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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AC/LSC/2013/0687**
Property	:	**Flats A & B, 240 Station Road, Edgware, HA8 7AU**
Applicant	:	**Richard Archer Property Trading Ltd**
Representative	:	**Mr Richard Davidoff of Aldermartin Baines & Cuthbert**
Respondent	:	**Ms S H Pandya (240A)** **Mr J Logan (240B)**
Representative	:	**Attended in person accompanied by Ms K Pandya**
Type of Application	:	**Reasonableness of service charge under Section 27A Landlord and Tenant Act 1985 ("the Act")**
Tribunal Members	:	**Judge T Rabin** **Mr M Cairns MCIEH** **Mrs R Turner JP**
Dates of hearing	:	**17th April 2014 at 10 Alfred Place London WC1 7LR**
Date of Decision	:	**28th May 2014**

DECISION

The Tribunal's decision

(1) The estimate for electricity charges is reasonable
(2) The estimate for the insurance premium was reasonable
(3) The supervision cost of 10% was reasonable
(4) The estimate for cleaning was unreasonable and disallowed

The application

1. The Tribunal was dealing with two applications seeking determinations pursuant to s.27A of the 1985 Act. The first was as to whether the estimated costs for services for the service charge year ending 24th March 2014 were reasonable and payable by the Respondents ("Application 1"). The second application was for a determination as to whether the estimated costs for cleaning the common parts were reasonable ("Application 2"). The applications relate to Flats 240A & 240B Station Road Edgware HA8 7AU ("the Flats"). The Applicant is the freeholder of 240 Station Road aforesaid ("the Building") Ramsey Court ("the Building") and the Respondents are the long leaseholders of the Flats ("the Leases")

2. The relevant legal provisions are set out in the Appendix to this decision.

3. In view of the nature of the claim it was determined that an inspection was not necessary.

The Hearing

4. The application was heard on 17th April 2014. The Applicant was represented by Mr R Davidoff of Aldermartin Baines & Cuthbert Flanagan who gave evidence. The Respondents appeared in person, accompanied by Ms K Pandya and both of them gave evidence. The Tribunal considered the bundle of documents produced for the hearing.

5. There was a case management conference held on 19th November 2013 and the issues identified were as follows:

- Whether a valid demand had been served in relation to the major work items allowed by an earlier decision of the Tribunal dated 17th January 2013
- Whether the estimated cost of electricity was reasonable in view of the Respondents' claim that there was no electricity consumed in the common parts
- Whether the Building was properly insured and whether the cost was reasonable

- Whether the management fee was reasonable when the Respondents claim that there was poor management
- Whether the supervision fee of was reasonable at 10%
- Whether the cost of photocopying at £100 was reasonable
- Whether the Tribunal should make an order under Section 20C of the 1985 Act in relation to the costs of these proceedings.
- Whether the Tribunal should order the Respondents to reimburse the Applicant with the application/hearing fees

6. There had been a decision of the Tribunal dated 17th January 2013 under file number LON/OOAC/LSC/2012 ("Decision 1") where a number of the issues before this Tribunal were considered and a decision made. The estimated major works costs, originally included in the 2012/13 budget, were considered in Decision 1 and it was determined that the costs were reasonable subject to service of a demand compliant with Section 47 of the Landlord and Tenant Act 1985. Mr Davidoff produced copies of valid notices served on the Respondents so this is no longer an issue. Similarly, the question of the level of management fee was considered in Decision 1 and a figure of £250 plus VAT per flat was considered reasonable for service charge year 2012/13. Since the management fee is unchanged, the Tribunal does not intend to revisit the question of the reasonableness of the management fee again as there is such a recent decision.

7. Having heard evidence and submissions from the parties and considered all of the documents provided in the trial bundle, the Tribunal has made determinations on the various issues as follows.

The evidence and the Tribunal's determinations

Application 1

Communal electricity costs – estimated at £45 per flat

8. There was much discussion about the electricity charges with both Respondents stressing that there was no lighting in the common parts and there had been none for some time. They were at a loss to understand how the electricity charges could be so great. Ms Pandya pointed out the cost of electricity had been disallowed in the First Decision and invited the Tribunal to adopt the same view. She said that an electricity supply representative had come to read the meter but that the meter cupboard was locked and she was told that Mr Davidoff had refused to open it. Both Respondents made the point that the external light benefitted the owners of Flats 242 A & B but that they made no contribution to the cost.

9. Mr Davidoff maintained that there were communal lights and that these had been working when he inspected the week before the hearing.

He denied that the meter cupboard was locked but said it was closed with bolts that could be opened by anyone and was located on an external wall of the Building. Had non-functioning light bulbs or a damaged light been reported to him, he would have attended to it but he had no record of any such complaint. There were a number of electricity bills in the bundle, all of which were estimated. Mr Davidoff also informed the Tribunal that the electricity supply had been separated from that shared with 242 Station Road after 242 Station Road had been sold and the supply in the Building related only to the Building and produced a letter from the electrician who had separated the supply confirming that the supply was exclusive to the Building.

The Tribunal's decision

10. It is not unusual for estimated power bills to be produced by landlords. These often fail to accurately reflect the amount of electricity actually consumed and when a reading is taken, there will be adjustments to reflect this. The Tribunal is confident that is what has happened in this case. There is conflicting evidence as to whether or not the meter cupboard is accessible without unlocking it but in any event, Mr Davidoff has agreed to arrange for the meter to be read so that an accurate demand can be made.

11. The Respondents will only be asked to pay for the amount consumed in the common lighting once the meter has been read and an accurate amount ascertained. The amount estimated by the Applicant appears to be a reasonable sum of the communal lighting and the sum of £45 per flat is allowed. The Respondents should note that this is only an estimate and will be adjusted once the meter has been read when the correct amount will be demanded. It may well be that there is an overpayment in which case there will be a credit balance and no payment will be demanded until any credit balance has been absorbed.

12. The Tribunal notes that the First Decision disallowed the electricity and the reason appears to be a lack of information. This Tribunal takes the view that the electricity supplier estimates the figures and the Applicant has demanded a reasonable amount. Mr Davidoff has offered to arrange for the meter to be read and this will ensure that the Respondents have an accurate demand for electricity actually consumed. As far as the use of the external light by the occupants of 242 Station Road, the Applicant has an obligation to light the exterior of the Building and, if the adjoining occupants are able to benefit, that is not a matter that the Tribunal can consider in the absence of any obligation on the part of the owner of 242 Station Road to contribute.

Insurance premium – estimated at £233.33 per flat

13. Mr Davidoff said that the insurance premium has reduced considerably this year due to the Applicant finding a new broker who was able to

secure a more favourable premium. The Respondents appear to query the different invoice numbers on two insurance demands from the broker. Mr Davidoff explained that he had paid the insurance premium from his own pocket as the Respondents had failed to pay and had repaid himself. He needed a receipted invoice from the broker who sent him a further copy of the demand showing it had been paid and this invoice had a different number.

The Tribunal's decision

14. The Tribunal did not consider that £233.33 was an unreasonable estimate and found nothing sinister in the fact that the two invoices from the insurance broker had different invoice numbers. These numbers were from the brokers records and not the Applicant and both invoices referred to the same policy number and commencement date.

15. Although the estimate is not unreasonable, since the Applicant has been able to secure a more favourable policy premium than in the previous year, it would be appropriate for the Respondents each to pay £190.82 based upon the current year's insurance premium which has now been established.

Supervision fee for major works at 10%

16. The Respondents objected to paying a supervision fee since they were already paying a management fee to the Applicant. They reiterated that the work was shoddy and that Mr Davidoff had not exercised proper control. Mr Davidoff pointed out that it was normal practice in the property world for supervision of major works to be an additional item. He also said that, where his own expertise was insufficient, he would appoint specialists, such as heating engineers, to supervise works. He denied that the work was shoddy.

The Tribunal's decision

17. In reliance upon the knowledge and experience of the Tribunal members, the Tribunal determined that supervision of major works was normal within the property world and that the proposed sum of 10% of the cost was not unreasonable. It is allowed in full but as a percentage of the works final costs.

Application 2

Proposed cleaning contract

18. The Respondents said that they had cleaned the common parts themselves for many years and they wanted that arrangement to

continue. They described the common parts as consisting of two small landings and a flight of stairs leading to Flat 240B. The Respondents said they kept them in a clean and tidy condition and Ms Pandya produced photographs to confirm this. She said these photographs had been taken in a few days prior to the hearing.

19. Mr Davidoff maintained that the common parts were in a dirty state with cobwebs, dust and dead flies on the windowsill and he produced photographs he said he had taken a week before the hearing. He wanted to arrange for cleaning to be done to maintain the integrity of the Building as it was damaging to allow the common parts to remain dirty as he claimed they were.

20. Mr Davidoff produced two quotes for cleaning the common parts from two different cleaning companies. Frank Jones Services Ltd quoted £60 per week for hoovering and dusting the staircase once a week. J & I Cleaning Services Ltd quoted weekly cleaning at £27 and fortnightly cleaning at £32 per fortnight, both plus VAT. They said the price included cleaning materials, equipment and products but did not include changing light bulbs.

The Tribunal's decision

21. The Tribunal were unable to place any weight on the photographs in view of the different accounts given of the state of the common parts by the parties and the differences in the photographs and the lack of any date stamp on them. It would have been a waste of public money to inspect the common parts in the light of the small amount claimed.

22. The Tribunal did not find either estimate to be satisfactory. There was no hourly rate, length of time to be spent or specification of the work to be undertaken in either quote. It appears from the plans in the file that the common parts are very small. These are used exclusively by the Respondents who have expressed the wish to take responsibility for cleaning the common parts, something they have done in the past.

23. The Tribunal is aware that the leases include an obligation to clean the common parts on the part of the landlord but the administration problems would be out of proportion to an acceptable level of cost. The Respondents have both expressed their willingness to clean the common parts themselves but the evidence that they have not been doing so is unclear. The estimates produced were lacking in detail and were, in the Tribunal's view, excessive for the amount of work involved.

24. Albeit that the lease includes an obligation on the part of the landlord to clean the common parts, at this point it seems that the pragmatic approach would be to allow the Respondents to undertake the cleaning

and, if they do not do so, the Applicant can review the situation in the future and produce proper estimates

Section 20 C of the Act and refund of fees

25. Mr Davidoff sought an order under Section 20C of the Act to the effect that the costs of these proceedings should not be regarded as relevant costs when calculating the service charges. He also sought refund of the application and hearing fees. Ms Pandya stated that she was exempt from paying application and hearing fees and that she did not think it was appropriate for an order under Section 20C to be made in view of the poor service offered by the Applicant. Mr Logan said that he was not exempt from paying fees but did not consider he should be asked to pay or that an order under Section 20C was appropriate nor that the application and hearing fees should be refunded.

26. The Tribunal has carefully considered the evidence before it. The Applicant has succeeded in the bulk of the application, although the cleaning was disallowed. The Respondents have failed to pay anything towards the sums allowed in the First Decision themselves forcing the Applicant to seek payment from Ms Pandya's and Mr Logan's mortgagees. Both mortgagees paid the outstanding sums in order to avoid the risk of possession proceedings. Both Respondents have maintained, quite without any justification that the Applicant has been overpaid, even though they have been served with statements clearly explaining the amounts demanded. The Respondents did not pay anything towards the service charges for 2010/11, 2011/12 and 2012/13, despite a decision having been made that these sums were due on 17th January 2013, obliging the Applicant to seek payment from their respective mortgagees.

27. The Tribunal considers that it would be appropriate for Ms Pandya and Mr Logan to each pay the costs of the proceedings and the application fee relating to Application 1. No contribution should be made to the costs of preparation of Application 2 or the application fee. Since the hearing fee would relate to both applications, the Respondents should reimburse the Applicant with 75% of the hearing fee.

28. Accordingly an order is made under Section 20C in relation to Application 1 but not in relation to Application 2. The order is subject to the terms of the leases permitting recovery of these costs. The Tribunal also order the Respondents to reimburse the Applicant with 75% of the application fee for Application 1.

29. The parties should be aware that this decision relates only to the **estimated** service charges for service charge year 2013/14. It does not have any bearing on whether the **final** costs for this year are reasonable or payable. Having said that, there are a number of actual invoices in the file, which give a more accurate picture of the final costs.

Conclusion

30. This is a very unfortunate case. Mr Davidoff said that same parties have been before the Tribunal on at least four previous occasions and the Respondents did not deny this. This is unacceptable and involves a great deal of wasted time and public money. There is a complete breakdown of trust between the Applicant and both of the Respondents. It appears to the Tribunal that there is blame on both sides. Mr Davidoff must be more accurate in his demands and both Ms Pandya and Mr Logan must adopt a more reasonable attitude when they are asked to pay for services. The manner in which the proceedings were conducted was inappropriate with rudeness and lack of respect for the process evident throughout. As an example, a great deal of time was wasted on the different invoice number on the insurance demands that had no bearing on the issue before the Tribunal

31. Mr Davidoff represents the Applicant and he is charged with undertaking the landlord's obligations in the leases on behalf of the Applicant. The leases set out the contractual relationship between the landlord and tenant and both the Applicant and each of the Respondents must comply with their obligations. These include paying for the services provided by the Applicant, something the Respondents were unwilling to do, even once the First Decision set out the amount they had to pay. They both seek reasons not to pay, many of them spurious, and then claimed that they had paid the amount the subject of Application 1 through their mortgagees, even though it was apparent they had not made this payment.

32. The Applicant and the Respondents must find a way to operate without the frequent applications to the Tribunal. There were serious flaws in the leases but these have been remedied through an order under Section 35 of the Landlord and Tenant Act 1987 and the obligations are now clearly set out in the amended leases.

33. The Respondents cannot simply refuse to pay money demanded and found to be due by the Tribunal. Ms Pandya said that she would suffer hardship but she has her obligations under the lease, as does the Applicant. The Applicant must provide services and both the Respondents must pay for these.

34. The Tribunal would urge the parties to meet in the presence of an independent person in order to agree a way forward. The repeated proceedings will lead to an increase in the sums payable by the Respondents and the Tribunal now has power to make an order for costs against any person who appears to have abused the Tribunal process.

35. The Tribunal has made an order and the sums referred to are payable immediately and the refund of fees is also payable immediately

Judge T Rabin

28th May 2014

Appendix 1
Relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(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.

Section 19

(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 provisions 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.

Section 27A

(1) An application may be made to the appropriate 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 the appropriate 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 post-dispute 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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(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 court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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