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

Case Reference : **BIR/37UG/LIS/2013/0044 &
BIR/37/UG/LLC/2014/001**

Property : **2 Sherwood Lodge, Dale Crescent, Balderton,
Newark, Nottinghamshire, NG24 3JT**

Applicant : **J H Watson Property Investment Ltd**

Representative : **Mr Nicholas Warren**

Respondent : **Ms Victoria Anne Witt**

Representative : **In person**

Type of Application : **Landlord’s application for the determination
of -**

**(1) liability to pay and reasonableness of
service charges pursuant to section 27A of the
Landlord and Tenant Act 1985 and**

**(2) for the determination of reasonable
administration charges pursuant to paragraph
5 of Schedule 11 to the Commonhold and
Leasehold Reform Act 2002**

Tribunal Members : **Judge Roger Healey & Mr Vernon Ward FRICS**

**Date and venue of
Hearing** : **14 January 2014 at Nottingham Magistrates’
Court**

Date of Decision : **30 JAN 2014**

DECISION

Introduction

1. This is an application by the Lessor, J H Watson Property Investment Ltd (“the Applicant”) for a determination of the reasonableness of service charges and administration charges relating to 2 Sherwood Lodge Dale Crescent Balderton Newark Nottinghamshire NG24 3JT (“the Property”) in respect of the Service Charge Years ending 30 June 2008, 30 June 2009, 30 June 2010, 30 June 2011, 30 June 2012 and 30 June 2013 for payment by the Lessee, Victoria Anne Witt (“the Respondent”).
2. The application (together with other matters) was commenced by the Applicant in the Harrogate County Court under Case Number 3YJ64227 and in accordance with paragraph 3(1) of the Commonhold and Leasehold Reform Act 2002 was transferred by the Nottingham County Court to the Leasehold Valuation Tribunal by Order dated 9 May 2013.
3. By virtue of the Transfer of Functions Order 2013 the functions of the Leasehold Valuation Tribunal are now exercised by the First Tier Tribunal Property Chamber (Residential Property).
4. The jurisdiction of the Tribunal is derived from Landlord and Tenant Act 1985 section 27A and Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Inspection

5. On 14 January 2014 the Tribunal Members attended at Sherwood Lodge (“the Building”). They were accompanied by the Respondent and Mr M Patel who represented the Applicant. The Building is of traditional brick and tile construction and comprises four flats on two floors of which the Property forms part. The Building is surrounded by a grassed area. There is a separate boiler room to the rear which is currently used as a store room. The internal communal parts of the Building comprise a ground floor entrance hall with stairs leading to a hallway on the first floor.
6. The doors to the front entrance of the Building show evidence of rot and permit the ingress of water. The carpet in the communal parts shows significant signs of wear and in places is cut or ripped. The paintwork to the hall shows evidence of water damage and further signs of wear. Plaster in the corner of the downstairs hall is missing. Paint is noted on the doormat. The parties agreed that the hallway had not been decorated for at least ten years and that the internal communal area was cleaned by the occupants. The parties agreed that the water damage was due to a flood emanating from flat 3 in the years 2010/11.
7. The exterior concrete sills to the windows in the Building show evidence of significant deterioration. Some repair has been undertaken to the window sills at Flat 1.

The original door bell system is inoperative. The concrete external paths and the grassed area appear satisfactory.

Hearing

8. Following the inspection a hearing took place at the Magistrates' Court Nottingham. The Applicant was represented by Mr Nicholas Warren, a Credit Controller employed by Watson Property Management who act as Managing Agents. Also present was Mrs Jean Bramhall, a director of both Watson Property Management and the Applicant and Mr Manoj Patel, a surveyor employed by the Management Company. The Respondent appeared in person and was assisted by Mr Andrew Davis.

9. It is not disputed by the parties that the Property was demised for a term of one hundred and ninety nine years from 25 December 1988 by a lease dated 30 August 1990 made between Lodgeday Commercial Limited of the one part and the Respondent of the other part. Clause 2 of the Lease provides for the Lessee to pay one quarter of the charges therein set out as may be incurred by the Lessor in respect of the maintenance and management of the building.

Preliminary issue

10. The Tribunal noted from the bundles prepared by the parties that the Applicant's claim for service charges and administration charges extended to a period prior to 1 July 2007 which is the commencement date of the claim transferred to the Tribunal for determination. Further certain claims for administration charges charged after 1 July 2007 relate to work undertaken prior to that date. The Respondent submits that agreement was reached with the Applicant's solicitors that all monetary claims were settled as at 31 June 2007. The Applicant submits that an offer of settlement was made by their solicitors but not accepted by the Respondent. The Tribunal determined that in order that it may determine the validity of the administration charges demanded after 1 July 2007 in respect of work undertaken prior to that date it must determine as a preliminary issue whether an agreement exists as submitted by the Respondent.

11. The Respondent gave evidence that she spoke by telephone with the Applicant's solicitor to discuss the outstanding service charges and other charges up to 31 June 2007 with a view to reaching settlement.

12. The Respondent gave evidence that she was not prepared to offer anything other than the sum of £3,278.94 which related to service charges which she found acceptable. She was not prepared to offer any further monies in respect of the solicitors costs or additional charges.

13. The Respondent gave evidence that at the conclusion of the telephone call the solicitor on behalf of the Applicant accepted the sum of £3,278.94 in settlement of the outstanding service charges and costs and an agreement was reached in those terms.

14. Mrs Bramhall for the Applicant gave evidence that no such agreement was reached.

15. The Respondent referred the Tribunal to a letter dated 9 April 2008 in her bundle. This is an open letter from the Applicant's solicitors to her. Paragraphs 1 and 2 read as follows-

"I write further to our brief telephone conversation in relation to these matters.

You will recall that it has been agreed that these matters be resolved upon payment of £3,278.94 representing sums payable by yourself through to June 2007".

16. The Applicant accepts that the sum of £3,278.94 has been paid.

17. On the basis of this evidence the Tribunal finds there is an agreement between the parties that service charge demands and administration charge demands up to 31 June 2007 are settled by agreement. The Tribunal finds the settlement is also inclusive of costs incurred to that date.

Service charge demands

18. The Respondent challenges the management charges for each of the service charge years in issue (i.e. year ending 30 June 2008 and each year thereafter to year ending 30 June 2013). The Respondent submits that the charges are too high. The Applicant responds that the charges are in line with those within the industry. Mrs Watson gave evidence that the Management Company was a wholly owned subsidiary of the Applicant.

19. The Tribunal using its own skill and judgment as an expert tribunal but not any secret or special knowledge determines that the management charges are in excess of those which they would expect to find.

20. The Respondent submits that the Applicant failed to manage as is evidenced by the condition of the Building. The Respondent submits that the Managing Agents failed to deal with her enquiries relating to the management of the Building. In support of this the Respondent refers the Tribunal to her letter to the Applicant dated 5 September 2011 which reads –

"I am still awaiting a reply to a letter I sent on the 5 August 2008 to Last Cawthra Feather who met with yourselves in January 2009 to discuss the account. I have received no correspondence from either yourself or Last Cawdra Feather to enable

closure of the matter and I am still waiting. I have today spoken to Anthony Bennett on an unrelated matter and he is going to speak to Jean Bramhill. I look forward to hearing from you."

21. The Applicant responds that the Respondent's claims were not sufficiently specific and further that the Respondent failed to pay service charges throughout the period in issue and this contributed to the difficulty in managing the Building.

22. The Tribunal finds that the Applicant has failed to respond to enquiries from the Respondent in a timely manner. The Tribunal finds, as evidenced by the state and condition of the Building that a failure to maintain has existed for some years.

23. The Tribunal determines that the excessive management charges and the failure to effectively manage, may be reflected by adopting a broad brush approach, and reducing by one half the service charge claimed in each year.

Service charge year ending 30 June 2008

24. The service charge proportion demanded for the year ending 30 June 2008 is £555.06 (A100 in the Applicant's bundle).

25. The Respondent challenges the account of Mr M.R.Hayton in the sum of £235 (A130 in the Applicant's bundle) relating to the relaying of slabs. The Respondent submits that only one slab was rectified and almost no time was spent on site by the contractor. In support of this she refers the Tribunal to an email dated 17 April 2008 from Keith Russell to the Applicant (Respondent's bundle B1-45) which states that work on the slabs took only ten minutes. The Applicant referred the Tribunal to the work order (A131) which shows that three slabs required attention and submitted the account to be reasonable. The Respondent challenges the management fee of £176.25.

26. The Tribunal finds Mr Hayton's charges acceptable. As determined in paragraph 19 the Tribunal reduces the management charges of £176.25 by one half thereby making a deduction for the year of £88.13.

Service charge year ending 30 June 2009

27. The service charge proportion demanded for the year ending 30 June 2008 is £1,273.36 (A105).

28. The Tribunal requested evidence of the Interest Charges payable in respect of the service charge account. These were subsequently produced and a copy made available to the Respondent. The Respondent expects further information by way of support from the Bank. The Tribunal is satisfied with the information supplied and determines that the interest claimed on the overdraft in the sum of £93.17 is properly payable.

29. The Tribunal, for the reasons previously stated, determines that the management charge of £179.29 be reduced by one half making a deduction of £89.65 for the service charge year.

Service charge year ending 30 June 2010

30. The service charge demanded for the year ending 30 June 2010 is £552.21 (A110).

31. The Respondent challenges the sum of £14.68 being her contribution to fitting a doorbell at the front entrance to the Building for the use of a Mr Hallam. The Applicant responds that the original equipment is inoperative and an individual bell was supplied by way of substitution.

32. The Tribunal finds the charge for the replacement door bell acceptable. For the reasons previously given the Tribunal finds that the management fee of £186.77 be reduced by one half. The Tribunal therefore determines a reduction of £93.39 from the service charge account.

Service charge year ending 30 June 2011

33. The service charge demanded for the year ending 30 June 2011 is £528.41 (A115).

34. There is no challenge other than the management fee.

35. The Tribunal determines the management fee of £190.79 be reduced by one half giving a deduction of £95.40 for the year.

Service charge year ending 30 June 2012

36. The service charge demanded for the year ending 30 June 2012 is £1,010.62 (A119)

37. The Respondent objects to making payment to repair Flat 1 and also to the communal area both of which arise out of a flood occurring in Flat 3 above. She submits that the works should be the subject of an insurance claim. The expenditure comprises a building survey by Bond Bryan in the sum of £600. (A134) and remedial works undertaken by Mr M.R.Hayton in the sum of £250 (A135) and £853.95 (A136). The Tribunal requested a copy of the surveyor's report which was produced subsequent to the hearing and a copy made available to the Respondent. The Applicant submits that a claim was made to the insurers but was rejected. The Tribunal accepts that the claim was rejected by the insurers and finds that it is properly charged to the service charge account.

38. The Tribunal notes the management fee of £202.50 and determines a deduction of £101.25.

Service charge for year ending 30 June 2013

39. The service charge demanded for the year ending 30 June 2013 is £916.76 (A124).

40. The parties agree that the service charge category entitled "General maintenance and repair" in the sum of £1,247.06 (proportion £311.77) should properly shown as a provision for future works and recorded as such.

41. The Tribunal notes the management fee of £192.82 and determines a deduction of £96.41.

Administration charges

42. The Administration charges claimed are set out in the Applicant's bundle A138 and A139. The Applicant accepted that those on A138 related to work incurred prior to 30 June 2007. In accordance with the preliminary determination recorded by the Tribunal in paragraph 17 these administration charges amounting to £3,433.12 are determined to be within the agreement reached by the parties and therefore not recoverable as an additional item.

43. There remains three administration charges which fall within the service charge year ending 30 June 2013. These are shown as "second reminder" on 16 October 2012 amounting to £42, a "final reminder" on 24 October 2012 of £60 and an "Allocation Questionnaire Fee" on 10 April 2013 of £220.

44. The Tribunal finds that the Respondent experienced difficulty in resolving her concerns with regard to management of the Building with the managing agents. It also finds that the Respondent is in arrears with the service charge demanded and has not made any payment in respect of the undisputed items forming part of the service charge. The Tribunal finds that the Applicant is justified in instituting proceedings for recovery. Accordingly the Tribunal finds the administration charges reasonable and finds the sum of £322 payable at the service charge year end at 30 June 2013.

Determination

45. Following the findings set out above, the Tribunal sets out in the table below, in the first column the relevant years in issue, in the second column alongside the relevant year the amount demanded in respect of services charges for that year, in the third column the amount deducted from that year by the Tribunal and in the fourth column alongside the relevant year the sum determined by the Tribunal to be payable by way of service charges in respect of each of those years.

<u>Service charge year end</u>	<u>Claimed</u>	<u>Deducted</u>	<u>Payable</u>
30 June 2008	£555.06	£88.13	£466.93
30 June 2009	£1,273.36	£89.65	£1,183.71
30 June 2010	£552.21	£93.99	£461.22
30 June 2011	£528.41	£95.40	£433.01
30 June 2012	£1,010.62	£101.25	£909.37
30 June 2013	£916.76	£96.41	£820.35

46. The Tribunal further determines the sum of £322 payable by way of administration charges for the year ending 30 June 2013.

Costs

47. The Respondent applies for an order in accordance with section 20C of the Landlord and Tenant Act 1985 that the costs incurred by the Applicant in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by her.

48. Following the findings in paragraph 44 the Tribunal determines that no order pursuant to section 20C be made.

Appeal

49. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. The application must be received by the Tribunal no later than 28 days after the date the Tribunal sends this decision to the party making the application. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Roger Healey
(Chairman)

30 JAN 2014