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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LSC/2017/0146**
Property	:	**Top Floor Flat, 89 Downs Park Road, London, E5 8JE**
Applicant	:	**Helen Martyn**
Representative	:	**In person**
Respondent	:	**Simon Wainwright**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay service charges**
Tribunal Member	:	**Judge I Mohabir**
Date and venue of Hearing	:	**30 August 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**16 October 2017**

DECISION

Management Fees

7. In relation to these fees, the Applicant submitted that they should be reduced by 50%. Her main reasons for making this submission were that the Respondent had failed to collect the buildings insurance contribution from Mr Lloyd. In addition, she complained that he had failed to complete the statutory consultation under section 20 of the Act for proposed major works to the property. These included the rear roof elevation and associated work. She said that the major works were long overdue as the property had been subject to a long history of neglect.

8. Moreover, the Applicant said that the Respondent had provided no communication or reports to her about any appointments to visit the property or the condition of the property generally. The Applicant conceded that the Respondent did carry out some works to the property, which were paid for out of service charge contributions collected. These included, health and safety requirements, fire risk assessment, installing emergency lighting, fire detection system, electrical wiring tests and an asbestos survey. However, the Applicant argued that the Respondent "gave up" after an unsuccessful application was made by Mr Lloyd and 3 other leaseholders to have the management order discharged in January 2016.

9. The Respondent did not accept that the complaints made by the Applicant about his failure to manage the property effectively were valid. He said that inspections of the common parts were carried out every 2 months. The Applicant was not notified of these because it was not his practice to do so given the small size of the property. Meetings had been held with the leaseholders on 2 or 3 occasions before the amended service charge budgets were prepared. He argued that his office had fielded countless telephone calls and correspondence from the Applicant.

10. The Respondent went on to explain that the cleaning contract for the common parts had been cancelled because the leaseholders had said that they would carry out this work themselves.

11. As to the condition of the property and the requirement for major works, the Respondent said that there had been no water penetration to the Applicant's flat. Although the rear roof slates were unattractive, they were not in fact in disrepair. Only the roof flashings and pointing needed to be repaired or replaced.

12. To make a proper assessment of the roof works, scaffolding had to be erected. However, the Respondent explained that he had been cautious about incurring this cost because of the antagonism from the other leaseholders. He said that Mr Lloyd had challenged every item of work set out in the section 20 Notice of Intention that had been served by him. Apparently, Mr Lloyd had then carried out some of the proposed works subsequently, which made the section 20 specification no longer relevant. In addition, he said that only the Applicant had paid the service charge contribution for the major works. This was the reason why the proposed works had not commenced.

13. The Respondent explained that he did not pursue Mr Lloyd for his outstanding buildings insurance contribution because he had no service charge monies to do so and had instead attempted to reach an agreement with him, albeit unsuccessfully. Mr Lloyd had sought to argue that the Respondent should have carried out statutory consultation under section 20 of the Act in relation to the buildings insurance and apparently he had argued that he had obtained a cheaper insurance quote and refused to pay.

14. In the Tribunal's judgement, given the bad relations between the leaseholders and, in particular, with Mr Lloyd the tenure of the Respondent was always going to be difficult and so it proved to be. It seems that the Respondent did carry out works to the common parts

that were limited by the service charge funds available to him. The main substantive complaint made by the Applicant was his purported failure to carry out the proposed major works including the roof repairs. However, the Tribunal was satisfied that the Respondent had been thwarted in this regard by a combination of the somewhat aggressive stance taken by Mr Lloyd, the failure on the part of the majority of the leaseholders to pay the relevant service charge contribution for the works and general disagreement amongst the leaseholders, including the Applicant, about the scope of the proposed works. The Tribunal accepted the Respondent's explanation that he could not pursue Mr Lloyd for his outstanding buildings insurance contribution because he did not have sufficient funds to do so.

15. The Applicant's assertion that the Respondent could have proceeded with the proposed major works in any event because the management order gave him the power to do so was incorrect. The Respondent's ability to manage the property generally was contingent upon him having the available service charge monies, which was not the case here.

16. In the light of these difficulties faced by the Respondent, the Tribunal found the management fees charged by the Respondent to be reasonable and should not be refunded to the Applicant.

Fees

17. The Applicant applied for an order that the Respondent refund her the fees she had paid to the Tribunal to have the application issued and heard.

18. The Applicant explained she had made the application because she was not confident that the Respondent would refund her service charge contribution for the major works promptly. She said that the Respondent had "promised a lot of things that did not happen". She

was unable to recall if she had made a request to the Respondent to refund her the money prior to issuing the application.

19. The Tribunal accepted the evidence given by the Respondent that he had assured the Applicant the major works money had been ring fenced and were in fact returned to her shortly after the directions hearing. Furthermore, there was no evidence that the Applicant had made a request to the Respondent to return the money prior to issuing the application. Had she done so, the time and cost of the application could have been avoided altogether. Therefore, the Tribunal considered that this application had been premature and for this reason made no order requiring the Respondent to reimburse the Applicant the fees she has paid to the Tribunal.

Judge I Mohabir
16 October 2017

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).