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

Case Reference : **MAN/00BW/LSC/2013/0063**

Property : **Apartment 1, 1,Thorncroft Avenue, Gin
Pit Village, Astley, Tyldesley, Manchester
M29 7TA**

Applicant : **Ms.L.Maguire**

Respondent : **Gladedale (Northern Division) Ltd.**
Represented by : **Mainstay Residential Limited**

Type of Application : **Landlord and Tenant Act 1985 – s27A
Landlord and Tenant Act 1985 – s20C**

Tribunal Members : **Mrs.C.Wood
Mr.D.Bailey**

Date of Decision : **18 October 2013**

DECISION

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1. DECISION

The Tribunal determines as follows:

1.1 in accordance with the terms of the lease dated 23 December 2009 and made between the Respondent (1) and W. and C.D.Chappell (2) (“the Lease”):

(1) that the following items of expenditure are classifiable as “Estate Expenditure” under Schedule 3, Part 1:

- (i) Gardening
- (ii) External electricity
- (iii) Day-to-day maintenance
- (iv) Out of hours (OOH) fees: external
- (v) Fire risk assessment
- (vi) Fire system maintenance
- (vii) Insurance
- (viii) Management fee (estate)
- (ix) Auditors fee (estate)/Accountancy fee
- (x) Bank charges
- (xi) Car park barrier (paragraph 4)
- (xii) Water

(2) that the following items of expenditure are classifiable as “Building Expenditure” under Schedule 3, Part 2:

- (i) Cleaning
- (ii) Window cleaning
- (iii) Bin Store Cleaning
- (iv) Internal electricity
- (v) OOH fees: internal
- (vi) Emergency lighting
- (vii) Management fee (building)
- (viii) TV/Satellite maintenance
- (ix) Internal and external decoration of the Building

(3) that the Tenant’s Proportion of Estate Expenses (defined as the sums incurred or to be incurred by the Landlord on the expenditure itemised in Schedule 3, Part 1) is 0.641%;

(4) that the Tenant’s Proportion of Building Expenses (defined as the sums incurred or to be incurred by the Landlord on the expenditure itemised in Schedule 3, Part 2) is 2.2334% together with the Car Park Gated Surcharge of 1.6949%;

(5) that:

(i) there was no evidence that the Tenant’s Proportion had been altered in accordance with clause 7.3 of the Lease prior to the letter dated 23 July

2013 (“the Letter”) from Mainstay to the Applicant purporting to do so with effect from 1 January 2013;

- (ii) the Letter was ineffective to alter the Tenant’s Proportion with effect from 1 January 2013 as it is apparent from clause 7.3 that any alteration is only effective from the date of the notice.

For the avoidance of doubt, the Tribunal makes no determination as to whether or not circumstances exist which make it “equitable” and/or “appropriate” to alter the Tenant’s proportion; and,

- (iii) the service charge percentages of 5.32% and 5.26% (2011/12) and of 5.32% (Mar-Dec 2012) and 10.13% (Jan-Feb 2013) were not in accordance with the Lease and, accordingly, the Applicant is not liable to pay at those percentage rates;

1.2. in respect of expenditure incurred by the Respondent and charged to the Applicant as service charge during the period February 2011 – March 2013, the following expenditure is determined to have been reasonably incurred as Estate Expenses:

- (1) 22.2.11: John Coulson (Builders) Limited: £40.00;
- (2) 8.3.11: Trustworthy Gate Maintenance: £156.30;
- (3) 10.5.11: Astra Signs Ltd: £60.00;
- (4) 13.5.11: City Maintenance UK Ltd: £305.88;
- (5) 27.7.11: Mainstay Facilities Management Ltd: £654.00;
- (6) 17.10.11: Trustworthy Gate Maintenance: £102.00;
- (7) 21.02.12: Mainstay Facilities Management Ltd: £62.50;
- (8) 8.5.12: Access Door Systems Ltd: £108.00;
- (9) 25.7.12: Blade Roofing Ltd: £432.00;
- (10) 26.7.12: Mainstay Facilities Management Ltd: £75.00;
- (11) 1.11.12: Garden Solutions: £150.00;
- (12) 1.2.13: Garden Solutions: £150.00;
- (13) 7.1.13: ABC Maintenance Ltd: £144.00.

For the avoidance of doubt, the Applicant’s liability in respect of the Estate Expenses listed above is 0.641% of the total expenditure.

1.3 in respect of expenditure incurred by the Respondent and charged to the Applicant as service charge during the period February 2011 – March 2013, the following expenditure is determined to have been reasonably incurred as Estate Expenses at the reduced amounts listed below:

- (1) 22.2.11: John Coulson (Builders) Limited: £635.52 reduced to £300.00;
- (2) 20.10.11: Mainstay Facilities Management Ltd: the invoice requires apportionment and the amount incurred as works to the gates included as an Estate Expense;
- (2) 5.1.12: Access Door Systems Ltd: £588.00 reduced to £250;

- (3) 7.2.13: Seasons Garden Maintenance: £474.00 reduced to £324.00 (inc. VAT).

For the avoidance of doubt, the Applicant's liability in respect of the Estate Expenses listed above is 0.641% of the total expenditure.

1.4 in respect of expenditure incurred by the Respondent and charged to the Applicant as service charge during the period February 2011 – March 2013, the following is determined to have been reasonably incurred as Building Expenses payable by the Applicant subject as noted in any case:

- (1) 8.3.11: ABC Maintenance Ltd: the invoice total of £84 should be apportioned equally to Blocks 1 and 2;
- (2) 10.11.12, 12.1.12 and 17.1.12: the invoices require apportionment to reflect OOH fees which relate to works done at the estate (Estate Expense) and at individual blocks (Building Expense);
- (3) likewise, the invoices for management fees require apportionment to reflect management fees which relate to the estate (Estate Expense) and to the individual blocks (Building Expense);
- (4) 2.1.13 and 1.2.13: Mainstay Facilities Management Ltd: the invoices relating to cleaning services require apportionment between the individual blocks;
- (5) 28.1.13: ABC Maintenance Ltd: £222.00.

For the avoidance of doubt, the Applicant's liability in respect of the Building Expenses listed above is 2.2334% of the total expenditure (together with the Car Park Gated Surcharge of 1.6949%).

1.5 in respect of expenditure incurred by the Respondent between February 2011 – March 2013 and charged to the Applicant as service charge, the following expenditure is determined as not payable by the Applicant:

- (1) 30.6.11: John Coulson (Builders) Ltd: £188.50: expenditure relates to Block 3;
- (2) 17.1.12: Mainstay Facilities Management Ltd: £231.67: expenditure relates to Block 2;
- (3) 4.1.2013: ACB Maintenance Ltd: £144.00: expenditure relates to Block 2;
- (4) 1.2.13: Seasons Garden Maintenance: £150.00;

1.6 that it is just and equitable in all the circumstances to grant the Applicant's application under section 20C of the Landlord and Tenant Act 1985;

1.7 that, pursuant to Rule 13(2) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, the Respondent is ordered to reimburse the Applicant the application and hearing fees paid by her.

2. BACKGROUND

- 2.1 By an application dated 20 April 2013, the Applicant requested a determination as to the payability and reasonableness of service charges for the Property for the service charge years 1 March 2011 – 29 February 2012 (“the 2011/12 S/C Year”), 1 March 2012 – 28 February 2013 (“the 2012/13 S/C Year”), 1 March 2013 – 28 February 2014 (“the 2013/14 S/C Year”) and 1 March 2014 – 28 February 2015 (“ the 2014/14 S/C Year”).
- 2.2 Following a pre-trial review held on 21 June 2013, it was determined that the determination would be made in respect of the 2011/12 S/C Year and the 2012/13 S/C Year and Directions dated 21 June 2013 were issued to the parties.
- 2.3 Both parties submitted documentary evidence to the Tribunal in accordance with the Directions. The Respondent also submitted by correspondence some supplementary evidence, including the Letter, to which the Applicant responded by undated letter, a copy of which was received by the Tribunal on 31 July 2013.
- 2.4 A hearing was scheduled for Monday 30 September 2013 at 11.30 am following an inspection a 9.30 am of the external and internal communal areas of the estate in which the property is sited. The Applicant admitted the members of the Tribunal to the internal communal areas but did not accompany them on the inspection; Mr.A.Croft, from Mainstay, was in attendance.

3. HEARING

- 3.1 In the Bundle of documents prepared by the Respondent for the hearing, the Tribunal was greatly assisted by Tab 9 which consisted of a Scott Schedule detailing the invoices disputed by the Applicant and the Respondent’s comments in response, together with copies of the relevant invoices. The Applicant did not submit any independent documentary evidence in support of her claims that invoiced amounts were “excessive”.
- 3.2 Oral evidence at the hearing was limited to the Applicant explaining, where this was not apparent from the documentation, the reasons for disputing each of the listed invoices, and the Respondent providing further information, as requested by the Tribunal, to explain its responses.

4. THE LEASE

- 4.1 The relevant provisions of the Lease are set out in paragraph 1 of this Decision.