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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/00KA/LSC/2018/0001**
Property	:	**25 Foxglove Way, Luton LU3 1EA**
Applicant	:	**Mr Andrew Campbell**
Representative	:	**Mr Campbell in person**
Respondent	:	**Luton Park View Management Limited**
Representative	:	**Mrs June Small of Julapae Property Services, Managing Agents for the Respondent**
Type of Application	:	**Application to determine the liability to pay and the reasonableness of service charges**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr D Barnden MRICS** **Mr O N Miller BSc**
Date and venue of Hearing	:	**Luton Magistrates' Court, Luton on 1st May 2018**
Date of Decision	:	**14th May 2018**

DECISION

DECISION

1. The Tribunal makes the determinations set out in the findings section below.
2. The Tribunal orders the Respondents to refund to Mr Campbell the application and hearing fee in the total sum of £300 payable within 28 days.
3. The Tribunal orders the Respondents to pay to Mr Campbell the sum of £100 in respect of its costs, it considering that the Respondents have acted unreasonably within the meaning of Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 for the reasons set out below.

BACKGROUND

1. In truth this is a continuation of a matter that came before this Tribunal in 2012. On the 30th November 2012 in case number CAM/00KA/LSC/2012/0103 Mr Campbell brought proceedings against the Respondent, Luton Park View Management Limited, in respect of a number of matters which are set out therein. One of the issues that the Tribunal was required to deal with related to the non-production of accounts and the provisions of section 20B of the Landlord and Tenant Act 1985 (the Act).

2. In this application started by Mr Campbell towards, it would seem, the end of December beginning of January this year, he sought to challenge service charge years 2012 to 2018 again on the basis that the accounting provisions contained in the lease had not been complied with. There was also a challenge that certain expenses such as gardening and sweeping, management and building insurance had not been the subject of consultation under section 20 of the Act. His application, which formed his statement of case made allegations that there had been breaches of the Code of Management Practice (Residential Management) (Service Charges) (England) Order 2016 and also in respect of section 1212 of the Companies Act 2006. Reference was also made to section 13 of the Supply of Goods and Services Act 1982 and section 42 of the Landlord and Tenant Act 1987.

3. Prior to the hearing we received a bundle of papers from Mr Campbell which contained the lease, the letter from Julapae, the managing agents, which although received in December 2017 is in fact dated July of 2017, and some accounting documentation going back it seems to 2009. We are of course only dealing with the period from 2013 as the previous Tribunal had looked at the accounts up to 2012.

4. There was a good deal of repetition and there was no specific statement from Mr Campbell. His only nod to this was a statement under directions order no 1 in which he merely indicated that disputed service charges had not been paid, that there was a breach of the consultation process, non-certified accounts had been produced and that the service charge account received on 15th December 2017 was included.

5. For the Respondents, Mrs Small of Julapae Property Services filed no papers until the day before the hearing. She told us at the hearing that she had not studied the directions order correctly and had made a mistake and did not think that she was required to lodge any documents. We will deal with that point in

due course. Her response document, set out over some six pages, was what appeared to be the Respondent's position and included a number of attachments.

HEARING

6. We did not consider that an inspection was necessary and accordingly dealt with the matter by way of a hearing at the Luton Magistrates' Court. Initially Mr Campbell complained about the late delivery of the papers and considered that they should be ignored. It was at this point that Mrs Small told us that she had not studied the directions properly and was therefore was at fault. She said that the papers had been emailed to Mr Campbell the night before the hearing as they had also been sent to the Tribunal.

7. The documents produced by Mrs Small were not extensive and we therefore allowed Mr Campbell some time to consider same.

8. On his return we went through the terms of his application, there being no statement of case to deal with.

9. We started by considering the provisions of section 20B of the Act. He told us that he had been sent no demands in respect of interim or final payments since the previous decision, which as we have indicated was at the end of 2012. No demand containing the statutory wording had been given to him and indeed the only demand that may have been compliant was that which he received in December of 2017, which in turn seemed to be seeking recovery of the interim service charge from January of 2017. It was noted that the invoice with the letter indicates a liability of £1,102.47, is dated 17th May 2017 and merely says service charge for the year, without indicating which year that may be. It does appear that there is evidence of statutory wording having been included but that is somewhat undermined by the terms of the letter enclosing the invoice which says *"I have included the service charge literature for your perusal. I have not included your actual invoice sheet as you are awaiting a set of final accounts and your invoice and they are not yet ready but the enclosed does provide the year's figures.*
Your formal billing will include the accounts as requested when available so although we have an up to date 2016 run from QuickBooks, 2016 is not yet officially finalised. Obviously, this request does not refer to any of the former years' outstanding payments as the accounts for those years also need to be produced as previously discussed."

10. In response to this Mrs Small said that the letter dated July 2017 did relate to the January 2017 interim demand. She was not able to produce any evidence to show that previous demands had been sent to Mr Campbell and had to concede the only demand that may have been compliant was that which was sent under cover of the letter of July 2017, but of course that contains the caveat set out above.

11. The next matter that Mr Campbell wanted to deal with related to the certified accounts. There seemed to be some confusion on this point. In the 7th schedule of the lease at paragraph 4.1, it says as follows:- *"The management company shall keep proper books and records of the service costs and as soon as practicable after each accounting date the management company shall prepare*

a certificate of the service costs of the accounting period ending on that accounting date.

4.2. The certificate shall contain a summary of the costs to which it relates.

4.3 The certificate shall be signed by an accountant or a firm of accountants, who shall be qualified (as specified in section 28 of the Landlord and Tenant Act 1985) and shall include a certificate by such accountant or accountants that the summary of service costs set out in the certificate is a fair summary and that the service costs are sufficiently supported by accounts, receipts and other documents which have been produced to him or them."

The clause then goes on to provide that within 14 days of the signing off of the accounts they will be sent to the tenant and there will be a final reckoning up as to whether or not the interim charge exceeds the amount that is found to be due with actual costs or whether a further payment is required.

12. Earlier in that schedule at paragraph 3.1 reference is made to an interim charge, which states at paragraph 3.3 as follows:- *"If the interim charge for any accounting period is not ascertained and notified to the tenant by the payment date in that period:*

(a) until 14 days following the ascertainment and notification to him of the new interim charge the tenant shall pay on account a provisional interim charge at the rate previously payable;

(b) commencing on that 14th day following such ascertainment, the tenant shall pay the new interim charge; and

(c) on that 14th day the tenant shall also pay the amount by which the new interim charge for the period since the commencement of that accounting period exceeds the amount paid on account (but if the amount paid on account exceeds the new interim charge for that period, the management company shall give credit for the overpayment).

13. Despite the comments we had made in our decision in November of 2012 in particular at paragraph 22, it does not appear that anybody has grappled with the preparation of accounts since 2013. In the bundle before us there appeared to be accounts prepared by I Hussain and Company Limited, Chartered Accountants from Luton. There is no date to them but they appear to deal with the accounts to the period ending 31st December 2013. The figures on the accounts are not challenged by Mr Campbell save insofar as the surplus, which is recorded in the balance sheet appears to be £119,088. That appears to have arisen from a deficit in 2012 of £3,509. It is, however, noted that the service charge income received was £120,000 more than in 2012, which may explain that difference.

14. Mrs Small said to us that she had been advised that these accounts needed to be signed off by an auditor. We do not propose to challenge the advice that she has received, but all we would say is that the terms of the lease does not require that the accounts be audited. It requires that there be a certificate signed by an accountant who meets the requirements of section 28 of the Landlord and Tenant Act 1985 and although Mr Campbell referred to section 21(6) of the Act, that merely refers to a certificate by a qualified accountant. In those circumstances, we do not see at the moment the need for an auditor's involvement. On the face of it, therefore, there appear to be certified accounts for 2012 and 2013 and we do not know why the Respondent Company has not signed off on those. The earlier

accounts appear to have been prepared by United Company Secretaries Limited and this was of course the subject of complaint at the previous hearing.

15. The next matter that we were asked to consider was whether or not there had been any breaches of section 20 of the Act. It appeared from the comments made by Mrs Small that the cleaning, gardening and sweeping were rolling one-month contracts. Her management agreement was initially for a term of one year but is now the subject of, again, a rolling termination provision and the insurance would inevitably be on a 12 month basis, which would not therefore require consultation. It is disappointing that Mrs Small, knowing that these were issues, had not bothered to include within her deficient bundle copies of these various statements. However, Mr Campbell took a pragmatic approach and confirmed that he would not be seeking to pursue the section 20 point any further.

16. Reference had been made to the lack of AGM being called. It is certainly the fact that there has not been an AGM for some considerable time and there was no clear indication given as to when the next one may be. This, however, is not a matter that falls within the jurisdiction of this Tribunal but it is something that the Respondents should deal with.

17. Another issue that was dealt with in passing was the banking arrangements for the reserve and service charge funds. Mrs Small told us that these were kept separately in trust. Again, there was no evidence produced to support this. However, Mrs Small did confirm that she would provide a letter to Mr Campbell from her bankers confirming the accounting position and that they are on a trust basis.

18. At the conclusion of the hearing, Mr Campbell sought the refund of the hearing and application fee and a contribution of £100 towards his costs under the provisions of Rule 13. There is also an application under section 20C of the Act which Mrs Small did not oppose. She did, however, oppose the refund of the hearing and application fee. She indicated that she did not why they were required to come back at the Tribunal. The position was made clear, apparently in a phone call Mr Campbell had made in which he said he was not paying his service charges until the accounts had been resolved and to an extent that is supported by the letter received by Mr Campbell in December of last year.

19. Mr Campbell told us that he came to the Tribunal because he was being ignored. He said he had tried to have meetings with the Respondents but had been rebuffed and that the stress of these matters being left in abeyance was not something that he was prepared to countenance and wanted to have the matter resolved. Indeed, at one point he had considered selling the Property.

THE LAW

20. The law applicable to this application is set out below.

FINDINGS

21. The accounting arrangements and service charge recovery provisions for this development is somewhat shambolic. We have little doubt, and indeed it is not

challenged by Mr Campbell, that the day to day management is conducted appropriately. Accordingly, if there are breakages or repairs or such similar matters they appear to be dealt with promptly. However, that is not the end of the management provisions. It is an important aspect that the accounts should be produced so that there is transparency for the lessees. There has been a singular failure to take regard of our decision in 2012. No accounts had been prepared at that time and that remains the position. Mrs Small's company took over the management of the estate on behalf of the Respondent on 1st April 2016. More than two years have gone by and still no accounts have been produced. Furthermore, it seems that although there were interim service charge demands none of these appear to have been sent to Mr Campbell, or if they were he certainly did not receive them. Mrs Small could give no evidence to say that any such demands had been sent.

22. This puts the Respondents in a difficult position. If no demands have been sent then Mr Campbell has no obligation to make payments. We accept the evidence of Mr Campbell in this regard, the more so as Mrs Small could produce no documents to show that any demands since 2012 had been served, until the letter received by Mr Campbell in December last year. Accordingly they cannot rely on the provisions of section 20B(2) in respect of interim service charge demands because no notification has been given to Mr Campbell of likely costs to be incurred. We find, therefore, that section 20B will apply to any service charge demands which are more than 18 months ago from the date of this decision. In respect of service charges due within that 18 month period, the Respondents will be well advised to serve proper demands on Mr Campbell so that they do not fall foul of any further difficulties under section 20B.

23. Mr Campbell's point on the interim demands and the fact that he may have been entitled to some credit is noted although not compelling (see paragraph 3.3 (c) of the Seventh Schedule). This deals only with interim demands and as none have been served, his concern that there may have been credits due to him is erroneous. However, as we have indicated above, the provisions of Section 20B defeat the Respondents going back more than 18 months and there is no point in them now serving demands which are not effective.

24. Insofar as the accounts are concerned, those should be done not only for Mr Campbell's benefit but for all other leaseholders. If surpluses are being held in respect of reserve fund monies, then that needs to be clearly stated and the individual tenants should be able to ascertain what funds they have standing to the credit of their reserve fund accounts. We cannot impress upon the Respondents, therefore, the need for them to resolve these accounting issues. Mrs Small said that they would be done within four months. It seems to us that the accounts for 2013 are in place and can be relied upon. It is a question, therefore, of carrying those forward and dealing with the accounts for the years ending 2014, 15 and 16. Upon production of these accounts it will be possible to ascertain what sums may or may not have been held in reserve. As we have indicated above, we consider that certainly if demands are now served, the Respondents would be entitled to expect a contribution from Mr Campbell going back 18 months. That may cross accounting periods but it is hoped that that can be resolved. The fact of the matter is that Mr Campbell has had the benefit of the services, including in particular insurance and other issues, and it is hoped

therefore that some compromise could be reached on the amounts that may or may not be payable. Once final accounts are available Mr Campbell can review the expenses and if he is so minded could consider a challenge to the actual costs, although that did not seem to form part of his complaint. These issues need to be resolved and we are disappointed that notwithstanding the comments we made in our decision in 2012 there has been no final line drawn. Maybe this is it.

25. Insofar as the extraneous matters were concerned, we have indicated above that the AGM issue is not a matter for us to deal with. Mr Campbell desisted in his suggestion that there had been breaches of the consultation provisions of section 20 of the Act.

26. Mrs Small said that she would agree to an order being made under section 20C of the Act. We think that that is appropriate. It seems to us just and equitable for such an order to made and we do so.

27. It is said that this application need not have been made as the Respondents were not pursuing Mr Campbell, as could be seen from the letter sent to him which he received in December of 2017. However, that letter contains a great deal of documentation, which is not of assistance and certainly there is an invoice which Mr Campbell was entitled to consider may have been a demand that was coming his way, if not already there. In those circumstances given that he has already waited since 2012 for the accounts to be dealt with, it seems to us perfectly reasonable that he should make the application. Accordingly, we find that the Respondent should reimburse to Mr Campbell both the application and hearing fees which total £300, which should be paid in 28 days.

28. In respect of the claim for costs under Rule 13, we find in favour of Mr Campbell. The Respondents have done little to follow up from the findings in 2012. Mrs Small did not deliver the papers until the night before the hearing which seems to us to constitute unreasonable conduct and in those circumstances, given the small amount involved, we are content that Mr Campbell should receive the sum of £100 to reimburse him the photocopying and other out of pocket expenses, which should be paid in 28 days.

Andrew Dutton

Judge: _____

A A Dutton

Date: 14th May 2018

ANNEX – 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 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 to 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 (ie 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.

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.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would

subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.