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

Case Reference : **MAN/00BN/LSC/2013/0093**

Property : **118 & 120 Oakcliffe Road, Wythenshawe,
Manchester M23 1DD**

Applicants : **Theresa Lo & Peter Deacon**

Respondent : **OM Property Management**

Type of Application : **Landlord & Tenant Act 1985 – S27A and s20C**

Tribunal Members : **K M Southby (Judge)
A Franks (Valuer Member)**

Date of Decision : **10 December 2013**

DECISION

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DECISION

1. The amount of service charge for the period 31 January 2011 to 7 February 2012 is to be reduced only as follows:
 - a. Cleaning costs for the years ending 31st March 2012 and 2013 are to be reduced by 25%
 - b. Block Management Fees for years ending 31st March 2012 and 2013 are to be reduced by 50%.
2. No order is made under s20C Landlord and Tenant Act 1985

PRELIMINARY

3. This matter originated through a claim made by the Applicant on 5 June 2013 against the Respondent that the service charges claimed were unreasonable or not reasonably incurred.

THE PROPERTY

4. The Property is within a complex of four modern blocks of flats, three and four storeys high with small lawned garden areas to the front and side and car parking to the rear. The Property is believed to have been built in or around 2006. Each block comprises two separate communal entrances, lobby and stairwell. The Tenants contribute to the service charge for their particular block and a proportion of the service charge for the entire estate grounds.

THE INSPECTION

5. The Tribunal inspected the Property on 10 December 2013. In attendance were Ms Lo, Ms Khan, Mr Attwater and Mr Wadsworth.

THE LEASE

6. The Tribunal was shown a copy of the Respondent's lease, which provides in paragraph one of the third schedule that the Lessee covenants *to pay the Annual Rent and Maintenance Charge at the times and in the manner provided in this Lease without any deduction save as aforesaid.*

Paragraph 1 of Part IV of the Fifth Schedule sets out amongst other things:
The Company shall be entitled to include in the relevant Heads of Expenditure reasonable and proper provision in respect of the following:

1. *A reasonable sum as remuneration for the COMpnay for its administration and management expenses (including a profit element)...*

4. *Reasonable fees and costs of any managing agent appointed by the Company to carry out the Company's obligations under this Lease including the costs of preparation of all accounts statements and certificates by the Company in relation to Service Charge...*
5. *All fees charges expenses or commissions payable to any solicitor accountant architect surveyor or other professional advisor...*

THE HEARING

7. At the hearing the Applicants appeared in person, together with Ms Janet Hardman who appeared as a witness for the Applicant. The Respondent was represented by their legal consultant Ms Khan. Mr Attwater, regional manager for the Respondent and Mr Bettinson also attended and gave evidence as witnesses for the Respondent. Mr Wadsworth of the Respondent was also in attendance as an observer. The Tribunal also had the benefit of the bundles of documents and written submissions provided by both parties.
8. The Applicants set out their claim as follows:

Year (year end March 31 st)	Issue					
2010	Insurance	Electricity	Fire Equipment Maintenance			
2011		Electricity				
2012	Insurance			Cleaning	Management Fee	
2013				Cleaning	Management Fee	General Repairs

INSURANCE

9. The Applicant argued that a 21% uplift in 2010 on the previous year's figure was excessive.
10. The Tribunal heard from Mr Bettinson, Head of Insurance and Estates for the Respondent. Mr Bettinson stated that a third party independent broker was used to place the insurance, and that every year the insurance price was reviewed and every 2-3 years alternatives would be sought. Mr Bettinson provided details of the claims history at the property including malicious damage claims which would have affected the premiums for the periods in question. In particular the Tribunal was informed of an arson claim for over £41,000 in 2008 which would have impacted upon the 2010 premium.
11. The Applicant argued in respect of both 2010 and 2012 that had the level of management and maintenance been better, then some of the malicious damage events might not have occurred and therefore the negative impact on the premium would have been reduced.

12. The Tribunal were provided with a list of different insurers approached as part of the market testing procedure. It was noted that there was no list for 2011 and the Applicant argued that they would expect different insurers to be approached on an annual basis.
13. The Tribunal considered the premiums charged and the efforts made to test the market to achieve a competitive premium. The Tribunal concluded that in respect of both 2010 and 2012 efforts had been made to review and market test the insurance for the Property. No alternative quotations had been provided and the Tribunal concludes that the insurance premium as charged to the service charge account is reasonable.

ELECTRICITY

14. The Applicants submit that the rise in electricity charges in 2010 and 2011 is unreasonably high given that no additional areas were to be lit. The Respondents provided evidence that the apparent 144% rise in 2010 was due to a rebate from the previous year being applied to the 2010 service charge account. In 2011 the actual electricity charges were as per the previous year but appeared higher as they included an accrual for an anticipated invoice. The Respondent also provided details of an independent consultancy who are used to obtain discounted rates for energy, although the Respondent was unable to confirm whether Team Energy had in fact been used for the years in question at this Property.
15. The Tribunal having listened to all the available evidence were of the view that the electricity charges were reasonable and reasonably incurred.

FIRE EQUIPMENT MAINTENANCE

16. The Applicant argues that the charges for fire equipment maintenance were excessive although no alternative costings were provided. The Applicant argued that the previous year's charges were zero and that fire equipment should be part of a new build. The Respondent suggested earlier costs were zero as they may have been covered by a guarantee, but in any event argued that charges were reasonable and that when alternative quotes were sought in 2011 the other quotation was more expensive than the one charged to the service charge account for 2010.
17. Having regard to all the submissions and supporting documentation the Tribunal concluded that the charges in respect of fire equipment maintenance were reasonable.

CLEANING

18. The Applicants confirmed that they are satisfied with the current cleaning arrangements which have been in place since April 2013. The Tribunal had been

shown upon inspection the cleaning record card which showed cleaning being signed for on an approximately fortnightly basis. The Tribunal heard from Mrs Hardman about the previous arrangements which were described as inadequate. The Tribunal were informed that in the preceding two years, although the communal areas were being cleaned, the quality of the cleaning was very poor. The Applicants argued that the cleaning costs doubled in 2012 but they were not receiving double the value. The current charges are back below the 2012 costs and the quality being received was also reported to be much higher.

19. Mr Attwater for the Respondent informed the tribunal that without an onsite caretaker there was only a limited way to check on the quality of cleaning immediately after a visit from the cleaners. Mr Attwater acknowledged that there had been problems with the level of cleaning at the time in question. It was suggested that some of the problems with the cleaning were due to problems with specific tenants in that block which led to that block needing more frequent cleaning. Since going out to tender Mr Attwater agreed with the Applicants that a better quality of cleaning was being achieved.
20. The Tribunal concluded that the costs for cleaning were of themselves reasonable but that the quality of service being obtained was substandard and so the costs for 2012 and 2013 were not reasonably incurred. The Tribunal therefore orders that the sums charged to the service charge account for cleaning in years ending 31st March 2012 and 2013 should be reduced by 25%.

MANAGEMENT FEES

21. The Applicants argued that due to substandard services provided the Management fees charged to the service charge account were unreasonably high. The Applicants clarified that they were only querying the management fees in respect of the block management not the estate management. Alternative quotes were provided by the Applicants, although it was unclear whether the level of service was directly comparable.
22. The Respondents stated that the management fee is calculated on a per unit basis with an annual inflationary uplift. The Tribunal were informed that as part of the management agreement the property manager would visit the Property monthly, although the Tribunal was informed that the particular property manager at the time lived very close to the Property and visited even more frequently.
23. The Tribunal were able to view the property inspection records during the inspection and observed that for year ending 2012 there were 6 inspections, and for the year ending 2013 there were 7 inspections. Mr Attwater suggested that the property manager may not visit every block on every monthly inspection and may instead carry out what he described as a 'quality inspection' every couple of months.
24. The Tribunal found this evidence from the Respondent inconsistent and unconvincing and noted from the Property inspection reports that consistent

problems with the fire alarm panel appeared to remain unresolved for two and a half years. There was also evidence provided by the Respondents that external car park lighting had remained out of operation for a significant period of time. The Respondent's witness informed the Tribunal that the level of management appeared to have increased over the last service charge year. Reference was made by the Respondents to closer working within the last 12 months with the local council and police, and key trouble-makers have now left the development which appears to have had a positive impact. Whilst the Tribunal is not of the view that the Respondent has responsibility as de facto policeman for the site, it would appear that an increase in the level of active management has had a marked increase in the service received by residents.

25. The Tribunal concluded that there clearly was management of the property taking place, but that during the period of years ending 31st March 2012 and 2013 the level of management was inadequate to satisfactorily oversee the cleaning contract, to resolve the ongoing fire alarm issues and to inspect each block's common parts on a monthly basis. Accordingly the Tribunal determines that the management fees are unreasonably high for the service that was provided and are to be reduced for that period by 50%.

26. GENERAL REPAIRS

27. The Applicants argued that if the Respondent had been satisfactorily managing the property the level of repair expenditure would have been reduced. The Tribunal did not receive any specific evidence to support this. The significant repeat items in the repairs charges were for re-lamping which the Tribunal did not find to be unreasonable in cost or frequency. The Tribunal having considered the invoices provided and the representations of both parties concluded that the charges for general repairs were reasonable.

COSTS

28. The Tribunal heard an application under s20C of the Landlord and Tenant Act 1985 seeking an order that costs of the Tribunal proceedings should not be added to the Service charge account. Taking into account the degree of success of the parties the Tribunal declines to make such an order observing that in the present circumstances no order under s20C is appropriate.