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

Case reference : LON/00AH/LSC/2017/0071

Property : Flat H (Unit 8), 2 Carolina Road,
CR7 8DT

Applicant : Sinclair Gardens Investments
(Kensington) Limited

Representative : Ms Miranda Butler (Counsel)
instructed by W.H.Matthews & Co

Respondent : Mahomed Munir Daud

Representative : In person

Type of application : Determination of the
reasonableness of and the liability
to pay service and administration
charges

Tribunal members : Judge Robert Latham
Mrs Sarah Redmond MRICS

**Date of Hearing and
Venue** : 22 May 2017 at
10 Alfred Place, London WC1E 7LR

Date of decision : 26 June 2017

DECISION

Decisions of the tribunal

- (1) The Tribunal is satisfied that it has no jurisdiction to determine this matter, the parties having reached a binding agreement on 6 April 2017 that the tenant would pay the landlord £9,500 in full and final settlement of all sums payable by the tenant under the terms of his lease as at 26 January 2017. This agreement covers all matters raised in the Claim Form, including court fees and solicitor's costs.
- (2) In the light of these findings, this matter should now be referred back to the Chichester County Court.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the Respondent.
2. On 5 October 2016, the Applicant issued proceedings in the Northampton County claiming the following sums: Rent: £1,312.50; Service Charges: £2,159.24; Advance Service Charge: £3,737.47; Insurance Rent: £592.88; Administration Charge: £171.09 (a total of £7,973.18). The Applicant further claims interest in the sum of £1,241.35, Court Fees of £455; and Solicitor's Costs of £100. The total sum claimed is £9,769.53. In 7 December 2016, the Respondent filed a defence.
3. On 22 February 2017, District Judge Clarke, sitting at Chichester County Court (Case No. CO6YP477) transferred the claim to this Tribunal to determine the issues within the jurisdiction of this Tribunal. On 8 March 2017, this Tribunal gave directions.

The Hearing

4. The Applicant was represented by Ms Miranda Butler (Counsel) instructed by W.H.Mathews & Co. She was accompanied by Mr Mark Kelly, a Director of Hurst Managements, the managing agents. The Respondent appeared in person.

The Preliminary Issue

5. Ms Butler asked the Tribunal to determine a preliminary issue, namely whether an agreement had been reached on 6 April 2017 in respect of the service charges payable by Mr Daud. The parties were agreed that

we needed to determine this issue having regard to the correspondence passing between the parties. The relevant letters are those dated 17 January 2017 (at p.103 of the Bundle); 26 January (p.171); 6 February (p.178) – a letter not received by the landlord until 3 April (see p.177); and 6 April (p.179).

6. Ms Butler also relies upon letters dated 6 April received at 18.05 (p.181), and two letters dated 19 May together with the proposed Consent Order drafted by the landlord. She conceded that these were only relevant in so far as they confirmed her case that a binding agreement had been concluded at 16.00 on 6 April (see p.181).
7. Mr Daud disputed that a concluded agreement had been reached. He stated that he had never accepted the landlord's contention that in addition to the sum of £9,500, he was liable for additional service charges of £458.89 which became due on 25 March 2017 and Section 146 costs of £2,580.

Our Determination

8. The Tribunal is satisfied that an agreement was reached that the tenant would pay the sum of £9,500 in respect of all the sums payable by the tenant under the terms of his lease as at 26 January 2017. The issue was not what the parties thought that they were agreeing. It is rather what an objective bystander would conclude had been agreed having regard to the correspondence passing between the parties.
9. The parties are agreed that the agreement includes:
 - (i) sums payable outside the scope of the service charges that this Tribunal has jurisdiction to determine.
 - (ii) all the sums claimed in the Claim Form, including court fees (£455) and solicitors costs (£100).
10. Mr Daud accepted that the agreement did not include the service charges which only became payable on 25 March 2017. This was not a sum payable by the tenant under the terms of his lease as at 26 January 2017. The landlord claims service charges in the sum of £458.89. This Tribunal has no jurisdiction to determine whether these service charges are reasonable or payable.
11. There is no agreement between the parties as to whether it is open to the landlord to claim an additional sum of £2,580 in respect of Section 146 costs. The landlord contends that these costs were assessed and demanded after 26 January. If the landlord is to pursue this claim, it will need to establish that these costs were not payable by the tenant

under the terms of his lease on 26 January 2017. This is not a matter that we have jurisdiction to determine on this application.

The Reasons for our Determination

12. Since 13 April 2007, Mr Daud has been the tenant of Flat 8, 14 Green Lane, Thornton Heath, CR7 8BA. There has been a history of disputes between the parties as to the service charges that are payable. This is not relevant to the matter which we are asked to determine. On 5 October 2016, the landlord issued its current claim in the County Court. In November, Mr Daud informed his landlord that he intended to sell his flat. On 6 April 2017, Mr Daud completed the assignment of his flat. The landlord refused to give its consent to the assignment until he had cleared any sums that he owed. On 6 April, Mr Daud had transferred the sum of £14,595.82 to his landlord.
13. In his e-mail dated 17 January 2017 (at p.103), Mr Daud sought to agree the sums that were due to his landlord. The landlord was contending that £11,599.47 was due. Mr Daud made an offer of £6,000 to settle his account.
14. In its letter dated 26 January 2017 (at p.171), Mr Kelly set out how the sum of £11,559.47 had been computed. This included “interest, fees and charges” of £2,286.65. We were told that this included the court fees and solicitor’s costs from the County Court proceedings. The letter stated: “I confirm the monies owed by you under the terms of your lease as at today’s date”. The landlord had rejected the offer of £6,000. However, it was willing to compromise. The landlord was willing to accept £10,720.63 provided that this was paid within 14 days.
15. In his letter of 6 February addressed to the landlord (at p.178), Mr Daud makes express reference to the letter dated 26 January and the landlord’s offer of £10,720.63. He concludes “In a final attempt to close this matter I am willing to revise my offer to £9,500 to draw a line under this matter”. The Tribunal is satisfied that this offer of £9,500 related to all monies owed by Mr Daud under the terms of his lease as at 26 January 2017.
16. It seems that this letter was sent to the wrong address. In a telephone conversation on 3 April, it became apparent that Mr Kelly had not seen this letter. Mr Daud therefore e-mailed him a copy at 11.49 (see p.177).
17. On 6 April, at 16.00 (see p.181), the landlord accepted the offer made by Mr Daud in his letter of 6 February. Mr Kelly refers to this letter. He also restates that “the sum due and payable under the lease as at 26th January 2017 was £11,559.47”. He then continues: “Your proposal to pay £9,500 in payment of all sums due under your lease as at 26th January 2017 is agreed by the landlord”.

18. The Tribunal is satisfied that there is no uncertainty as to what had been agreed. On 6 February, Mr Daud offered to pay £9,500 to settle the landlord's claim for £11,559.47. This sum represented all the sums that the landlord was contending were owed by Mr Daud under the terms of his lease, as at 26 January. This offer was unambiguously accepted by Mr Kelly.
19. Mr Kelly's letter raised two further demands. However, these demands were outside the landlord's claim for £11,559.47 which the parties had agreed to compromise in the sum of £9,500. The two additional demands were for:
 - (i) £458.89 which the landlord contends became due on 25 March 2017 in respect of rent (£87.50); (ii) Service Charge (£327.22) and Insurance (£458.89). These sums were not owed on 26 January 2017. Mr Daud's liability to pay these sums is outside the jurisdiction of this Tribunal in respect of the current County Court referral.
 - (ii) The demand for £2,580 in respect of "Section 146 Costs". Again, it is not open to this Tribunal to determine whether Mr Daud is liable to pay this sum. The landlord would need to establish that this does not include any sums owed by Mr Daud under the terms of his lease as at 26 January 2017. The landlord would also need to establish that Mr Daud was liable to pay this sum under the terms of his lease and that it is reasonable.
20. Ms Butler relies on the following to support the finding that an agreement was concluded on 6 April:
 - (i) Mr Daud's e-mail sent at 18.05 on 6 April (at p.181). He states that he is happy that the landlord has accepted his offer. His complaint is rather directed at the additional demands. He suggest that the offer was in full and final settlement of all sums due (i.e. as at 6 April). This is not correct. The offer and acceptance related to the sums due on 26 January.
 - (ii) On 19 May, Mr Daud wrote to Mr Kelly referring to the agreed settlement in the sum of £9,500. Again it is apparent that Mr Daud is taking issue with the additional sums which the landlord asserts have become due since 26 January 2017.
 - (iii) On 19 May, Mr Kelly sent Mr Daud a Consent Order which recorded that "the sum of £9,500 is payable by the Respondent to the Applicant in respect of all sums under the lease as at 26th January 2017". Mr Kelly noted that the additional sums demanded fell due after 26 January 2017 and are entirely separate matters.

We agree that these letters confirm the existence of a concluded agreement on 6 April.

21. The Tribunal is therefore satisfied that an agreement was reached on 6 April 2017 that the tenant would pay the sum of £9,500 in respect of all the sums payable by the tenant under the terms of his lease as at 26 January 2017. This agreement covers all the sums claimed in the County Court proceedings. Because the parties have compromised this matter, there is no dispute for this Tribunal to determine. Further, Section 27A(4)(a) of the Landlord and Tenant Act precludes this Tribunal from determining any application “in respect of a matter which has been agreed or admitted by the tenant”.

Judge Robert Latham
26 June 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).