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

Case Reference : **CHI/29UG/LSC/2013/0037**

Property : **Albert Mansions, 29-31 Marina,
Bexhill on Sea, East Sussex, TN40 1BP**

Applicant : **Mr G Venditto**

Representative : **Mr G Okines**

Respondent : **Mrs S Claire
Mrs B Nahaie**

Representative : **Unrepresented**

Type of Application : **S.27A (and 19) of the Landlord and Tenant
Act 1985 (as amended) ("the Act")**

Tribunal Members : **Robert Wilson (Chairman)
Roger Wilkey FRICS (Surveyor Member)**

**Date and venue of
Hearing** : **Friday 28th June 2013
Hornty Park Sports Complex, Hastings**

Date of Decision : **15th July 2013**

DECISION

The Application

1. The Applicant freeholder applied under S.27A (and 19) of the Act for a determination of the liability of the Respondent leaseholders to pay actual service charges for the year ending 24th December 2012 and on account interim service charges for service charge year ending 24th December 2013.

Summary of Decision

2. The actual service charge recoverable by the Applicant for the year ending 24th December 2012 is £11,305.
3. The estimated expenditure recoverable by the Applicant for the year ending 24th December 2013 is £45,000.

The Lease

4. The Tribunal had before it a copy of the lease for Flat 3 and was told that all other residential leases in the building were on similar terms. The lease is for a term of 99 years from the 25th December 1982 at a yearly ground rent of £25.
5. The service charge provisions in the leases are very basic and may be summarised as follows:
 - (a) Each tenant is liable to pay 25% of the maintenance expenses that the landlord may from time to time expend and as may reasonably be required on account of anticipated expenditure incurred in the upkeep of the building and the common parts as more particularly described in clauses 1(b) & 4 of each lease.
 - (b) Payment of service charge is due from each tenant within 7 days of demand.

Inspection

6. The Tribunal inspected the subject property immediately before the hearing, in the presence of the Applicant's representative. More particularly, we were shown the outside of the property, the public ways, and the interior of the ground floor restaurant.
7. The property is a large five storey semi detached corner building built in the Victorian era. It is arranged as a restaurant on the ground floor and basement with three self-contained flats above which have a separate entrance from the frontage to Albert Road. The restaurant fronts Marina which is the main coast road and connects at ground floor level with the adjoining property which is owned by the same freeholder.

Procedural matters, Representation and Evidence at the Hearing

8. Mr George Okines represented the Applicant at the hearing and also gave evidence. None of the Respondents attended the hearing and there was no attendance on their behalf.
9. The Tribunal had given directions for the case providing for the Applicant to file a statement of case and evidence by the 10th May 2013 and for the Respondents to file and serve their statements of reply with evidence by the 10th June 2013. The case was set down for hearing with a target date of the 28th June 2013. Whilst the Applicant complied with these directions, the Respondents did not. Instead Mrs Nahaie the lessee of flat 3 had sent a letter to the Tribunal dated the 11th June 2013 in which she applied for an adjournment of the hearing on the grounds that she was in the process of issuing a court summons against the Applicant claiming amongst other things that it was the Applicant's responsibility to pay for the repairs. That request had been considered earlier by a procedural chairman and refused.
10. The only other evidence filed by the Respondents was a letter dated the 24th April 2013 to the Tribunal written by Mrs Nahaie, which was taken into account by the Tribunal in arriving at its decision.
11. The Applicant's evidence was largely documentary and comprised the following:
 - a) Application form to the Tribunal.
 - b) A statement of case accompanied by a hearing bundle which included the annual accounts for 2012, with supporting receipts.
 - c) The budget for 2013 together with the consultation documentation and a structural engineers report on the state of the roof.

The Law

The relevant provisions in the Act are as follows:

18. Meaning of "service charge" and "relevant costs".

- (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 purposes—*
 - (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.

19. Limitation of service charges: reasonableness.

(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.

27A. Liability to pay service charges: jurisdiction

(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 ...

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The Applicant's Case

12. The Applicant's case was set out in some detail in his statement of case and was developed at the hearing by the Applicant's representative Mr Okines. The facts as set out in the Applicant's statement were not challenged. The statement exhibits a budget of anticipated expenditure for the year ended 24th December 2013 in the sum of £3,500. The Tribunal heard that this budget was calculated on previous years expenditure, without the additional cost for emergency works, which were carried out in 2012 and without including the anticipated cost of the major works. These had been notified to the Respondents separately by way of the statutory consultation exercise carried out by the Applicant. The major works were estimated at £41,470, which together with the estimated budget of £3,500 produced an overall figure of approximately £45,000. The Applicant claims that each of the lessees is liable for one quarter share of this figure by virtue of the lease provisions contained at clause 1(b). The Applicant states that the successful contractor is ready willing and able to carry out the work and that it is the intention of the Applicant to commence the works during the summer months, bearing in mind that the roof timbers will have to be exposed and major work carried out to the roof itself.

The Determination

2012

13. The 2012 budget for routine expenditure was fixed at £3,500 and by a decision of another Tribunal dated 4th January 2013 case number CHI/21UG/LSC/2012/0122 this figure was upheld.
14. The Tribunal was told that actual expenditure for this year totalled £11,305 and the extra expenditure had largely come about because of the emergency repair work to the roof. This proposed expenditure had been the subject of another Tribunal decision dated 4th April 2012 case number CHI/21UG/LDC/2012/0011. In this case the Tribunal had granted dispensation from the consultation requirements for limited work upon the terms set out in the decision.
15. The evidence before the Tribunal included a description of the work carried out and documentary evidence supporting the amounts paid for such work.
16. The Respondents had adduced no evidence that effectively challenged the scope of the work, the quality or the amount charged. The Tribunal therefore carried out its own review of the evidence and having done so was satisfied that the emergency work carried out did not extend beyond the landlords repairing covenants or what had been sanctioned by the dispensation order and that the cost had been reasonably incurred. The costs of this work are accordingly upheld.
17. The Applicant's evidence also included receipts for all other routine work and services charged to the maintenance account in 2012. The Tribunal noted that there was no challenge to these items and they are upheld.

18. Total expenditure for 2012 in the sum of £11,305 is therefore upheld and will be payable within 7 days of demand with credit being given for any sums paid on account for this year.

2013

19. The Tribunal is satisfied that the on account demand of approximately £45,000 is recoverable and reasonable in amount having regard to the extensive nature of the work to be carried out.
20. There was expert evidence before the Tribunal to support the need to carry out the work in the form of a report dated 16th March 2012 from BDR Civil and Structural Engineering Consultants. This report confirms that the existing roof structure is inadequate to support the existing roof loads and states that urgent remedial works are necessary to ensure that there are sufficient support structures, triangulation and lateral wall restraints. The report indicates that the existing state of affairs represents a risk to the occupiers as well as the general public.
21. The Tribunal heard that following on from the report, a schedule of the required remedial work had been produced and consultation carried out in respect of the work. Contractors had been selected to tender for the work including a lessee nominated contractor. Four prices had been obtained which ranged from £41,470 to approximately £60,000. Mr Okines confirmed that it was the Applicant's intention to accept the lowest tender which was from DR Symes Roofing and Building. This firm had confirmed that they were ready, willing and able to commence work and would honour the tender figure even though it had been submitted nearly a year ago.
22. Mr Okines told the Tribunal that if the Tribunal upheld the revised budget then the freeholder would give instructions for the work to be carried out forthwith so that it could be completed in the summer months of this year.
23. The Tribunal is satisfied that the work is necessary and that the reasonable costs are recoverable under the leases. Whilst the Tribunal recognises that the Respondents contend that the work has come about because of the negligent actions of the Applicant in extending the ground floor restaurant, the Respondents adduced no cogent evidence to support their views. For the avoidance of doubt the Tribunal makes no findings on this claim and it therefore remains open to the Respondents to pursue this claim in the County Courts if they wish. The fact remains that there is an experts report concluding that the roof needs urgent attention and the proposed costs are supported by a robustly conducted consultation exercise, which has been upheld by another Tribunal. For these reasons the Tribunal has no hesitation in upholding the estimated figure as reasonable.
24. The Tribunal finds that all other routine budget expenditure, which was not effectively challenged by the Respondents, is also reasonable in amount and is recoverable in full. The determined amounts are as set out in Paragraphs 2 & 3 above.

Signed _____
Judge Robert Wilson (Chair)

Dated 15th July 2013