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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LSC/2014/0409**
Property	:	**Flat 18, 35 Sherwood Gardens, London E14 9GA**
Applicant	:	**St Edmunds Management Limited**
Representative	:	**Ms M. Khan, Legal Consultant to Peverel Property Management (Managing Agent)**
Respondent	:	**Ms A. Bhindi**
Representative	:	**No appearance**
Type of Application	:	**Section 27A Landlord & Tenant Act1985, and Schedule 11 Commonhold and Leasehold Reform Act 2002 - Annual Service Charges and Administration Charges**
Tribunal Members	:	**Judge Lancelot Robson** **Mr P. S. Roberts DipArch RIBA** **Mrs J. Dalal**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR** **5th January 2015**
Date of Decision	:	**19th January 2015**

DECISION

Decision Summary

(1) The Tribunal decided that the annual service charges totalling £2,278.38 relating to 2011 and 2013 claimed by the Applicant in County Court Case No. A7XI9928 referred to this Tribunal by an order of the Court dated 1st August 2014, pursuant to Section 27A of the Landlord and Tenant Act 1985 were reasonable, reasonable in amount, and therefore payable by the Respondent within twenty one days of the date of publication of this decision.

(2) The Tribunal decided that the administration charges of £120 relating to 2012 also claimed by the Applicant in the referred County Court Case noted above, pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002, were reasonable, reasonable in amount, and therefore payable by the Respondent within twenty one days of the date of publication of this decision.

(3) The Tribunal notes that matters relating to rent, court interest, and costs incurred in the County Court proceedings are not within the jurisdiction of the Tribunal, and should be dealt with by the County Court. The Tribunal refers this case back to the County Court to deal with any outstanding matters.

Preliminary

1. By an order made on 1st August 2014 in the County Court at Clerkenwell and Shoreditch in Case No. A7XI9928 District Judge Manners referred the Applicant's claims for service charges and administration charges to this Tribunal. The Applicant seeks an order as to the reasonableness of service charges totalling £2,278.38 relating to the service charge years commencing on 1st January 2011 and 2013 under Section 27A of the Landlord & Tenant Act 1985, and also administration charges totalling £120 in the service charge year commencing on 1st January 2012 under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to the reasonableness of certain administration charges relating to the service charge years 2012 – 2013 inclusive, pursuant to a lease dated 3rd March 2006 (the Lease).

2. Extracts from the relevant legislation are attached as Appendix 1 below.

3. The Applicant (the Management Company appointed by the Lease), Landlord made brief written submissions dated 20th March 2014 in the County Court Case, and a detailed Statement of Case dated 24th December 2014. The Respondent made brief written submissions in the County Court Case dated 3rd April 2014, but failed to make any further submissions in breach of the Tribunal's Directions dated 16th September 2014, particularly requiring service of a full statement of her case by 14th October 2014. Technically, the Applicant was also in breach of the Directions by failing to serve a statement of case in reply to the (missing) statement of case by 28th October 2014, but in the absence of the

Respondent's statement of case applied to the Tribunal for an adjournment on 22nd December 2014. The Tribunal refused the request for an adjournment and directed the Applicant to serve its statement and the documents bundle forthwith upon the Respondent and the Tribunal, in preparation for the hearing.

4. The Tribunal noted that the Respondent has failed to take any part in this application, beyond applying by email with a request for an adjournment of the case management conference held on 16th September 2014, a few minutes before the conference was scheduled to begin. The Judge presiding at the conference refused that application and gave the Directions noted above. The Directions were sent by the Tribunal by post on 16th September 2014 to the address for service notified by the Respondent in the County Court claim. Since then, the Respondent has made no further contact with the Tribunal, but has been in correspondence with the Applicant referring to related matters. The Tribunal sent the Respondent a copy of its direction to the Applicant by email, and the case officer telephoned the Respondent a few minutes after the hearing was due to start to discover if the Respondent was attending. As the telephone was only answered by an answer phone message, a message was left for the Respondent. In the light of these facts, the Tribunal decided that the Respondent had no wish to take further part in the application, and that further delay would be of no practical use.

Applicant's case

5. Ms Khan, supported by Ms N. Wood, the agent's Property Manager of this block for much of the relevant period, and Mr S. Doherty, the agent's accountant, made oral submissions based on the Applicant's statement of case. These were necessarily restricted to the extremely brief and general complaints made by the Respondent in her Defence in the County Court Claim. These can be summarised as follows:
a) The Service charges were paid by her mortgagee, Mortgage Express.
b) the amount claimed by the Applicant included fees and charges which were disputed by the Respondent for the following reasons;
(i) She had not received any demands for the service charges, but Mortgage Express had been sent a demand
(ii) The Applicant had "not provided the level of service expected from a managing agent"
(iii) Rubbish had been left in the corridors and damage to the common areas had not been attended to
(iv) problems with the Sky dish had not been attended to
(v) Her address had changed and the Applicant was aware of this as she had other properties in the same block.

6. The Tribunal notes in passing that in her Defence the Respondent gave two addresses for service; 7 Queenborough Gardens Ilford IG2 6XZ, and Flat 34, New House, 67-68 Hatton Garden, London EC1N 8JY. The document bundle also contained an email dated 3rd October 2014 from the Respondent to the Applicant notifying a new address for service at Suite 3, 219 Bow Road, London E3 2SJ. Her email remained the same;

anubhindi@gmail.com, (although on occasions a similar, but not identical, email address was used by the Respondent).

7. Following the Respondent's list of complaints noted above, the Applicant submitted;

(a) Money paid by Mortgage Express

The Applicant had recovered monies due previously for this property from Mortgage Express. We were referred to the Statement of Account for this property on pages 26 and 27 of the bundle. On 16th July 2013, the Applicant's solicitors, Bond Dickinson, had recovered those monies, and a credit of £3,471.96 had been given to the Respondent's account. In response to questions, the Applicant drew attention to the Respondent's payment history. Since January 2009, the Respondent only appeared to have paid sums due after recovery action had been commenced. In the Applicant's view, the Respondent seemed to be confusing the money claimed in this application with the previous claim. An excess sum of £237.50 had been received in the sum paid on 16th July 2013, which appeared to represent interest on arrears. This would be credited to the the Respondent's account (see page 25 of the bundle). A sum of £24.51 had also been credited to the account on 7th November 2013, representing an adjustment due to the Respondent based on the final service charge account for 2012.

(b) (b)(i) No demands received by the Respondent, and (b)(v) New address notified to Applicants

The Applicant referred to various demands and other documents in the bundle. In essence its case was that it has served documents on 7 Queenborough Gardens until it was notified of the Hatton Gardens address in the Defence, since when it had served documents on both addresses. After notification of the Bow Road address, documents had been sent to all three addresses and by email (including the bundle and the statement of case dated 24th December 2014).

(c) (b)(ii) Inadequate Level of Service from the managing agent

(The Tribunal noted that the generality of this complaint made it difficult to answer). Ms Wood gave oral evidence of the tasks carried out by the agent. She had no copy of the management agreement, but outlined her duties. Without recounting unnecessary detail, those duties, included service charge administration, monthly inspections, managing repairs and maintenance, providing information, and accounting functions, as the Tribunal would have expected of a competent agent. Particular problems of dealing with vandalism and trespass in the common parts, as well as dealing with significant service arrears in the block (noted in more detail below), were referred to by Ms Wood. For this service, the managing agent had charged fees equating to £230.12 per unit in 2011, £239.35 per unit in 2012, and £249 per unit in 2013 (all exclusive of VAT).

(d) (b)iii) Rubbish and damage in common parts, and (b)(iv) Problems with the Sky Dish

Ms Wood assisted by Mr Doherty explained that the block was a new block built about 2005. In recent years it had been plagued by a gang of under-age juveniles gaining access to the internal common parts without damaging the entry system. The police had been informed, but the police had informed the agent that they found it difficult to deal with the gang as they were generally under the age of responsibility, and were apparently being allowed access by a resident. The agent was aware of criminal damage, drug taking, public nuisance, and other unsavoury activities in the common parts. Ms Wood herself had arranged for the locks to be strengthened and changed to a key pad entry system, but the codes had been discovered by the gang. She had then changed the locks to be operated by a key fob issued only to lessees. Again access to a fob had been obtained by the gang. There was a recurring cycle in this block of damage, followed by repair, followed by more damage. When Ms Wood discovered damage, she arranged for repairs to be carried out, making insurance claims when appropriate, but particularly due to some leaseholders with multiple properties in the block withholding service charges (about 75% of leaseholders are not resident in the block) on occasions only money for urgent repairs has been available. On one occasion the freeholder even agreed to make a loan to the Applicant to cover the cost of urgent repairs, although it was not obliged to do so. The Applicant acknowledged that at on some occasions the Sky satellite reception had been defective in some properties. These repairs had not been considered as urgently required as others mentioned above. The Applicant referred to the audited annual accounts in the bundle. In 2012 total service charge arrears had reached more than £73,000 against annual expenditure of approximately £58,000. However by 2013 the arrears had been reduced to £20,000 against annual expenditure of about £55,000.

Respondent's case

8. The Respondent made no statement of case beyond those matters noted at paragraph 5 above.

Decision

9. The Tribunal considered the evidence and submissions. The Respondent's case lacked precision, and no evidence had been submitted to contradict the Applicant's case. While the Tribunal would have preferred to see a copy of the management agreement when a leaseholder was querying management and administration charges, it was not for the Tribunal to make a party's case for it, particularly when that party had apparently made no effort at all to clarify its case, in breach of Directions. The Tribunal considered that generally the Applicant's explanations were consistent with the evidence in the bundle, and there was no cogent reason to doubt the Applicant's submissions. The picture which emerged that was that the Applicant and its agent were carrying out the management as best they could, despite considerable difficulties. Overall, the Tribunal was satisfied that the disputed service charges made by the Applicant were reasonable, and reasonable in amount. The management charges made were relatively modest for this type of property, despite the particular problems which

the block had. Also the Applicant appeared to be making reasonable attempts to solve these problems, despite lack of resources.

Fees and Costs

10. The Tribunal noted that no Section 20C application to limit the Applicant's costs of this application had been made by the Respondent, and thus made no order. If such an order had been sought, the Tribunal would not have been minded to make such an order on the evidence disclosed to it.

11. The Applicant was asked at the hearing if it wished to make any costs application. Ms Khan stated that the Applicant did not wish to do so.

Chairman: Judge Lancelot Robson
Signed: Lancelot Robson

Dated: 19th January 2015

Appendix 1

Landlord & 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 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.

(3) 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).
