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

Case Reference : LON/00BB/LSC/2013/0035

Property : 45 Britten Court, Abbey Lane, Stratford,
London E15 2RS

Applicant : Abbey Lane Block B Management Co
Ltd

Representative : Goldfield Properties Ltd

Respondent : Mr S G Nadarajah

Representative : In person

Type of Application : For the determination of the
reasonableness of and the liability to pay a
service charge

Tribunal Members : Mr L Rahman (Barrister)
Mr P Roberts Dip Arch RIBA
Mr A Ring

**Date and venue of
Hearing** : 10 June 2013, 10 Alfred Place, London,
WC1E 7LR

Date of Decision : 16 July 2013

DECISION

Decisions of the Tribunal

1. The Tribunal determines the service charge for the year ending 31st March 2012 is not payable until the service charge demand is properly served upon the Respondent.
2. The Tribunal determines the service charges for the years ending March 2011 and 2012 are not payable by the Respondent until the Applicant provides audited accounts as required under the Lease.
3. The service charge payable by the Respondent for the years ending March 2011 and 2012 must be re-calculated based upon the end of year adjustments as required under the Lease.
4. The management fee (£125 plus vat for each year) for the service charge years ending March 2011 and 2012 are reasonable and payable under the Lease subject to the Applicant deducting the Company Secretary fee payable by the Applicant Company.
5. The Tribunal makes the determinations as set out under the various headings in this Decision.
6. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.
7. This matter should now be referred back to the Bow County Court.

The application

8. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years ending March 2011 and March 2012. (For each year the service charge is £833.33).
9. Proceedings were originally issued at the Bow County Court under claim no. 2QT77718. The claim was transferred to this Tribunal, by order of District Judge Vokes, on 5.1.13.
10. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

11. The Applicant was represented by Mr Donnellan (Managing Director of Goldfield and also the Applicant's Company Secretary) and the Respondent appeared in person and was accompanied by Mr F Uddin (an Accountant).

12. Immediately prior to the hearing the Respondent handed in a bundle prepared for the hearing. The Respondent explained he did not receive the Applicant's bundle until Saturday 8th of June and so prepared his own bundle. The Applicant accepts the Applicant's bundle had only been served by Special Delivery on Friday 7th June. The Applicant stated there was no particular reason for the late service of the bundle and apologised for the delay. The Respondent stated his own bundle contained the same evidence as the Applicant's bundle except the Company accounts for the years 2008 to 2012. The Respondent agreed to copy the accounts for the years 2008 to 2012 and to add those to the Applicant's bundle (pages 95 to 153). During the course of the hearing the Respondent submitted further evidence detailing arrangements for the inspection of documents at the Applicant's offices (pages 154-157).

The issues

13. At the hearing the parties identified the relevant issues for determination as follows:
- (i) Whether the Applicant had issued the service charge demands for the years ending 2011 and 2012.
 - (ii) Whether the Applicant needed to provide audited accounts for each of those years.
 - (iii) The reasonableness of service charges for each of those years relating to the management fee.
14. The Respondent sought to argue that the other items of expenditure for each of the relevant years should also be considered by the Tribunal. However, the Tribunal note the Respondent was directed at the pre trial review (12.2.13) to identify the items and amounts in dispute. The Respondent arranged for an inspection of various documents at the Applicant's offices in March 2013 but states the Applicant failed to provide all the necessary documents. Yet the Respondent failed to identify any particular items of the service charges that were disputed in the schedule he provided pursuant to the Tribunal's direction (page 7 of the bundle) or in his witness statement dated 5.4.13 (page 19 of the bundle). The Respondent also accepts that he had not raised any issues with any of these items in any of his other various correspondence. The Applicant correctly stated in its letter dated 26.4.13 (page 4) that the Respondent did not dispute the amounts owed but only whether he had been served the service charge demands. Again, the Tribunal note the Respondent accepts he received this letter yet he did not raise any questions about any of the particular items for which he was being charged. The Respondent also stated at the hearing that he accepts the main issues were whether the service charge demands were issued, whether the Applicant had to provide audited accounts, and whether the management company was solvent. With respect to the items of expenditure in the service charge, the Respondent stated he did not agree or disagree with it.

15. The Respondent is an Accountant and was at the time legally represented and had received from the Applicant a breakdown of the Company accounts for 2011 and 2012, both of which provided a breakdown of the particular items of expense and which the Respondent accepts are almost identical to the service charge accounts. The Tribunal find the Respondent was aware of the items for which he was being charged but had not challenged any of those items of expenditure other than stating that he had not received the service charge demands and that the accounts had not been audited. The Tribunal find it would be unfair to allow the Respondent to raise these arguments at the hearing, bearing in mind the Applicant had not prepared for it. However, the reasonableness of the management fee was raised at the pre trial review and is a matter that can be considered by the Tribunal.
16. The Applicant conceded at the hearing the land registry fee of £4.00 and its administration fee of £240.00 for the County Court proceedings were not recoverable.
17. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Service of the service charge demands

18. The Applicant states that for each year the service charge demands were sent to Unit 3, Manor Court. That was the "billing address" it had for the Respondent. It sent a standard letter together with a copy of the service charge, the estimate for the forthcoming year, and the Statutory Notice. The Applicant states it does not have copies of the service charge demands. It does not keep any copies so that its storage costs can be reduced. It does not have anything on its computer records either.
19. The Respondent accepts he received the service charge demand for the year ending 31.3.2011 but did not receive any breakdown of the expenses for that year. He disputes receiving the service charge demand or a breakdown of the expenses for the year ending 31.3.12. The Respondent states Unit 3, Manor Court, is his office address and was only given to the Applicant about 3-4 months ago. He has only been there since April 2012. His address for correspondence concerning this property was 45 Britten Court. The Respondent referred the Tribunal to a letter on page 42. This was a letter the Respondent sent to the Applicant in September 2010 and gives his address as 45 Britten Court. The Respondent believes he received the service charge demand for the year ending March 2011 at that address. The Respondent also referred the Tribunal to page 40 of the bundle. This is a copy of an Application Notice to the High Court, completed by the Applicant in September 2010, and provides the Respondents address as 45 Britten Court.
20. On balance, the Tribunal is not satisfied the service charge demand for the year ending 2012 was served upon the Respondent. The Applicant has failed to provide a copy of the service charge demand. The Tribunal find it difficult to

understand why the Applicant would not keep a copy of the demand given the previous disputes between the parties. The Tribunal understands that perhaps, to keep costs down, a hard copy is not kept. However, the failure by the Applicant to even have a copy of the letter stored on a computer is unpersuasive. The Applicant claims to have sent the service charge demands for the years ending 2011 and 2012 to an address which the Respondent states he only occupied since April 2012 and had only provided the address to the Applicant 3-4 months ago. The Applicant has failed to provide any evidence that it had sent any letters to that address in 2011 or 2012.

21. The Tribunal find the service charge for the year ending 31st March 2012 is not payable until the demand is properly served upon the Respondent.

Do the service charge accounts need to be audited

22. The Lease at paragraph 10 of Part IV of the Schedule states "*The account...shall be prepared and audited by a qualified accountant who shall certify the total amount of the said costs charges and expenses...for the period for which the account relates and the proportionate amount due from the Lessee to the Company under this Lease credit being given for any amount which shall already have been paid...*"
23. The Applicant accepts that under the Lease it must provide audited accounts, but it states it is cheaper and practical not to do so. The Applicant stated at the hearing that if audited accounts were needed, it would provide them and request the costs from the lessees.
24. The Respondent states he has been requesting audited accounts as the Applicant has, since 2008, levied the same service charge (£833.33) each year without raising any balancing charges / credits at the end of each year despite there being some huge losses at the end of some of the years. The Respondent is concerned, as he owns 1 share in the Applicant Company, that any shortfall is not covered and the Company may be insolvent. The Respondent wants the Applicant to adhere to the highest standards of record keeping and procedure when dealing with the service charge payers' monies.
25. The Tribunal find the service charges for the years ending March 2011 and 2012 are not payable by the Respondent until the Applicant provides audited accounts as required under the Lease.
26. The Tribunal does not consider this just a technicality. The Tribunal was concerned with the vague and inconsistent answers from Mr Donnellan. Initially he stated that there was a minimal surplus (about £100) each year, which was put into a reserve account. He then stated there were losses each year. Mr Donnellan agreed that if losses were made then the service charge should go up. When asked why the service charges had remained the same, he did not provide an answer. Mr Donnellan could not explain why the surplus from some years was not credited for the following years service charge. Mr

Donnellan stated any surplus was put into a reserve fund yet he accepts the Lease does not allow for a reserve fund and he did not have the accounts available for the Tribunal to consider. Overall, it was unclear to the Tribunal what happened to any surplus or deficit. There was no evidence of any reconciliation in the following years account as required under the Lease.

27. The service charge payable by the Respondent for the years ending March 2011 and 2012 must be re-calculated based upon the end of year adjustments as required under the Lease.

Management fee

28. Mr Donnellan stated they have been managing Block B for 6 years. They charge a set fee plus vat, which is agreed with the Director of the Applicant Company. The fee is £125.00 plus vat for each flat. The fee is reviewed each year. The fee is below the market rate and is very reasonable for the service provided. They run the day-to-day affairs and nothing more. There is also a charge for acting as Secretary for the Applicant Company. Mr Donnellan was unsure whether the service charge accounts were shown to the Respondent in March 2013.
29. The Respondent states the fee is not fixed. Only one Director agrees to the fee. Since 2008 there have been increasing losses yet the management fee has been increasing each year. The management is poor. The property is in a poor state. The lead on the roof is coming off. The Respondent has been asking for audited accounts for a number of years but they are not provided. When the Respondent had arranged with the Applicant to view the service charge accounts at the Applicant's offices in March 2013, the Applicant failed to show the service charge accounts. There is no clear accounting. It is unclear what happens to any surplus in the service charge accounts.
30. The Respondent accepts a fee is payable but he could not state what the fee should be. He stated he also owns a flat in Block A, which has 30 flats and is managed well, by another managing agent. The total management fee for Block A is £4,000.00 per annum (£133.00 per flat). The Respondent believes the total fee for Block B should be no more than £2,500 per annum. He then stated he would expect the management fee to be about 8% of the total service charge for the year 2012, which equates to about £45.00 per flat per annum.
31. The Tribunal accept there are various shortcomings in the management service, as referred to at paragraphs 20, 25, and 26 above. The Tribunal accept the Applicant has failed to provide audited accounts despite the various requests from the Respondent. The Tribunal accept the Applicant failed to show the service charge accounts in March 2013. However, the Tribunal find, using its own knowledge and experience of such matters, the fee charged, £125 plus vat according to Mr Donnellan, is already at the bottom end of the scale. Even with the mismanagement, the fee charged is reasonable. The fee paid reflects the service provided. We do not accept a fee of £45.00 per unit is realistic. The Respondent has not provided any supporting evidence to show

that such a low fee is reasonable. The Respondent has not provided any supporting evidence of the management fee he is paying elsewhere.

32. However, the Tribunal note Mr Donnellan's evidence that the management fee also covers the cost of acting as Secretary for the Applicant Company. The Applicant's Company Secretary fees are not recoverable under the Lease. It is a separate expense that must be covered by the Applicant. The Applicant must deduct this fee from the management fee charged to the Respondent under the Lease.

Application under s.20C and refund of fees

33. At the end of the hearing, the Applicant made an application for a refund of the fees that had been paid in respect of the application (£20.00) and the hearing (£150.00). Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicant.
34. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines the Respondent acted reasonably in connection with the proceedings and had substantially won on nearly all the disputed issues, therefore the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

The next steps

35. This matter should now be returned to the Bow County Court.

Chairman: L Rahman (signed electronically)

Date: 16.7.2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).