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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HG/LIS/2013/0110
Property:	57 Alexandra Road, Ford, Plymouth PL2 1PH
Applicants:	Alison Blacoe Mitch Pollard Andrew Sacker
Representative:	Alison Blacoe
Respondent:	Lisa Property Limited
Representative:	Mr J Davies of Counsel
Type of Application:	Section 27A and 20C of the Landlord and Tenant Act 1985 (Liability to pay service charges) Tenants application for the determination of reasonableness of service charges for the years 2005-2013.
Tribunal Members:	Judge A Cresswell (Chairman) Mr M Woodrow MRICS
Date and venue of Hearing:	25 July 2014 in Plymouth
Date of Decision:	6 August 2014

DECISION

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The Application

1. On 12 November 2013, the Applicants, the owners of the leasehold interests in the 3 Flats at the property, made an application to the Leasehold Valuation Tribunal for the determination of the reasonableness of the service charge costs claimed by the landlord, the Respondent, for the years 2005 to 2013 inclusive.

Inspection and Description of Property

2. The Tribunal inspected the property on 25 July 2014 at 1010. Present at that time were Ms A Blacoe, Mr A Sacker, Ms B Johnson and Mr P Glover (the last 2 employees of the Respondent) and Mr J Davies of Counsel. The property in question consists of a Victorian terraced house on 3 floors converted into 3 flats. The ground floor flat has its own outside front door (Mr Sacker). Ms Blacoe is the tenant of the top floor flat which shares the entrance hall and stairs to the first floor with the first floor flat (Mr Pollard). There is a rear yard which is accessible only from the ground and first floor flats as well as from a pedestrian path that is shared with neighbouring properties. The guard rail to the side of the steps within this yard was rotten and in a dangerous condition. There is also a small garden area to the front.

Summary Decision

3. This case arises out of the tenants' application, made on 12 November 2013, for the determination of liability to pay service charges for the years 2005 to 2013 inclusive. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has determined that the landlord has not demonstrated that some of the charges in question were reasonable, and so those charges, which the Tribunal details below, are not payable by the applicants.
4. The Tribunal does not order the reimbursement of fees paid by applicants. The Tribunal partially allows the tenants' application under Section 20c of the Landlord and Tenant Act 1985, thus precluding the landlord from recovering over £300 including VAT of its cost in relation to the application by way of service charge (£100 per flat).

Directions

5. Directions were issued on 11 February 2014 after a Case Management Conference hearing on 10 February 2014.
6. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
7. This determination is made in the light of the documentation submitted in response to those directions and the submissions made by the parties at the hearing.

The Law

8. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
9. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
10. The relevant law is set out below:

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

18 Meaning of "service charge" and "relevant costs"

(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.

19 Limitation of service charges: reasonableness

(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 provision 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.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 postdispute 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 of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Ownership and Management

11. The Respondent is the owner of the freehold. The property is managed for it by Urbanpoint Property Management Limited.

The Lease

12. Ms Blacoe holds The Top Flat under the terms of a lease dated 30 September 1988, which was made between Patricia Doreen Ilet Taylor as lessor and Kim McKee as lessee. The Tribunal understood this lease to be representative of all 3 leases at the property.

13. **Insurance**

The Applicants raised concerns that the insurance cover obtained by the respondent covered more than was required by the terms of the lease and pointed, in particular, to "Rent/Alternative Accommodation Sum Insured" as detailed on the extracts from the policy provided by Genavco Insurance Brokers. They were also concerned that the premium was above that available from competition in the insurance market. Ms Blacoe told the Tribunal that she had contacted 3 insurance brokers and sought competitive premiums to set against the £936.09 charged in the current year (2014) by the respondent in respect of insurance by NIG via Genavco Insurance Brokers. Ms Blacoe said that she had obtained quotations of £540 and £513 on the basis of a building sum insured of £360,000 and from NIG a quotation of £360 on the basis of a building sum insured of £300,000. Ms Blacoe told the Tribunal that she had indicated to the brokers that the building was split into 3 flats, one of which was sub-let and that the quotations were on the basis of comprehensive cover.

The Respondent explained how the value of the building was calculated and how Genavco went about finding insurance cover for it. Mr Davies stated that the cost of reinstating the property for insurance purposes was assessed by A L Surveying Services, Chartered Building Surveyors, in their report dated 21st August 2005.

Genavco had then applied increases to the to the declared value by reference to BCIS (Building Cost Information Service) indices. Mr Davies then directed the Tribunal to a letter of 25 April 2014 from Genavco, where that company's managing director set out the benefits of the respondent's block policy with AXA Insurance. He also detailed how each year the market was tested so as to ensure that AXA was competitive; Mr Davies submitted that there was evidence of this competitive analysis by reason of a change to NIG Insurance in the current year.

Mr Davies was concerned that the enquiries made by Ms Blacoe may not have led to a scientific comparison because there may not have been a like-for-like quotation. He indicated that the policy chosen by the respondent provided cover even in the circumstance of unnotified non-occupation of one or more of the flats. He also pointed out that Ms Blacoe had not indicated whether the quotations she received were subject to the same policy excesses as the policy obtained by the respondent (Ms Blacoe told the Tribunal that she had not mentioned the excesses when seeking quotations).

The Tribunal had no reason to doubt the veracity of the statement by the managing director of Genavco that there was market testing each year, a circumstance evidenced by the change of insurance provider in the current year. The Tribunal also noted that Genavco stated they had applied BCIS indexation each year to the declared value so that there was a periodic re-assessment of value. Guidelines issued by BCIS, however, recommend that the rebuilding cost is checked regularly (at least every five years), rather than relying on index linking over long periods. They also warn that the index is based on average house types and therefore it cannot exactly reflect changes in rates from the house rebuilding cost tables as regional trends, labour and materials contents differ. The Tribunal could not be satisfied that the quotations received by Ms Blacoe were on a wholly like-for-like basis given what the Tribunal has recorded, particularly in respect of the cover when one or more flats is unoccupied and the issue of excess.

It was apparent, however, as Mr Davies conceded, that the element relating to "Rent/Alternative Accommodation Sum Insured" is not an element required by the terms of the lease. Given Mr Davies' concession on that point and the fact that both parties have a copy of the lease, the Tribunal does not set out the relevant clause here. It was apparent from the insurance certificates within the bundle that this extra element was valued at one fifth of the building declared value, and,

accordingly, represents one sixth of the premium. Given that this element is not payable under the lease, the Tribunal finds that one sixth of the insurance premium is not payable in each of the years in question. The Tribunal makes clear that, in so finding, the Tribunal finds only that repayment is due to each of the applicants in accordance with the years that each has been a tenant.

14. **Management Fees**

The Applicants indicated their concern that there had in fact been very little management of this property, even following an earlier Tribunal hearing in 2005 when the determination had made that very point. Ms Blacoe wished to be assured that the tenants had not been charged for a second survey in 2005 which was required after the initial survey had been of the wrong building.

The Respondent demonstrated that there was no charge for a further survey by taking the Tribunal through the relevant accounts.

Mr Davies pointed out that the works identified by the 2005 survey had been carried out by the tenants themselves and that there had been resistance to the involvement of the respondent in that process. Whilst that was the case, Mr Davies argued that some management functions had been carried out by the respondent as was demonstrated by the insuring of the building and the maintenance and audit of the service charge accounts.

The Tribunal was told that Beverley Johnson had taken charge of the building during May 2011 and had sent her first letter to the tenants on 19 June 2012. She wanted a further inspection of the building and was told by Ms Blacoe it could be viewed from the exterior. A copy of the survey report of Douglas Barley, Consultant Building Surveyor, was dated 20 September 2012. Ms Johnson told the Tribunal that she wrote to Ms Blacoe to indicate what was required urgently but does not believe that she enclosed the report. Ms Blacoe had responded to the effect that the tenants would source their own contractors. On 4 October 2012, Ms Johnson wrote offering to provide assistance with finding a contractor, but did nothing further after that in relation to the required works.

The Tribunal noted the wholly unsatisfactory arrangements here between landlord and tenant given the basic premise that the landlord owns the property, and that there are leases with the tenants of the 3 flats in the property detailing the rights and responsibilities of each of the parties to those leases. The RICS Service

Charge Residential Management Code details the normal work expected of a managing agent, but the Tribunal notes that very little of that work had been shown by this respondent to have been carried out. The Tribunal was particularly concerned to note that recommended health & safety surveys had not been conducted despite the guidance of the Code and the previous recommendations of a surveyor. In particular, there had been no asbestos survey, electrical safety survey or CCTV drains inspection.

It was clear to the Tribunal that the tenants of this property had declared an interest beyond the terms of their leases, such that they sought to dictate to the owner of the building what works were to be carried out and by whom. It was apparent from the evidence of Ms Blacoe that some works had been conducted by the tenants themselves and "*on the cheap*", such that there would be no guarantees for the landlord or future tenants. It was also apparent that the landlord had been told by the tenants that a survey could only be conducted from the outside, where the landlord had authority under the terms of the lease to survey and work upon all common parts, including those within the building. Clearly, there are faults on both sides and if there is to be proper management of the building, then it needs to be on the basis of the terms of the lease or on a basis agreed by both parties.

Given the background and history which the Tribunal has detailed above, the Tribunal concluded that the management fees charged by the respondent were in excess of the works actually conducted in terms of management of the property. Accordingly, the Tribunal finds that a reasonable management fee for the years 2006-2011 inclusive and 2013 should be £50 per flat inclusive of VAT. During those years, the only work conducted by the respondent appears to be the obtaining of insurance and maintenance of the service charge account. For the years 2012 and 2014, there was evidence of efforts by the respondent to manage the building, such as the survey in 2012 and correspondence in 2014 brought to our attention. Accordingly, for the years 2012 and 2014, the Tribunal finds that a reasonable management fee for each of those years is £75 per flat inclusive of VAT.

The Tribunal was satisfied that there was no charge for a further survey following the earlier Tribunal determination, having been taken through the relevant accounts by Mr Davies.

15. **Accountancy fees**

The Applicant withdrew this element.

16. **Reserve Fund**

The Applicant, Mr Sacker, believed that he paid £4228.81 at the time of his purchase of the lease in September 2007 and that some of this money was in respect of a reserve fund, for which the lease makes no provision, as the previous Tribunal determination had established.

The Respondent submitted that the sum in question had in fact been paid by solicitors acting for the previous tenant, Mr Hynd, and that there was no reference within the accounts to any payments by Mr Sacker towards a reserve fund.

The Tribunal was satisfied that there was no evidence before it to show that Mr Sacker had been required to make any payment to a reserve fund. If there had been any payment by Mr Hynd attributable to a reserve fund, then that was a matter between Mr Hynd and the respondent.

General

17. The Tribunal notes the wishes of the applicants that there be no future charges for a reserve fund; that they find it unhelpful to receive estimated service charge accounts, which the lease does not call for and which they should not have to pay for; that there be a clear explanation of the mathematics behind the rationalisation of their accounts following this determination; that future service charge accounts are clearly detailed.

18. If there is to be a more healthy relationship between the parties, there needs to be more dialogue; either the applicants must take the control they desire by purchasing the freehold or the respondent needs to retake control by acting in accordance with its rights and duties under the lease.

19. The Tribunal emphasised at the hearing that any reductions resulting from its determination relate only to the years (or part years) the individual lessees owned their flats and that the leases, whilst very similar, are individual to each lessee.

Section 20c Application

20. The Applicants have made an application under Section 20C Landlord and Tenant Act 1985 in respect of the Respondent's costs incurred in these proceedings. The Applicants seek an order that the Respondent should pay their Tribunal fees.
21. The relevant law is detailed below:

Section 20C Landlord and Tenant Act 1985: Limitation of service charges: costs of proceedings

(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 ... ... leasehold valuation tribunal, ...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.

(3) The ... tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Rule 13 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

22. The Tribunal notes that Ms Johnson's arrival at the respondent's management company and her approach to the tenants provided an opportunity for dialogue. Her olive branch offer of a meeting was rebuffed with a comment that the meeting would be at the Tribunal hearing. Whilst the Tribunal can resolve some of the issues before the parties, the Tribunal would always encourage consensus, where that is possible. The Tribunal could not see any reason why the applicants could not have met with Ms Johnson or why they would insist, in conflict with the terms of the lease, in excluding the landlord from the maintenance of its building. That being the case, the Tribunal does not order the respondent to reimburse the applicants the fees paid by them.
23. The Tribunal notes that the applicants have been partially successful in their submissions, but notes also their own stance of independence and the fact that works done have not been completed such as to carry a guarantee, and that there remain health and safety issues requiring resolution. Taking a rounded view, the Tribunal allows the application under Section 20C of the Landlord and Tenant Act 1985 in part. It directs that the respondent's costs in relation to this application are not to be regarded as relevant costs to be taken into account in determining the

amount of the service charge for the current or any future year over and above a limited sum of £100 per flat, inclusive of VAT.

A Cresswell (Judge)

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.