12078

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/29UM/LSC/2016/0014
Property	:	Flat 2, 1 Broadway, Sheerness, Kent ME12 1AB
Applicant	:	Ms Rosanna Mulonia
Representative	:	Seddons Solicitors
Respondent	:	S1 Limited
Representative	:	John Copland and Son, Solicitors
Type of Application	:	Liability to pay service charges and/or administration charges under section 27A of the Landlord and Tenant Act 1985
Tribunal Member(s)	:	Judge S. Lal LLM(Chairman) Mr Richard Athow FRICS MIRPM
Date of Inspection	:	Thursday 16th February 2017
Date of Decision	:	Thursday 2nd March 2017

DECISION

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APPLICATION DETERMINED ON AN INSPECTION OF THE PROPERTY AND WRITTEN SUBMISSIONS

RULE 31, THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL) PROPERTY CHAMBER RULES 2013

The application

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 (the 'Act") as to whether service charges are payable by the Applicant for various charges demanded by the Respondent in 2015. The Applicant also seeks an order for the limitation of the landlord's costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985.

2. The parties have indicated that they are content for the application to be dealt with without a hearing.

3. The Tribunal inspected the Property on 16th February 2017 and has considered the bundle of documents provided by the parties in accordance with the Tribunal directions of 28th November 2016. The property is situated in the centre of Sheerness town centre with all facilities close by. Its current layout is two shops on the ground floor, six self-contained flats on the first and second floors approached via a communal hall, stairs and landings. There is a further area which it is understood to be in the basement, which until recently has been used commercially; however, the respondent informed us at the inspection that it is no longer used. The building is of traditional construction.

The Applicant's case

4. The Applicant is the tenant under a long lease of the Property dated 14th September 1989 between James William Utting and Gary George Read (the "Lease"). The Applicant purchased the leasehold interest on 26th March 2015 with the intention of renting out the Property to produce an income. The Applicant resided in Italy during the period in question and rented the Property to a Miss Bellinger under an assured shorthold tenancy for 12 months. Miss Bellinger vacated the Property in August 2015 and the Property was vacant until January 2016.

5. The Applicant challenges the service charge demands made by the Respondent between 13th May 2015 and 5th November 2015 which amount to a total of £6,009.57. The Applicant claims that such demands are not reasonable under the Lease and that a number of the demands have been duplicated by the Respondent.

6. Taking each of the service demands in turn, the Applicant claims that:
   a) The demand dated 13th May 2015 for £108 is not a sum which can be demanded as service charge under the Lease as she received no complaints during this time and the demand is not particularised;
   b) The demand dated 14th May 2015 for £108 is disputed as the Applicant herself paid for the repairs following the leak from the Property;
   c) The demand dated 28th May 2015 for £108 is disputed as the Applicant claims it is a duplicate of (b);
   d) The demand dated 18th June 2015 for £215.57 for insurance, management fees, help desk fees etc. has been paid by the Applicant but not acknowledged by the Respondent. The Applicant however claims that this amount is not chargeable under the Lease;
   e) The demand dated 18th June 2015 for £360 relating to telephone calls, emails and attendance at the Clocktower building is disputed as the Applicant claims it is not chargeable as service charge under the Lease;
   f) The demand dated 25th June 2015 for £280 has been paid by the Applicant but not acknowledged by the Respondent and the Applicant claims that this amount is not chargeable under the Lease;
   g) The demand dated 21st October 2015 for £840 for redecoration work to the communal hallway is disputed by the Applicant as she has been charged 100% of the cost of this work.
   h) The demands dated 21st October 2015 for £150 and £480 for works carried out in relation to the leak are disputed by the Applicant as the leak was resolved in May/June 2015;
   i) The demand dated 5th November 2015 for £3,360 is disputed as the Applicant claims that the matters are not capable of being service charge and are unreasonable.

7. The Applicant claims that the Respondent has not complied with the consultation requirements under section 20 of the Act or applied to dispense with those requirements.

8. The Applicant also claims that the service charge demands have not complied with the requirements of sections 47 and 48 of the Landlord and Tenant Act 1987 and the Applicant has not been provided with a summary of her rights and obligations.

The Respondent's Case

9. The Respondent accepts that the provisions in the Lease relating to what constitutes service charge are vague but that the Tribunal has jurisdiction under section 27 of the Act in relation to service charge.

10. The Respondent submits that it was reasonable to apportion 100% of the costs of cleaning and repairing the common parts to the Applicant as 100% of the damage was caused by the Applicant's tenant.

11. The Respondent submits that the management charges are properly incidental to the landlord's duties under paragraph 4(1) of the Lease and therefore should be included in the service charge demands and considered reasonable.

12. The Respondent claims that all of the works carried out were qualifying works under the Act and many of which were emergency works which would dispense with the section 20 consultation requirements. The Respondent claims that the non-urgent works and urgent works were reasonably incurred by the landlord. The Respondent claims that any failure to consult the Applicant has not prejudiced the Applicant in any way.

The Law

13. Section 19 of the Act states that:

"(1) Relevant costs shall be taken into account in determining the amount of service change payable for a period –

(a) Only to the extent 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; the amount payable shall be limited accordingly."

Section 27A of the Act states that:

"An application may be made to the 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 ....."

Clause 1(4) (b) of the Lease outlines the Applicant's obligations regarding the payment of service charge. The Applicant is obliged to pay *"by way of further or additional rent a reasonable proportion (to be conclusively determined by the Landlord's surveyor) of the amount which the Landlord may from time to time reasonably expend in performing the Landlord's obligations as to repair and maintenance and insurance hereafter contained ....."*

Decision

14. Following the inspection of the Property on 16th February 2017, the Tribunal has considered the arguments put forward by the Applicant and the Respondent together with the other papers in the bundle of documentation. The Tribunal has also reviewed the relevant provisions of the Lease as far as it relates to service charge obligations.

15. The Tribunal finds that the service charge demands specified in the Application are not payable by the Applicant for the following reasons:

(a) The Applicant has been required to pay 100% of the service charge in a number of cases when she is only obliged under the Lease to pay a reasonable proportion of expenditure. The Tribunal finds that it is irrelevant that the Respondent considers the damage to the communal parts was solely the responsibility of the Applicant's tenant.
(b) A number of items included in the demands should not properly be included as service charge.
(c) There appear to be a number of duplications in the service charge demands.
(d) The Applicant was not consulted about the works being carried out or notified about the complaints involving her tenant.
(e) The procedural requirements relating to service charge demands do not appear to have been met.

16. The Tribunal therefore finds in favour of the Applicant and deems, pursuant to section 20(c) of the Act, that the costs incurred by the Respondent from these proceedings should not be included in future service charge demands relating to the Property.

Reasons

17. The lease contains very few clauses which allow the Landlord to recover costs under the heading "Service Charge". Clause 1(4) (b) states:

"there shall also be paid by way of further or additional rent a reasonable proportion....of the amount which the Landlord may from time to time expend in performing the Landlord's obligations as to repair maintain and insurance hereinafter contained.....and such sums shall be paid by the Tenant within 28 days of being demanded."

The phrase "reasonable proportion" has been interpreted by the Landlord as 1/8th for all structural works and insurance, and 1/6th for all repairs and maintenance to the internal communal parts. The Tribunal accepts this is a reasonable interpretation of this Clause.

18. The Landlord's covenants are contained in Clause 4. The relevant sections in this instance are:

"(1) at all times during the said term to keep in good and substantial repair and in clean and proper order and condition those parts and appurtenances of the Building which are not included in this demise and in particular the main walls foundations and roof thereof

(2) at least once in every three years to decorate the external parts of the building previously decorated in a proper and workmanlike manner

(3)(a) to keep the building insured....."

19. The lease is sparse in wording. Indeed it makes no provision for the Landlord to recover any costs of management in any form, which is most unusual. However, that being the case the Respondent seeks to recover these costs through the service charge account. The Respondent states that, failing that, in the alternative Clause 3(12) permits recovery of such sums. This clause states:

"... and to pay all expenses including solicitors' costs and disbursements and surveyors' fees incurred by the Landlord of and incidental to the service of all notices and schedules relating to wants of repair of the Building ..... "

20. The Applicant states that the Landlord failed to carry out the consultation process required under Section 20 of the Landlord and Tenant Act 1985. There is provision that if the works is below a certain cost the consultation process is not required. This is to enable small works to be carried out without the need for the consultation process, otherwise the cost of the process would be excessive. 21. The Act states that if the cost of the works is such that any one flat would be required to contribute more than £250.00 the consultation process is required. In this instance this sets two limits. For internal repairs and maintenance this would be 6 times £250 - £1,250.00, and for structural works this would be 8 times £250 - £2,000. None of the works in this case are above these limits and consequently no consultation is required.

22. The Applicant states that the Landlord has not served demands which comply with Sections 47 or 48 of the Landlord and Tenant Act 1987. The Applicant states that no Tenants summary of Rights and Obligations have been served. The Tribunal has not seen demands which comply. Because the demands have not been correctly served none of the demands are valid and no sums are payable at this moment in time. The failure to serve correct demands is capable of being corrected by the Landlord serving demands containing the appropriate information.

23. Dealing with each sum challenged the Tribunal notes:

a) The demand dated 13th May 2015 for £108 (page 85) – This does not fall under the items recoverable as service charge, nor under the heading of serving of notices relating to wants of repair to the building. Consequently the Tribunal finds this sum is not recoverable.

b) The demand dated 14th May 2015 for £108 (page 86) - The Tribunal is satisfied from the papers that the water was turned off during the relevant period consequently any leak cannot be proven to have originated from within the Demised premises. The applicant states that she paid for the repairs herself following the leak from the Property. Consequently the Tribunal finds this sum is not recoverable.

c) The demand dated 28th May 2015 for £108 (page 87) – The Tribunal finds this sum is not recoverable for the same reasons as stated in b) above.

d) The demand dated 18th June 2015 for £215.57 (page 88) – This sum is made up of a variety of items. The Tribunal finds that a sum of £215.57 has already been paid by the Applicant as shown in her bank statement (page 96), but certain parts of the sum demanded are not recoverable under the terms of the Lease.

1. The insurance premium of £1,266.69 has not been proven. However, this item has not been challenged per se. The Tribunal finds this is an allowable expenditure. 1/8th of the cost is £158.34 and is payable.

2. Kidds Carpentry invoice of £60.00 (page 84) is a repair under Clause 4(1) of the Lease. It appears that Mr Kidd is not VAT registered. Consequently the gross bill is £60.00 – 1/6th of this is £10.00 and the Tribunal finds this sum to be payable.

3. The Invoice from Proclean in the sum of £120.00 is undated and does not indicate that is was any specific period or work. There is a hand written note "Clocktower communal", which is not the address of the subject property. In the light of this it is impossible to state how this relates to this block. Consequently, the Tribunal finds this is not recoverable.

4. There are two invoices from Mechanical Movements (pages 94 & 95) for cleaning blocked drains using a high pressure water jetting system. Both are in the sum of £144.00 including VAT. However, a further invoice is claimed, this time from JLH Drains (page 98) in the sum of £250.00 +VAT (£300.00 gross). This latter document appears to be a job sheet rather than a VAT invoice. It explains that upon carrying out a CCTV inspection the blockage was caused by a lot of scale which had been dislodged by rodding. From this The Tribunal concludes that the first two jobs undertaken by Mechanical Movements could not have been carried out to a satisfactory standard, otherwise there would not be any loose scale. Resulting from this the Tribunal concludes that the two jobs were not carried out by Mechanical Movements to a satisfactory standard and are not to be recoverable as service charges.

5. All other items claimed under this heading are not service charge items and as a result the Tribunal finds these are not recoverable as such.

e) The demand dated 18th June 2015 for £360 (page 97)-

1. The evidence of JLH Drains work (page 98) is discussed above and the Tribunal find this to be reasonably incurred as it dealt with the failure to rectify the two previous attempts to cure the blocking drains. Whilst there is no VAT invoice as such the Tribunal finds the evidence at page 97 indicates that the company is VAT registered and consequently £300.00 is a legitimate service charge expenditure. The Tribunal assumes that the drains are shared by the six flats and the two shops, consequently 1/8th of the cost of these works (£37.50) is payable by the Applicant.

2. All other items claimed under this heading are not service charge items and as a result the Tribunal finds these are not recoverable as such.

f) The demand dated 25th June 2015 for £280 (page 101) – The invoice for this work is in the sum of £1,400 (page 102). J D Easton is not VAT registered, consequently no VAT is chargeable. The Applicant states that £280.00 has been paid but not acknowledged by the Respondent, and the Applicant claims that this amount is not chargeable under the Lease. The Tribunal find that this work is recoverable as a maintenance expenditure under clause 4(1) of the lease, the proportion of this due from the Applicant being 1/6th, making a sum due of £233.33.

g) The demand dated 21st October 2015 for £840 (page 104) –This is disputed by the Applicant as she has been charged 100% of the cost of this work. The invoice of £700.00 from Jeff Easton for redecoration work to the communal hallway is found at page 105 of the bundle. The Tribunal finds that there is not sufficient proof that the requirement to redecorate only three months after the previous redecoration programme (as discussed above) was due solely to damage caused by the Applicant's sub-tenant because the remaining five flats are all sub-let on Assured Shorthold Tenancies. The evidence submitted reports damage caused by bike tyre scuffs on the stair walls. Tenants move on at frequent intervals and tend not to be concerned about the damage they cause to the decorations as they pass through the communal areas, which being narrow with steep staircases are prone to a high rate of wear and tear. Consequently it is not uncommon to need to redecorate such communal areas at frequent intervals. The Tribunal finds that this sum is a reasonable expenditure under Clause 4(1) of the lease. The sum due is 1/6th of £700.00 - £116.67.

h) The demand dated 21st October 2015 for £150 (page 108) – The invoice in the sum of £150.00 for the work is at page 109. It comprises two parts without dates of the callouts; the second part states a "call out by Flat 2 on a Saturday as they could not isolate the mains water tap to their property...." The Applicant states that the water supply had been turned off by her workmen and therefore the leak could not have been from her flat. The Tribunal finds itself in a difficult position with regard to this item of claim as there is no statement from the Applicant's workmen giving the date when they turned off the water supply. The Tribunal finds it difficult to understand why the Applicant's workmen would need to call out the Freeholder for such an occurrence as this is not part of the Freeholder's responsibility under the Lease. In view of the lack of evidence from either side the Tribunal find that neither of these works highlighted in the invoice can be proved to be a proper service charge expenditure and consequently the sum of £150.00 is not payable by the Applicant.

i) The demand dated 21st October 2015 for £480 (page 110) – The invoice (page 111) for work carried out by Alcock Roofing is disputed by the Applicant as she states the work was dealt with in May/June 2015 and there had been no report of further leaks, therefore is not due. The invoice relates to repairs to the lead flashing to the narrow parapet over the shop window. The tribunal took note of the ornate design of leadwork. During the inspection the Respondent's agent began to explain what had occurred, but the Tribunal could not take evidence from him. The Directions issued by the Tribunal were clear that no evidence could be taken at the inspection; this point was repeated at the beginning of the inspection. The invoice states that work was required to the lead flashing. No argument was included in the Applicant's submission challenging this point. As a result, the Tribunal find that this work was a legitimate item of expenditure under the service charge as set out in Clause 4(1). The total invoice is £400.00 + VAT. However, for an invoice to be a legitimate VAT invoice it must include the VAT registration of the contractor. In this instance because there is no VAT registration number contained within the invoice the Tribunal finds that only £400.00 is a correct total expenditure under the service charge heading. Because this is a structural repair to the main fabric of the building the cost is shared 1/8th each unit. Thus the sum due to be paid by the Applicant is £50.00.

j) The demand dated 5th November 2015 for £3,360 (Pages 112 & 113) – This is disputed by the Applicant who claims that the matters are not capable of being service charge and are unreasonable. The Tribunal agrees with the Applicant in this instance as these costs do not fall under the heading of Service Charges as set out in Clause 4(1) of the Lease.

24. In many instances the Respondent has issued demands for expenditure and then added VAT to those sums. An example is JLH who charged £250.00 + VAT. The Respondent then charged a fee of £50.00 and then has then added VAT to the total of the expenditure under that group. This is not permitted under legislation as it effectively means a tax on a tax. This issue has been clarified many years ago by HM Customs and Excise. It states that tax can only be charged once.

25. From the forgoing the gross sum due from the Lessee to the Landlord is as follows:

a)	nil
b)	nil
c)	nil
d)	£168.34
e)	£37.50
f)	£233.33
g)	£116.67
h)	nil
i)	£50.00
j)	nil
TOTAL	**£605.84**

25. It must be remembered that a sum of £495.57 has already been paid by the Applicant as shown in her bank statement (page 96). Therefore, the balancing sum of £110.27 is the net balance due from the Applicant. Consistent with this outcome and pursuant to section 20(c) of the Act, the Tribunal determines that the costs incurred by the Respondent from these proceedings should not be included in future service charge demands relating to the Property.

26. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

27. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

28. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge S.Lal