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

Case Reference : **LON/00BG/LSC/2013/0428**

Property : **Flat 69 Godley VC House, Digby Street, London E2 0LP**

Applicant : **Lakeside Developments Limited**

Representative : **Ms Antoinette Griffiths of Trust Property Management Limited**

Respondent : **Mr Paul Harrington**

Representative : **N/A**

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

Tribunal Members : **Mr J P Donegan (Tribunal Judge)
Mr T Sennett MCIEH (Professional Member)
Mrs J Hawkins (Lay Member)**

Date and venue of Hearing : **12 September 2013
10 Alfred Place, London WC1E 7LR**

Date of Determination : **16 October 2013**

DECISION

Decisions of the Tribunal

- (1) The tribunal determines that the Respondent is liable to pay the following service charges to the Applicant:

25 June 2010 to 24 June 2011 - £1,551.52

25 June 2011 to 24 June 2012 - £1,430.59
- (2) The tribunal determines that the Respondent is not liable to pay the administration charges claimed of £201.60.
- (3) The Tribunal determines that the Respondent shall pay the Applicant the sum of £150 within 28 days of this decision, being reimbursement of the Tribunal fee paid by the Applicant pursuant to Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 ("the 2003 Regulations").
- (4) The tribunal determines that the Respondent shall pay the Applicant the sum of £313.80 within 28 days of the date of this Decision, being costs incurred by the Applicant in connection with these proceedings, pursuant to paragraph 10 of schedule 12 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").
- (5) Since the tribunal has no jurisdiction over ground rent, county court costs and fees, this matter should now be referred back to the Central London County Court.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years 2010/11 and 2011/12.
2. In its response dated 22 August 2013, the Applicant also sought an order for costs under schedule 12 to the 2002 Act.
3. Proceedings were originally issued in the County Court Bulk Centre under claim number 2QZ51165. An undated Defence was filed by the Respondent and the case was then transferred to the Central London County Court before being transferred to the tribunal.

4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicant was represented by Ms Antoinette Griffiths of Trust Property Management Limited, the managing agents for Godley VC House, Digby Street, London E2 oLP ("GVC House"). The Respondent did not attend the hearing. Ms Griffiths advised the tribunal that she had not received any communications from the Respondent for some time but that the address used by the tribunal when writing to the Respondent (12 Royal College Street, Camden Town, London NW1 oTH) was an address that he had provided. This was also the address given on the claim form within the County Court Proceedings.
6. Prior to the hearing the Applicant produced a bundle of relevant documents for the tribunal. During the course of the hearing Ms Griffiths also supplied the tribunal with a copy of the lease for Flat 69 at GVC House ("the Flat") and certified service charge accounts for the year ended 24 June 2012 that had been omitted from the bundle.

The background

7. The Applicant is the freeholder (lessor) of GVC House and the Respondent is the leaseholder (lessee) of the Flat.
8. The Respondent holds a long lease of the Flat, which requires the Applicant to provide services and the Respondent to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
9. Neither party requested an inspection of the Flat nor did the tribunal consider that one was necessary, nor would it have been proportionate to the issues in dispute. The tribunal understand the GVC House is a purpose built blocks of flats and that the middle section of this block, consisting of 33 flats, is the building referred to in the lease.
10. An oral pre trial review took place on 11 July 2013, when Directions were given. Ms Griffiths attended that hearing but there was no appearance by the Respondent.
11. The Applicant served a statement of case, schedule and witness statement in accordance with the directions. The Respondent failed to comply with the directions and did not serve any documents or evidence. In his Defence to the County Court Proceedings the Respondent gave brief details of alleged water ingress to the Flat, which might give rise to a set off for damages. He failed to provide any further

details to the tribunal and did not attend the hearing on 12 September 2013. This meant that tribunal was unable to consider the set off claim.

The lease

12. The lease is dated 25 July 1990 and is for a term of 125 years from 25 March 1990. The original parties to the Lease were Structadene Limited and Shieldbay (Enfield) Limited (1) and Michael Peter Hansen (2).
13. The service charge provisions are to be found at clause 2 (iii) of the lease, which is set out below:
 - (a) *To contribute and pay to the Lessor or his agents or as he may direct during the said term a sum (hereinafter called "the Maintenance Charge") being four ninety-seconds of the costs expenses and outgoings incurred by the Lessor in respect of the matters referred to in the Fourth Schedule hereto.*
 - (b) *The Maintenance Charge shall be paid as follows: -*

As to TWO HUNDRED AND FIFTY POUNDS (£250.00) per annum or seventy-five per centum (75%) of the Maintenance Charge for the preceding year whichever is the higher (hereinafter called "the Interim Charge") payable in advance on the day of payment of rent As to the balance (if any) within twenty-one days of the delivery to the Lessee by the Lessor or an account (hereinafter called "the Maintenance Account") showing particulars of such costs expenses and outgoings for the year up to the previous Twenty-fourth day of June PROVIDED THAT if the Maintenance Account shall show that the proportion payable by the Lessee of the said costs expenses and outgoings for the year to the previous Twenty-fourth day of June amounted to less than the Interim Charge the difference shall be refunded to the Lessee within twenty-one days of delivery of the Maintenance Account Provided that the Lessee shall be entitled to retain out of such difference such a sum as it may reasonably estimate to be necessary to provide (without any sums retained from previous years) a fund to meet future costs and expenses and outgoings the cost of which should be spread over several years If any dispute shall arise as to the accuracy of the Maintenance Account or the reasonableness of any sum retained for future expenses the same shall be submitted to a Member of the Institute of Chartered Accountants in England and Wales to be agreed between the parties hereto or in default of agreement to be nominated by the President for the time being of the said Institute The fees of the said Accountant shall be paid by the person requiring the dispute to be submitted.

(c) *The Maintenance Charge shall be a charge on the premises and be recoverable as if the same were rent in arrear.*

14. The rent payment day specified in clause 1 of the lease is 24 June. It follows that the interim charge is an advance payment due on 24 June in each year and there is then an end of year adjustment/reconciliation once the service charge accounts are produced, showing actual expenditure for the year in question. The interim charge is fixed as £250 per annum or 75% of the Maintenance Charge, being the Flat's share of actual service charge expenditure for the preceding year. If the Flat's share of actual expenditure is more than the interim charge then a balancing payment becomes due.

The issues

15. In the original County Court Proceedings the Applicant claimed a sum of £3,173.07 plus fixed costs. Part of this sum relates to ground rent, which does not fall within the tribunal's jurisdiction. A total of £2,773.07 is claimed for interim charges and balancing payments for the years ended 24 June 2011 and 24 June 2012 and administration charges, being management fees for late payment of the service charge.
16. The only issues to be determined by the tribunal are whether the Respondent is liable to pay the service charges for 2010/11 and 2011/12 and the late payment administration charges.

Evidence and submissions

17. The Applicant provided details of the service and administration charges in its statement of case, schedule and response. Ms Griffiths provided further details to the tribunal at the hearing. She is the property manager for the Building, which contains flats numbered 41-73.
18. The statement of case identified that the service charges being claimed are:

Interim charges for 2010/11	£1,116.66
Balancing charge for 2010/11	<u>£25.94</u>
	£1,142.60

Interim charges for 2011/12	£1,391.19
Balancing charge for 2011/12	<u>£37.68</u>
	£1,428.87

19. Ms Griffiths referred the tribunal to a service charge statement issued to the Respondent on 11 July 2013. This provided details of the interim charges, balancing charges and late payment administration charges. The interim charges have been demanded twice yearly, on 24 June and 25 December in each year, rather than annually. Further they have not been calculated in accordance with the formula at clause 2(iii) (b) of the lease. The balancing charges have been correctly demanded following production of the end of year accounts.
20. The administration charges claimed in the statement are:
- | | | |
|------------|-------------------------------|---------------|
| 04/11/2011 | Management fee – Late payment | £67.20 |
| 13/02/2012 | Management fee – Late payment | £67.20 |
| 18/09/2012 | Management fee | <u>£67.20</u> |
| | | £201.60 |
21. Ms Griffiths also referred the tribunal to the service charge accounts and end of year certificates for 2010/11 and 2011/12, which had been served on the Respondent. Total service charge expenditure for the Building in 2010/11 was £35,715.01 with a credit of £47.62 for interest income, giving a net figure of £35,667.39. The Flat's share of this sum is £1,551.52.
22. Total service charge expenditure for the Building in 2011/12 was £32,894.84 with a credit of £7.91 for interest income, giving a net figure of £32,886.93. The Flat's share of this sum is £1,430.59.
23. The schedule produced by the Applicant gave brief details of each item of service charge expenditure for the two years in question.
24. Ms Griffiths explained that the late payment administration charge of £67.20 was a standard fee that the managing agents charged for writing to leaseholders that were in arrears. The charge equates to £56 plus VAT. In this case there were three charges, as the agents had been obliged to write to the Respondent regarding non-payment of three separate interim charges being those claimed for June and December 2011 and June 2012.

The Tribunal's decision

25. The Tribunal determines that Applicant is liable to pay the following service charge contributions:

2010/11 - £1,551.52

2011/12 - £1,430.59

26. The Tribunal determines that the Applicant is not liable to pay the administration charges of £201.60, as detailed at paragraph 21 of this decision.

Reasons for the Tribunal's decision

27. The interim service charges detailed in the statement dated 11 July 2013 have not been demanded in accordance with the lease, as identified in paragraph 19. The Applicant is only entitled to recover service charges that have been correctly demanded. It follows that the Applicant is not entitled to recover any of the interim charges.
28. The end of year service charges have been demanded correctly in that accounts and certificates have been served upon the Respondent. The certificates correctly identify the Flat's share of total service charge expenditure, after adjusting for interest income, for each of the years in question.
29. The Respondent has not challenged any of the service charge expenditure detailed in the 2010/11 and 2011/12 accounts. In the absence of any challenge and having considered the information provided by the Applicant and Ms Griffiths, the tribunal allows the expenditure in full.
30. The service charge certificate for 2010/11 was issued to the Respondent on 07 February 2011. Allowing two days for delivery, the service charge contribution of £1,551.52 became due by 02 March 2011 (21 days from 09 February 2011).
31. The certificate for 2011/12 was issued to the Respondent on 14 August 2012. Allowing two days for delivery, the service charge contribution of £1,430.59 became due by 06 September 2012 (21 days from 16 August 2012).
32. The tribunal has found that the Applicant is not entitled to recover any of the interim charges detailed in the statement dated 11 July 2013. It follows that it is not entitled to recover any late payment administration charges for seeking to recover these interim charges.

Costs/fees

33. At the end of the hearing, Ms Griffiths made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fee of £150 that the Applicant had paid in respect of the hearing. Having heard the Applicant's evidence and submissions and taking into account the determinations above, the tribunal concluded that it was just and equitable for the Respondent to pay this fee. The tribunal determines that the Respondent shall pay the Applicant the sum of £150 within 28 days of the date of this Decision.
34. Ms Griffiths also asked tribunal to make an award of costs pursuant to Paragraph 10(2) (b) of Schedule 12 to the 2002 Act. She argued that the Respondent had acted unreasonably in connection with the proceedings in that he had failed to serve any statement of case in accordance with the directions, had failed to put forward any grounds for disputing the service charges, had failed to make any payment and had failed to attend both the pre-trial review and the full hearing.
35. Ms Griffiths also pointed out that the Applicant would have been willing to waive the administration charges, to achieve a settlement with the Respondent. It was not possible to settle the dispute, as the Respondent did not respond to any communications from Ms Griffiths.
36. The tribunal concluded that the Respondent had acted unreasonably in connection with the proceedings, for the reasons advanced by Ms Griffiths. He had been given ample opportunity to put forward grounds for disputing the service charges but had failed to do so. Further the Respondent had failed to produce any information in support of his set off claim.
37. Had the Respondent agreed the service charges by the time of the pre-trial review then the Applicant would not have been obliged to file and serve their statement of case and there would have been no need for Ms Griffiths to attend the full hearing. The costs claimed by the Applicant for the period after the pre-trial review were:
 - Preparing statement of case, statement, response and bundles (2 days @ £75 per day) - £150.00
 - Attendance at full hearing (1/2 a day at £75 per day) - £37.50
 - Photocopying bundles - £60.00
 - Travel for full hearing - £14.00

Ms Griffiths confirmed that the Applicant is liable to pay these costs, which come to £261.50 plus VAT. The sums claimed are reasonable and the tribunal determines that the Respondent shall pay the Applicant the sum of £313.80 (including VAT) within 28 days of the date of this Decision.

The Next Steps

38. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Central London County Court.
39. The service charges determined by the tribunal are greater than those actually claimed by the Applicant. This is due to the incorrect manner in which the interim charges have been demanded. It follows that the Applicant may wish to amend its claim in the County Court Proceedings, to reflect the increased sum allowed.
40. For the avoidance of doubt the tribunal has not determined the Respondent's set off claim, given his failure to provide any information in support of that claim.

Name: Jeremy Donegan (Tribunal Judge)

Dated: 16 October 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).

Schedule 12, paragraph 10

- (1) An appropriate tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to an appropriate tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of an appropriate tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before an appropriate tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.