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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/34UH/LSC/2015/0095**
Property	:	**92 Guillemot Lane, Wellingborough, Northamptonshire NN8 4UH**
Applicant	:	**Mr Ajay Ahuja**
Representative	:	**Mr Gurpal Singh of Hawkins Ryan Solicitors**
Respondent	:	**Hyperion Properties Limited**
Representative	:	**Mr R Langley and Miss B Garnham, Directors of Hyperion**
Type of Application	:	**Under Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs M Wilcox BSc MRICS** **Mr O N Miller BSc**
Date and venue of Hearing	:	**The Ibis Hotel, Wellingborough on 7th March 2016**
Date of Decision	:	**29th March 2016**

DECISION

DECISION

1. **The Tribunal determines that the Applicant shall pay to the Respondent the sum of £2,176.50 in full settlement of the service charges claimed for the period 2003 to 2014 inclusive.**
2. **The Tribunal makes no order in respect of the alleged arrears of ground rent amounting to £390 as this is not within the jurisdiction of the Tribunal.**
3. **The Tribunal dismisses the claim for interest in the sum of £1,478.50 for the reasons set out below.**
4. **The Tribunal declines to make order for the refund of the fees paid to the Tribunal in respect of the application and the hearing fee. There were no other applications for costs made at the hearing.**

BACKGROUND

1. This application was commenced by Mr Ahuja on 16th January 2015. The application challenges service charges for the years 2003 onwards. In each year this included a challenge to the following items of expenditure:- maintenance; ground rent; building insurance; and interest. The sums differed each year but the total amounts sought from the Applicant were erroneously recorded in a record of account at page 12 of a bundle provided to us for the hearing in the sum of £4,133.

2. These sums were broken down as to £1,112.50 in respect of maintenance of the property for the period January 2003 to December 2014. These items were set out on purported service charge demands for each of these years. They included also a management fee which appeared to settle at £5 per month per flat. In addition, ground rent was claimed for the same period in the sum of £390 and finally a contribution towards the building insurance from May 2003 to June 2014 of £1,152.50, although in fact the total payable for insurance was £1,064.

3. The bundle provided for the hearing included copies of the demands apparently issued by Hyperion Properties for each 12 monthly period. They are basic and list the items of expenditure requesting a cheque payable to Hyperion Properties Limited Maintenance Account. This is the same for each year in dispute.

4. In addition, at page 27 of the bundle, a copy of the summary of rights and tenants' obligations is included although it is not shown annexed to each demand made during the period in question. There are also demands sent separately in respect of building insurance for the period we have outlined above. The difference in respect of the building insurance is that this is rendered on a block basis whereas the maintenance charges appear to be rendered on an estate basis.

5. We also had included in the papers a copy of the freehold register showing the Respondent as the owner, some correspondence, a copy of a lease dated 9th February 2001 between Sierra Property Developments Limited (1) and the Respondents (2) which is said to be the lease governing the ownership of the property by Mr Ahuja and a copy of the application itself.

6. We did not inspect the premises. Prior to the hearing we received a skeleton argument prepared by Mr Singh on behalf of Mr Ahuja which we will refer to in

due course. We also received during the course of the hearing a copy of the registered title of Mr Ahuja's leasehold interest under title number NN219111 which confirmed he was indeed the proprietor, which impacted upon the skeleton argument produced by Mr Singh. In addition, prior to the hearing we had been sent a bundle of correspondence from Hyperion dated 29th February 2016 which contained without prejudice communications.

HEARING

7. Prior to the commencement of the hearing the parties sought additional time to discuss matters but this did not prove fruitful. At the start of the hearing we discussed the skeleton argument put forward by Mr Singh on behalf of Mr Ahuja which raised a preliminary issue as to whether or not there was in fact any landlord and tenant relationship between the parties. This obviously would have had an impact on the case and also on Mr Ahuja, who, it seems, is in the process of attempting to sell the flat in question.

8. However, to remove this potential hurdle Mr Ahuja was able to obtain a copy of his registered title showing that he is indeed the registered proprietor of the subject property and had been so since February 2002. In addition, having seen copies of the freehold title showing Hyperion as the owner, the question as to whether there was any form of contractual issue fell away. The issues that required determination centred around whether or not the demands had been properly served on Mr Ahuja and whether they fell foul of Section 20B of the Landlord and Tenant Act 1985 as to whether or not demands had been made within 18 months of the costs being incurred. It is also said that the demands did not comply with Section 21B of the Act in that they did not contain the statutory wording required under the provisions of the Service Charges (Summary of Rights and Obligations and Transitional Provisions) England (Regulations 2007) which came into effect after 1st October 2007. It was also suggested in Mr Singh's skeleton argument that there had been a breach of Section 49 of the Landlord and Tenant Act 1985. We think that must be a typographical error because there is no Section 49 in the 1985 Act. We conclude that what he actually wished to put before us was whether or not the landlord respondent complied with Sections 47 and/or 48 of the 1987 Act.

9. We were told that there were 36 flats on the development, six contained in the block including Mr Ahuja's property. The service charges are therefore divided on a one thirty-sixth basis for the estate and for the insurance on a one sixth basis. Mr Singh having abandoned the claims contained at paragraphs one to 14 of the skeleton argument confirmed that there would be a concentration on whether the demands had been properly lodged and Mr Ahuja pragmatically confirmed that he would not seek to challenge the individual items of expenditure.

10. Mr Ahuja gave evidence first and told us that when he received the schedule in September 2015 which he says is the first time he had been made aware of any monies outstanding. He noticed that it included interest which he said had not been demanded. It seems that he had paid an initial service charge demand when he first bought the property but this statement in September 2015 was the first time that he had received any demands for insurance and maintenance payments. He confirmed that he had three residential addresses in the time that he had been an owner of the subject flat. He told us that if service charges are demanded of

him he is aware of his obligation to pay them as he is an experienced landlord and the potential for forfeiture if he fails. He told us that when he received the demand for building insurance in 2015 a cheque was sent to the respondent company although there was some discussion as to why it had taken so long for it to have been received. He confirmed, however, that he had received no other demands at his present address 2 Fenn View, Doddington were he had lived since, it appears, 2008.

11. He told us that he owned some 200 properties and was aware of his obligations to pay ground rent. Asked whether he insured the premises that he owned, he told us that about 140 of these were freeholds which he did not insure but that he only paid insurance on leasehold properties when he got the demands. In respect of this property, he told us that he had not made enquiries about insurance and did not consider it was his responsibility but rested with the landlord. Asked whether he would obtain the insurance details for his lender, he replied that only if that were asked of him. He reiterated that the only demand he had received was in 2015 for insurance which had arrived in the summer before he received the schedule in September of 2015. He told us that of the two addresses he had owned before the Fenn View address, he had arranged with the post office for there to be redirection of mail for 12 months. He had not sent his change of address to the respondent landlord. On questioning from the Tribunal he confirmed that he also owed 100 Guillemot Lane but that again he had not paid ground rent or service charges for that property. His position was that if the landlord did not ask for service charges he would not pay them.

12. The Respondents gave evidence through Mr Langley and Miss Garnham. They confirmed that there had been no summary of rights attached to demands until 2007 when Miss Garnham said this is the first time she became aware of it. She thought, however, that since then the wording had been included. As to the demands, she was asked why they did not show the address of the property or bear a date. She told us that she issued standard demands and put the address on the envelope but did not include a covering letter. She said that she did change the number of the property as she printed them off but did not keep the individual service charge demands. The letters were sent with a stamp but they bore no postal return address. She told us that she had no trouble with 99% of the demands they sent out.

13. It appears from the papers and from the evidence given that they were aware that Mr Ahuja had moved. However, it seems that they were not aware of the move from 6 Chatteris Avenue to 99 Moreton Road, Ongar until 2010. Prior to then, we were told they had been sending the demands to the Chatteris Avenue address. Miss Garnham told us that she had put fresh demands in an envelope sent to the Ongar address in 2010 but had only found out about the new Fenn Drive address recently which had prompted her to send the demand in 2015 for the insurance. Asked why she had not commenced proceedings to recover the money before, she indicated that in the past they had ordinarily been able to resolve matters. We were told that the demands had been sent to the subject property and Mr Langley said that he had on occasions hand delivered them to the flat. They confirmed that in 2010 demands going back to 2003 were sent to the Ongar address and indeed had sent demands from 2014 back to 2010 to that same Ongar address. We were told that Mr Ahuja had left them no telephone number or office address.

14. Mr Langley and Miss Garnham confirmed that they had no record of posting and could provide no evidence that they had been sent out other than it was their invariable system to send all demands on the same day to the lessees. It was confirmed that no chasing letters had been sent, that they had not pursued the debt and no demand had been made of Mr Ahuja's mortgagee.

15. They were asked certain questions by Mr Singh and asked why demands had not been sent in 2015 Mr Langley and Miss Garnham replied that they were then in contact with Mr Ahuja's solicitors.

16. On the question of interest, it was suggested by Mr Singh that this was not a service charge and it became apparent that in fact the interest was compound. Finally, at the conclusion of the hearing Mr Singh raised the question of a claim for costs under Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 but abandoned that. Mr Ahuja asked for a refund in respect of the application fee of £125 and the hearing fee of £190 and also requested a contribution towards the solicitors' costs for attending the hearing of £350.

THE LAW

17. The law applicable to this matter is set out at the appendix below.

FINDINGS

18. In the course of reaching our decision not only have we considered the evidence given to us by the parties at the hearing but also a witness statement prepared by Mr Ahuja which is undated but appeared at page 6 onwards in the bundle. We also considered the Respondent's statement set out in a letter dated 9th December 2015 and a further response by Mr Ahuja to that statement. We have carefully considered the demands which appear in the bundle both for the maintenance/service charge and building insurance and the terms of the lease and the application.

19. It seems to us that Mr Singh was quite right to abandon his skeleton argument insofar as it related to any lack of contractual relationship between the parties. He concentrated therefore on whether or not the service charges were recoverable for a period 18 months before the demand made in September 2015 under s20B of the Act, whether they complied with s21B and or whether they fell foul of sections 47 and 48 of the 1987 Landlord and Tenant Act. It was suggested that they were unreasonable on a quantum basis but this last limb was not proceeded with.

20. We should firstly deal with the allegation that the demands do no comply with Sections 47 and 48 of the Landlord and Tenant Act 1987. Those sections are set out at the foot of the decision. Section 47 requires the demand to contain the name and address of the landlord at which notices may be served. Section 48 of the Act requires the landlord to furnish the tenant with an address in England and Wales where notices may be served upon him. The demands that have been produced to us do not contain the address of the subject premises, but do bear the address of Hyperion Properties Limited which originally was 16 Fields View, Wellingborough changing to 53 Lindsey Street, Kettering some time after the

service charge year ending December 2009. It seems to us that it does, therefore, provide sufficient information for a tenant to be able to contact the landlord and therefore the provisions of the 1987 Act are met. We do, however, find it surprising that the documents produced for the hearing do not bear the specific property address nor the date upon which the demands were sent. We are unclear as to whether or not the statutory wording provided for in the statutory instrument referred to above was attached to any of these demands. Miss Garnham said that from 2007 they were but no copies of any demands in the bundle bear the wording attached to them. This, therefore, causes us to doubt whether the provisions of Section 21B have been met at any time.

21. With regard to the provisions of Section 20B of the 1985 Act, it is said by the Respondents that the demands in the papers before us were sent to the Applicant at his last known address and the Respondents have not sought to claim anything in excess of the amounts shown on those demands. We are satisfied as best we can from the information given to us that the demands in each year record sums incurred by the Respondent during the period for which the demands purport to relate. In those circumstances if Mr Ahuja has received these demands notwithstanding that they may fail to comply with Section 21B of the 1985 Act, he has nonetheless been informed of a liability to pay service charges and accordingly the provisions of Section 20(b)(1) would not seem to apply, the landlord being saved by the provisions of sub-section (2) of that section. That says (2) *sub-section (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.* We are satisfied that if Mr Ahuja received the demands in the format provided in the bundle, he would have known that costs had been incurred and that he had a liability to make payment.

22. It is therefore a question of weighing the evidence that we received. We bear in mind the fact that Mr Ahuja openly accepted that if a demand was not received he was not going to chase the landlord for payment of service charges or insurance, it being the responsibility of the landlord to chase him. Further he accepted that he had not provided the respondent landlord with details of his changes of address and it was only by carrying out a land registry search in 2010 that the respondents discovered he had moved from the Chatteris Avenue address. It seems that a further search indicated that he had moved from the address in Ongar to his current abode. If a tenant fails to provide the landlord with his address for service of the demand, then to an extent he brings problems relating to such issues on his own head. The evidence from Mr Langley was that he had on occasions hand delivered the demands to the subject premises. He would not, however, recall when.

23. The evidence, therefore, is not ideal on either side. However, doing the best we can with the information that we had before us both in written and oral form, we make the following findings. We find that Mr Ahuja had not notified Hyperion of his changes of address. We accept the evidence of Miss Garnham and Mr Langley that demands had been sent out on an annual basis with all other leaseholders who owned properties at Guillemot Lane. These demands were sent in envelopes addressed to the last known address of the tenant. It appears that the 12-month

period that Mr Ahuja had redirecting facilities in place with the post office may have spanned the service charge years. It is possible therefore that the 12-month period for redirecting had expired before the demands were sent out. He accepted that he did not have mail forwarded to him by the then occupiers of the premises as it appears he had given them no forwarding address in any event. We find, therefore, on the balance of probabilities that these demands were sent out on an annual basis to Mr Ahuja at the address that Hyperion Properties had for him until they discovered the change in 2010. However, that change was already historic as he had by then moved again to the Doddington address. It is said that they were sent on to him at the Ongar address but he had told us in evidence that he had moved from there in 2008 when he moved to his present address Fenn View in Doddington. It is, as we have said, therefore quite possible that the demands missed him and that a resending of them in 2010 to the Ongar address would have had no effect because he had by then moved.

24. Having concluded that the demands on the balance of probability had been sent within 18 months of liability being incurred in each year, we then need to consider whether or not the demands contained the statutory wording. We are not satisfied that they did. No complete copies were produced and the Respondent accepted that no wording was included until 2007 at the earliest. In those circumstances we do not consider that Mr Ahuja has any liability to make any payment to the Respondent until such time as demands are sent to him which contain the statutory wording. This is something of an unnecessary burden to have to deal with as Mr Ahuja clearly now does have copies of the demands but technically payment does not become due until they are properly demanded. This, however, does drive a coach and horses through the claim for interest on the part of the Respondents because if the payment is not due then interest can hardly be payable and it is for that reason that we dismiss the claim for interest contained in the record of account amounting to £1,478.50.

25. In the circumstances of this case and doing the best we can on the evidence, we have concluded that Mr Ahuja owes the Respondents the sum of £1,112.50 in respect of the maintenance going back to January 2003 and forward to December 2014 together with £1,064.00 for the insurance period from May 2003 to June 2014, which totals £2,176.50. He in our opinion quite rightly did not challenge the quantum of any of these items as the amounts involved are really quite small. Furthermore, no issue was raised by us with regard to any limitation point which might have some bearing on the question of ground rent.

26. We hope that the matter can now be resolved. We understand that Mr Ahuja is still intending to sell his interest in this flat and presumably some form of undertaking can be given by his solicitors to send the amount we have determined is due and owing, subject to the ground rent point, to Hyperion to resolve matters.

27. So far as the fees are concerned, Mr Ahuja has had only partial success and we would not, therefore, be inclined to order a refund to him of the application or hearing fee. We do not either consider that the Respondents have acted so unreasonably that they should be required to pay Mr Ahuja's costs of making this application. We would suggest to Hyperion that they introduce a tighter system of accounting, ensure that the demands are compliant both with the provisions of

1985 and 1987 Landlord and Tenant Acts and that a better record is kept of the issuing of demands, where they are sent and the date of such issue.

Andrew Dutton

Judge: _____
A A Dutton

Date: 29th March 2016

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 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 to 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 (ie 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.

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.

Section 20B

(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.

Withholding of service charges s21A

(1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3) An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4) If, on an application made by the landlord to a leasehold valuation tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5) Where a tenant withholds a service charge under this section, any provisions of the tenancy 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.