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

Case Reference : LON/00AN/LSC/2013/0819

Property : 38a Leamore Street, London W6
0JZ

Applicant : Ms E. J. E. Kerr (Leaseholder)

Representative : In person

Respondent : Mrs P. Khan, Ms J. Khan
(Freeholders)

Representative : In person

Type of Application : Section 27A Landlord and Tenant
Act 1985 – Service charges

Tribunal Members : Mr L. W. G. Robson LLB (Hons)
Mr M. A Mathews FRICS

Hearing Date : 12th February 2014

Date of Decision : 21st February 2013

DECISION

Summary of the Tribunal's Decisions

- (1) The Applicant's contributions to the service charge have not been certified and ascertained in accordance with the Fifth Schedule to the Lease. Until the correct certification is made and sent to the Applicant, no contributions are payable.
- (2) No summary of Rights and Obligations accompanied any demand for service charges as required by Section 21B of the Landlord and Tenant Act 1985 as supplemented by the Service Charges (Summary of Rights and Obligations and Transitional Provisions) Regulations 2007. Unless such a summary accompanies such a demand the charges in the demand are not payable.
- (3) If valid demands are made as noted above, the Tribunal determines that the following items are reasonable and payable by the Applicant (with due credit to be given for sums already paid):

Insurance due on 31st August 2012: £205.04

Interim Charge – Nil (superseded by actual accounts for the period)

Roofer's account dated 15th October 2012: £243.75

Management Expenses for period 1st January – 31st December 2012 (if demanded): £10, the terms of the Lease appearing to preclude a charge for management services by the Landlord personally.

- (4) The Respondents confirmed that they intended to make no charge for the costs of this application. The Tribunal thus decided to make an order under Section 20C of the 1985 Act that all or any of the costs incurred, or to be incurred, by the landlord in connection with the application before this Tribunal, were not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.
- (5) Pursuant to Regulation 13(2) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, the Respondents shall reimburse the Fees to the Tribunal paid by the Applicant, totalling £280.
- (6) The Tribunal made no order for costs under Regulation 13(1)(b) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

- (7) The Tribunal made the other determinations as set out under the various headings in this decision.

The application

1. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 as to the reasonableness of service charges demanded by the Respondents in the service charge year commencing on 1st January 2012 pursuant to a lease dated 10th September 1999 (as subsequently varied)(the Lease). Appendix 1 to this decision contains extracts from relevant legislation for ease of reference.
2. Directions were given by the Tribunal on 9th December 2013 for hearing of this application on 12th February 2014, requiring the Respondent to submit further documents, and allowing the Applicant the opportunity to make written comments on them. Both parties made formal statements of case with relevant documents annexed. The Respondents made a short further submission without authority from the Directions on 6th February 2014. After allowing the Applicant time to read this submission, the Tribunal decided to allow the submission into evidence as it appeared to raise no new issues which would surprise the Applicant.

Applicant's case (summary)

3. The Applicant submitted that the property was in a four storey Edwardian house, divided into two flats. The basement flat was occupied by Ms J. Khan, the second named Respondent. The flat in the three upper storeys was leased to the Applicant. The Applicant's share of the service charge was 75%. Since the Applicant had taken over the Lease in July 2012 the Mrs Khan (on behalf of the Respondents) had made confusing and apparently contradictory demands for interim service charge, insurance and management charges for her own time. In response to repeated requests for details of the charges and documentation, the Respondents had consistently refused to provide adequate explanations, accounts, or valid service charge demands. The Applicant noted that the Respondents were in breach of the RICS Service Charge Residential Management Code. The Fifth Schedule Paragraph 2 of the Lease stated:

"To pay to the Lessor a service charge being that percentage specified in Paragraph 9 of the Particulars of the expenses which the Lessor shall in relation to the Building reasonably and properly incur in each Service Charge Year and which are authorised by the Eighth Schedule hereto (including the provision for future expenditure therein mentioned) the amount of such payment to be certified by the Lessor's managing agent or accountant actin as an expert and not as an arbitrator as soon as conveniently possible after the expiry of each Service Charge Year and Further on the first day of January in each Service Charge Year ("the Payment Date") to pay in advance on account of the Lessee's liability under this clause the Interim Service Charge the first payment thereof to be made on the execution hereof PROVIDED THAT upon the Lessor's

Managing Agents' or Accountants' certificate being given as aforesaid there shall be paid by the Lessee any shortfall between the Interim Service Charge and the Service Charge so in respect of the Demised Premises"

6. Initially the Applicant had paid several amounts on account but the Respondents had repeatedly refused to provide certified accounts due to the cost, and appeared to consider requests for documentation as accusations of dishonesty. The Applicant had instructed a solicitor in February 2013, however the solicitor had also been unable to clarify the Respondents' responses and had advised the Applicant to make this application. The Applicant objected to the following:
- a) Insurance due 31st August 2012 (after several other figures given by the Respondents – apparently £326.19 x 75% = £244.64 initially demanded on 8th September 2012
 - b) Interim Charge - £208.33 – apparently a proportion of the annual interim charge initially demanded on 30th August 2012
 - c) Management Charges to end of March 2013 - £412, initially demanded on 27th January 2013. These charges were subsequently amended in the Respondents' statement of case to £165 for 2012, and £376 for 2013, and were allegedly based on time charges for a litigant in person, for the time spent on replying to correspondence from the Applicant and her solicitor.

The Applicant noted that none of the demands were accompanied by a statutory statement of rights and obligations. Eventually a copy was sent on one occasion, but not with any demand. She had paid the sum of £208.33 to her solicitors to be held pending resolution of the dispute.

Respondents' case

7. The Respondents submitted that for many years they had collected service charges at the time the cost was incurred. This avoided the high costs of the procedure set out in the Lease. They were not trying to "rip off" the Applicant. They considered that (unspecified) statements made by the Applicant in correspondence were factually incorrect. They considered that they had been abused, relating specific instances at the hearing (although these seemed without corroboration from the bundle). They also complained about noise from the flat, and that the Applicant would not reveal who was living in the flat for insurance purposes. They had seen several people. The Respondents' second statement had been returned by the Post Office, as the Applicant insisted that they communicated through her solicitors. They considered this to be unreasonable and a waste of time and costs. They considered that in 2012 the Applicant should have been made fully aware by her solicitor that the interim charge would be made. The recent history of the upper flat was that the then leaseholder had died in 2011. The property had been sold by auction in November 2011. Upon request, the Respondents had answered some preliminary enquiries before that sale, upon which they stated "We will wish to call in interim charge". The property had then been sold again by auction on two occasions, on the last occasion being to the Applicant in July 2012. Apparently the same replies to

enquiries were provided on these subsequent sales, although no one contacted them after the first occasion.

8. In reply to questions from the Tribunal and analysis of the various figures, the Respondents substantially agreed with the sums noted on page 41 of the bundle, being a spreadsheet dated 27th January 2014 prepared by the Applicant. It showed various sums demanded and paid on account since August 2012. Based on that document the parties were able to discuss and agree the following matters at the hearing;
 - a) Insurance contribution for 2012 - £205.04, the Applicant confirming that she had seen a copy of the premium receipt and the risks covered.
 - b) That as all third party costs had been ascertained in 2012, the interim charge should be ignored.
 - c) That the Applicant's contribution to the roofer's bill incurred in October 2012 (£325) was £243.75, the Applicant being satisfied that the work had been done.
9. Thus the only outstanding matter was the Management charge. In their statement of case, the Respondents stated that they had in fact made no charge at all for management in 2012. In reply to questions from the Tribunal, they indicated that they might decide to charge for the work done, thus the Tribunal stated that it would make a determination as to a reasonable cost for the work, indicating that its interpretation of the Lease as a whole was that it did not specifically provide for the Lessors themselves to charge for work in connection with management, and such a charge could not be inferred from the terms of the Lease.

Decisions

10. The Tribunal accepted the Applicant's submission that in the absence of certified accounts following the Fifth Schedule of the Lease, no service charges are payable at this time. The absence of Summaries of rights and responsibilities served as required by the Service Charges (Summary of Rights and Obligations and Transitional Provisions) Regulations 2007 also barred collection of service charges until demands accompanied by summaries in the correct form were served. Further, although the matter was not raised by the parties and does not form part of the Tribunal's decision, the Tribunal draws the parties' attention to Section 47 and 48 of the Landlord and Tenant Act 1987 which requires certain information to be supplied by a landlord when demanding rent and service charges. Details can be found in the RICS Code noted above.
11. In the event that valid demands are made, the sums noted in paragraph 8 above in respect of insurance and the roofer's account dated 15th October 2012 are reasonable and payable.
12. The Tribunal carefully considered the facts of this case and the Lease provisions relating to the putative management charges. On the facts, the Respondents emphasised that they had not yet made a formal demand for a management charge, although the Tribunal considered that the Applicant was reasonable in assuming that they had done so. However

there was no invoice for the work, nor was there a written management agreement. Further, on balance, it decided that the Lease could not be interpreted to entitle the Respondents to charge for the provision of management services, as the Contra Proferentem rule (a common law rule of interpretation which requires the wording of a lease provision to be construed against the landlord where the wording is unclear) applied. The Lease does give specific power for the Lessor to employ a third party to do so, and charge that cost to the service charge. While the Tribunal sympathised with the Respondents' desire to save expense it is not possible to ignore the contractual terms of the Lease or statutory requirements imposed by Parliament, unless the parties formally agree to dealing with the matter another way. The parties should seek legal advice if they wish to take that course.

Costs

13. The Applicant applied for a Section 20C Order. Once the meaning of the application had been explained to them, the Respondents stated that they had no intention of charging any costs relating to the application to the Tribunal. Based on this concession, the Tribunal decided to make an order under Section 20C of the 1985 Act that none of the costs incurred, or to be incurred, by the landlord in connection with the application before this Tribunal, were to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.
14. The Applicant also made an application pursuant to Regulation 13(2) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, for the Respondents to reimburse the Fees to the Tribunal paid by the Applicant, totalling £280. The Respondents resisted this application.
15. The Tribunal's power in this matter is discretionary. It noted that the Applicant had been substantially successful, and that from the documents it seemed that making the application was the only reasonable way to proceed with the matter in a situation where the parties' positions had become entrenched. The Tribunal decided to order that the Respondents paid the sum of £280 to the Applicant.
16. The Applicant also applied for an order for payment of costs due to unreasonable conduct by the Respondents under Regulation 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. The Respondents submitted that they were not trying to rip anyone off. They were trying to keep costs to a minimum. It was unfortunate that the property had been sold so many times. The solicitors concerned had not passed on their practise.
17. The Tribunal considered that the Respondents' conduct was quite misguided, but that it did not reach the high threshold imposed by Regulation 13 which had to be read in the light of Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, the

governing rule prior to the passing of the 2013 Regulations, i.e. the conduct has to be of a kind which was vexatious, frivolous or otherwise unreasonable. The Applicant accepted at the hearing that their motive had been to save money, rather than any base motive. While motive is not conclusive in such cases, the Tribunal also took into account that the costs incurred by the Applicant (totalling £1,838) were partially inflated by requiring the Respondents to contact her through her solicitors. In the end the Tribunal decided to make no order for costs.

Chairman: L. W. G. Robson LLB (Hons)
Tribunal Judge

Signed: Lancelot Robson
Dated: 21st February 2014

Appendix 1

Landlord & 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.

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 leasehold valuation tribunal, or the Lands 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).....

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

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Regulations 13(1) - (3)

- 13.-(1) The Tribunal may make an order in respect of costs only-
- (a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
 - (i) an agricultural land and drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (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.
- (3) The Tribunal may make an order under this rule on application or on its own initiative.

(4) – (9)...
