

9300



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

Case Reference : **CHI/45UH/LIS/2013/0042**

Property : **Flat 7 Carlyle House Bridge Road
Worthing West Sussex BN14 7BS**

Applicant : **Mr G Agusta**

Representative : **In person**

Respondent : **Extensive Holdings Ltd**

Representative : **Mr Lauder MRICS (J Nicholson &
Son)**

Type of Application : **Sections 27A and 20C Landlord
and Tenant Act 1985**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mr B H R Simms FRICS MCI Arb**

**Date and venue of
Hearing** : **19 August 2013
Worthing Magistrates Court**

Date of Decision : **9 September 2013**

DECISION

- 1 The Tribunal declares that the management fee to be charged by the Respondent landlord for the service charge year ending 29 September 2012 shall be limited to the sum of £200 including VAT.
- 2 The Tribunal makes an order under s20C Landlord and Tenant Act 1985 .

- 3 The Tribunal orders the reimbursement to the Applicant of his application and hearing fees.

REASONS

- 4 The Applicant is the tenant of the property situate and known as Flat 7 Carlyle Court Bridge Road Worthing West Sussex BN 14 7 BS (the property). He filed an application with the Tribunal on 9 March 2013 asking the Tribunal to consider the reasonableness of service and management charges imposed by the Respondent landlord for the service charge year ending 29 September 2012. He also asked for an order under s 20C Landlord and Tenant Act 1985 .
- 5 The property is managed for the Respondent landlord by J Nicholson & Son.
- 6 The Tribunal inspected the property on 19 August 2013 immediately before the hearing. Carlyle House is a three-storey block of 30 flats adjoining the main railway line approached by a driveway leading from Bridge Road. It has part brick and part plastic boarded elevations under a flat roof believed to be covered in mineral felt. The Tribunal inspected the ground floor common ways, the interior of the ground floor flat No. 7 and part of the exterior of the flat. Some damage to the interior of the South and East walls of the living room and the East wall of the kitchen were noted. The Applicant indicated that the walls were not currently damp as the problem only occurred in the winter months. Some pine dado panelling in the living room had been removed and the carpet lifted in this area. Some tiles were loose in the kitchen and there was mould growth in the under-sink cupboard and verdigris to the copper pipes. Externally there was evidence of about 6 - 10 bricks having been removed and replaced at damp course level on the East flank wall. No evidence of an inspection was evident on the South flank wall but several areas of eroded mortar joints were noted towards the South East corner on this wall. Some loose bricks had been temporarily placed externally on the living room window cill. The flat is within walking distance of the town centre and all local amenities. Parking appeared to be available within the grounds of the block but there is no garden area or other outside space.
- 7 At the hearing the Applicant represented himself and the Respondent was represented by Mr Lauder.
- 8 The Applicant explained that there was an ongoing problem with damp in his flat about which he had complained and he had expressed an unwillingness to pay service charges while this problem, which he felt was the landlord's responsibility, remained unresolved.
- 9 He had however, prior to the hearing, withdrawn his objections to the cost of roof repairs . Since he had raised no objections to any other items in the service charge account, the only matter outstanding before the Tribunal was the amount of the managing agent's fees which the Applicant asserted were excessive.
- 10 Despite his retraction of this element of his application the Applicant remained concerned about the damp in his flat evidence of which had been apparent on inspection. The Tribunal explained to him

that as he had not formally complained to the managing agents about this matter until November 2012, it fell outside the scope of the present application (restricted to service charge year ending 29 September 2012) and therefore could not be considered by the Tribunal at the hearing. If, as he asserted, the damp was a matter which fell within the landlord's repairing covenant a separate application to the Tribunal could be made. His concerns about the standard of management of the block could be addressed in similar fashion and he was advised to seek legal advice about these matters. It was stressed that the Tribunal could not give him any advice about these issues because it was acting in a judicial capacity and was required to maintain its impartiality in making its decisions.

- 11 In relation to the management fees, Mr Lauder was asked to explain to the Tribunal his justification for charging 15% of the total service charge amounting in the case under discussion to £508.09. Mr Lauder said that his firm charged 15% of the total service charge as fees. He was unable to show the Tribunal any documentation either in the lease itself or in an agreement between the managing agents and the landlord which permitted 15% to be added to the service charge bill. He said that the amount was high in the year under discussion because the service charge for that year included a sum for major works and that other years would show a lower figure. No s 20 documentation bills or receipts for the major works were produced by the Respondent.
- 12 The Tribunal asked Mr Lauder, a qualified surveyor, whether he was aware of the RICS Code (Service Charges Residential Management Code) to which standards landlords were expected to adhere. Mr Lauder was not familiar with the Code nor its strong recommendation in para 2.3 of the Code that management fees should be charged as a flat fee per unit and not as a percentage of the total service charge. When asked by the Tribunal he considered that a fee of £150-180 per unit might be a reasonable charge.
- 13 Mr Lauder sought to justify the £508.09 fee charged on the basis that additional work had been done by the managing agents because of the major works to the roof which had been carried out during the service charge year. The Tribunal pointed out that the service charge bill already included an administration fee charged by the managing agents of £5,215 plus VAT relating to the major works contract (page 21) and asked what additional work had been necessary to account for the £508.09. Mr Lauder said that no additional work had been done by the managing agents per se on account of the roofing works.
- 14 The Tribunal was not satisfied with this response since it appeared that the administration of the roofing works had in effect been partially double charged. The Tribunal was also concerned that the Respondent, in ignorance of the RICS provisions, was charging a percentage management fee instead of the recommended flat rate per unit and that the Respondent had ignored the Tribunal's Directions (issued on 9 and 31 May 2013) and had only sent their bundle to the Tribunal on Friday 16 August 2013, giving the

Applicant no time in which to take legal advice on its contents (Tribunal hearing on Monday 19 August 2013).

- 15 In light of the above the Tribunal considers that the management fee of £508.09 sought by the Respondent is excessive and unreasonable and reduces it to a sum of £200 inclusive of VAT.
- 16 The Applicant asked the Tribunal to exercise its discretion and to make an order under s 20C Landlord and Tenant Act 1985. Mr Lauder was not familiar with this section of the legislation. When the Tribunal explained it to him he said that he objected to the Tribunal making such an order because costs had to be accounted for.
- 17 Although the Applicant had withdrawn one element of his application prior to the hearing, he has been successful on the only matter extant before the Tribunal (management fees). The Tribunal was concerned about the Respondent's conduct of this matter. They appeared not to be aware of the RICS Code and its recommended provisions, had not produced to the Tribunal any evidence to justify their charges and had ignored the Tribunal's Directions. On balance therefore, the Tribunal considers that this is a suitable case in which it will make an order under s 20C and further, will order the reimbursement to the Applicant of his application and hearing fees.

Judge F J Silverman as Chairman

9 September 2013