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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	LON/OOAM/LSC/2014/0065
Property	:	THIRD FLOOR 13/15 WESTLAND PLACE N1 7LP
Applicant	:	TOWER COURT HOLDINGS LTD
Representative	:	Springcourt Property Management Ltd
Respondent	:	MS CLARE MARGARET BEAVAN
Representative	:	Messrs Freeman Box, solicitors
Type of Application	:	SECTION 27A LANDLORD AND TENANT ACT 1985 ("1985 Act")
Tribunal Members	:	JUDGE T RABIN MR K M CARTWRIGHT FRICS
Date and venue of Paper determination	:	28th May 2014 10 Alfred Place, London WC1E 7LR
Date of Decision	:	30 May 2014

DECISION

The application

1. The Tribunal was dealing with an application seeking a determination pursuant to s.27A of the 1985 Act as to whether the nominal management charges proposed for service charges years 2011 to 2014 (inclusive), were reasonable and payable by the Respondent. The application relates to the third floor, 13/15 Westland Place London N1 7LP ("the Property"). The Applicant is the freeholder of the building of which the Property forms part ("the Building") and the Respondent is the long leaseholder of the Flat.

2. The Tribunal has identified the following issues to be determined:

(a)Whether the nominal management charge is payable, even though there is no provision for the payment of management charges in the lease under which the Property is held. The charges are as follows:

Year ending 31st March	
2011	**£152.64**
2012	**£160.73**
2013	**£166.47**
2014	**£172.11**

(b) If the charges are payable, whether they are reasonable

(c) Whether the Applicant is entitled to make a charge, even though there is no provision in the lease

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

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

The background

5. The application was dealt with on documents only and without a hearing. The parties had submitted a bundle and a supplemental statement of claim was filed by the Applicant and a response to the revised statement of claim was also served.

6. The Respondent objected to paying the nominal management fee charged by the Applicant for the service charge years 2011 to 2014 on the basis that the lease under which the Property was held made no provision for management charges. The Property was sold as a live/work unit but the Respondent has been using it solely as a residential unit since her acquisition in 1997. It is currently sublet as a solely residential unit.

7. The Applicant accepted there was no provision in the lease for payment of management charges. However, he relied on case law and common law to support his contention that, despite the omission in the lease, charges could be made for services actually rendered. The main cases relied upon were **Brent** v **Hamilton LRX/51/2005, Norwich V Marshall LRX/114/2007** and **Haveli Ltd v Amanda Glass LRX/22/2005.** The Applicant set out its case clearly in the Statement of Case in the bundle.

8. On the advice of the Leasehold Advisory Service the Applicant stated that there was common law authority for landlords and management companies to charge for the cost of providing services under a lease where the lease does not specify that this can be recovered. The reason for this is that the cost will inevitably be incurred in providing services beyond the flat cost of the services themselves and costs should be recoverable from the tenants who are benefitting from the services.

9. The Respondent denied the points made by the Applicant. She relied on the case of **Gilje v Charlegrove Securities Ltd [2001] EWCA Civ 1977** that held that where a landlord seeks to recover money, there must be clear terms in the contractual provisions entitling him to do so. The Respondent also cited **Embassy Court Residents Association v Lipman (1981) 271 545** which held that as a general rule to cost of employing management agents will not be recoverable unless the lease expressly so provides. The Respondent's arguments are set out in the Respondent's response to the Applicant's Statement of Case.

10. In support of her submissions that there was no authority to imply that management charges could be made, the Respondent submitted a letter from Mr J Williams, the solicitor who drafted the lease on behalf of the then landlord in 1997 and who is now retired. He wrote to the Respondent on 22nd March 2014 stating that he specifically excluded a provision for management charges to be paid from the lease, as in his experience these were only necessary where there were a large number of units in a block involving calculations of costs between many units. At the time of the grant of the lease to the Respondent there were only two units- namely the Property and the four floors retained by the then landlord. No provision for management charges was included and all parties accepted this at the time. Any management issues, such as cleaning the common parts and minor repairs are undertaken by the tenants themselves.

THE TRIBUNAL'S DECISION

11. The Tribunal carefully considered the submissions and documents provided by both parties. It is common ground that the lease does not contain any provision for payment of a management charge. No evidence has been produced to contradict the evidence of Mr Williams that there was no intention to include such a provision and the intention is of relevance when considering the question of the levying of management charges.

12. In the Tribunal's view, the starting point when considering the rights and obligations for the parties is the terms of the lease. The case of **Gilje** makes it clear that:

> "....the landlord seeks to recover money from a tenant. On ordinary principles there must be clear terms in the contractual provisions said to entitle him to do so."

13. The cases of **Hamilton** and **Marshall** both effectively state that a landlord may recover the costs of carrying out specific duties place on him by the lease where these need to be carried out to ensure compliance with the landlord's obligations. The Tribunal has considered the evidence of the occupancy of the Building where the ground and basement are occupied by the Jamie Oliver Organisation who also are subtenants of the first and second floor through related entities. There is effectively a single occupancy of the lower part of the Building by a single organisation and it is more than likely that this part of the Building is let on a commercial basis where the lessee will have full responsibility for repairs and maintenance

14. The Tribunal considers that the lengthy and detailed description of the duties needed for management of the Building by the managing agents given by Springcourt Property Management are exaggerated. The lease contains provisions for repairs, refurbishment and insurance and there is an obligation to pay for these and for the related costs. There is no provision in the lease for cleaning of the common parts. The amount of management is minimal in the light of the nature of the Building and the paucity of occupants.

15. The Tribunal has considered the letter from Mr Williams. This contains an unequivocal statement to the effect that there was no intention to include management charges due to the nature of the Building and its occupants. The Respondent is the original leaseholder and signed the lease in full knowledge of its terms. The Applicant's predecessor in title also signed it and assignment was accepted by the Applicant presumably with full knowledge of the terms.

16. There is no evidence that the l has an obligation any greater under the lease other than insure and keep it in good repair and condition. The

Applicant has an insurable interest of its own to consider and there is no reason why the Applicant cannot effect insurance.

17. The Tribunal can find nothing in the terms of the lease that imposes an obligation on the landlord to undertake services for which repayment cannot be recovered under the lease. The Tribunal can find no justification for going behind the terms of the lease where there was no error in drafting and there are no obligations imposed upon the Applicant by the lease for which reimbursement cannot be obtained. It is quite clear that there was never any intention to impose management charges and Mr Williams's evidence in this case is quite clear and has not been challenged.

18. Having determined that the lease does not provide for management charges to be paid, it follows that the Applicant cannot require reimbursement of any charges incurred by the managing agent in undertaking obligations

Conclusion

19. The Tribunal are of the opinion that the management charges were not recoverable under the terms of the lease and there was no obligation in common law or contract that would justify the payment of a management charge. In the light of the Tribunal's decision, there was no requirement to consider the reasonableness of the service charges and no determination will be made.

Judge Tamara Rabin

30th May 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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 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.

(4) No application under sub-paragraph (1) 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.

(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 matter of an application under sub-paragraph (1).