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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case Reference : LON/OOBE/LSC/2013/0305

Property : FLAT 14 AYLESFORD HOUSE LONG
LANE LONDON SE1 4BL

Applicant : LONDON BOROUGH OF SOUTHWARK

Representative : Ms A Mills, Legal officer, Mr J Sheehey,
Major work officer, Mr G Dudhia,
accountant and Mr T Hunter, compliance
operations

Respondent : MR R FURLONG

Representative : The Respondent did not attend and was
not represented

Type of Application : SECTION 27A LANDLORD AND
TENANT ACT 1985 ("1985 Act")

Tribunal Members : JUDGE OF THE FIRST TIER
TRIBUNAL T RABIN
MR D JAGGER
MRS J CLARK

Date and venue of Hearing : 27th August 2013 10 Alfred Place, London
WC1E 7LR

Date of Decision : 27th August 2013

DECISION

The application

1. The Tribunal was dealing with an application seeking a determination pursuant to s.27A of the 1985 Act as to whether the estimated service charge demanded during service charge year 2012/13 and the cost of fire prevention works undertaken in 2010 were reasonable and payable by the Respondent. The application relates to Flat 14 Aylesford House Long Lane London SE1 4BL("the Flat"). The Applicant is the freeholder of the Aylesford House ("the Building") which forms part of the Staple Street Estate ("the Estate") and the Respondent is the long leaseholder of the Flat.
2. Proceedings were originally issued in the Northampton County Court. The claim was transferred to Lambeth County Court and then to the Tribunal by order of District Judge Zimmels on 12th January 2013. Judge Zimmels stated judgement would be entered for the admitted sum of £400 with the balance being transferred to the Tribunal
3. The relevant legal provisions are set out in the Appendix to this decision.
4. In view of the nature of the claim it was determined that an inspection was not necessary.

The Hearing and Evidence

5. The application was heard on 27th August 2013. The Applicant was represented by Ms A Mills, legal officer. The Tribunal also heard from Mr J Sheehy, major works officer, Mr Dudhia, accountant and Mr T Hunter, compliance operations manager. The Respondent did not attend and made no submissions or any explanation for his absence.
6. The issues before the Tribunal were as follows:
 - Whether the cost of works to the Respondent's front door in accordance with fire regulations was reasonable and payable
 - Whether the on account service charges of £892.09 as stated in the particulars of claim were reasonable and payable by the Respondent
7. The Tribunal was hampered by the Respondent's failure to attend the hearing or to submit a statement of case. He filed a defence in the County Court dealing with the excessive cost of works to the front door and the failure of the Applicant to inform him when the work was to be undertaken. He made no comment on the estimated charges. A further difficulty was District Judge Zimmels, when transferring the unadmitted sum, entered judgement for a sum of £400. The

Respondent did not admit any of the claim and the sum of £400 is not mentioned in the pleadings. In view of the lack of clarity, the Tribunal will make a determination in relation to the on account service charges of £892.09. It is for the Lambeth County Court to determine whether the judgement for £400 should stand or not as it appears to be an error.

8. The Tribunal considered the estimated service charges in the light of evidence given by Mr Dudhia, the Applicant's accountant. In summary, the estimated service charges are prepared using the average cost for previous years and known costs for repeated items. This is then divided amongst the flats on a bed weighting system where each flat is allocated a weighting of four units, representing bathroom, kitchen, living room and hallway. An additional unit is added for each bedroom. The Flat is a one bedroom flat which attracts a weighting value of 5. A 10% administration charge was added. Mr Dudhia produced a statement showing that the estimated charge for 2012/13 was finalised as £886.04, a small variation from the amount claimed in the County Court.
9. The Tribunal then considered the cost of the front door. Mr Hunter explained the procedure undertaken by the Applicant. The Applicant had received deficiency notice from the Fire Safety Officer on 10th June 2010. The Applicant then carried out a fire risk assessment and it was noted that a large number of front doors to the individual flats were not fire compliant. This were identified as a moderate risk requiring remedy within two or three months. A Section 20 Notice of Intent was served on 21st October 2010 and the cost of replacing the doors was identified as £50,000. This cost was to be divided between the flats using the bed weighting method. The amount payable by the Respondent was £1,028.30.
10. The Applicant received responses from a number of leaseholders who suggested that the cost should be divided equally between the number of flats in the block itself as each had a single front door. A revised Notice of Intent was sent on 4th November 2010 where the cost was divided equally and the Respondent's share was £1,299.28.
11. The Applicant made further investigations and ascertained that some of the doors were compliant and only 9 needed replacement. 29 needed to be upgraded. 37 required new fan lights and 7 were compliant. The Respondent's door was upgraded and not replaced.
12. The Tribunal then heard from Mr J Sheehey. He said that the estimated cost was based on replacement of all the doors. The final account was in fact £24,310. Those leaseholders who had new doors were asked to pay £645 each. The upgraded doors, such as the Respondent, paid £485. Those with new fan lights, including the Respondent paid £120. In each case a professional fee of 7.28% and

administration fee of 9% was added. The total payable by the Respondent was accordingly £707.46

THE TRIBUNAL'S DECISION

13. The Tribunal considered the terms of the lease under which the Flat is held and it is clear that the responsibility for maintaining the front door of the Flat lies with the Applicant. It is also specified that an estimated service charge can be demanded calculated using whatever reasonable method the Applicant decides.
14. Mr Dudhia explained the process by which the estimated service charges are assessed. The use of past costs together with known future costs is a reasonable and sensible method of assessing estimated service charges. The Tribunal was surprised that there was no addition for inflation but generally, the Tribunal considered that the sum of £886.04 was reasonable and payable by the Respondent. This sum is overdue and payable immediately.
15. The Tribunal are of the opinion that the Applicant has acted reasonably in this case. The cost of £50,000 was reduced by half following further investigation to see whether any of the doors were compliant with fire regulations and the method of charging per flat was used following proposals from the leaseholders. The work was undertaken through a long term qualifying agreement and, although the Respondent has stated that that he could have the work undertaken more cheaply, he did not produce a like for like quotation. In fact the cost to him was greatly reduced by upgrading the door, rather than replacing it.
16. The Tribunal was advised that the Respondent has been given a credit on his service charge account of £591.82 being the difference between the amount originally demanded and the actual cost.
17. In view of the lack of clarity as to the actual issues transferred the Tribunal determines that the estimated service charges of £886.04 are reasonable and payable. The cost of the door at £707.46 is the amount properly payable by the Respondent for the upgrading of this front door. These sums are overdue and payable immediately. The question of interest payable should be referred to the Lambeth County Court as the Tribunal has no jurisdiction

Tamara Rabin

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.
- (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).