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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BH/LSC/2014/0412**
Property	:	**Flat 3, 615 High Road, Leytonstone, London E11 4PA**
Applicant	:	**Salim Yasin**
Representative	:	**Whitmore Law LLP, solicitors**
Respondent	:	**Toheeb Dosunmo**
Representative	:	**In person**
Type of application	:	**For the determination of the applicant's liability to pay service charges and administration charges: claim transferred from the county court**
Date heard	:	**15 January 2015**
Appearances	:	**Thomas Talbot-Ponsonby, counsel, instructed by Whitmore Law LLP, for the applicant**
	:	**The respondent in person**
Tribunal	:	**Margaret Wilson (judge)** **K M Cartwright FRICS JP** **Rosemary Turner JP**
Date of decision	:	**2 February 2015**

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DECISION

Introduction and background

1. This is a claim to recover arrears of service charges and administration charges which was brought in the county court and transferred to the Tribunal under paragraph 3 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("the Act").

2. The claim as pleaded is for £6375.35 and costs and was issued on 19 September 2012. It relates to service and other charges alleged to be payable by the tenant, Toheeb Dosunmo, who holds a long lease of Flat 3, 615 High Road Leytonstone which is a block of five flats and four garages. The arrears of service charges are said to relate to costs incurred in respect of the year 2005/2006 up to the date of issue of the proceedings. The claim is also for ground rent said to be due from 2003 to date but the Tribunal does not have jurisdiction in respect of ground rent which, in any event, it appears that the tenant has paid. The identity of the landlord was identified as an issue at the case management conference but it is now agreed that the landlords are Salim Yasin and his wife, Shaheen Salim Yasin. The property is managed by their son, Asif Yasin.

3. Directions for the determination of the claim were made on 30 September 2014 at a case management conference which was attended by Thomas Talbot-Ponsonby, counsel, then instructed by Daybells, solicitors, for the landlords and by the tenant in person. The parties complied with the directions save that the landlords' hearing bundle did not contain the tenant's documents so that he had to provide a separate bundle himself.

4. At the hearing on 15 January 2015 the landlords were again represented by Mr Talbot-Ponsonby, now instructed by Whitmore Law LLP, the landlords' previous solicitors having ceased to practise. He called Asif Yasin to give evidence. The tenant again appeared in person and gave evidence.

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 claim

6. In addition to ground rent, the claim comprises the following items, taken from a list at pages 5 and 6 of the landlords' bundle:

i. insurance
ii. communal electricity
iii. repairs
iv. Land Registry fees
v. administration fees
vi. surveyor's fees
vii. solicitor's fees
viii. Tribunal fees
ix. barrister's fees

7. It emerged at the hearing that none of the relevant demands for service charges had been accompanied by the summaries of the of the tenant's rights and obligations as required by section 21B of the Act of which Asif Yasin admitted that he had never heard. Accordingly none of the sums claimed in respect of service charges are payable until such summaries are deemed to have been served, which we take to be on the date when this decision becomes final.

The issues

i. Insurance

8. The tenant's alleged one fifth share of the costs of insuring the building were given in the "rent schedule" at pages 5 and 6 of the landlords' bundle as:

2005/2006	£132.88
2006/2007	£132.88
2007/2008	£198.04
2008/2009	£198.03
2009/2010	£203.47
2010/2011	£215.87
2010/2012 [sic]	£246.08
2010/2013 [sic]	£265.78

9. It was the tenant's case that he had never, in spite of several requests, been provided with any evidence, such as policy documents or receipts for premiums, to show that the building had been insured during the period in question and that he had accordingly been obliged to insure the flat himself at his expense, which, by producing insurance schedules, he demonstrated that he had done. He said that when he bought the property from the previous freeholder the address of the present landlord could not be found by his solicitors and he had been advised to insure the flat himself and to take out an indemnity policy to cover him in the event, as we understand it, that the new owner was in fact insuring the building. He said that at a meeting with Salin Yasin, the applicant, in December 2010 he had asked for the insurance documents so that he could forward them to his insurers but he received none. He said that he had also asked Asif Yasin for proof that the property was insured but had not received it and that, at a hearing in the county court of the landlords' claim for forfeiture for alleged dilapidations, when he told the district judge that he was not prepared to pay service charges until he had seen proof that the landlords had insured the property and paid for other services, the district judge had told the landlords to demonstrate to the tenant that the property was insured but that they had not done so. A letter in the tenant's bundle from the tenant to Asif Yasin dated 15 February 2011 includes a request for a copy of "the latest and current buildings insurance" which was "required by law" and said that until it was received the tenant would keep insuring his flat. In the first paragraph of his defence to the present claim (at page 27 of the landlords' bundle) he said "I have made numerous requests for Mr Yasin (the freeholder) to send proof that he has been insuring the property as is required of him in the lease. The court has also instructed him to make the documents available to me. To date I have not received any insurance documents for the building" and he asserted that he believed that the building was uninsured and that as a result he had himself insured his flat. The Tribunal's pre-hearing directions required the landlords to provide invoices in relation to disputed costs.

10. Despite this history, as to the accuracy of which we are satisfied, the only evidence that landlords produced to support their case that the property was insured was a letter from Hollie Cocomazzi dated 3 March 2014 which said that the property had been insured through Fairweather continuously since 2010 and giving a list of insurers and policy numbers but no details of the premiums paid or of the extent of the cover. At the hearing a further letter was produced (not in the hearing bundle) from Ms Cocomazzi which said that the property had been insured since 2005/2006 through Fairweather and giving a list of insurers and policy numbers for the years 2005/2006, 2006/2007, 2007/2008, 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015. The letter said that they were "currently locating" the policies for the years 2008/2009 and 2009/2010.

11. In his written statement, at page 38 of the landlords' bundle, Asif Yasim said that he had "caused a search to be made in our storage facility because I cannot immediately find certificates". He said that he had asked the account executive to search out confirmations of insurance but "like me they do not keep records going back in time". In his oral evidence he said "we have 30 to 40 properties, that the premium was £6000 and the insurance documents

were "usually kept elsewhere in a general file for insurance. He said he had first read the lease "this week" and that no one else had asked for evidence of the premiums or details of the insurance cover. Cross-examined by the tenant as to why proof of the insurance cover and premiums had never been provided he said that the documents were "possibly in storage somewhere". Asked by the Tribunal how it could decide whether the premiums were paid and the cover adequate he said that there was not much he could say.

12. The landlord is obliged under clause 5(ii) of the lease *whenever required [to] produce to the lessee the policy or policies of ... insurance and the receipt for the last premium.* We accept the tenant's evidence that he on a number of occasions asked for proof that the building was insured but had never received it. There is no other explanation for his decision to spend his own money on insuring the flat. No satisfactory explanation was offered to us as to why details of the relevant policies, the amount of the relevant premiums and proof that they had been paid was not available. Mr Talbot-Ponsonby agreed that it was hard to contradict the Tribunal's suggestion that the insurers would have been able, if asked, to confirm that the building was insured, on what terms, and at what premium. On the evidence put before us we are not satisfied that the landlord insured the building, adequately or at all, during the relevant period, or, if it was insured, that the cover was adequate and the premiums reasonable in amount. If it was insured, the landlords have only themselves to blame by not providing the tenant and the Tribunal with the appropriate evidence. Accordingly the tenant is not liable to pay any of the claimed costs of insurance.

ii. Communal electricity

13. The tenant's share of charges for this service as given in the "rent schedule" are:

2005/2006	£10.85
2006/2007	£25.83
2007/2008	£27.41
2008/2009	£32.51
2009/2010	£27.55
2010/2011	£25.45
2009/2012 [sic]	£21.59
2010/2012 [sic]	£27.41

14. The only invoices for electricity which the landlords produced were dated 7 June 2006, 8 September 2006 and 24 November 2006. Mr Yasin said that the other invoices might be on another file, or he might have given them to his previous solicitors. It was agreed that the charges claimed were for power for three lights in the communal areas which were generally switched on for eight hours a day. Mr Talbot-Ponsonby submitted that the charges, though mostly unsupported by invoices, were realistic and the tenant agreed that they were. We determine that these charges were incurred, and reasonably so.

iii. Repairs

15. The tenant's alleged one fifth share of these costs were:

2005/2006	£1453
2007/2008	£23.50
2007/2009 [sic]	£200
gate	£888.58

16. The charge of £1453 for the year 2005/2006 is one fifth of the sum of £7265 given in an estimate from M Khan Builders, addressed to the previous freeholder, Mr Goldstein, care of Elliott Davis Properties, the landlords' company, which is at page 52 of the landlord's bundle. The document is undated and is not receipted. The only receipt for repairs apparently carried out in 2005/2006 is at page 54 of the landlords' bundle and is from Shahi Developments Ltd for £920 dated 2 April 2005 for removing damaged plaster in communal areas, re-plastering and redecoration and replacing the lock of a communal door, which includes some of the work listed in the estimates from M Khan and S & S Builders. It is agreed that the landlords did not consult the leaseholders in accordance with the Service Charges (Consultation Requirements) (England) Regulations 2003 although there is a letter, which does not comply with the consultation requirements, at page 67 of the landlords' bundle which is said to enclose two estimates, that from M Khan and the other, at page 53, from S & S Builders, also undated, in the sum of £4500, labour only, materials to be supplied by the landlord.

17. Mr Yasin said that Mr Khan, who "disappeared a few years ago" did the work and would have been paid for it. He said that the landlords would have had a receipt but he could not produce it. The tenant said that he agreed that some work had been done but he did not accept that all the work listed in the estimate had been done and considered the standard of the work to be shoddy. He said that his office was two doors away from the building and he had staff who inspected the building for him. He said he was suspicious of the letter at page 67 of the landlords' bundle because it had never been produced to him before.

18. It is clear, and was not disputed, that the landlords did not properly comply with the statutory consultation requirements in relation to this work. Mr Talbot-Ponsonby did not ask us to dispense with such compliance but, even if he had done so, we would have been most unlikely to have agreed to do so because of the unsatisfactory nature of the evidence of what work was done and what was paid for it. We bear in mind that the work was allegedly carried out some years ago, but the evidence of what was done and how much was paid, and to whom, is so unsatisfactory that, doing the best we can, we allow as payable by the tenant only £250, the maximum permitted by the consultation regulations where the landlord has not complied with them. This may be generous to the landlord.

19. The charge of £23.50 in 2007/2008 is said to be supported by an undated invoice at page 51 of the landlords' bundle and relates to clearing drains at a cost of £100 plus VAT at 17.5%. However there is no indication on the invoice

that 1st Drainage and Plumbing who carried out the work was registered for VAT and we therefore disallow the VAT element and determine that only £20 is payable by the tenant.

20. The charge of £100 for the years 2007/2009 is said to be supported by an invoice, this time from 1st Building Contractors and dated 15 December 2009, said to relate to an emergency call-out for a leaking roof. This curious document says that the invoice includes labour and materials: £350, and the sub-total is £1000, said to be inclusive of VAT. Once again no VAT number is given and we do not accept that 1st Building Contractors was entitled to charge VAT. On the basis of the unsatisfactory evidence provided to us we conclude that the cost which the landlord is entitled to recover is limited to £350 and we determine that the tenant is liable to pay one fifth of this sum, namely £70.

21. The charge of £888.58 relates to the provision of a new metal entrance gate. Documentary support for this charge includes a notice of intention given under the consultation regulations at pages 58 - 60 of the landlords' bundle, in which the landlord proposes to accept the tender of Metal Grill Master in the sum of £3200. At the second page of the notice the estimated cost of the works is said to be £4442.88, one fifth of which is £888.58. The sum comprises, in addition to the £3200 quoted by Metal Grill Master (the invoice from whom is at page 61 and is for £3200), contract administration at 5.7% and a management fee 10%, a sub-total of £3702.40, together with VAT of 20% on the whole amount. Given that Metal Grill Master was not registered for VAT, and that the contract administration and management were said by Mr Yasim to have been carried out by the landlords' company which is not registered for VAT or by his brother, who is not registered for VAT, the charge for VAT on the whole amount is surprising. Mr Yasim said that it could be that the VAT was payable to a Mr Junia Charlton who works for a housing association but also helps the landlords and who found the contractor, but he was unable to confirm that Mr Charlton was registered for VAT and he agreed that "probably" VAT should not have been charged on the full amount.

22. The tenant said that he agreed that the gate had been replaced and he had paid the £500 he had been asked to pay, when he was asked to do so, and that it had ben agreed that he would pay the balance when he was notified that the work had been completed, but that he had not been so notified. He agreed that £3200 was a not unreasonable charge for the gate.

23. We are satisfied that the charge for VAT was improperly made. We allow the fee of £182.40, based on 5.7% of the cost of the gate, as reasonably incurred for contract administration but disallow the fee for management in view of the unsatisfactory treatment of VAT. We thus determine that the tenant's share of the reasonably incurred cost of the gate is one fifth of £3382.40, or £676.48, of which it is not disputed that he paid £500 (see the letter dated 27 October 2011 in the tenant's bundle). He remains liable to pay £176.48.

iv. Land Registry fees

24. In view of the small sums involved, £4 and £3, the tenant agreed that they were payable. They were likely to have been administration charges rather than service charges since they appear to have been related to the landlords' efforts to find the tenant's address.

v. Administration fees

25. It emerged that these charges were fees for managing the building. The tenant's share of charges for this service as given at page 5 of the landlords' bundle are:

2007	£75
2008	£100
2009	£120
2010	£135
2011	£145
2012	£160

The list also includes charges for management in 2013 and 2014 which post-date the claim and are thus not matters over which we can adjudicate in these proceedings.

26. Although we consider that the standard of management was very low, the tenant agreed these charges and we accordingly determine that they are payable. They amount to £735.

vi. Surveyor's fees

27. These fees - two amounts of £450 - were charges said to have been made by Asif Yasin's brother, Shaaraz Yasin, for preparing two schedules of dilapidations in respect of the garage let with the tenants' flat. It seems reasonably clear from the evidence of both Mr Yasin and the tenant that the landlords started proceedings for forfeiture of the tenant's lease, that the landlords obtained judgment in default of appearance or defence, and the proceedings were then withdrawn, or not pursued (Mr Yasin says in his statement (at page 37 of the landlords' bundle) that the landlord "decided not to pursue" the claim and that he, his father and the tenant subsequently had a meeting in an attempt, presumably, to settle the dispute). Mr Yasin said that he could not find invoices for the charges.

28. Mr Talbot-Ponsonby submitted that these charges should be regarded as variable administration charges within the meaning of paragraph 1(1)(d) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as having been incurred *in connection with a breach (or alleged breach) of a covenant or condition* in the lease. He submitted that as the charges had never been dealt with by the court we should infer that they were payable as

administration charges. In our view, however, the inference which is more likely to be correct is that the landlords, in withdrawing or not pursuing their claim without seeking or obtaining an order for costs, accepted that they would pay their own costs, including any fee charged by Mr Yasin. We determine that these charges are not payable by the tenant.

vii. Solicitor's fees

29. These charges are of £176.25 in 2007 and of £1106.25 on 17 March 2010. There appears to be no invoice in the bundles to support the charge of £176.25, but the charge of £1106.25 is said to be supported by an invoice from Daybells, solicitors, the landlords' previous solicitors, at page 70 of the landlords' bundle. It is dated 17 March 2010 and is described as a "first interim account" for costs incurred. The sum includes a disbursement of £225 in respect of a court fee. It appears likely that these costs were incurred in connection with the forfeiture proceedings which the landlords elected not to pursue.

30. As with the surveyor's fees, Mr Talbot-Ponsonby submitted that these costs were variable administration charges. Whether or not they are to be so categorised in principle, we determine that they are not payable for the same reasons as we have given in relation to the surveyor's fees.

viii. Tribunal fees

31. The fee of £190 paid to the Tribunal is neither a service charge nor an administration charge. We do have power to order the reimbursement of such fees but Mr Talbot-Ponsonby said that in the circumstances the landlords did not seek reimbursement.

ix. Barrister's fees

32. This sum of £420 is the fee paid to Mr Talbot-Ponsonby for attending the case management conference. We could order payment of such a sum only if we considered that the tenant had behaved unreasonably in his conduct of the proceedings. Mr Talbot-Ponsonby agreed that he had not done so.

Costs

33. The tenant asked for an order under section 20C of the Act to prevent the landlords from placing its costs incurred on his service charges. In the circumstances we are satisfied that it is just and equitable to make such an order in view of the landlords' mismanagement and failure to establish their entitlement to recover much of the sum claimed. Insofar as it is within our power to do so we say also that we would not regard it as appropriate for the landlords to seek to recover their costs from any of the leaseholders.

Conclusion

34. It follows from the above that the tenant is liable, when this decision becomes final, to pay the sum of £1457.08 in respect of the service charges claimed.

Judge: Margaret Wilson