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

Case Reference : LON/00BC/LSC/2014/0563

Property : 43a New North Road, Hainault,
Essex IG6 2UE

Applicant : Mr V. Laxhman and Mrs N.V
Laxhman (landlords)

Representative : None

Respondent : Mrs A. Tutty (leaseholder)

Representative : None

Type of Application : Application under section 27A of
the Landlord and Tenant Act 1985
to determine the liability to pay a
service charge

Tribunal Members : Professor James Driscoll (Judge)

Date of Decision : 4 March, 2015

DECISION

The Decision summarised

1. The leaseholder must pay her contribution towards costs incurred by the landlord in insuring the building. Her contribution for the 2014 - 2015 service charge accounting period is the sum of £164.66. This should be paid no later than 31 March 2015.
2. Under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the leaseholder is to reimburse the landlord for the costs of making the application (£65) and the cost of the hearing fee (£190). The total fees of £255 are to be paid by the leaseholder to the landlord by 31 March 2015.
3. No order is made under section 20C of the Landlord and Tenant Act 1985.

Introduction

4. In this application a determination of payment of a contribution to the costs of insuring the premises is sought. It is made by the landlords under section 27A of the 1985 Act. The respondent to the application is the leaseholder. The sole issue for the tribunal is the payability of a contribution of £164.66 towards the landlord's costs of insuring the premises.
5. This application was made in 2014. Directions were given on 7 November 2014 proposing that the matter be determined without a hearing. However, the leaseholder informed the tribunal that she wanted a hearing so this was arranged for 4 March 2015 and additional directions were given. A bundle of documents was prepared by the landlords for the hearing. The bundle is over 100 pages in length.

The hearing

6. The leaseholder and her husband attended the hearing. Mr P. Laxhman the son of the landlords attended on their behalf. Neither party was legally represented. As the leaseholder and her husband were delayed on their journey from their home to the tribunal, the hearing started at 10.40.
7. I was told that the premises consists of a building which has commercial premises on the ground floor (described to me as a 'convenience store') with the leaseholder's flat above it. She has a lease of the flat. The ground floor is occupied by a commercial tenant. The building is part of a parade of buildings consisting of shops with residential accommodation above it. Mrs Tutty told me that she the flat a maisonette over two floors. She is the sole leaseholder. After the hearing started she told me that she wanted her husband to speak on her behalf.

8. The parties agree that the landlord is responsible (amongst other matters) for arranging the insurance of the building. For years, the costs of the insurance has been the only service charge claimed by the landlords from the leaseholder. Acting on the advice of their insurers the landlord apportions the cost of insuring the building by charging the commercial tenant two-thirds and Mrs Tutty one-third of the costs of the premium.
9. Mr Tutty told me that they accept in principle that the landlord is under an obligation to insure the building and that the leaseholder has an obligation to pay a proportion of the landlord's costs through service charges. They accept that the building is insured and that the landlord has expended the sum of £493.98 as there is a receipt to this effect (tab 4, page 15 of the bundle). It is also accepted that requiring the payment of one-third of the costs of the insurance is reasonable.
10. He told me that they have two issues which have led to this dispute. First, although documents relating to the insurance were made available he says that they have in the past found it difficult to obtain documentation from the landlord. Second, they think that it would be fairer if separate insurance is arranged for the residential and commercial parts of the building. Mr Laxhman responded by telling me that several years ago (he was unsure of the actual year) his parents were persuaded to do this. However, he has advised them that this is unworkable and does not properly discharge the landlord's obligation to insure the whole of the building.
11. It became apparent early on during the hearing that the leaseholder did not question (a) the obligations she and the landlords have over the insurance, or (b) that the actual costs are too high, or (c) that the sum has not been properly demanded, or (d) that the insurance has not been arranged by the landlord.
12. Mr Tutty told me that they tried to avoid a continuing dispute by posting the landlord a cheque for the insurance with a covering letter. Unfortunately, he could not find a copy of that letter and he did not have their cheque book with them to show the relevant cheque stub. Responding to this, Mr Laxhman told me that his parents have no record of receiving the cheque.
13. Mr Laxhman submitted that the leaseholder should pay his costs of paying the tribunal fees and also his expenses in preparing the bundles of documents and other out-of-pocket expenses.
14. Neither Mr or Mrs Tutty could explain why the insurance had not been paid nor why they had insisted on a hearing rather than allowing the tribunal to make a determination on the basis of the documents supplied.

Reasons for the decisions

15. Having summarised the evidence and the submissions I have no doubt that the leaseholder's challenges to the insurance costs are unfounded. In summary, there is clearly an obligation on the part of the landlord to insure the building. I do not consider that arranging separately the insurance of the residential and commercial parts of the building is either practical or, equally importantly, that it sufficiently discharges the landlord's responsibilities. As the leaseholder does not challenge the costs of the insurance and accepts in principle that the apportionment is fair and reasonable and that the building is insured and that the landlords have paid the premium for the 2014 - 2015 period I determine that the costs of £164.66 are recoverable in full from the leaseholder. The leaseholder should pay this sum in full to the landlords by 31 March 2015.
16. As to costs the tribunal has powers under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to order one party to reimburse the other for the whole or part of the fees payable to the tribunal. As the landlords had correctly notified the leaseholder of the costs due which she continued to question, they had little alternative but to make the application thereby a fee of £65. Further as the leaseholder insisted on the tribunal conducting a hearing (and she has the right to insist on a hearing), the landlord had to pay the fee of £190. In these circumstances I am satisfied that an rule 13(2) order is fair and just in this case. Accordingly, I determine that the leaseholder should pay the landlords the sum of £255 by 31 March 2015.
17. Mr Laxhman also claims that the landlords should be reimbursed for the costs of producing the documents bundles and postal and other costs. He claims on behalf of the landlords the sum of £157.77 (for which he has receipts). I did not consider it appropriate to consider making an order for costs under rule 13(1) and Mr Laxhman did not press this point.
18. I explained to the parties the purpose and the scope of section 20C of the 1985 Act. Having regard to the fact that the landlords have succeeded in their application and that in the event the leaseholder did not mount a serious challenge to the claim I do not consider it necessary let alone fair or just to make any order under section 20C limiting recovery of any costs associated with this application. Any future service charge demand that is made that includes any elements of the costs that have been claimed by Mr Laxhman will have to be recoverable under the terms of the lease and will also have to be reasonable.

Appendix of the 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
- 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.
- 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.
- But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.