10601

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference		**LON/00BB/LSC/2014/0550**
Property	:	**12 Johnstone Road, East Ham, London E6 6JA**
Applicant	:	**Harjit Singh**
Representative	:	**Hexagon Property Company Limited**
Respondents	:	**Poormina Swaroop** **Chidima Chobbah**
Representative	:	**In person**
Type of application	:	**For the determination of the respondents' liability to pay service charges**
Date heard	:	**2 February 2015**
Appearances	:	**Monika Derveni, solicitor, DH Law Limited, for the applicant** **Chidima Chobbah in person** **Poormina Swaroop did not appear**

Tribunal	:	**Margaret Wilson** **Peter Roberts RIBA** **Lucy West JP**
Date of decision	:	**9 February 2015**

DECISION

Introduction and background

1. This is an application by Harjit Singh, the landlord, under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine the liability of the respondent leaseholders, Poormina Swaroop and Chidima Chobbah ("the tenants") to pay service charges in respect of the years 1 April 2012 to 31 March 2013, 1 April 2013 to 31 March 2014 and 1 April 2014 to 31 March 2015.

2. Ms Swaroop and Ms Chobbah hold long leases of, respectively, the ground floor flat, Flat A, and the first floor flat, Flat B, at 12 Johnstone Road, which is a converted two storey terraced house. Each of the tenants acquired her lease in 2007 and the landlord acquired the freehold in 2008 and appointed Hexagon Property Company Limited ("Hexagon") as his managing agent.

3. By a decision dated 3 December 2013 a leasehold valuation tribunal determined the tenants' liability to pay service charges in respect of the period 4 October 2011 to 31 March 2012, the landlord's claim to recover service charges for that period having been referred to the tribunal by the county court. The decision is before us but this determination is made on the basis of the evidence given to us.

4. At the hearing on 2 February 2015 the landlord was represented by Monika Derveni, solicitor of DH Law Ltd. Ms Chobbah, the tenant of Flat B, appeared in person and gave evidence. Ms Swaroop took no part in the hearing.

The statutory framework

5. The Tribunal's jurisdiction in relation to these service charges is derived from section 27A of the Landlord and Tenant Act 1985 which provides that an application may be made to the Tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A *service charge* is defined by section 18(1) of the Act as *an amount payable by the 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.* Relevant costs are defined by section 18(2) and (3). By 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 provision 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. By section 19(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 of subsequent charges or otherwise.*

The lease

6. The two leases are effectively in the same form. By clause 2(3)(i) the tenant covenants to *pay to the lessor by means of yearly payments payable on the 24th June in each year a service charge equal to one half of* the expenses listed at clause 2(3)(i) (a) to (e). By clause 2(3)(ii) the amount of the service charge is to be certified by a certificate signed by the landlord's accountants or managing agents as soon as practicable after the end of the landlord's financial year, which is 31 March, and the certificate is to relate to that year. By clause 2(3)(e) the expenses incurred by the landlord include not only expenses actually incurred during the year in question *but also such reasonable part of all such expenses outgoings and other expenditure ... which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever ... incurred ... including a sum or sums by way of reasonable provision for anticipated expenditure...* . By clause 2(3)(f), as soon as practicable after the signature of the certificate the landlord must provide the tenant with an account of the service charge payable by the tenant for the year in question *due credit being given for all interim payments made by the lessee in respect of the said year and upon the furnishing of such account* the tenant must pay the service charge or any balance and *there shall be allowed by the lessor to the lessee any amount which may have been overpaid by the lessee by way of interim payment as the case may require.*

7. Despite the provisions as to credits for any interim payments there is no obligation whatsoever on the tenant to pay any interim service charges or service charges on account. The only obligation is to make one yearly payment after the end of the service charge year, although the service charge demand made after the service of the accounts at the end of the accounting year may include provision for anticipated future expenditure. There were no demands for funds to cover anticipated future expenditure in the period covered by the present claim.

The service charges

8. The service charge accounts for the service charge year 2012/2013 are at pages 267 - 273 of the hearing bundle, the accounts for the year 2013/2014 are at pages 279 - 285. The managing agent's budget for the year 2014/2015 is at pages 250 and 251. The tenants are not at this stage liable to pay any service charges in respect of the year 2014/2015: their liability to do so will arise only on 24 June 2015 after service of the certificate and accounts.

9. In the accounts for each of the two relevant years the landlord's costs which form the service charges demanded fall into the same categories: building insurance, cleaning, repairs and maintenance, accountancy and management.

Building insurance

10. For 2012/2013 the cost of insuring the building as it was given in the accounts was £239 and for 2013/2014 it was £325. According to the documents in the hearing bundle, from 9 November 2011 to 9 November 2012 the building was insured with AXA through the agency of GSS Insurance Brokers Ltd with a declared value of £150,000 at a premium of £318 including tax (certificate at page 256). From 8 February 2013 to 8 February 2014 it was insured with AXA through the agency of Little N Large.com with a declared value of £151,950 at a premium of £322.13 including tax (certificate at page 255). From 8 February 2014 to 8 February 2015 it was insured with AXA through the agency of Little N Large.com with a declared value of £155,293 at a premium of £339.10 including tax (certificate at page 254). From 8 February 2015 to 8 February 2016 it will be insured with AXA through the agency of Little N Large.com with a declared value of £165,076 at a premium of £371.27 including tax (certificate at page 253). Mrs Derveni agreed that from 10 November 2012 and 8 February 2013 the building was not insured, the reason, she said, being that the tenants had not paid ground rent or service charges. She submitted that the building was insured at a reasonable rate with a reputable insurer and that the premiums were reasonable in amount. She said that she did not know whether the landlord or the managing agent received any commission from the insurer.

11. Ms Chobbah said that the landlord had consistently insured the building with the same insurer and there was no evidence that he or his agent had tested the market. She submitted that the insurance premiums should not have risen each year when there had been no claims. She put before us alternative quotations (page 66 - 71), including a quotation from Discount Insurance for insurance from 8 February 2015 to 7 February 2016 at a premium of £152.10 including tax. Although it was not clear from the document in the bundle that the quotation related to the whole building rather than to a single flat, Ms Chobbah was able to contact Discount Insurance in the course of the hearing and she then produced a faxed document from which we were satisfied that the quotation related to the whole building. Mrs Derveni said that Ms Chobbah's alternative quotations were not like-for-like with the cover obtained under the landlord's policy because they did not cover insurance against flood or malicious damage.

12. As we told Mrs Derveni and Ms Chobbah, we are concerned that the building may be underinsured in that the declared value of the whole building is rather less than the purchase price of each flat in 2007. However the tenants had not taken that point and the landlord was thus not on notice that the point required to be dealt with. However, unless the building has been recently re-valued for insurance it would be wise for it to be re-valued to avoid the risk that the insurer might decline to meet a claim on the ground that the property is underinsured. We are also concerned that the building was

uninsured for about three months in 2012/2013 and we do not regard the fact that the tenants may not have paid service charges or ground rent as justification for the landlord's failure to insure for that period.

13. Notwithstanding those comments we are satisfied, on balance and on the basis of the evidence we have, that the premiums for the years 2012/2013 and 2013/2014 were within a reasonable range. While we accept that it could have been insured for less, and the alternative quotation on which Ms Chobbah relied tends to support that, we are aware that some insurers have a habit of offering favourable rates to attract new business and imposing large increases in subsequent years. On balance we accept that these charges for the years 2012/2013 and 2013/2014 were reasonably incurred.

Cleaning

14. It is agreed that the communal areas of the property consist of a ground floor hallway measuring approximately 1 square metre and a small paved area outside the front of the property of perhaps 2 metres by 4 or 5 metres. The stairs up to Flat B are demised to Ms Chobbah.

15. In the year 2012/2013 £360 was charged in the service charge accounts for cleaning (see page 271); and £432 was charged for the year 2013/2014. Mrs Derveni says that the charges were based on the previous tribunal's determination that the appropriate charge for cleaning was £36 per visit. £360 therefore represents ten monthly visits and £432 represents 12 monthly visits. In the landlord's statement of case (at page 82) it is said the charge in 2012/2013 was £396, representing 11 visits. According to the invoices in the bundle, cleaning was carried out by Nadeem Ullah Consultancy until September 2012 and thereafter by Bishop & Baron Contractors Ltd, later called Bishop & Baron London Ltd. A statement from Abrar Khalid, the director of Bishop & Baron London Ltd, is at pages 184 and 185 of the bundle. He was not present to give oral evidence.

16. Ms Chobbah said that the cleaning was poor and sporadic and that local cleaners were available who would charge much less than £36 for the minimal work required, and she produced a list of cleaners in the Newham area charging between £5 and £15 an hour (at pages 62 - 64). She also said that Mr Ullah's company had been struck off the register of companies and she did not see why she should pay any sum to it in the circumstances. Mrs Derveni submitted that because areas outside the building had to be cleaned there were health and safety requirements which made it necessary for the cleaner to have public liability insurance, and that the status of Mr Ullah's company was irrelevant.

17. In the previous decision the tribunal expressed the view (at page 346) that the cleaning arrangements for these modest common parts ought to be reconsidered and that the tenants might clean the common parts themselves. We agree with that observation, and Mrs Derveni said that the landlord would be willing to agree to such an arrangement save for the fact that the tenants did not get on together very well and that Ms Swaroop had sub-let her flat and

lived elsewhere. She said that the managing agents had had a meeting with Ms Chobbah shortly after the last hearing at which cleaning was one of the topics raised but that it had been unsuccessful in establishing common ground.

18. In the circumstances and particularly the fact that Ms Swaroop has not provided any evidence that she is willing to share responsibility for cleaning with Ms Chobbah or to allow Ms Chobbah to do the cleaning, we accept that the landlord's arrangements are reasonable and we are not satisfied that £36 is an excessive charge for a cleaning contractor to make, although there are cleaners who would, no doubt, do the work for less. On balance we accept that the standard of cleaning was adequate and that the charges were not unreasonable. We do not consider the status of Mr Ullah's company to be relevant, provided the work was done and paid for, which we accept that it was. We allow only the amounts in the service charge accounts, namely £360 for 2012/2013 and £432 in 2013/2014.

Repairs and maintenance

19. The sum given in the accounts for repairs and maintenance in 2012/2013 is £270. There is no charge for this item in the 2013/2014 accounts. The landlord says that the charge comprises £220 for clearing the gutter at the front of the property (invoice from Ultim8 at page 100 of the bundle) and £50 for the repair of an electrical switch in the communal hallway (invoice, also from Ultim8, at page 101). Both invoices are dated 14 February 2013. The invoice at page 100 which is said to relate to clearing the gutter, is described as "in relation to the quote dated 10th January 2013 relating to the Health and Safety works required at the property" and the invoice at page 101 says that it is "in relation to the quote dated 14th December 2012 for the maintenance works required at the property".

20. Ms Chobbah says that she did not ask for the gutters to be cleaned and was unaware that they had been cleaned and did not accept that the charge was genuine. She said that she had asked the landlord to make a claim on the insurance policy in respect of leaks but had been ignored. In respect of the electrical works she said that the socket in question was not live and all that had been done was to glue the defunct socket to the wall of the common hall. She questioned whether either of the invoices were genuine.

21. The evidence about the works is vague, but we are not satisfied on the evidence that the invoices are fraudulent and on balance we accept that these charges were incurred, and reasonably so.

Accountancy

22. The charge for accountancy in the 2012/2013 accounts is £240 and for 2013/2014 it is £450. The accounts are prepared by Vision Consulting, chartered accountants. The landlord says that the lower charge for 2012/2013 was "a promotional offer for providing the firm with more work". Mrs Derveni

said that Vision Consulting is an independent and reputable firm of chartered accountants and that, although the landlord accepted it would not usually be considered proportionate to instruct a firm of chartered accountants to prepare these brief and simple service charge accounts, the landlord reasonably considered it advisable to do so in this case because Ms Chobbah was likely to challenge every single cost. Ms Chobbah said that she had found many people who were able to prepare accounts for fees very much less than those charged by Vision Consulting, and she provided quotations from accountants who could do the necessary work for £13 to £15 per hour (at pages 72 - 73). She asked for proof that Hexagon was registered for VAT in the relevant period and during the course of the hearing Mrs Derveni obtained satisfactory proof that it was.

25. By clause 2(3)(i)(e) of the lease the tenant covenants to pay the landlord's cost of employing a firm of chartered accountants to prepare *a management account*. While this entitles the landlord to instruct a chartered accountant it does not oblige him to do so and we are satisfied that it was not necessary for the landlord to have done so in this case. The building is small, the services are few, there is no reserve fund and the accounts are unusually short and straightforward. Any competent managing agent should have been able to prepare them without any difficulty. Clause 3.17 of the management agreement (pages 141 - 151 at page 146) lists as one of the agent's duties *To manage the service charge account, and any reserve fund, sinking fund or contingency fund account, in accordance with the terms of the leases, to prepare accounts in accordance with those terms, and estimates for future expenditure* and we are satisfied that that clause covers the accountancy work reasonably carried out in this case. Mrs Derveni accepted that although the landlord was entitled, if it was necessary and reasonable to do so, to employ a chartered accountant to prepare the service charge accounts, he was not obliged to do so. We do not regard the landlord's justification for doing so, namely that the tenants, or at any rate Ms Chobbah, were likely to challenge every cost, as sufficient justification for instructing a chartered accountant. Every landlord faces the risk that leaseholders will challenge service charges but, if the records which the managing agent keeps are adequate and the landlord and the managing agent comply with the law and the lease, the challenges are likely to fail. We disallow all the accountants' fees as not reasonably incurred.

Management

26. £300 is charged in the accounts for each of the years under review, the amount based on the decision of the previous tribunal which reduced the fees charged from £200 to £150 per flat including VAT. Mrs Derveni submitted that the charge was modest and had been found to be reasonable.

27. Ms Chobbah said that the standard of management was very poor. Examples of poor management are, she said (page 219) that the managing agents did not visit the building, made improper and invalid demands for service charges, did not monitor services for quality and cost, refused to allow the tenants to clean the property themselves, ignored reasonable requests to

repair the property and in those and other respects did not comply with the RICS Residential Management Code. She provided (at page 74) a quotation from No 1 Property Selection offering to management services for "£100 per property for first 6 month. After £120", for services which include "accountant (approximately £150 if self employed").

28. We accept that the standard of management was not perfect, if only because the landlord deliberately chose not to insure the building for a short period on the pretext, which we regard as insufficient, that the tenants were not paying service charges or ground rent. However we are satisfied that some management was carried out and we accept that £300 including VAT, or £150 for each flat, is reasonable in the circumstances particularly as we have determined that the fee must include the preparation of the service charge accounts. The alternative quotation obtained by Ms Chobbah is badly expressed and does not inspire confidence and in any event the quoted charges are not significantly less than the fees charged by Hexagon.

Costs

29. Mrs Derveni asked for an order under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the tenants should pay the landlord's costs on the ground that the tenants had acted unreasonably in not taking legal advice and reaching a reasonable settlement. But orders for costs may be made only if a party has *acted unreasonably in bringing, defending or conducting proceedings.* The tenants are entitled to defend the proceedings and have, indeed, achieved some measure of success. It is not unreasonable to defend proceedings unless a party has absolutely no defence, and Ms Chobbah did not act unreasonably in her conduct of the proceedings; she complied with the directions and conducted her case admirably and with restraint. We are satisfied that an order under rule 13(1)(b) would not be appropriate.

30. Mrs Derveni also asked for an order under rule 13(2) for the reimbursement of the application and hearing fees which the landlord has paid. These proceedings were clearly justified because of the arrears, and the landlord has been successful save in respect of accountancy fees. We consider that the tenants should reimburse the hearing and application fees, a total of £315, in full, each of them paying one half of the fees, or £157.50.

31. The only clause in the lease which entitles the landlord to recover the costs he has incurred in connection with these proceedings is clause 2(3)(e) which obliges the tenant to pay the landlord's costs of *employing managing agents to manage the building.* Mrs Derveni correctly accepted that that clause does not cover the landlord's legal costs incurred in connection with these proceedings but only the managing agent's fees for instigating and preparing the case which, according to a statement of costs which she put before us, amount to £735 including the application and hearing fee which we have ordered the tenants to pay. Ms Chobbah asked for an order under section 20C of the Act to prevent the landlord from putting the balance of the managing

agent's fee, £420, on the service charge. We are entitled to make such an order if we regard it as just and equitable to do so, but in this case we consider that the landlord should not be prevented from recovering its costs as a service charge, provided it does not seek to recover its legal costs. He may therefore place the sum of £420 on the service charge in respect of the managing agent's fee in respect of this case.

Judge: Margaret Wilson