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

Case Reference : BIR/00CN/LIS/2014/0012
Property : 1 Westminster Court Lyndon Close
Birmingham B20 3NN

Applicants : Mukesh Kanji Raithatha and Dilip Kanji
Raithatha

Representative : Crooks Commercial Solicitors

Respondent : Mohammad Nawaz

Type of Application : Landlord's application for the
determination of liability to pay and
reasonableness of service charges
pursuant to section 27A of the Landlord
and Tenant Act 1985.

Tribunal Members : Mr Vernon Ward BSc (Hons) FRICS &
Judge Peter Ellis

**Date and venue of
Hearings** : 25 September 2014 & 9 December 2014
The Tribunal Hearing Suite
Fifth Floor Priory Courts
33 Bull Street
Birmingham B4 6DS

Date of Decision : 22 January 2015.

DECISION

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Introduction

1. This application is by the Lessors, Messrs Mukesh Kanji Raithatha and Dilip Kanji Raithatha ("the Applicants") for a determination of the reasonableness of service charges relating to 1 Westminster Court Lyndon Close Birmingham B20 3NN ("the Property") in respect of the service charge years commencing 1 October 2010 and 1 October 2011 for payment by the Lessee, Mohammad Nawaz ("the Respondent").
2. This matter was commenced by the Applicants in the Brentford County Court under Case Number 11R79459 and in accordance with paragraph 3(1) of the Commonhold and Leasehold Reform Act 2002 was transferred to the Leasehold Valuation Tribunal by an Order of District Judge Nisa dated 9 April 2014.
3. By virtue of the Transfer of Functions Order 2013 the functions of the Leasehold Valuation Tribunal are now exercised by the First tier Tribunal Property Chamber (Residential Property) ("the Tribunal").
4. By directions issued by a Procedural Chairman on 19 June 2014 the Tribunal directed that the application be dealt with on the basis of an oral hearing as one had been requested by the Respondent. Written representations were received from the Applicants and these were copied to the Respondent.

Background

5. The Applicants are the lessors of the Property and the Respondent holds the residue of a 125 year lease from 25 December 1978 granted by a Lease ("the Lease") originally made between Mercers Leasing Limited as Lessor and Periss Shfwket Ahmed as Lessee. The ground rent is currently £60 per annum.
6. The service charges which are the subject of the application are as follows:

01/10/10	£395.24	
01/04/11	£395.24	
27/04/11	£1,488.10	S20 Roof Works
Total	£2,278.58	

Inspection

7. The Tribunal inspected Westminster Court on 25 September 2014. The parties were not present at the inspection but the Tribunal were admitted to the building by another resident.

Westminster Court comprises 16 apartments arranged over 4 storeys with a communal entrance hallway and appears to have been originally

constructed in 1930s. There are limited external areas and no dedicated off road car parking.

The Submissions of the Parties

8. Following the Directions issued by the Tribunal, Crooks Commercial Solicitors made the submission on behalf of the Applicants. Initially their submission outlined the previous actions in the County Court and it was also noted that proceedings had originally commenced in December 2011.

9. The Applicants then outlined the provisions in the lease by which the Respondent was obligated to make a service charge payment.

"4 (iii) To pay the Lessor without deduction by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the Lessor in repair maintenance and renewal of the said buildings and the insurance of Lyndon Close Estate (including reasonable provision for future expenditure) and the provision of services in the said buildings and the other heads of expenditure as the same are set out in the Fourth Schedule hereto such further and additional rent (hereinafter called "the Service Charge") being subjected to the following terms and provisions"

Payment of the service charges are to be made in accordance with the provisions of the lease as follows:

"3.in advance by equal half yearly payments on Twenty fourth day of June and the Twenty fourth day of December in every year free from any deductions whatsoever the first payment thereon being a proportionate part of the said rent calculated from the date hereof to be made to the execution hereof together with the Service Charge hereinafter mentioned in the manner described....."

10. The submission made further reference to a previous decision of the Tribunal in 2011 in respect of Westminster Court, albeit that it was Flat 6, not the subject property and also contained copies of the service charge invoices relating to the period outstanding. The Tribunal noted that also enclosed was a copy of the summary of tenants' rights and obligations which we understand had been served with the service charge demands.

11. The Respondent made no submissions and accordingly did not comply with the Directions issued by the Procedural Judge.

THE HEARING

12. A Hearing was held on 25 September 2014 at the Tribunal Hearing Suite, Priory Court, Birmingham. The Applicants were represented by Joy Davies, Legal Executive of Crooks Commercial and Rebecca Fowler, Solicitor Advocate of LPC Law who presented the case. The Respondent was not in attendance.

13. On behalf of the Applicants, Ms Fowler led the Tribunal through their submissions and essentially stated that the Respondent had made no defence to the Tribunal and failed to comply with the Directions and accordingly the service charge was reasonable due and payable as no contrary evidence had been provided.
14. Continuing, Miss Fowler said the Tribunal should be bound by its previous decision in 2011, however the Tribunal affirmed, as has been stated by one of the District Judges involved in the matter, that this Tribunal was not bound by the decision of a previous Tribunal. However Miss Fowler stated that even if it could not be relied upon, it should be at least persuasive.
15. The Tribunal questioned the Applicants in connection with matters that had been raised by the Respondent in his defence in the County Court which specifically related to the front entrance door to the building and the basement.
16. After the Hearing, the Tribunal issued further Directions notifying the Applicants that they could if they wished make further submissions in respect of the Respondent's Defence in the County Court proceedings in connection with the aforementioned items.
17. On 6 October 2014 the Tribunal received a letter from the Respondent providing reasons and evidence for his failure to attend the Hearing on 25 September 2014. The Tribunal considered that it was reasonable in the circumstances to fix a further hearing for Tuesday 9 December 2014 at the same venue in order to give the Respondent an opportunity to present his case.
18. The Respondent failed to attend the re-arranged Hearing with no subsequent explanation or submissions made.

THE LAW

19. The Act provides:

Section 19 Limitation of service charges: reasonableness

(a) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period – only to the extent that they are reasonably incurred, and 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;

(b) and the amount payable shall be limited accordingly.

(c) 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 of subsequent charges or otherwise.

20. Section 27A Liability to pay service charges: Jurisdiction

(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 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*

(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 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 as having agreed or admitted any matter by reason only of having made a payment

6) and (7) not relevant to the Application.

DETERMINATION

- 21. Having considered the provisions of the Lease, the Tribunal notes that the obligation for the tenant to pay a service charge is contained within Clause 4 (iii), with the basis laid out in the Fourth Schedule.
- 22. At the inspection of the development, the Tribunal noted that it was generally in a poor although serviceable condition and it was observed that the front entrance door was unsecured which we understand was due to vandalism. The age and design of the building indicates that

maintenance costs are likely to be high.

23. The Respondent had not complied with the Directions issued by the Tribunal even after reminders. The Respondent's non-attendance at the original Hearing was considered justified, and the Tribunal accordingly arranged a second one in order that his case could be presented, as he requested, orally. The Respondent failed to attend this Hearing with no explanation given whatsoever.
24. The only information that the Tribunal could therefore consider on behalf of the Respondent was that contained within his County Court defence. The statement given by the Respondent in this respect was that firstly the basement of Westminster Court was 1 metre deep in contaminated oil and water, with consequent health and safety implications, and further as the front door was unsecured it was a serious security concern.
25. In response to these specific issues the Applicants have indicated that pumps were installed to the basement to drain away excess water which apparently originates from a local spring. They further stated that officers from the Environmental Health Offices of the local authority carried out several checks in respect of the liquid in the basement and confirmed that it was not foul.
26. In respect of the front door of the property, the Applicants confirmed that the door is unsecured however until such time as service charge funds are available, the door will not be repaired. They informed the Tribunal that whilst the Application is for service charges due for specific periods in 2010 and 2011, the Respondent has in fact made no service charge payments to date. They stated that once funds allow the door will be secured.
27. In connection with the issue regarding the basement, as the Respondent has produced no evidence to the contrary, the Tribunal accepts the Applicants' statement.
28. In respect of the communal entrance door to the development the Tribunal noted at its inspection that it was unsecure, however due to the serious levels of service charge indebtedness to the development it accepts the reasons why it had not been repaired.
29. The Tribunal finds therefore that the service charge amounts sought by the Applicant as follows are reasonable, due and payable:

01/10/10	£395.24	
01/04/11	£395.24	
27/04/11	£1,488.10	S20 Roof Works
Total	£2,278.58	

30. This matter is now remitted back to Brentford County Court for final determination, as such it is not in the Tribunal's jurisdiction to make

any orders regarding costs, however the Tribunal would recommend to the County Court that when considering costs in respect of this matter, it would take account of the fact that the Respondent did not comply with Directions and failed to attend a Hearing re-arranged purely to suit his personal circumstances without any explanation.

Appeal

31. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V WARD BSc HONS FRICS

22 JAN 2015