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

Case Reference : **MAN/00EY/LSC/2014/0099**

Property : **Flats 1 & 2, 56 Westmorland Avenue,
Blackpool, FY1 5PG**

Applicant : **Christopher A McNickle and Iryna McNickle**

Respondent : **Ground Rents (Regis) Limited**

Type of Application : **For the determination of the reasonableness
of and the liability to pay a service charge**

Tribunal Members : **Colin Green
John Faulkner FRICS**

Date of Decision : **19 February 2015**

DECISION

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Decisions of the Tribunal

- (1) In respect of the service charge year 2013, the sum recoverable is £519.00, of which the Applicants are liable for 75%.
- (2) In respect of the service charge year 2014, the sum recoverable by way of advance service charge is £611.70, of which the Applicants are liable for 75%.
- (3) Pursuant to s. 20C of the 1985 Act, the Respondent shall not be entitled to include the costs incurred in respect of this application as part of any service charge for flats 1, 2 or 3, 56 Westmorland Avenue.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act) as to the amount of service charges payable by the Applicant in respect of the service charge years ending 31st December 2013 and 2014.
2. The relevant statutory provisions are set out in the Appendix to this decision.

The hearing

3. Christopher McNickle appeared on behalf of himself and his wife. Susan Kemp and Amy Bishoprick of Countrywide Estate Management, the Respondent's managing agents, appeared on behalf of the Respondent.

The background

4. The property which is the subject of this application consists of a terraced property which has been converted into three flats. Flats 1 and 2 are accessed from the front of the property, each with their own entrance from a small hall. Flat 1 comprises the ground floor and flat 2 the first floor of the building. Flat 3 is a flat-roofed building at the rear of the yard to the property and is accessed from a passageway at the rear. Although the Tribunal was told that it is subject to a lease in similar terms to the leases of flats 1 and 2, it is currently unoccupied.

5. The leases of Flats 1 and 2 contain identical provisions in respect of service charge, save that the contribution for flat 1 is 25% of expenditure and flat 2 is 50% of expenditure. The service charge years correspond to calendar years. At all material times, the owner of the freehold of the building has been the Respondent. The Applicants took an assignment of flats 1 and 2 in May 2013, so that their combined liability for flats 1 and 2 is 75% of expenditure.
6. The Tribunal had the benefit of an inspection, although they were unable to gain access to either flats 1 or 2, which the Applicants have sub-let, but were able to inspect the entrance hall, the yard at the rear and the exterior of the property.
7. So far as the service charge year 2013 is concerned, based on actual expenditure the total spent amounted to £579.00 which was apportioned at to 25% to flat 1 (£144.75) and 50% to flat 2 (289.50), a total of £434.25.
8. In respect of the year 2014, demands were served in December 2013 seeking an advance payment. No demand based on actual expenditure had been served at the time of the hearing.

The issues

9. The 2013 reconciled demand is based on 75% of the following items:
 - 9.1. Management fees - £375.00
 - 9.2. Accountancy fees - £144.00
 - 9.3. Fees - £60.00

The reasonableness of each of these items was challenged by the Applicants

10. The 2014 payment on account is based on the 75% of the following items
 - 10.1. General repairs and maintenance - £1,000.00

- 10.2. Garden/Estate maintenance - £400.00
- 10.3. Electricity - £200.00
- 10.4. Insurance valuation fee - £125.00
- 10.5. Health & Safety - £130.00
- 10.6. Reserve Fund - £300.00
- 10.7. Accounting Fees - £400.00. The Respondent accepted that this figure should be reduced to £108.00 as such matters were now dealt with in-house at reduced cost and the Applicants took no issue with this.
- 10.8. Management Fees - £450.00
- 10.9. Fees - £60.00
- 10.10. Out of hours emergency service - £43.20
- 10.11. Stationary, printing, postage, etc. - £10.50

Save where indicated above, there was an issue concerning the reasonableness of all the above items, either as to whether it was reasonable for them to be incurred, or as to amount, and in some cases, both..

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

2013

Management fees - £375.00

The tribunal's decision

12. This is a reasonable sum

Reasons for the tribunal's decision

13. The fee is based on a figure of £125.00 per unit per annum and is a flat fee not based on work actually done, so that on occasions it might work in favour of the landlord, on other occasions not. A fixed fee is recommended under paragraph 2.3 of the RICS' *Service Charge Residential Management Code* (2nd Edition) and the Tribunal finds that this is a reasonable rate.
14. The Applicants questioned whether this figure should have been apportioned to reflect the fact that the leases were not assigned until May 2013, but the Tribunal finds that the issue of apportionment is a matter between assignor (the previous lessees) and assignee (the Applicants) and this does not relieve the Applicants of liability to the Respondent for the service charge for the whole of the service charge year in which the assignment took place.

Accountancy fees - £144.00

The Tribunal's decision

15. This is a reasonable sum.

Reasons for the Tribunal's decision

16. The amount is reasonable even though the Respondent could have incurred a lesser charge by dealing with the accounts certification in-house, as it has done in respect of the service charge year for 2014.

Fees - £60.00

The Tribunal's decision

17. This sum was not incurred by way of service charge expenditure. Alternatively, it is not reasonable to include it as part of service charge expenditure.

Reasons for the tribunal's decision

18. This is a fee levied by Pier Management to approve the service charge budget. Pier Management acts for the Respondent and undertakes various duties, including approval of Countrywide Estate Management's proposed budgets. There is no reason why the Respondent or someone appointed by it should not have a final say-so on budgets, but being exclusively for the lessor's benefit there is no justification for passing-on that expense to the lessees under clause 1(ii)(d) as it is not "for the general benefit of the Building and its Lessees".

2014

General repairs and maintenance - £1,000.00

The Tribunal's decision

19. This is not a reasonable sum and should be reduced to £0.00

Reasons for the tribunal's decision

20. The estimate of £1,000.00 was fixed after an inspection of the property in November 2013. It has since come to light however, that the Applicants have incurred considerable expenditure themselves in carrying out work to the property, estimated at over £6,300.00 – which the Respondent does not dispute, as a result of which it will not have carried out any such expenditure in the service charge year 2014. On that footing, irrespective of whether £1,000.00 was a reasonable estimate at the time the budget was prepared, it cannot be viewed as reasonable in the light of the work with the Applicants have chosen to carry out and that no such expenditure will be incurred.

Garden/Estate maintenance - £400.00

The Tribunal's decision

21. This is not a reasonable sum and should be reduced to £0.00.

Reasons for the Tribunal's decision

22. An estimate for this charge was made after an exterior inspection in November 2013, but with sight of the yard at the rear, which is not subject to a communal

cost. No expense has been or will be incurred. There is no suggestion of any other such costs being incurred in the 2014 service charge year.

Electricity - £200.00

The tribunal's decision

23. This is not service charge expenditure.

Reasons for the Tribunal's decision

24. An estimate for this charge was included in respect of a communal light in the entrance hall, but it has since been discovered that the cost of such power is paid for by flat 1, so that it is not a communal expense.

Insurance valuation fee - £125.00

The Tribunal's decision

25. This is not a reasonable expense at the present time.

26 and renumber from here

Reasons for the Tribunal's decision

This is the costs of a report to ensure that the property is being insured at the correct rate, to be carried out every two years with the costs spread equally over two years. The tribunal is of the view that such a valuation needs to be undertaken only once every five years, not two years and therefore is an expense that it would be unreasonable to incur in the 2014 year.

Health & Safety - £130.00

The Tribunal's decision

26. This expense would not be reasonably incurred.

Reasons for The tribunal's decision

27. This item relates to inspection of the communal areas to ensure that they are health and safety compliant. The areas in question are so small however, that such an inspection could be undertaken by the managing agents as part of their management duties.

Reserve Fund - £300.00

The Tribunal's decision

28. This expense would not be reasonably incurred.

Reasons for the Tribunal's decision

29. This item is justified on the basis of the basis that it is always prudent to build up a reserve fund where permitted by the lease. The Respondent relies on paragraph 9.1 of the *Service Charge Residential Management Code*:

“Reserve funds are often permitted by the lease. A reserve fund is a pool of money created through the payment of service charges which are not immediately needed towards repairs, maintenance or management, etc. but which are collected and retained to build up sums which can be used to pay for large items of infrequent expenditure (such as the replacement of a lift or the recovering of a roof) and for major items which arise regularly (such as redecoration of the common parts). A reserve fund also helps to spread costs between successive tenants and can, if the leases/tenancy agreements allow, be used, on a temporary basis, to fund the cost of routine services, avoiding the need to borrow money. Legislation ensures that the money in a reserve fund, as is the case with service charge funds and advance payments, is held on trust.”

Paragraphs 9,2 and 9.3 go on to provide, however:

“The usual method of working out how much money is to go into the fund each year, assuming the lease/tenancy does not make any other provision, is to take the expected cost of future works and divide it by the number of years which may be expected to pass before it is incurred. However, it is advisable to have new estimates of the cost of replacing the item from time to time and to adjust payments into the fund to match costs. If the fund is invested prudently, the interest earned will itself help to meet rising costs. Tax will be charged on the interest income (see also Part 11).

You should be able to justify the contributions to reserves by reference to the work required, the expected cost and when it is to be carried out. Experience of similar work should be used in support of the calculations. It is not considered appropriate for specifications and tenders to be obtained merely to support the reserve allocation. These will be required at the time the work is to

be carried out. It should be indicated to tenants that the figures may vary when the work is undertaken."

30. There is no evidence of the figure for a contribution to a reserve fund having been calculated in the manner set out in the code, or anything to suggest how the figure was arrived at, other than that it was as a result of an inspection of part of the exterior in November 2013. A more detailed inspection could have been carried out if the managing agents had they contacted the Applicants to advance of the visit. In the circumstances, no figure can be established as reasonable under this head.

Management Fees - £450.00

The Tribunal's decision

31. This is a reasonable sum.

Reasons for the Tribunal's decision

32. Paragraphs 13 and 14 are repeated. There is an increase over the previous year to £150.00 per unit, but the tribunal considers that this is within a range of permissible charges that is reasonable.

Fees - £60.00

The Tribunal's decision

33. This sum would not be incurred by way of service charge expenditure. Alternatively, it would not be reasonable to include it as part of service charge expenditure.

Reasons for the Tribunal's decision

34. Paragraph 18 above is repeated.

Out of hours emergency service - £43.20

The tribunal's decision

35. This sum would be reasonably incurred and reasonable in amount.

Reasons for the Tribunal's decision

36. This charge relates to maintenance of an out of hours emergency number which can be used in respect of issues with the common parts when the managing agents are not available. It is possible that there might be occasions when such a facility would be of benefit.

Stationary, printing, postage, etc. - £10.50

The Tribunal's decision

37. This sum would be reasonably incurred and reasonable in amount.

Reasons for the Tribunal's decision

38. This is a notional sum to cover correspondence to lessees in respect of matters relating to service charge related issues. The amount is a reasonable estimate of such expenditure.
39. Of course, determination in respect of the 2014 advance charge will be subject to any adjustments made after a reconciliation has been carried out and a final service charge demand made. That was not an issue before the tribunal, however.

Application under s. 20C

40. The Applicants made an application under s. 20C of the 1985 Act. The Respondents' representatives stated that no costs incurred in relation to this application would be taken into account in respect of any service charges and therefore, so that this is properly recorded, a direction in those terms will be made.

ANNEX

Law

1. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

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. The Tribunal is "the appropriate tribunal" for this purpose, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
3. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

4. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.*

5. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

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.

6. There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, he will need to specify the item complained of and the general nature of his case. However, the tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

7. Section 20C of the 1985 Act permits the Tribunal to order that the costs incurred by the landlord in connection with these 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 by any other person specified in the application for the order. The Tribunal may make such order as it considers just and equitable in the circumstances.