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

Case Reference : LON/00BD/LSC/2013/0309

Property : FLAT 4C, 4 ROSEMARY TERRACE,
ROSEMARY LANE, LONDON SW14
7HG

Applicant : LOUISE JANE LAKE

Representative : MICHAEL WILLIAM POAT

Respondent : ROBERT WILLIAM NORMAN
CATTRELL

Representative : NONE

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

Tribunal Members : MS L SMITH
MR I THOMPSON

**Date and venue of
Hearing** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 16 July 2013

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £995 is payable by the Applicant in respect of the management charges included in the service charges for the years 1999-2012 (save that any such charges demanded after 1 October 2007 are not payable until a demand in proper form is served)
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985

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 management fees included in the service charges payable by the Applicant in respect of the service charge years 1999-2012.
2. The relevant legal provisions are set out in the Appendix to this decision.

The decision

3. The Applicant indicated in her application form that she was content for the case to be dealt with by way of a paper determination if the Tribunal thought that appropriate. In the Directions order of 30 April 2013, the Tribunal indicated that it would determine the case on the papers in the week commencing 15 July 2013 unless a hearing were requested. No hearing has been requested by either party.

The background

4. The property which is the subject of this application ("the Property") is a one bedroom flat in a converted terrace house comprising 4 self-contained flats.
5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been relevant to the issues in dispute.
6. The Applicant holds a long lease of the Property dated 23 July 1985 ("the Lease"). The Lease requires the Lessor to provide services (clause 3) and the Lessee to contribute towards their costs by way of a variable service charge (clause 1). The specific provisions of the Lease are referred to below, where appropriate.

The issue

7. In the application and the correspondence submitted to the Tribunal, the parties identified the relevant issues for determination as being the payability and/or reasonableness of management charges included in the service charges for the years 1999-2012. Those charges as set out in the application amount to £995 (£60 per annum from 1999-2006; £85 per annum from 2007-2011; £90 for 2012)
8. In determining this case the Tribunal has had regard to the bundle of documents produced by the Applicant together with a letter from the Respondent dated 10 July 2013, a letter in response from the Applicant's representative and an e mail from the Lessee of Flat 4D, 4 Rosemary Terrace (Ms Keefe). Having read the evidence and submissions from the parties and considered all of the documents provided, the tribunal has determined the issue as follows.

The tribunal's decision

9. The tribunal determines that the amount payable in respect of management charges included in the service charge is £995. The service charges demanded after 1 October 2007 are not payable until properly demanded in accordance with s21B Landlord and Tenant Act 1985.

Reasons for the tribunal's decision

10. The Applicant's case is that clause 1 of the Lease is not sufficiently wide to allow the Lessor to recover his own costs of managing the Property. The Applicant also submits that the Lessor is not entitled to recover management charges as he does not actively manage the Property.
11. Clause 1 of the Lease provides (so far as relevant) as follows:-

"The Lessor HEREBY DEMISES unto the Lessee ALL THOSE the premises particulars whereof are set out in the First Schedule hereto.....TO HOLD the same (as aforesaid) unto the Lessee for a term of one hundred and fifty (150) years computed from 22nd September 1983 YIELDING AND PAYING THEREFOR for the duration of the said term the clear yearly rent of Fifty pounds (£50) per annum such rent to be paid in two equal payments in advance on the first day of January and the first day of July in each year....and ALSO YIELDING AND PAYING unto the Lessor on demand from time to time during the term by way of further or additional rent a sum or sums equal to Twenty-five per centum (25%) subject to the provisions of Clause 4(3) hereof of all sums or amounts which the Lessor *may from time to time expend or incur and as may reasonably be required on account of anticipated expenditure in connection with:-*

- (i) *The carrying out and performance of the Lessor's obligations contained in and for generally giving effect to the provisions of Clause 3 of this Lease*
- (ii) *The employment and payment of the proper fees of a Surveyor or Managing Agent or Accountant (or any of them) in connection with the carrying out or prospective carrying out of any of the Lessor's said obligations or providing and maintaining the services referred to herein and the collection of the rents hereby reserved and other payments to be paid by the Lessee hereunder*
- (iii) *Providing such services facilities and amenities or in carrying out works or otherwise incurring expenditure as the Lessor shall in the Lessor's reasonable discretion deem necessary or desirable for the general benefit of the Building and its occupiers whether or not the Lessor has covenanted to incur such expenditure or provide such services facilities and amenities and in complying with any obligations imposed upon the Lessor by operation of law and*
- (iv) Towards the establishment or setting up of any Sinking Fund which the Lessor may in the Lessor's discretion establish for the purpose of providing for the future cost of carrying out any of the Lessor's obligations or the replacement or renewal of any part or parts of the Building.

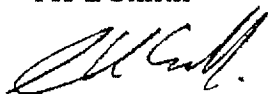
[Tribunal's emphasis]

- 12. The Applicant says also that the Respondent does nothing to justify payment of a management fee, has in fact resided in Australia for at least part of the years for which a management charge has been levied so could not have been managing the Property and tends to leave the Applicant and other Lessees to deal with such things as cleaning and decorating the Property.
- 13. The Respondent does not deny that he adopts a "hands off" approach to the management of the Property but it is clear from the documents that he does at the least insure the Property each year (which he is obliged to do by Clause 3(2) and which is particularly relevant since the Applicant has claimed on the insurance a number of times for flooding of the Property – although her case is that this is due to the Respondent's inactivity which has allowed the flooding from Flat 4D to continue). He also collects the ground rent. There is also some evidence that he liaises with the Lessees in relation to works which may be required and from time to time meets with the Lessees. This is borne out by the content of the e mail from the Lessee of Flat 4D.

14. The Applicant could not dispute that Clause 1 of the Lease would enable the Respondent to employ a managing agent for the Property and recover his costs of so doing. As the Respondent points out, this would be far more expensive and the other Lessees do not appear to dispute that he is entitled to recover something for his time spent in management of the Property.
15. In the view of the Tribunal the italicised sections of Clause 1 as above when read as a whole are sufficiently wide to allow the Respondent to recover for his time expended on management of the Property. The issue then is whether the amount claimed is reasonable. In the view of the Tribunal, the Respondent is not obliged to show that he has actually incurred or expended a particular sum. It would be normal practice for a managing agent to charge on a fixed fee basis. The Respondent submits that the amount claimed is equivalent to about £20 per hour (the figure at its highest – for 2012 – amounts to a total of £360). The Tribunal is satisfied that this is a reasonable amount to charge for management of a block of 4 flats even if all the Respondent were doing is collecting rents and dealing with insurance.
16. The Applicant also submits that, for amounts claimed after 1 October 2007, those are not payable as the Respondent has failed to comply with s21B of the Landlord and Tenant Act 1985 (in that he has failed to append to the demand a summary of the Tenant's rights and obligations in statutory form). The Tribunal agrees. It will of course be open to the Respondent to now serve notice in proper form whereupon those amounts will be payable.
17. Application under s.20C and refund of fees
18. In her application, the Applicant sought a refund of the fees that she had paid in respect of the application¹. Taking into account the above determination, the tribunal does not order the Respondent to refund those fees.
19. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Taking into account the above determinations, the Tribunal does not make an order.

Name: Ms L Smith

Date: 16 July 2013



¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and 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 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.

Section 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations²
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it

² See the Service Charges (Summary of Rights and Obligations and Transitional Provision (England) Regulations 2007 [SI 2007/1257] which came into force on 1 October 2007 and apply to all demands served after that date.