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

Case Reference : **MAN/OOEW/LAC/2013/0009**

Property : **5 Naylor Road, Ellesmere Port CH66 1SD**

Applicant : **Mr Paul Victor Williams**

Respondents : **Bellway Homes Ltd (1st)
Mainstay Residential Ltd (2nd)**

Type of Application : **Commonhold & Leasehold Reform Act 2002
Schedule 11, Paragraph 5
Landlord & Tenant Act 1985 Section 20C**

Tribunal Members : **Laurence Bennett (Tribunal Judge)
Elizabeth Thornton-Firkin BSc MRICS**

Date of determination : **07 October 2013**

Date of Decision : **08 October 2013**

DECISION

Application

1. Mr Paul Victor Williams applies for a determination under Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 of his liability to pay and reasonableness of administration charges relating to 5 Naylor Road, Ellesmere Port CH66 1SD (the Property).
2. Mr Paul Victor Williams applies for an order under Section 20C of the Landlord & Tenant Act 1985 restricting the inclusion of the Respondents' costs in the service charge relating to the Property.

Preliminary

3. The Applicant and the 1st Respondent are the respective owners of the Lessors, Lessees and Managers' interest in the Property created by the lease specified below.
4. The 2nd Respondent named in the application is the Management Company appointed by the 1st Respondent to carry out its management obligations under the terms of the lease. As it is not a party to the lease the Tribunal has not considered it a party to the proceedings against whom an order can be made.
5. The application was received 03 June 2013.
6. Directions dated 18 July 2013 by a Deputy Regional Judge of the Tribunal included: "It is considered that this matter is one that can be resolved by way of submission of documentary and other written evidence leading to an early determination." The directions gave opportunity for the parties to request a hearing. No request was made.
7. The Applicant and 1st Respondent provided further details and documents in accordance with the directions.
8. The Tribunal convened on 07 October 2013 without the parties to determine the application.

The Law

9. Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the Act) provides that:-
 - 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 application for such approvals,
 - (b) for or in connection with the provisions 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.

- 1(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
- 2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
- 5 (1) An application may be made to a leasehold valuation tribunal for 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

10. The operation of the Act was brought into effect by SI 2003 No 1986. Paragraph 8 of Schedule 2 of that instrument states:

Paragraphs 2-5 of Schedule 11 shall not apply to an administration charge that was payable before the first commencement date.

11. The first commencement date was 30 September 2003

The Lease

12. The Applicant holds the leasehold interest in the property created by a lease dated 22 June 2007 made between Bellway Homes Ltd (1) Paul Victor Charles Williams and Tracey Williams (2) for a term of 150 years from and including 01 January 2006 (the Lease).
13. Paragraph 3.6 of the Lease contains the Leaseholders covenant: "To pay all costs charges and expenses (including Solicitors costs and Surveyors fees) incurred by the Landlord for the purpose of or incidental to the preparation and service of a Notice under Section 146 or Section 147 of the Law of Property Act 1925."
14. Paragraph 6.1 of the Lease contains the proviso that: "The Landlord shall not commence proceedings forfeiture of this Lease without giving reasonable prior notice to the Mortgagee of the Leaseholder of which the Landlord has received notice."

Facts and Submissions

15. The Applicant fell into arrears of the rent reserved by the Lease. The Respondent by its agents submitted written requests and reminders, instructed collection agents gave notice to the Applicant's Mortgagee and instructed Solicitors who sent a letter before action. The Respondents submitted demands for payment of their agents and Solicitors costs amounting to £499.00 taking into account a credit cancelling the cost of "mortgage correspondence."
16. The Applicant seeks a determination of the cost payable noting that an earlier charge was included and then credited, that he did not receive a copy of a particular statement and that the copy Lease sent to him in June 2007 does not contain his signature.

17. The Respondents' demands include a breakdown of the individual charges for the activities for which they seek payment.

Tribunal's conclusions with reasons

18. Noting the provisions of the Lease and the request made by the 1st Respondent to the Applicant we find that the sums requested are a variable service charge falling within Paragraphs 1(1)c and (d) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 and are within the Tribunal's jurisdiction.
19. We have considered the work involved in preparing and producing each of the items which give rise to charge and find they are routine tasks that would form part of a usual process for any agent or Solicitor involved in collection of ground rents. The letters would be routine as would the referral to Solicitors and the attention they would need to give in submitting a letter before action.
20. Following 19 we consider that an appropriate cost for standard correspondence is in our experience £25 + VAT, we find the sum of £38.50 is not justified by submission of detail of any unusual circumstances. Similarly the cost of referral to both collection agents and Solicitors would be a routine process for which we consider the sum of £40 + VAT appropriate. For similar reasons we find the Solicitors fees for the tasks involved should be no more than £50 + VAT.
21. As the VAT treatment by the Respondents is not clear we are unable to provide a final calculation adjusting the sum demanded.
22. The Applicant referred to non receipt of a demand. We find that he was fully aware of the amount that should be paid including the Ground Rent which he had not paid for some years. He has been aware of the charges throughout these proceedings, on the face of it the demands were sent and we do not consider the non receipt mentioned an issue that can affect the payability of sums requested.
23. The Applicant considers he should not be bound by the Lease as he has not signed it. The Lease is registered at HM Land Registry as is his Leasehold interest. We are not concerned whether his solicitor or another gave a complete copy to him in 2007 or any other time but it plainly sets out the conditions of his interest.

Landlord & Tenant Act 1985

24. The Lease does not contain provision for a service charge (as distinct from an administration charge). It is not necessary for us to make a determination under Section 20C. Had there been an obligation to pay a service charge we would not make such order as we find it necessary for the Respondent to have taken steps for recovery of Ground Rents and costs because of the long period of non payment by the Applicant.
25. For similar reasons despite our order reducing the charges payable we do not find it appropriate to order reimbursement of any application fee payable to the Tribunal.

Order

26. The sum payable to Bellway Homes Ltd by Mr Paul Victor Williams shall be limited as set out in paragraph 20 above.