10125

FIRST-TIER TRIBUNAL PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference :	CHI/24UL/LSC/2013/0010
Property :	Flat 11, Chestnut View, 133 Alexandra Road, Farnborough GU14 6TJ
Applicant :	Miss S F Hendry (the Tenant)
Representative :	---
Respondents:	Rio Homes Limited; and Chestnut View (Farnborough) Management Company Limited c/o Amprop Limited
Representative :	Mr C Foster
Type of Applications:	Application for determination as to reasonableness of service charges pursuant to Sections 19 and 27A Landlord and Tenant Act 1985
Tribunal Members :	Judge P.J. Barber Mr D Lintott FRICS Valuer Member
Date and venue of Hearing :	22nd May 2014 Aldershot & Farnham County Court, 84-86 Victoria Road, Aldershot GU11 1SS
Date of Decision:	4th July 2014

DECISION

Decision

(1) The Tribunal determines in accordance with the provisions of Sections 19 and 27A Landlord and Tenant Act 1985 ("the 1985 Act") that none of the service charges for the period 1st October 2007 to 20th February 2013 are payable by the Applicant to the Respondent in respect of the Property. In regard to the period 20th March 2004 to 20th September 2007 the Tribunal determines that the service charges are reasonable and payable by the Applicant to the Respondent.

(2) In regard to the application in respect of costs made by the Applicant pursuant to Section 20C of the 1985 Act, the Tribunal determines that no costs of the Respondent shall be taken into account in determining the amount of any service charges payable by the Applicant.

Reasons

INTRODUCTION

1. This application is dated 11th January 2013 and is made pursuant to Sections 27A and 19 of the 1985 Act, for determination of the reasonable service charges payable by the Applicant to the Respondent. Directions were issued in the matter respectively on 16th January 2013 and 20th February 2013. A hearing was arranged and held on 25th November 2013, when it nevertheless became apparent that the First and Second Respondents had failed to comply with earlier directions, by not providing the documentation or sufficient details so required by those directions. Accordingly Further Directions were issued on 28th November 2013 in order that the case may properly be made ready for hearing. The original application addressed issues arising during the 2011 service charge year; however the Further Directions of 20th February 2013 provided for the proceedings to be amended to include service charges for all years from 20th March 2004 to 20th February 2013.

2. The claim relates to service charges in respect of Flat 11, Chestnut View, 133 Alexandra Road, Farnborough, GU14 6TJ ("the Flat"). The Flat is a one bedroom ground floor flat in a Victorian building ("the Building") converted in or about 2003/4 and comprising 7 flats being Flats 8-14. The estate known as "Chestnut View" comprises the Building at 133 Alexandra Road, and also the adjoining Numbers 129 and 131 Alexandra Road. The Tribunal was advised that Flats 1-7 Chestnut View were originally all leased to Amprop Limited. An access way to the side of the Building leads to a parking area and timber bin store at the rear of the estate, and also a more recently constructed block comprising a further 4 flats known as Flats 15-18 Chestnut View.

3. The Flat was demised by a lease dated 5th March 2004 ("the Lease"). The service charge year is defined in the Lease as "The Maintenance Year" being from 1st November to 31st October. The Lease defines "the Building" as the building which

includes the Flat, forming part of "the estate". The tenant`s contribution to the total Maintenance Charge is defined in the Lease as being one-seventh of expenditure relating to the Building and one-fourteenth of the Expenditure relating to the Grounds.

4. The Applicant`s broad concerns were in regard to :-

   (1) Lack of audited accounts.

   (2) Lack of a full set of invoices to support service charges

   (3) Inconsistent sinking fund contributions

   (4) Redecorations programme not implemented

   (5) Outstanding work

   (6) Management charges and budgets

   (7) Lack of clarity as to service provision by various companies

   (8) Increased management charges resulting from an insurance claim

   (9) Service Level Agreements and frequency of recurring cleaning & maintenance

   (10) Proper division of maintenance charges & costs

INSPECTION

5. The Tribunal's inspection had taken place prior to the original hearing on 25th November 2013 in the presence of the Applicant Miss Hendry, and Mrs Fiona Fawcett of Amprop Limited. Access to the Flat is obtained via a communal front entrance door; the Applicant had pointed out that the front door needed varnishing and that the intercom lock release has been working only intermittently; she also mentioned that there were some lights at the rear of the Building which are not working. There were 18 numbered parking spaces to the rear of the Building.

6. Chestnut View was managed from 2004 to 2007 by Fosters of Fleet; then from 2007 to 2012 by Mitchell Lettings and from December 2012 to date by Amprop Limited.

THE LAW

7. Section 19(1) of the 1985 Act provides that :

"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."

8. Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

"(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 cost, 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.

9. "*Service Charges" are defined in Section 18 of the 1985 Act as follows*

(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, 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

18(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.

Section 21B of the 1985 Act provides as follows :

"(1) A demand for payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2)The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand....."

Section 21B and the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007, commenced on 1st October 2007.

HEARING & REPRESENTATIONS

10. The hearing was attended by the Applicant and Mr Chris Foster a director of the second Respondent, and his PA, Ms Caroline Anderson.

11. The Tribunal sought initial clarification on a number of points arising from the Applicant`s concerns listed at paragraph 4 above.

12. In regard to the absence of audited accounts, Mr Foster submitted that company law provided an exemption from the requirements as to auditing in the case of small companies. In addition he submitted that paragraph 10 of the Sixth Schedule of the Lease provided that either audited or certified accounts may be prepared. The Applicant indicated that she had not been furnished with annual reconciliation accounts as required by paragraph 3 of the Ninth Schedule to the Lease. Mr Foster said that such accounts had been issued, but was unable to offer evidence on this point and accepted that his bundle included no verification of service or delivery. The Applicant submitted that in the absence of provision of annual year end accounts, she had no means of knowing either what moneys were being held from time to time to her credit, or what the actual service charge costs were.

13. In regard to demands for service charges, Mr Foster submitted that estimated demands were issued in or about March in each year, followed by adjusted demands in or about September, once the actual insurance premiums were known. The Tribunal asked whether a summary of tenant rights and obligations had been attached to the demands; however Mr Foster admitted that he was unfamiliar with such summaries, including the requirements of Section 21B and could offer no evidence as to inclusion of such summaries with any of the service charge demands issued. At this stage a short adjournment occurred; thereafter the Tribunal advised the parties of the consequences of failure to comply with Section 21B of the 1985 Act and that the Applicant was entitled to withhold payment of service charges demanded in breach of Section 21B(1). The Tribunal however pointed out to the Respondents that proper demands may yet be re-served, but subject to the limitations and time limits set by Section 20B of the 1985 Act; this was a matter on which the Respondents should seek their own advice.

14. Subsequent to the oral hearing the Tribunal wrote to the parties pointing out that the statutory requirement for attachment of summary of rights to service charge demands, was in fact only in force from 1st October 2007 and that consequently further consideration was yet needed in respect of the demands for the period 20th March 2004 to 30th September 2007. Both parties indicated that they wished to deal with the claim in respect of the above period, by submission of written representations, rather than at any further reconvened oral hearing. Accordingly written representations were received from both parties and duly separately considered by the Tribunal.

15. In regard to the Section 20C costs application made by the Applicant, Mr Foster confirmed that no costs relating to this hearing would be included in future service charges to the Applicant.

CONSIDERATION

16. The Tribunal have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.

17. In regard to service charges for the period 20th March 2004 to 30th September 2007, Mr Foster submitted in his letter addressed to the Tribunal dated 12th June 2014 that the service charges in the period had been reasonable and that they had in fact decreased. Mr Foster referred in his written representations, to Pages 800-828 of the bundle for details of the amounts levied by way of service charges during this period, indicating that for 2004/05 one of the largest items of expenditure was in respect of insurance, but that this had been obtained on the basis of competitive quotes. Mr Foster submitted that in 2005/06, service charges were reduced owing to completion of Phase 2 of Chestnut View and resulting in 14 flats sharing the costs, rather than 7 flats. Mr Foster submitted that for 2006/07, and as a result of competitive insurance quotes, the service charges again decreased. Mr Foster further submitted that the respective annual charges for the period in question were £1022.67 for 2004/05; £884.31 for 2005/06; £792.13 for 2006/07 and £371.35 for the half year from 1st March 2007 to 30th September 2007.

18. The Applicant in her letter to the Tribunal dated 14th June 2014, referred to copies of various documents relevant to the period 20th March 2004 to 30th September 2007, but did not specifically particularise or identify exactly which elements of service charges for the period she alleged to be unreasonable; she did however say she was unaware of whether garden border maintenance had in fact been undertaken on a fortnightly basis. In general terms, the copy documents referred to by the Applicant and attached to her written submissions, included concern in relation to items for repairs and maintenance incurred only shortly after initial refurbishment; requests for sight of supporting invoices; general dissatisfaction over the quality of maintenance services provided; lack of annual audited or certified accounts; concern regarding certain company addresses and identities.

19. In regard to service charges for the period from 20th March 2004 to 30th September 2007, the Tribunal notes that the service charges for the Building throughout the period were in respect of the following items :-

	2004/05 (x7)	2005/06 (x14)	2006/07 (x14)
	£	£	£
Insurance	2,107.61	3,400.00	2,940.00
Communal electricity	160.00	280.00	280.00
Maintenance / cleaning	2,100.00	4,320.00	4,320.00
Accounts	411.25	705.00	740.25
Contingency / sinking fund	350.00	700.00	700.00
External / Internal repairs	1,400.00	2,800.00	2,800.00

The Tribunal accepts the evidence of the Respondents that the insurance had been obtained on the basis of competitive quotes and notes that no alternative insurance quotes were provided by the Applicant for comparison purposes. In such

circumstances where insurance was competitively obtained, the Tribunal finds no reason to conclude other than that the costs are reasonable throughout the period. In regard to costs for communal electricity, in the absence of any clearly expressed basis for challenge the Tribunal is unable to conclude that the costs were other than reasonable. Similarly, although general comments were expressed in the copy correspondence referred to by the Applicant, regarding the quality of maintenance and cleaning, there were no clearly particularised complaints made such as to enable the Tribunal to conclude that any specific charges were unreasonable. Similarly there appeared to be no specific challenges to the amounts incurred for accounting. The copy correspondence to which the Applicant referred also questioned the need for a contingency element or sinking fund; however the Tribunal considers particularly in the case of an older building which has been refurbished, that it is prudent to hold a contingency provision and concludes in the absence of compelling evidence to the contrary, that the amounts over the period, were neither wholly unreasonable or disproportionate. Accordingly on the basis of the evidence actually placed before it, the Tribunal is unable to conclude that any of the service charges for this period were unreasonable.

20. In regard to service charges for the period from 1st October 2007 to 20th February 2013, the Tribunal notes that the service charge demands were not properly served pursuant to Section 21B of the 1985 Act and in consequence as matters currently stand, the charges for that period are not payable by the Applicant.

21. In regard to Section 20C costs the Tribunal notes the confirmation given by Mr Foster and considers that in all the circumstances and where the Applicant`s case has to a significant extent been justified, it would be just and reasonable to determine that none of the Respondent`s costs in connection with these proceedings shall be taken into account in determining service charges payable by the Applicant.

22. We made our decisions accordingly.

Judge P J Barber

Appeals :

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.