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

Case Reference : **LON/00AH/LSC/2016/0070**

Property : **Flat 2, 63 Albert Road London SE25
4JD**

Applicant : **Ms Mandip Chhokar**

Representatives : **In person**

Respondent : **Mercia Investment Properties
Limited**

Representative : **Mr Martin Paine, Circle Residential
Management Limited, Managing
Agents**

Type of Application : **For the determination of the
liability to pay and reasonableness
of service charges (s.27A Landlord
and Tenant Act 1985)**

Tribunal Members : **Professor Robert M. Abbey
(Solicitor)
Mr Frank Coffey (FRICS)**

**Date and venue of
Hearing** : **20th May 2016 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **1 June 2016**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the service charges for the property are payable as follows:-

2014-2015, (actual charges for the property)

Year end Accountancy	£60.00
External redecoration	£Nil
Gardening Costs	£375.07
Buildings Insurance	£646.42
Interest	£Nil
Sundry/miscellaneous	£5.00
Health and safety	£48.00
Management fee	£270.00
Building repairs (guttering)	£Nil
Building repairs (Roof)	£Nil

2015-2016, (estimated charges for the property).

Year end Accountancy	£60.00
Building repairs	£80.00
Gardening	£375.07
Insurance	£678.74
Refuse collection	£30.00
Management fee	£285.00

- (2) The tribunal makes no order under section 20C of the Landlord and Tenant Act 1985 as the applicant withdrew the 20C application at the end of the hearing.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount and reasonableness of service charge payable by the applicant in respect of services provided by the respondent in respect of Flat 2, 63 Albert Road London SE25 4JD, (the property) and the applicant’s liability to pay such service charge.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant was represented by Mr Martin Paine from the Managing Agents Circle Residential Management Limited and the respondent was self-represented but with the assistance of her partner Mr Titus.
4. The tribunal had before it an agreed bundle of documents prepared by the respondent. The bundle was augmented at the hearing by a Scott Schedule prepared by the respondent.

The background

5. The property which is the subject of this application comprises six converted flats within 63-65 Albert Road, (“the building”), with three flats in each house. Flat 2 is on the ground floor. The ground floor lease was granted on 30 December 2014 for a term from 25 March 1978 to and including 24 March 2128.
6. The original tenant was Kirmond PP Investments limited who then sold it to another company with no connections to the respondent or the managing agents by way of a proper arm’s length transaction. (That company was called Pier 1 Investments Limited). Mr Paine for the respondent stated to the tribunal that there was no connection whatsoever with that second company which was an entirely independent entity which then then sold the property to the respondent. The applicant purchased this property on 26 August 2015 by way of an auction contract and the managing agents received notice of assignment by letter dated 9 October 2015.

7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. Under the terms of the flat lease the tenant must pay 16.67% for the services provided.

The issues the applicant raised covered the reasonableness of some of the charges raised for the several items listed above and carried out by the respondent. The applicant considers that some of the items are either excessive or unreasonable. The applicant also believes that an interim service charge liability should have been disclosed when they purchased the property.

The issues

9. The position of the respondent was quite clear. The charges were properly demanded in accordance with the terms of the lease and were therefore properly payable by the applicant. The applicant accepted most of the items were reasonable as to some of the charges but when they purchased their potential liability was not disclosed despite requests after the auction for this detail.

Decision

10. With regard to the respondents submissions on payability and the interim service charge the tribunal could find nothing of substance. The lease terms are clear and the tribunal is of the view that the charges levied were properly demanded. The tribunal then turned to the matter of reasonableness for each service charge item.
11. The tribunal is of the view that there are elements of the service charges that are unreasonable. The tribunal considered the amounts for each year starting with 2014-2015. In this particular year there were ten items in dispute and each was considered in turn.
12. In regard to the charges for external redecoration, interest and building repairs (roof) the respondent conceded these points and agreed a nil contribution for this tenant. The tribunal therefore finds that a nil sum is agreed and fixed. During the hearing the respondent also conceded the charges regarding building repairs (guttering) and thus agreed a nil contribution for this item. The tribunal again finds that a nil sum is agreed and fixed.
13. With regard to the year end accounting, buildings insurance, sundry/miscellaneous charges, health and safety charges and the

management fee the tribunal finds that they are all reasonable. Either they reflect the actual charges, e.g. the insurance premium or they are simply reasonable given the nature of the work done and the charges levied.

14. This simply leaves one outstanding item for 2014-2015 and that is with regard to the gardening costs. It was agreed by the parties that the gardens comprised a small front garden mostly laid as grass and a rear garden of no great size. The tribunal were not shown any gardening contract with a detailed specification of works. They were advised that the gardening contractors had been changed in February 2016 when a significant reduction in the gardening charges was achieved. The tribunal, relying upon its experience of service charges of this kind, considered that the charges were unreasonably high and thought that the appropriate charge for a residential property of this type would be £375.07 and therefore substitute this sum for the sum originally levied.
15. In regard to the year 2015-2016 the applicant was seeking to challenge the estimated interim charges for the current year. At the hearing the applicant confirmed that of the six items listed for the year they only disputed the interim charge for gardening. Accordingly, the tribunal was able to find that the charges for year end accounting, (£360), building repairs, (£80), insurance, (£678.74), refuse collection, (£330) and management fee (£285) were all reasonable and were therefore approved by the tribunal.
16. This again simply leaves one outstanding item for 2015-2016 and that is with regard to the gardening costs. As has been noted above, the tribunal was not shown any gardening contract nor a detailed schedule of works. With regard to such estimated costs, for that is all they can be, it is usual to base these on the actual costs for the last year for which actual accounts have been prepared and hence actual costs obtained. These actual costs are then adjusted for inflation and finally, provision made for any additional items not included in the latest available accounts. It should be remembered of course that interim charges are always subject if an applicant deems it appropriate to an eventual application in respect of reasonableness. Comparing the charge for the period to 28th September 2015 of £3119.50, with the budgeted sum for the subsequent year of £2202.00, in view of the fact that there was no proper and suitable detailed description of garden works, or at least none that was produced at the hearing, the tribunal is of the view that the actual service charge for gardening works should not exceed £2250 for the year to 28th September 2016.
17. For all the reasons set out above the tribunal is of the view that the service charges are in part unreasonable and that the amounts should be as set out above.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate 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 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 that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.