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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BR/LSC/2015/0024**
Property	:	**Flat 1(A), 258 Peel Green Road, Eccles, Manchester M30 7BU**
Applicant	:	**Ms L H Wenneker**
Representative	:	**HLM Property Management**
Respondent	:	**Mr J Dalton**
Representative	:	**Mr D Lightfoot**
Type of Application	:	**Landlord and Tenant Act 1985 – s27A** **Landlord and Tenant Act 1985 – s20C**
Tribunal Members	:	**Mrs C Wood (Judge)** **Mr J Rostron, MRICS** **Dr J Howell**
Date of Decision	:	**11 August 2015**

DECISION

ORDER

1. The Tribunal orders as follows in respect of the service charges for the Property for the service charge years 2010 (1 May – 31 December 2010), 2011, 2012, and 2013, (together "the Service Charge Years"):

1.1. that the amount of £360 charged for accountancy fees in each of the Service Charge Years is reasonable;

1.2 that the amounts charged for insurance of the Block in the 2010/11 and 2013/14 service charge years and for the Property in the 2011/12 and 2012/13 service charge years are reasonable;

1.3 that the amount of £150 charged to the reserve fund in each of the Service Charge Years is reasonable;

1.4 that the following amounts charged for stationery/printing are reasonable:

(i) 2011: £10.00
(ii) 2012: £10.00
(iii) 2013: £22.00;

1.5 that the following amounts charged for professional fees are reasonable:

(i) 2012: £28.20
(ii) 2013: £8.20;

1.6 that the costs incurred in respect of the Health and Safety Survey in August 2012 were not reasonably incurred and were not relevant costs to be taken into account in determining the amount of the service charge payable in the 2012 service charge year;

1.7 that the following amounts charged for management fees in each of the Service Charge Years are reasonable:

(i) 2010: £175.00
(ii) 2011: £265.00
(iii) 2012: £288.00
(iv) 2013: £299.00; and,

1.8 the Tribunal did not consider that it was fair and equitable in the circumstances to grant the Respondent's s20C application, which is refused.

BACKGROUND

2.1 Following the institution of proceedings in or about December 2014 by the Applicant for the recovery of service charge arrears from the Respondent, the matter was transferred to the Tribunal by order of

District Judge Khan sitting at Manchester County Court on 5 February 2015.

2.2 Directions dated 9 March 2015 ("the Directions") were issued.

2.3 A hearing was scheduled to take place at 1130 on Monday 29 June 2015 following an inspection of the Property at 1000 on the same date.

INSPECTION

3.1 The inspection was attended by Mr J Ryan and Ms E Davies, both of HLM Property Management, ("HLM") for the Applicant, and Mr D Lightfoot representing the Respondent.

3.2 The Property is one of 2 flats in a 2-storey house, ("the Block"). The Property is on the ground floor. At the front of the Block there is a small internal communal hallway with access to both the Property and the upstairs flat. This area is carpeted and the walls were painted.

3.3 The garden to the rear of the Block (which was very overgrown) was accessed from the street by a side gate which was in a poor condition. It appeared that only the Property had access to the external areas.

3.4 Mr Lightfoot drew the Tribunal's attention to the front door, to the carpeting and painting in the internal communal hallway and to the flashing and some of the guttering at the front of the Block all of which he claimed had been replaced and/or repair work undertaken by the Respondent at his own expense.

LAW

4.1 Section 27A(1) of the Landlord and Tenant Act 1985 provides:

An application may be made to the appropriate 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.

4.2 The Tribunal is "the appropriate tribunal" for this purpose, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

4.3 The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

4.4 In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

> *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.*

4.5 "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

> *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.*

4.6 There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, he will need to specify the item complained of and the general nature of his case. However, the tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

4.7 Section 20C of the 1985 Act permits the Tribunal to order that the costs incurred by the landlord in connection with these 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 by any other person specified in the application for the order. The Tribunal may make such order as it considers just and equitable in the circumstances

HEARING

5. The same parties attended the hearing as attended the inspection.

6. The parties made the following submissions:

6.1 in his defence to the county court claim, the Respondent claimed that he had already paid the arrears of service charge in respect of the Property:

(i) HLM stated that Flat B (on the 1st floor of the Block) had been re-possessed by the mortgagee, Mortgage Express, and they had paid the service charge arrears;

(ii) Mr Lightfoot said that the Respondent had paid the service charge arrears in respect of the Property to the mortgage company;

(iii) HLM stated that they had not received any service charge arrears in respect of the Property from the mortgagee nor from the Respondent;

(iv) neither party produced any documentation in support of these submissions to the Tribunal;

6.2 in their letter dated 6 May 2015 to the Tribunal and to the Respondent, HLM on behalf of the Applicant suggested that, in view of statements made by the Respondent in the statement dated 5 May 2015 (in compliance with paragraph 4 of the Directions), the Respondent (a) was not challenging the reasonableness of any of the service charge costs incurred; and (b) was challenging the "equitableness" of the administration fees – which it was claimed did not fall within the Tribunal's jurisdiction - rather than their "reasonableness" – which did:

(i) Mr Lightfoot explained that the Respondent accepted that there was a contractual obligation under the terms of his lease to pay service charges but he was not happy with the level of management services provided by HLM nor with the amounts charged for these services;

(ii) he also explained that when the Respondent referred to "administration charges", he was referring to charges for the management and/or administration of the house;

6.3 with regard to the service charges generally:

(i) all of the expenditure for each of the Service Charge Years relates to the Block; the Respondent's liability is for 50% of the expenditure;

(ii) HLM had assumed responsibility for management of the Block with effect from 1 May 2010;

(iii) where there is a reference to an accrual, it was explained that the invoice was not available but the expenditure had been incurred in relation to that year;

(iv) in each of the Service Charge Years, costs had been incurred in respect of accountancy fees, insurance, management fees and reserve fund;

(v) management fees included the "back office" administration work eg issuing of demands, liaising with the accountants, arranging the insurance; the day-to-day matters eg problems with the Block; and 6 inspections per annum;

(vi) HLM said that the management fee was calculated on a charge per unit each year (rather than a percentage of expenditure) and increased each year by agreement with the Applicant. There had been an increase of 2.3% in 2011, 9% increase in 2012, 4% increase in 2013 and a 5% increase in 2014;

(vii) Mr Lightfoot said that the Respondent was not aware of any visits by HLM to the Property and no reports had been given of these visits to the Respondent;

(viii) HLM confirmed that they did not give prior or subsequent notice to leaseholders of these visits. However, where they are in communication with leaseholders, they will, where necessary/appropriate, arrange to meet on site, report back on matters which have been raised with them etc. In HLM's view, the Respondent has not engaged at all with the Applicant/HLM;

(ix) with regard to the Respondent's claim that there have been many emergency repairs which the Respondent has dealt with, HLM denied that any problems had been reported to them;

(x) Mr Lightfoot said that the Respondent was not aware that was the procedure and expressed surprise that HLM would not have noticed the problem with the flashing/guttering at the front of the Block during one of their visits;

(xi) HLM said that they and the Applicant were aware of the need to do works at the Block, in particular, to the garden, but they are restricted by the terms of the RICS code from placing orders for works where have no service charge funds to pay for them. They said that there was a zero balance on the service charge account, whilst the debtor balance has increased since they took over the management. Because of this, some of the services have been funded by them and the Applicant;

(xii) with regard to the accountancy fee of £360 in each of the Service Charge Years, the Respondent claimed that it was "excessive" as there was not a lot of work involved;

6.4 service charge for the period 1 May – 31 December 2010: the Applicant explained that the management fee of £175 related to a 6 month period only;

6.5 service charge years 2011 and 2012: in both of these years, the insurance charges (2011: £153.82; 2012: £139.66) are in respect of only 1 flat in the Block and is an error. By contrast, the insurance charges in 2010, (£320.04), and 2013 (£322.26), are for both of the flats in the Block. It was confirmed that the insurance was effected for the Block in all cases. HLM also confirmed that the insurance runs from February – February in consecutive years;

6.6 service charge year 2012: Health & Safety/Fire Risk Report submitted 8 August 2012: the Applicant stated that they were required to arrange for a report at regular intervals or when something changed at a property necessitating a report to be undertaken. They had assumed management in 2010 and thought it was appropriate by 2012 to arrange for this to be done. The Tribunal referred the Applicant to the statement in the Report that the Block has "no internal communal areas", (page 139); this appeared to be consistent with HLM's statements to the Tribunal at the inspection that there were no internal communal areas. Mr Lightfoot had shown the Tribunal and HLM the communal internal hallway, (paragraph 3.4 above).

DELIBERATIONS

7. In reaching the decisions set out in paragraph 2 of this Decision, the Tribunal had regard to the following matters:

7.1 on balance of the oral evidence presented to it, the Tribunal considered that the Applicant had not received payment of any arrears of service charge from the mortgagee of the Property;

7.2 the Tribunal was satisfied that the Respondent was challenging the actual costs incurred as service charge expenditure for each of the Service Charge Years and that the statements made in paragraph 2 of his statement dated 5 May 2015 did not constitute an admission of liability within section 27A(4)(a) of the 1985 Act. Further, the Tribunal was satisfied that the Respondent was referring to the management fees when he referred in paragraph 3 to "administration charges" rather than administration charges as defined in paragraph 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002;

7.3 they determined that the costs incurred in commissioning the Health & Safety Report (referred to in paragraph 6.6.above) were not reasonably incurred and were not therefore "relevant costs" to take into account in determining the service charge payable in the 2012 service charge year because the instructions given to the surveyors by the Applicant were based on a fundamental misunderstanding that there were no internal communal areas at the Block. This was shown to be inaccurate at the inspection of the Property. Since part of the Report concerned making an assessment of the fire risks at the Property, the Tribunal considered that the lack of knowledge of the internal communal hallway was such a significant omission that it was reasonable to assume that, at the very least, the Report would need to be reviewed whilst, at worst, a further survey/report might be required;

7.4 the Tribunal did have some concerns about the extent and quality of the management being undertaken by HLM/the Applicant. In particular, the Tribunal considered that there was more administration, than management, and that some of the time spent could be more purposively spent eg they questioned the value of making visits to the Block without notifying the leaseholders and/or reporting back to them. However, the

Tribunal also took into account the Respondent's failure to engage with the Applicant/HLM, and the failure to make payment of any of the service charges since at least 2010. On balance, whilst the management services may be limited in extent and effect, the Tribunal was satisfied that HLM were carrying out necessary functions like preparing budgets, issuing invoices/demands, arranging insurance and arranging for the annual preparation of accounts and that the charges made were reasonable for the provision of these limited services;

7.5 notwithstanding the Tribunal's determination in paragraph 1.6, as they had determined that all of the other charges were reasonable it was not just and equitable to grant the Respondent's s20C application.