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

Case Reference : CHI/45UC/LSC/2017/0009

Property : Tower Flat, Hotham Park House, Bognor
Regis PO21 1HW

Applicant : Mr. Ian Harris

Representative :

Respondent : Ms. Laraine Nash

Representative :

Type of Application : Determination of liability to pay and
reasonableness of service charges under
Section 27A Landlord and Tenant Act 1985

Tribunal Member(s) : Judge D. R. Whitney

Date of Determination : 28th April 2017

DETERMINATION

Background

1. The Applicant is the owner of a head lease of Hotham Park House, Bognor Regis PO21 1HW (“the Property”). The Respondent is the leasehold owner of the Tower Flat at the Property.
2. The Applicant seeks a determination of the Respondents liability to pay service charges for the year 2016 and 2017 pursuant to Section 27A of the Landlord and Tenant Act 1985.
3. Directions were issued on 24th January 2017 listing the matter for a telephone case management hearing. This was held on 21st February 2017 and directions were issued to prepare the matter for a hearing. Those directions have been substantially complied with. It was agreed that the matter would be determined upon the papers and the tribunal was supplied with a hearing bundle. References within this bundle to pages [] refer to pages within the bundle supplied.

The Law

4. The relevant law is contained within Sections 20 & 27A of the Landlord and Tenant Act 1985.

Determination

5. The tribunal reminds itself that it has been asked by the Applicant to determine the Respondents liability to pay and the reasonableness of service charges demanded for the years 2016 and 2017. In the directions issued on 21st February 2017 the questions to be determined were said to be:
 - Liability to pay under the lease between the Applicant and the Respondents;
 - Has the Applicant complied with his statutory obligations;
 - Reasonableness of the costs of works;
6. Each party has supplied various documents including the Head Lease and the lease for the subject flat. The tribunal has read the totality of the documents provided within the bundle and has had regard to the same in making its determination.
7. The tribunal reminds itself and the parties that the starting point in such an application is to consider the leases and what that provides and allows.
8. The tribunal notes that both parties have made reference to ground rents. The tribunal does not have jurisdiction to determine the liability

to pay ground rents save that these items should all be dealt with separately from any service charges.

9. The Applicant has a head lease of the building from the freeholder, Arun District Council from the 1st June 1977 for a term of 99 years. Under this lease he is responsible for maintaining the Property including the main building and grounds. Such works of maintenance are to be undertaken to the satisfaction of the freeholder. The Applicant is responsible for insuring the Property. Further the tribunal is advised that the Property does have listed building status.
10. The Respondent occupies under a lease [2-36 to 2-51] dated 15th February 1979 for a term of 99 years less 10 days from 1st June 1977 paying an annual ground rent of £50. The ground rent is payable by equal half yearly instalments in advance on 25th March and 29th September in each year. Clause 5(22) requires the Respondent to pay 20% of the Applicants obligations set out in the Second Schedule being the service charge. Clause 5(23)(c) requires the Applicant to pay half yearly instalments on 25th March and 29th September in each year an estimated service charge calculated by reference to a "forecast estimated in accordance with the provisions of the Second Schedule hereto".
11. The tribunal notes clause 5(3) provides that whilst the Respondent is responsible for keeping her own windows in repair the obligation to decorate the windows rests with the Applicant. Further clause 5(5) provides that if the windows are not in repair the Applicant, to comply with their decorating obligation, may undertake the repairs and recover the costs of the same from the Respondent.
12. The Second Schedule sets out what matters may be included within the service charge. This includes the cost of insurance and all costs associated with the maintenance and repair of the Property as a whole including internal communal areas. The Second Schedule includes provision for the recovery of audit, management and professional services.
13. Paragraph 9 of the Second Schedule provides that the Applicant shall prepare accounts up to the 31st December in any year. Such accounts are to be audited and under clause 5(24) of the lease any balancing charge may then be demanded and any overpayment held to the credit of the Respondent for the forthcoming year.
14. It is the Respondents case that no valid demands have been issued for the sums claimed either in accordance with the terms of the lease itself or the various statutory requirements.
15. The Applicant contends that he has given notice by various emails he has referred to and that whilst seeking monies quarterly or monthly may not strictly be in accordance with the lease this is the method he has adopted throughout his period of ownership. Further he suggests

that this is how the service charges were managed by his predecessor and this should not be interfered with. He appears to accept he has not served Summaries of Rights and Obligations as required following the Commonhold and Leasehold Reform Act 2002 nor issued formal demands in compliance with the lease. He suggests that all other leaseholders in the block are satisfied with this arrangement.

16. The tribunal determines that no valid demands have been issued by the Applicant in accordance with the lease and currently for the years in respect of this determination being 2016 and 2017 no sums are payable by the Respondent by way of interim charges pursuant to clause 5 (23)(c). The tribunal accepts there are various letters and emails included within the bundle (see [3-5] for example) but these do not comply with the terms of the lease or statute. As a result none of the sums claimed are payable by the Respondent currently.
17. The tribunal reminds the parties that all are required to comply with the leasing structure. It is for the Applicant to have issued valid demands in accordance with the lease which allow for bi-annual payments. The Applicant should prepare a budget for the forthcoming year and then issue demands based upon the same. These demands must comply with the statutory requirements including attaching a copy of the relevant summary of rights. We remind the parties it is for the Applicant, as the competent landlord, to prepare this budget on the basis of the reasonable expenditure he forecasts. Budgeting is not an exact science and it is for the Applicant to determine, subject to his methodology being reasonable, as to how and when he intends to attend to items of repair and maintenance.
18. Turning now to the reasonableness of the amounts claimed we note that there is reference to matters in other years. The tribunal is not able to comment upon those as they are not part of this application which is limited to 2016 and 2017. Obviously for 2017 no accounts have been prepared as yet.
19. The Applicant appears to suggest that his letter dated 1st March 2017 [3-17] is a budget. This refers to his suggestion that £2,000 per leaseholder is the amount he seeks. We have already determined that this is not a valid demand. However in respect of the amount claimed a total sum claimed of £10,000 for the Property might be reasonable if and when the same is properly demanded. Currently this tribunal is unable to determine whether or not this sum is reasonable. We would suggest it is for the Applicant to prepare a budget by way of a forecast of expenditure and to base the sum claimed upon the same and to provide sufficient information for the Respondent (and other leaseholders) to assess the reasonableness of the sum claimed. The interim sum claimed should cover any and all expected expenditure for the next 12 months including, if they are to be undertaken, the costs of any major works.

20. The Applicant has produced accounts for the year ending 31st December 2016 [3-2 to 3-4]. Further there is an income/expenditure document [3-6].
21. It is not entirely clear what either party says about the individual items from their respective statements of case but the bundle contains correspondence in which the parties appear to make their respective cases. The Respondent appears to suggest that the Applicant has not properly consulted in respect of any matters which constitute major works under Section 20 of the Landlord and Tenant Act 1985 being works costing any one leaseholder more than £250.
22. The Respondent does not appear to challenge the cost of the insurance for the year ending 2016 and the tribunal determines that this is reasonable. Further there appears to be no challenge to the cost of the "independent accounting review" in the sum of £120 and the tribunal determines that this sum is reasonable.
23. The tribunal notes that the service charge accounts refer to ground rent. This sum is not payable as a service charge item and should not be included within the accounts and is not payable as such. The Applicant can recover ground rent from the Respondent under her lease but what ground rent he must then pay to the freeholder is a matter for him and in accordance with his own lease.
24. The tribunal notes that in the accounts for the year ending 31 December 2017 there is no single claim for costs exceeding £1250 and so none of the items claimed required formal consultation in accordance with Section 20 of the Landlord and Tenant Act 1985. The parties are reminded that if any item of works appears as though it may cost more than £1250 in total (so that each leaseholder will need to contribute more than £250) then the Applicant is required to consult unless all leaseholders have positively agreed to all works proceeding or the tribunal has dispensed with some or all of the consultation requirements.
25. Having considered the accounts and the various supporting invoices contained within the bundle it is clear repairs in the year ending 31st December 2016 totalled £5406.52. In the certified accounts the repairs are recorded as £4,306.52. It appears having reviewed the papers the difference is that in the accounts the cost of the carpet in the sum of £1,100 has been removed as it appears this was covered by an insurance claim. The accounts have allowed for the excess as a separate item which has been claimed under the expenditure. The tribunal agrees that the excess may be recovered as a reasonable service charge expense.
26. The tribunal is satisfied that all of the repairs costs claimed are reasonable having regard to all the correspondence and documents within the bundle, including the invoices being the evidence available

to the tribunal. All appear to relate to works which can be classified as falling within the service charge provisions of the lease.

27. The accounts also allow an amount for what is said to be the “The Listed Property” subscription in the sum of £48. On the particular facts, notably that there are no other management charges, the tribunal determines this expenditure is reasonable considering the particular nature of this building and properly payable.
28. The tribunal determines that the total amount which it finds as being reasonable for the service charge year ending 31st December 2016 is £7,245.79.
29. It is now for the Applicant to consider what if any demands he need to make to reflect this decision (and its findings with regards to amounts demanded). The tribunal reminds the parties this decision is only in respect of the actual accounts for the year ending 31st December 2016 and the estimated charges for the years 2016 and 2017.
30. The tribunal notes that the Applicant has candidly stated that he is not a professional landlord. It is clear that he has been trying to do the best and perhaps in the past this may have been sufficient. The Respondent is however entitled to expect him to comply with the lease and the statutory requirements. It is clear from the papers that this determination will not determine all of the outstanding issues. The tribunal would urge the parties, given they are both resident in the Property, to try and engage with each other to determine any outstanding issues. Further litigation either here or elsewhere will serve neither party well in the long-term. We are sure both have the best of intentions and would urge them to try and resolve the issues. The parties are urged if they are unclear about matters to consider taking independent professional advice.

Judge D. R. Whitney

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.