respondents,
  - c) There was no suggestion of a dispute between the parties that might confer jurisdiction on the tribunal.
10. The applicant requested a paper determination. To facilitate the proportionate determination of this matter, the tribunal considered that the application was suitable for determination on the documents without an oral hearing, unless the parties requested otherwise. No such request was made. The application proceeded to be determined on the papers.
11. The Directions required various steps to be made by the parties by certain dates.
12. Amongst the documents in support of the application was a demand from Circle Management Limited addressed to the respondents at the property, dated 17<sup>th</sup> February 2015. This was stated to be the estimated service charge for the period ended 24<sup>th</sup> December 2015 in respect of the property. The total sum claimed as an on account service charge for that period for the property was £1,191.63 (50% of £2,383.26). In the covering letter dated 17<sup>th</sup> February 2015, Circle Management Limited stated that 'If you agree that the budget is reasonable we would be obliged if you would sign and return one copy of this letter to us by 3 March 2015. If you have queries in relation to the budget please do not hesitate to contact us.'
13. In a letter dated 1<sup>st</sup> April 2015 the first respondent Mr Alexander James stated that he is 'happy to pay £1,191.63 for the period ending 31<sup>st</sup>

December 2015.' He stated he had sent his response to Circle Management.

14. In a letter dated 15<sup>th</sup> April 2015 addressed to the tribunal, Circle Management Limited stated that the respondent had admitted the reasonableness of the interim charges for 2015 and indicated that they are willing to pay the total sum claimed in the application.
15. In a letter dated 17<sup>th</sup> February 2015, Circle Residential Management Ltd made a demand to the respondents for interim service charges in the total sum of £595.82 being interim service charges for £297.91 on 25.12.2014 and £297.91 on 25.12.2015. It was stated that these sums were due within 14 days of the date of the demand. Neither of these sums were referred to in the application form nor referred to in the directions.
16. In respect of the sum claimed in the application of £1,191.63, having considered the evidence the tribunal finds that this is not due and payable from the respondents to the applicant under the terms of the lease, alternatively the claim has been compromised. Further, the tribunal finds that the sum of £297.91 claimed due on 25<sup>th</sup> December 2014 and £291.91 claimed due on 25<sup>th</sup> December 2015 are not due and payable by the respondents to the applicant.

The tribunal's reasons

17. The lease of the property provides that the tenants pay a 'Maintenance Rent' defined as 'One Half of the costs and expenses that the Lessor incurs pursuant to its covenants contained in the Second Schedule hereto. The 'On Account Payment' was £250 per annum. The Maintenance Year End was 31<sup>st</sup> December. The 'Payment Dates' under the lease were 'The usual quarter days'.
18. The Lessor's (landlord's) covenants were set out in the Second Schedule to the lease. The mechanism for charging was contained in paragraph 11 of the Second Schedule. This stated that:

'11. The cost of the forgoing services shall be ascertained and certified by the Lessor's Managing Agents (whose certificate shall be final and binding on the parties hereto) to the Maintenance Year End and payments shall be made within one month of the production of such certificate and until verified by the Managing Agent the Lessee shall pay on account of the Maintenance Rent the amount of the On Account payment by equal payments on the Payment Dates in each year and shall receive credit therefore against the next Maintenance Rent Payment.

12. If in the opinion of the Lessor's Managing Agents the amount of the On Account Payment shall be insufficient to cover the costs of the items contained in this Schedule they ... be entitled to serve one month's notice requiring an increase in the On Account Payment which shall upon the expiry of such notice become the future On Account Payment.'
19. The Third Schedule to the lease included a covenant by the tenants 'To pay the Rent and On Account Payment in respect of the Maintenance Rent and the Maintenance Rent at the times and in the manner at and in which the same are hereinbefore reserved and made payable without deduction'.
20. The cost of the services had to be ascertained and certified by the landlord's managing agents to the Maintenance Year End (31<sup>st</sup> December in each year) and once this had been done, payment was due from the tenants within one month of the production of such certificate. Until verification by the managing agents the obligation was to pay the amount of the On Account Payment on the usual quarter days by equal instalments, which payments would be credited against the next Maintenance Rent Payment. If the amount of the On Account Payment was considered insufficient the landlord was entitled to serve one month's notice requiring an increase.
21. The sums claimed as outstanding in the application were £1,191.63. This would have included the On Account Payments made if any relating to the same service charge year. There was no explanation why the amount of 'Interim Service Charge' claimed in one of the managing agent's letters dated 17<sup>th</sup> February 2015 was £297.91 rather than one quarter of £250 per annum referred to in the lease as payable on each quarter day. There was no documentary evidence that one month's notice had been given of an increase in the amount of the On Account Payment.
22. The other letter dated 17<sup>th</sup> February 2015 from the Managing Agents to the tenants was headed 'Service Charge Estimates For the Period Ended: 24 Dec 2015'. Firstly the service charge year is the year to 31<sup>st</sup> December and not 24<sup>th</sup> December. Secondly, there was no evidence that the amount claimed £1,191.63 in respect of the property had been 'certified' as required by the lease.
23. Even if the letter to the tenants dated 17<sup>th</sup> February 2015 could be regarded as a 'certificate' for these purposes, under the terms of the lease the amount was not due until one month after the production of the certificate.
24. Having considered the evidence, the tribunal is not satisfied that it has been shown that the figure claimed in the application of £1,191.63 was due. The two figures of £297.91 were not specifically claimed as separate items, but in any event there has been no satisfactory

explanation of how these particular sums are alleged due. Further the second figure of £297.91 is not alleged due until 25<sup>th</sup> December 2015.

25. At the date of the application the sums claimed it has not been shown that the sum claimed was due under the terms of the lease. In any event, the amount has been admitted Mr Alexander James has stated in his letter dated 1<sup>st</sup> April 2015 that he would be happy to pay the sum of £1,191.63 for the year to 31<sup>st</sup> December 2015. In the circumstances there is no reason for the tribunal to make the determination requested.

#### Reimbursement of fees

26. The applicant, in a letter dated 15<sup>th</sup> April 2015, requested the tribunal to make an award under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The applicant sought £125 in respect of the application fee.

Rule13(2). The Tribunal may make an order requiring a party to reimburse the other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

27. The applicant contended that the respondents had acted unreasonably in relation to the proceedings including:

‘Failing to make payment of the Interim Service Charge in the sum of £297.91 prior to the application being issued. The interim Service Charge fell due on 25 December 2014 and the amount was demanded on 26 November 2014. A Pre-Action Payment Request was sent to the Tenant on 17 February 2015 which set out the amount being demanded in relation to the Service Charge.....The tenant was sent an invitation to agree the reasonableness of the Service Charge budget for the 2015 period on 17 February. The Tenant did not respond to this letter until 10 April, after the application had been issued. Had the Tenant responded to this letter within the two weeks deadline stipulated in the letter, the application would not have been issued and accordingly the Landlord would not have incurred the application fee. The Tenant is a consistent late payer for sums due under the terms of the lease. The Respondent had now admitted that the Interim Service Charge is reasonable and that he is happy to pay the full amount of the service charge in the sum of £1,191.63 it is the Applicant’s contention that it is appropriate for the Respondent to reimburse the Applicant for the application fee incurred. The Applicant should not be put to the cost of a successful outcome if it could have been easily avoided by a reasonable Respondent.’

28. Having considered the application for reimbursement of fees the tribunal considers that it is not reasonable to make such an order in all

the circumstances of this case as outlined above, and makes no such order.

A Seifert

Date: 7<sup>th</sup> May 2015

Judge of the First tier Tribunal (Property Chamber)

### **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.



