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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAU/LSC/2018/0266**
Property	:	**Flat 1, 7a Caledonian Road London N1 9DX**
Applicant	:	**Mr A I Rogove and Mr I J Rogove**
Representatives	:	**In person (Mr A I Rogove)**
Respondent	:	**Regent Quarter Investments (4) Limited**
Representative	:	**Mr P Evans of Levy Asset Management Limited**
Type of Application	:	**For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985)**
Tribunal Members	:	**Judge Professor Robert M. Abbey** **Mr John Barlow FRICS Professional Member** **Mr Alan Ring Lay Member**
Date and venue of Hearing	:	**19 November 2018 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**23 November2018**

DECISION

Decisions of the tribunal

(1) The tribunal determines that:-

Four IML Technical Services Invoices

For the service charge years for these four invoices amounting to £2286.14 as charged they are fair and reasonable.

Reserve Fund

Reserve Fund of £2096.75 is a reasonable provision in the service charges and is held in a separate Clydesdale Bank account

Management fee

The 2015/16 management fee of £860 - £269.29 payable by the applicant – is fair and reasonable and payable by the applicant.

Insurance premium

The relevant insurance premium for the 2015/2016 service charge year is fair and reasonable and payable by the applicant

The "pass through" estate charge

The tribunal makes no finding in this regard

2016-2017 and 2017-2018 estimated service charges

The tribunal's finding is limited to the management fees for these years and they are found to be fair and reasonable and payable by the applicant

(2) It is the tribunal's view that it is both just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. Therefore, the tribunal makes a limited order pursuant to the terms of s.20c the details of which appear at the end of this determination.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable to the respondent in respect of service charges payable for

services provided for **Flat 1, 7a Caledonian Road London N1 9DX**, (the property) and the liability to pay such service charge.

2. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

The hearing

3. The applicant was represented by Mr Albert Rogove and the respondent was represented by Mr Philip Evans of Levy Asset Management Limited, ("Levy").

4. The tribunal had before it two trial bundles of documents prepared by one of the parties, the applicant, in accordance with previous directions. Regrettably only one bundle was paginated. No additional copy paperwork was made available to the tribunal on the day of the hearing.

The background and the issues

5. There is an entrance on the ground floor of the block to commercial premises (7 Caledonian Road) and there is a separate entrance to the upper part which contains a one bedroom flat on the first floor ("the property") and a three/four bedroom flat on the second and third floors.

6. Neither party requested an inspection and the tribunal did not consider that an inspection was necessary in the light of the detailed and extensive paperwork in the trial bundle; nor would it have been proportionate to the issues in dispute.

7. The applicant tenant holds a long lease within the property which requires the landlord to provide services and the tenant to contribute towards their cost by way of a service charge. The applicant tenant must pay a percentage stipulated in their lease for the services provided. (The actual percentage is expressed to be a particular percentage for each flat and which percentage will vary with each flat). The service charge percentage for Flat 7a is 31.3126%

8. The issues the applicant raised covered the reasonableness of the management fee service charges demanded by the respondent and carried out on behalf of the respondent by agents Levy Asset Management Limited for the periods from 2015 to 2016, 2016-2017 and 2017-2018. The managing agents for the whole of that period to date were Levy. The applicant also challenged four invoices from IML Technical Service, details of a reserve fund set out in the service

charges, an insurance premium and a "pass through" estate charge. These will be considered individually in this determination.

9. There was no dispute between the parties about the terms of the leases in that the parties accepted that this service charge was properly chargeable under the lease terms.

The applicant also sought an order under s.20C of the Landlord and Tenant Act 1985 seeking to debar the respondent from recovering its costs of this litigation.

Summary of the applicant's argument

10. In essence the applicant says that the managing agents have failed to provide a reasonable management service. One of the foremost elements of the application is the applicant's detailed criticism of the agent's accounting processes. As a consequence the applicant challenges the management fee because the services have been very poor. The applicant cited various examples he thought exemplified this poor service. One example was the late delivery of accounts; another was the long delayed provision of copy insurance details. The applicant also mentioned that a CCTV camera set in the ceiling in the common parts had not worked for six years. Finally, the applicant mentioned that he referred the matter of rotten window sills to Levy in 2017 but the applicant says that nothing has been done since they made the referral to the agents.

Summary of the respondent's argument

11. The respondent says that while there were accounting errors they were not excessive and have been corrected after a lengthy enquiry into the accounts carried out by the auditors/accountants tasked with this investigation. This related to the Reserve that was incorrectly stated in the original accounts but which has been correctly stated to the tribunal and set out above in the decision section of this determination. The respondent refuted the allegations of poor management and tried to highlight to the tribunal the great efforts that had made to address the concerns of the applicant.

12. The respondent asked the tribunal to note the voluminous exchange of emails set out in the trial bundle that showed the extent to which the respondent tried to deal with the applicants' concerns. The respondent also said that the cost of the repair to the CCTV would be very high and disproportionate given that only two tenants would find the repair of benefit. Otherwise the insurance was dealt with by the Lessor and the agents simply collected premiums and nothing else. Similarly, where issues with external works are concerned, these were passed on to the estate managers so that were the party responsible for dealing with the sills. (The tribunal was informed by the respondent that a S.20

statutory process would be embarked upon early in the new year to address this issue.)

Decision

13. The tribunal is required to consider several issues as listed at the start of this decision. Each is considered below.

14. Dealing first with the four IML Technical Services Invoices, the tribunal determined that the service charges for these four invoices amounting to £2286.14, are fair and reasonable. The tribunal was told that these charges were for life saving issues, fire alarm inspections and the respondent showed the tribunal a letter to Levy dated 7 August 2015 that itemised the works carried out on a quarterly basis.

15. The applicant asserted that these were long term agreements that should be regulated by statute and required tenant consultation. The Respondent explained to the tribunal that they were in fact agreements that ran for exactly 364 days and were therefore not long term agreements. The respondent said this was to enable the respondent to control costs and were reviewed at the end of the contractual period. Indeed the respondent confirmed that the provider had now changed from IML to EDL and this showed that the contracts were reviewed and changed when better value for money was identified. The tribunal accepted that these were not long term agreements.

16. The applicant also said that he had not seen any explanation of the invoices until this was provided during the progress of this dispute. The respondent accepted that it had not communicated information as readily as it should have done. The tribunal l decided that in the absence of any alternative quotes or other reasons to take a different view that these service charges were reasonable and payable by the applicant.

17. Secondly and with regard to the Reserve Fund of £2096.75 the tribunal was satisfied that is a reasonable provision in the service charges and the money is held in a separate Clydesdale Bank account. The respondent reconciled the figures for the parties and the tribunal and was able to confirm that the proper amount for the accounts was corrected by the auditors/accountants as being £2096.75 including an additional contribution of £250. The existence of a separate bank account at Clydesdale Bank was also confirmed to the tribunal by the production of a sample copy bank statement. The applicant stated that notwithstanding a three hour visit to the offices of the respondent's agent he could not resolve the issue of the Reserve Fund. However, the respondent's agent confirmed that there had been poor communication on this issue and that lessons had been learnt and that now that the figure had been corrected the issue has been resolved to the benefit of the applicant

18. Thirdly with regard to the Management fee of £860, with £269.29 thereof payable by the applicant, the tribunal decided that this is fair and reasonable and payable by the applicant. It was clear to the tribunal that the applicant was not satisfied with the performance of Levy as the managing agents of the property. In essence the applicant says that the managing agents have failed to provide a reasonable service charge management service. As a consequence the applicant challenges the management fee because the services have been very poor.

19. The applicant cited various examples he thought exemplified this poor service and these have been mentioned above. . The problem for Levy is that they have to refer insurance issues to the lessor and exterior repairs issue to the estate managers. Accordingly they cannot control these matters in the same way that they can when they have direct control. Furthermore it was apparent to the tribunal that Levy had tried to address the issues with the applicant but had failed in some respects to adequate communicate progress to the applicant. Moreover the actual charge to the applicant of £269.29 was well within the range of this type of charge that the tribunal might encounter in similar properties in Central London. Accordingly the tribunal find these service charges both fair and reasonable and properly payable by the applicant.

20. With regard to the challenge about the Insurance premium, the relevant insurance premium for the 2015/2016 service charge year is fair and reasonable and payable by the applicant. This insurance is arranged by the lessor and all that the managing agents do is collect the premium and pass on issues regarding insurance to the lessor to deal with. No doubt this has given rise to delays in responding to tenants. Certainly the applicant asserted that the provision of insurance details was greatly delayed as was the endorsing of their interest on the policy as lessees. However, there was no evidence of any alternative quotes before the tribunal and there being nothing to the contrary the tribunal finds the premium fair and reasonable and payable by the applicant.

21. In the case management hearing that preceded this hearing Directions were issued by Judge Bowers regarding the "pass through" estate charge. The tribunal found it hard to identify the details of these charges from the contents of the trial bundle and they did not seem to be quantified and the applicant did concede that he was not querying them so the tribunal makes no finding in this regard

22. Finally with regard to 2016-2017 and 2017-2018 estimated service charges The tribunal's finding is limited to the management fees for these years and they are found to be fair and reasonable and payable by the applicant. The tribunal enquired of the applicant what part of the estimated service charges he was seeking to challenge and he did confirm that it was only in relation to the managing agent's fees, the

management fee. Mr Evans confirmed that the charges for these years were at exactly the same level of £860 each year and therefore at £269.29 per year for the respondent. In these circumstances the tribunal having previously held these charges to be reasonable so it found these two years charges reasonable as well. (Mr Evans did confirm that the present year's charges are being increased by 3%).

Application for a S.20c order

1. It is the tribunal's view that it is both just and equitable to make an order pursuant to S. 20C of the Landlord and Tenant Act 1985. Having considered the conduct of the parties, their written submissions and taking into account the determination set out in the decision set out above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act that 75% of the costs incurred by the respondent in connection with these proceedings should not be taken into account in determining the amount of any service charge payable by the tenant thus allowing 25% could be taken into account in determining the amount of any service charge payable by the tenant.

2. With regard to the decision relating to s.20C, the Tribunal relied upon the guidance made by HHJ Rich in *Tenants of Langford Court v Doren Limited* (LRX/37/2000) in that it was decided that the decision to be taken was to be just and equitable in all the circumstances. The tribunal thought it would not be just to allow the right to claim all the costs as part of the service charge. The s.20C decision in this dispute gave the tribunal an opportunity to ensure fair treatment as between landlord and tenant in circumstances where costs have been incurred by the landlord and that it would be just that the tenant should not have to pay them all by way of the service charge but should in effect pay one quarter.

3. As was clarified in *The Church Commissioners v Derdabi* LRX/29/2011 the tribunal took a robust, broad-brush approach based upon the material before it. The tribunal took into account all relevant factors and circumstances including the complexity of the matters in issue and all the evidence presented.

4. It was apparent to the tribunal that there were noteworthy accounting issues that were highlighted in this decision and which related specifically to the reserve that was originally stated in error. The tribunal did note that Mr Evans did concede at the hearing that his company could have done things better and said lessons would be learnt and that he would do his best to ensure communication was improved as between the managing agents and the tenants of the property.

5. Accordingly it can be seen that the tribunal did take issue with elements of the conduct of the respondents and could see where the applicant was able to take issue with the conduct of the managing agents. The tribunal took careful note of the respondents' submissions but in the end felt that in the light of the above comments it would be just and equitable to proceed as set out above. For all these reasons the tribunal has made this decision in regard to this 20C application.

Name: Judge Professor Robert M. Abbey **Date:** 23 November 2018

Appendix of relevant legislation and rules

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.

20B Limitation of service charges: time limit on making demands.

(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.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.