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

Case Reference : CHI/21UD/LIS/2013/0063

Property : 57 Sedlescombe Road South,
St Leonards, East Sussex TN38 0TJ

Applicant : Southern Land Securities Ltd

Representative : Hamilton King Management

Respondents : Mrs L M Yeats (Flat 1)
Miss J Dugdale (Flat 2)
Mr & Mrs Jenkins (Flat 3)
Superior Properties Ltd (Flat 4)

Type of Application : s27A Landlord & Tenant Act 1985
Liability to pay service charges

Tribunal Members : Judge JA Talbot
Mr R A Wilkey FRICS
Ms J Dalal

**Date and venue of
Hearing** : 7 August 2013, Hastings

Date of Decision : 5 September 2013

DECISION

Case No. CHI/21UD/LIS/2013/0063

Property: 57 Sedlescombe Road South, St Leonards on Sea, East Sussex TN38 0TJ

Application

1. This was an application made on 8 May 2013 by the landlord, Southern Land Securities Ltd, under s27A of the Landlord and Tenant Act 1985 ("the Act") as to service charges payable in the accounting year ending 30 June 2012 and the projected budget costs for the year ending 30 June 2013.
2. Directions were issued on 9 May 2013 for the parties to provide written statements of case with documents in support. Mrs K Evans of managing agents Hamilton King, complied on behalf of the applicant. Miss Dugdale responded on behalf of herself, Mrs Yeats and Mr & Mrs Jenkins. Superior Properties did not respond, apart from to request an adjournment shortly before the hearing, which was refused.

Law and Jurisdiction

3. The tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). Under s27A, the tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The tribunal therefore also determines the reasonableness of the charges.

Inspection

5. The members of the tribunal inspected the property before the hearing, in the presence of the first three respondents. It comprises a semi-detached Victorian house which has been converted into four self-contained flats. The building fronts onto a local through-traffic route and is otherwise part of an established predominantly residential area comprising mainly properties of similar age and type. All the flats are sub-let.
6. The main roof is pitched and has been re-covered with interlocking concrete tiles. There are various flat sections covered with mineral felt. Inspection from ground level is very limited. The elevations are part brick, part cement rendered. Some of the original timber windows have been replaced with uPVC units.
7. The exterior of the property has not been well maintained. We noted several areas of decay to windows and numerous cracks to rendered

elevations. There was no evidence of any render repairs having been carried out in recent years. External paintwork is deteriorating to wood and rendered surfaces. The front garden area is overgrown. Most of the rear garden is used by the occupier of the lower flat.

8. We made a brief inspection of the internal common parts, the lower flat which is on two levels, Flat 2 on the ground floor and Flat 3 on the first floor. We noted that the decorations and carpets to the common staircases and landings were badly soiled and old, and that there are several damp stains to wall surfaces. The lessees advised that water penetration has affected the interior of several flats. The necessary repairs and redecoration have been carried out, so there are currently no visible signs, save indications of dampness to the front wall in Flat 2 by the junction with the living room and kitchen area.

Hearing

9. A hearing took place in Hastings. It was attended by Mrs Evans for the applicant, Miss Dugdale and her partner Mr Kirk for the first three respondents. No-one attended for Superior Properties, and there was no explanation for their absence.

Background

10. In the application, the landlord sought a determination for payability of service charges for the year ending 30 June 2012 of insurance premium of £539.98 and "opening balance previous freeholder" of £748.89, and for a projected budget of £2,323.00 for the year ending 30 June 2013.
11. It was not clear from the application what the sum of £748.89 referred to. This emerged at the hearing, in relation to the history of the transfer of the freehold of the property from the former landlord Superior Properties ("Superior") to the current landlord Southern Securities ("Southern").
12. The background was as follows. Superior previously owned the freehold, and still owns the lease of flat 4. In May 2012 Southern purchased the freehold at auction. The completion date was 9 May. Documentation handed over on purchase was limited.
13. A letter dated 9 May 2012 from Chancellors Lea Brewer LLP, solicitors for Superior, shows the purchase price was £8,500, together with an additional amount of £748.89. This was calculated as: " 'service charge expenses incurred by seller of £1,303.08, less proportion of ground rent £34.19, less balance of reserve fund £520.00, balance £748.89".
14. Presumably, this sum was paid by Southern to Superior on completion in addition to the purchase price. Southern then sought recovery from the lessees as service charges, which was disputed and led to this application.

15. We examined the claimed service charge expenses of £1,303.08. The only evidence was a document headed “statement/invoice” from Superior dated 7 May 2012. This read as follows:-

Service charge @ £640 p.a.	£548.83
A1 Locksmiths	£216.00
Insurance @ £473 p.a.	£405.62
Electricity paid to date	£ 72.51
Accounts/return fees @ £70 p.a.	£ 60.12
Total	£1,303.08

16. As this was the only statement of any expenditure in the accounting year to 30 June 2012, we scrutinised these figures in order to determine whether any of them were supported by documentary evidence and correctly payable as service charges.
17. Looking at actual expenditure, only two items were supported by invoices: A1 Locksmiths dated 28/09/2011 for £216.00, and various overdue EDF energy electricity bills totalling £72.51. This amounted to £288.51.
18. The “accounts/return fees” were presumably accountancy fees. These were unsupported by any accountant’s invoice. In any event, the cost of making a company return to Companies House is an expense payable by Superior as a limited company and not payable by lessees as service charges.
19. There were no proper certified service charge accounts which could have been drawn up by a qualified accountant, even though an auditor’s certificate of the total maintenance charge is required under the terms of the lease (para. 2(b) of the Sixth Schedule).
20. In the documents were two so-called “account statements”. The first was provided by Miss Dugdale and purports to show expenditure for the years ending 30 June 2010 and 2011. The second was provided by Mrs Evans, in the same format, showing the years ending 30 June 2011 and 2012. Only the year ending 30 June 2012 was within scope of the application, but the history of the management of the service charges was relevant.
21. These brief “account statements” are not self-explanatory. They consist of a list of items, including unspecified “works” and “general maintenance” plus some numbered notes which did not obviously co-relate to any specific items. On examination, the list does not only contain items of expenditure, but also income: ground rents, “sinking fund receipts” and “service charges”. It then appears the whole list was added up and divided by four to find the one quarter sum said to be payable by each lessee. However, this cannot be an accurate service charge figure.
22. Miss Dugdale provided a letter dated 30 June 2011 from Superior demanding “ground/rent/service charge/insurance” of £538, which is 25% of £2,152, the total for 2011. We accepted Miss Dugdale’s evidence that this was Superior’s usual practice. She did not receive a demand for a payment

on account in advance, as required under the lease terms to be “estimated by the landlord being the likely maintenance charge for the year in question by one payment on 1st July each year” with any balance payable after provision of the certified accounts (para.2(a) of the Sixth Schedule). Instead, the letter purported to be a service charge demand at the end of the accounting year for costs already incurred during that year.

23. Several issues of concern arose from the accounts. We examined the “statement of account” to 30 June 2012.
24. The figure of £640, which appears in the list as “service charges”, was unexplained. At first sight, this might suggest that each lessee has been charged £160 per year in advance as the estimated maintenance charge, but this is not what happened. The only sense we could make of the £640 figure, was that this was the total service charge that Superior expected to collect. If so, it should have been shown in the accounts as an amount demanded or received, not an item of expenditure.
25. In effect, by adding this sum to the list, it appeared Superior sought to recover not only its actual expenditure but also an additional sum of £640.
26. It is therefore difficult to understand why the £748.89 in dispute included the figure of £548.83 “service charge @ £640” said to be “service charge expenses incurred by seller” by in Chancellors’ letter. We found it inherently improbable that Superior, as lessee of Flat 4, had actually incurred service charge costs of £548.83. If, on the other hand, hand Superior as landlord had received any service charge payments on account, these should have been credited to Southern on completion.
27. There was an unresolved dispute about the reserve fund. There is provision in the lease for the landlord to collect a “reserve fund to cover accruing and anticipated expenditure” which must be held on trust for the tenants in a separate account (paras.1(d) and 4 of the Sixth Schedule). There is no evidence of the reserve fund being held in this way.
28. The reserve fund appears in the “account statement” list as “sinking fund receipts” of £400 in 2010 and £1,600 in 2011, totalling £2,000. Again, it makes no sense to show “receipts” in a list of items of expenditure. The reserve fund should be shown separately.
29. Miss Dugdale was understandably under the impression that there should be in existence a reserve fund of £2,000 which Superior should have handed over to Southern on completion. However, the 2012 account showed the reserve fund as “£0”. She corresponded with Hamilton King about this but no satisfactory explanation was given.
30. In Chancellors’ letter, it was stated that “the reserve fund balance” held by Superior was £520, due to Southern on completion. Superior claimed that it had spent £1,480 of the reserve fund on repairs to the roof and render. The cost of roof works was purportedly supported by invoice from a Mr M McQueeney with roof works allegedly carried out in September 2011. The invoice did not contain specific details of the works and was not receipted.

31. Miss Dugdale's case was that no roof or render works had actually been carried out. Neither she nor the lessees of flats 1 & 3 had seen any scaffolding or any workmen on site. Although the flats are sub-let, all the lessees were in regular contact with their sub-tenants, who also confirmed no workmen had attended. Mr Kirk drove past the property every day at that time and had not seen any evidence of work being carried out.
32. Mrs Evans pursued this matter. She was unable to contact Mr McQueeney as despite several voicemail messages he did not return her calls. She submitted an email dated 26 April 2012 from Mr F Elsmere of Superior, stating the remaining reserve fund was £520 because of the roof works and also render repairs of £240. Despite requests from Mrs Evans, no invoice in relation to the render works was provided. On inspection, we noted the render was in poor condition and saw no evidence of repairs.
33. In March 2013, Mr Elsmere, on behalf of Superior as lessees of Flat 4, made an insurance claim for "water damage from roof valley to Flat 4", claiming for ceiling/wall damage and loss of rent. Mrs Evans instructed Martin Bowles Property Maintenance Ltd to inspect the roof. They reported there was no evidence of any recent repairs. Mrs Evans therefore submitted that Southern was "inclined to agree" with the other lessees that no roof works had been carried out, as the insurance claim related to a leak from the roof which was supposed to have been repaired.
34. Further, we noted that the "account statement" to 30 June 2012 did not include any mention of roof and render repairs totalling £1,480 which seems odd as this expense was allegedly incurred in that year.
35. Taking all these circumstances into account, and accepting the evidence of Miss Dugdale, Mr Kirk and Mrs Evans, we found on the balance of probabilities that it was more likely than not that no works to the roof or render repairs were carried out in the year to 30 June 2012, and that the invoice from Mr McQueeney was therefore unlikely to be genuine.
36. The "statement of account" for June 2012 also included "general maintenance" of £240. This was neither explained nor supported by invoices. We noted that the accounts for 2010 and 2011 also included the same figure. We concluded it was unlikely to refer to actual expenditure so was not a recoverable service charge. Cleaning costs of £40 were also unsupported by any objective evidence.
37. Regarding the insurance premium, the sum of £473 appears in the 2012 account. The sum stated in Chancellors' letter was £405.62. The amount claimed in the application was £539.98. Mrs Evans explained that this was a proportion of the premium up to the freehold transfer date, following which the property was insured by Southern under a block policy, the renewal date of which did not match the accounting date, so the amount charged as service charges for insurance would continue to be apportioned. This was accepted by Miss Dugdale at the hearing.

38. Turning to the budget for 2013, this was not disputed by Miss Dugdale. In particular, Hamilton King's management fees were accepted. Mrs Evans explained these were based on £162 including VAT per flat, totalling £648. The amount claimed in the application was £94.06, reflecting an apportioned charge from 9 May to 30 June 2012.
39. Ground rent of £240 appeared in Superior's 2012 account. This is not a service charge item. It is quite different and should be demanded separately from each lessee. The lease provides for a ground rent of £60, payable in advance on 30 June each year.

Decision and Reasons

40. From our findings of fact and analysis of the figures, taking into account all the evidence, it appeared to the tribunal that it was incorrect for Southern to describe the amount sought of £748.89 as an "opening balance" of service charges from the previous freeholder. This is because the majority of this figure was not made up of service charge items.
41. In our view, the only expenditure for the year to 30 June 2012 that was supported by credible invoices and payable as service charges amounted to £288.15, being the A1 Locksmith and electricity costs.
42. In addition, the apportioned insurance premium of £539.98 and management fees of £94.06 were agreed between the parties.
43. All other alleged service charges for the year ended 30 June 2012 were disallowed.
44. Therefore, the total service charges payable for the year ended 30 June 2012 are as follows:

£216.00	A1 Locksmith
72.51	Electricity
539.98	Insurance
<u>94.06</u>	Management fees
£922.55	Total

45. The total amount payable for the year to 30 June 2012 was therefore £922.55. Each lessee was liable to pay 25% which was £230.64.
46. On the evidence analysed above, we did not accept that any roof or render repairs had been carried out to the value of £1,480. However, the tribunal does not have the power to order re-imbusement of reserve fund moneys but simply to determine the payability of service charges.
47. The undisputed budget costs for 2013 were £2,232 of which each lessee was liable to pay 25%, or £558.00.

Determination

48. The tribunal therefore determines that the service charge payable by each lessee for the year ended 30 June 2012 is £230.64, and the estimated amount to be paid for the year ended 30 June 2013 is £558.00.

Section 20C

49. Miss Dugdale applied for an order under s.20C of the 1985 Act. Although Mrs Evans, for Southern, indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under s.20C, so that the applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Dated 5 September 2013

Judge J A Talbot