11249

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00AM/LSC/2015/0400
Property	:	85B Lordship Park, London, N16 5UP
Applicant	:	Steven Lidbury
Representative	:	in person
Respondent	:	Martina Kilikita
Representative	:	Johnny Christofi (of Goodsir Commercial Limited, managers of the property on behalf of the Respondent)
Type of Application	:	Determination of the payability of service charges (s27A Landlord and Tenant Act 1985)
Tribunal Members	:	Francis Davey Peter Roberts DipArch RIBA
Date and venue of Hearing	:	9th December 2015 10 Alfred Place, London
Date of Decision	:	17th January 2016

DECISION

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1. Service charges are payable by the Applicant to the Respondent apportioned in accordance with the lease out of the relevant costs listed in Annex 1 to this decision.

2. The Tribunal orders, pursuant to section 20C of the Landlord and Tenant Act 1985 that all or any of the costs incurred, or to be incurred, by the respondent in connection with proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant.

3. The Tribunal orders, pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the respondent reimburse all fees paid by the applicant to the tribunal in connection with this application.

REASONS

Unless otherwise stated, all references to section numbers are to the Landlord and Tenant Act 1985

The Property

4. 85 Lordship Park is a three storey building divided into four flats. The property is the second floor flat.

5. It and the first floor flat are accessible from doorways on a small first floor landing that forms part of the common parts. The landing is accessible via a half-carpeted flight of stairs leading up from a small hallway with a communal door.

6. Outside the door is an area, described by Mr Lidbury as a "porch". The porch has, in principle, a door to the outside but that door has, as far as all those involved were aware, always been open.

7. The ground and basement flats have separate entrances.

8. Ms Kilikita is the head lessee of 85 Lordship Park. Mr Lidbury holds the property from her under an underlease for 99 years from 25th March 1987 ("the Lease").

The Application

9. Mr Lidbury's asks the tribunal to determine the payability of service charges for 2015 and 2016.

10. On 29 September, Judge Dickie ordered that the parties complete a table setting out each item in dispute in the service charge bill, with the tenant and landlord's comments.

Our approach

11. The charges for 2015 were demanded as advance service charges. The majority of 2015 has now passed. It would seem artificial to determine the payability of those charges from the perspective of the date on which they were demanded.

12. For reasons that will become clear this would almost certainly require the parties to return to the tribunal for a further determination at year end to no-one's benefit. We proposed, and the parties accepted, that it would be proper for us to determine the payability for the 2015 service charge bill from the perspective of the hearing date and on the basis of work that had, or had not, taken place.

13. For the 2016 charges our approach is to consider what would be reasonable to demand in advance.

Hearing

14. No inspection was carried out. We heard evidence and submissions from Mr Lidbury and Mr Christofi.

15. Only one general point arose: Mr Christofi told us that, when his firm took over the management of the property in 2014, it obtained a key that, it believed, would open the door to the internal common parts. He told us that it did not.

16. He had therefore been unable to obtain access and that, in turn, meant that work, such as cleaning, had not been carried out by the respondent in the internal common parts.

17. Mr Lidbury was concerned that there might be an implication, in Mr Christofi's submissions, that he was responsible for this situation, for example by having changed the lock. If there were such an implication, he denied it.

18. For our part we do not need to determine this point. If the respondent wishes to access the internal common parts that is her right. It is open to her to have the looks changed if she does not have a key to the locks that are in place.

19. Whether the cost of such work would be recoverable as a service charge would depend, amongst other things, on the reason why Mr Christofi's key does not work, but the determination of that cost was not a question before us.

Accountancy and audit costs

20. Mr Christofi told us this was an actual cost. It represented the cost of preparing the service charge accounts as required by the Lease and then having a firm of accountants certify them. He said that the work was done by his firm's internal accounts department but that the certification was carried out by Business Orchard LLP. He did not now what the split of revenues between internal and external costs was.

21. In our view the production of service charge accounts, given modern management practice, should be relatively straightforward and should be included within the management fee.

22. Paying an external firm of accountants to certify the accounts was in principle reasonable. We were prepared to allow up to £250 for that work – in this case the fee paid to Business Orchard LLP – for 2015 and 2016.

23. Clearly, in the light of our conclusions, the Respondent may not recover more under this head than is actually paid out.

General maintenance and repairs

24. The parties agree that no maintenance or repair has been carried out in 2015.

25. Mr Lidbury was concerned that he knew of no specific maintenance or repair that had been identified as the object of the £200 claimed for 2015 and 2016.

26. In our view some allowance must be made for the possibility of repair work in 2016. It seems to us that £200 is a reasonable amount to allow for contingencies.

27. For that reason we assess the 2015 bill as £0 on the assumption that no further work is needed in 2015 – if work is carried out then the payability of service charges for that work would be an entirely different question – and we allow £200 for 2016.

Communal cleaning

28. It was conceded by Mr Christofi that no cleaning had been carried out in 2015 or was likely to be carried out for the remainder of the year. For that reason we assess the total sum for 2015 at £0.

29. The amount for 2016 presents more difficulty. At present Mr Lidbury says that the cleaning is carried out between himself and his neighbour and that the fairly small area of the common parts is kept in a clean and tidy condition.

30. Mr Christofi says that he cannot verify this because he has not had access to the internal common parts. We have not had the benefit of an inspection so we have had no ability to assess whether the tenants' work is adequate.

31. It seems to us that there are two questions.

32. First, if a landlord is aware that tenants are carrying out cleaning duties adequately and have expressed a commitment to do so, is it reasonable for the landlord to hire cleaners to carry out the work as well?

33. In our view the answer to that question would be highly fact-sensitive. It would depend for example on exactly what commitment the tenants gave. It may be that an oral assurance that cleaning will be done would

34. be sufficient. It would also depend on the landlord's (or their agent's) assessment of the tenants carrying out the work.

35. For reasons that will be clear, we do not need to come to a conclusion on this point. The Respondent should bear in mind that our tribunal might consider it unreasonable to hire a firm of cleaners if the Respondent is satisfied that cleaning is being carried out by the tenants, but it might come to a different conclusion.

36. The second question is, what sum should be allowed for 2016? It seems to us that a reasonable landlord should allow for the possibility that tenants stop cleaning – whether through illness, absence or otherwise – and should allow the full year's cleaning costs in advance, crediting the tenants with any surplus at the end of the year.

37. It seems to us that £400 is within the range of reasonable fees a landlord might pay for cleaning in these circumstances. Accordingly we allow £400 for 2016.

Key holding

38. Mr Christofi says that his firm pay a key holding company (Cordant Security Limited) to hold a copy of its keys to their properties' common parts in case they or a tenant were to loose their copy. Mr Christofi would not have to call on the company to replace a lost key more than "once or twice a year per property". He had no idea, and would not expect to know, how many leaseholders took advantage of the key holding company.

39. We would expect a competent managing agent to be able to manage the holding of keys itself without loosing track of them. While it is up to the managing agent to decide how to make sure it does not loose keys – for example by asking contractors who take keys and loose them to pay for replacements or by having what is essentially a key loss insurance in the form of a security company – the cost of ensuring it has the keys it needs would normally form a part of the management fee.

40. We therefore disallow this head of expenditure.

Electricity costs

41. The only electricity costs that could be borne by the landlord would be for the lighting of the common parts.

42. Mr Lidbury told us that electricity for the common parts was supplied by one or other of the leaseholders of the first and second floors. He was not entirely sure which of them paid, but thought it might be the leaseholder of the first floor flat.

43. The landlord does not pay any electricity bill for the building. Mr Christofi conceded that, in the light of this evidence, there could be no service charge for electricity. Accordingly we set the charge to zero.

Management fee

44. In her written submissions, the Respondent's evidence is that reasonable management fees may range from £300 - £600 per dwelling and that therefore the amount charged by her agents for the management of the building (£325 per flat) is not unreasonable.

45. Mr Christofi, in justifying his firm's fees, said that they would carry out monthly inspections of the property as well as preparing service charge accounts, liasing with contractors and general correspondence with leaseholders. Mr Lidbury criticised that frequency of inspections, suggesting that it was more appropriate for commercial property rather than residential property held under long leases.

46. While we sympathise with Mr Lidbury's criticism of monthly inspections – in our view quarterly inspection would seem to be more appropriate – we agree with the Respondent. Our knowledge of the property management market suggests that £300 - £600 per flat is a plausible range for management fees. Accordingly, despite the frequency of inspections, the overall management fee is reasonable.

47. **S20C and repayment of fees.**

48. Mr Lidbury has made an application both for an order under S20C of the Landlord and Tenant Act 1985 and for reimbursement of his fees under rule 13(2).

49. Overall, Mr Lidbury has successfully reduced his service charge bill for 2015 and his advance bill for 2016 by bringing this matter to the tribunal. Although he was not successful on every point he raised in his application those points on which he was unsuccessful ought not to have taken much additional effort to deal with.

50. It therefore seems to us just to make a s20C order.

51. The same considerations apply to an order under regulation 13(2) but in this case there is a further factor. Mr Lidbury applied for a paper determination. The respondent refused to permit the matter to be dealt with on paper and chose instead to have the matter dealt with at a hearing.

52. In our view this is a matter which would have been much better dealt with on paper. While a hearing is the respondent's right it does not seem to us fair to ask Mr Lidbury to pay for it.

53. Accordingly we make an order pursuant to rule 13(2) for the reimbursement of Mr Lidbury's fees.

Francis Davey
17 January 2016

ANNEX 1– SUMMARY OF SERVICE CHARGES

	2015	2016
Accountancy and audit costs	£250	£250
General maintenance and repair	£0	£200
Communal cleaning	£0	£400
Key holding	£0	£0
Electricity costs	£0	£0
Management fee	£1300	£1300

ANNEX 2- RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

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