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

Case Reference : LON/00BD/LSC/2016/0086

Property : Flat 1, 79 Stanley Road, Teddington,
Middx. TW11 8UB

Applicant : Mary Elizabeth Oton

Respondent : Avon Estates (London) Ltd

Type of Application : Liability to pay service charges

Tribunal : Judge Nicol
Mr MC Taylor FRICS

**Date and Venue of
Hearing** : 11th May 2016;
10 Alfred Place, London WC1E 7LR

Date of Decision : 19th May 2016

DECISION

Decisions of the Tribunal

- (1) The service charges of £582.26 demanded by the Respondent from the Applicant for the year 2013-14 are reasonable and payable.
- (2) The administration charge of £60 in relation to the letter before action dated 8th February 2016 is not reasonable and so not payable.
- (3) There is no order in relation to costs.

The Tribunal's Reasons

1. This case concerns a two-storey house converted into three flats. The Applicant is the leaseholder and occupant of the front ground floor studio flat. The Respondent is the freeholder.
2. On 22nd February 2016 the Applicant applied for a determination under section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of service charges of £582.26 for the year 1st August 2013 to 31st July 2014. Relevant legislative provisions are set out in the Appendix to this decision.
3. The Applicant complained that she had asked for but not received a breakdown of these costs. The Respondent asserted that they had sent an e-mail on 20th May 2015 with all the details. The Applicant said she never received it. This was confirmed by her son-in-law, Mr Clayson, who attended the Tribunal hearing with her and said he had checked her e-mail account. This was unfortunate. The documents sent showed the following breakdown for the costs to the whole building:
 - Legal and professional fees £1,092.78
 - Maintenance external £54
 - Management fees £900
4. The Applicant queried in relation to the first item why she should have to pay legal fees. In fact, the entire amount was for the professional fee of a surveyor, Mr Levy, to inspect the whole property and draw up a specification of major works. The Applicant is justifiably concerned that this may result in a large bill in due course but the statutory consultation process under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 has yet to begin and so it would be premature for the Tribunal to comment on that.
5. In relation to Mr Levy's fee, the Applicant pointed out that Mr Levy had not spent long at the property when inspecting it. However, as the Respondent pointed out, his fee was not only for the site visit but also for his consideration and preparation of his report. Absent of any

consultation issue, the Tribunal is satisfied that this fee is reasonable in amount and reasonably incurred.

6. However, Mr Levy's fee resulted in a charge to each lessee of more than £250 and, therefore, engaged the aforementioned statutory consultation process. Mr Gutstein, acting for the Respondent at the hearing, conceded that no such process had been carried out and applied for dispensation under section 20ZA of the Landlord and Tenant Act 1985. If dispensation were not to be granted, this charge would be capped at £250. Since this issue did not come up until the hearing, the Tribunal was satisfied that it was appropriate to permit his late application.
7. The Tribunal explained to the parties that whether to grant dispensation had been addressed by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854 and principally concerned whether a lessee had been financially prejudiced as a result of the lack of consultation. Neither the Applicant nor the Tribunal could identify any such prejudice. In particular, it is entirely appropriate for a freeholder to instruct an expert to advise on the execution of their repairing obligations and, as already mentioned, Mr Levy's fee was reasonable. In the circumstances, the Tribunal decided that it is reasonable to dispense with the consultation requirements.
8. The maintenance charge of £54 was for work to the front entrance door lock. The Applicant said she was unaware of the need for any such work but the Tribunal is satisfied that the charge was incurred and that such a modest sum is reasonable.
9. The management fee amounts to £250 plus VAT per flat. The Applicant asserted that little had been done for this fee and the Respondent's communication was poor. Management work tends to vary from year to year and it is one of the risks of the kind of fixed fee charged for it that some years will provide better value than others. However, management involves some minimum expense and, in the Tribunal's experience, this fee is well within the range of management fees which might be expected for this type of property.
10. Also, apart from the unfortunate instance when the e-mail of 20th May 2015 went astray, the Tribunal did not identify any problems with communication. The Applicant is a pensioner and would, understandably, prefer some consistency and predictability in her annual service charges in order to allay any fears about affordability. It would be preferable, of course, if the Respondent could provide her with reliable estimates of future expenditure but the Tribunal could not identify any failing in this regard sufficient to affect the reasonableness of the management fee.
11. The Applicant also queried why the Respondent had sent her correspondence demanding a balance from the previous year's service charges of £366.80 since they had stated in an e-mail dated 12th June

2015 that they would cancel those charges. In particular, the Respondent sent a letter before action dated 8th February 2016 demanding payment of all service charges, including these charges, and levying a fee of £120 for doing so. At the hearing before the Tribunal, Mr Gutstein conceded that the letter was mistaken and offered to reduce the fee to £60. In the Tribunal's opinion, the Respondent made the mistake of sending the letter and it is they who should bear the cost – a charge of either £120 or £60 would not be reasonable in the circumstances.

12. The Applicant sought an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs of the proceedings in the Tribunal should not be added to the service charge and for reimbursement of her fees. In the light of the above findings, the Tribunal sees no basis for making such an order.

Name: NK Nicol

Date: 19th May 2016

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 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
- (2) In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.

- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the recognized tenants’ association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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.

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.