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

Case Reference : **LON/00BE/LSC/2015/0092**

Property : **Flat 20 Broughton House, Tennis Street, London SE1 1YF**

Applicant : **London Borough of Southwark**

Representative : **Ms H Kara (enforcement officer)&
Ms L Bui (service charges officer)**

Respondent : **Mr. Nigel Procter**

Representative : **In person**

Type of Application : **Service charges (transfer from county court)**

Tribunal Members : **Judge Tagliavini
Miss M Krisko FRICS**

Date and venue of PTR : **10 Alfred Place, London WC1E 7LR
17 March 2016**

Date of Decision : **17 March 2016**

DECISION

- (1) The tribunal determines that the sum of £1,021.63 is payable by the Respondent in respect of the service charges* for the year 2013/2014.

**There is in addition a £10 ground rent charge.*

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- (2) The tribunal is not required to make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge, as the Applicant indicated to the Tribunal it did not intend to seek to add such costs to the service charges.
- (3) The Tribunal determines that the Applicant is not entitled to be reimbursed for the Tribunal Hearing Fee of £190 and the same is not to be sought in the county court.
- (4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be remitted to the Lambeth County Court.

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 charges the respondent is liable to pay, in respect of the service charge years 2012/2013 and 2013/2014. Initially, the Applicant had sought a determination in respect of additional service charge years, but these have been agreed by the parties prior to this hearing and therefore are no longer required to be determined by this Tribunal.
2. Proceedings were originally issued in the Lambeth County Court under claim no. A05YPO38. The claim in turn was transferred to this tribunal, by order of District Judge Zimmels on 19 February 2015.

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The hearing

3. Ms Kara and Ms Bui represented the Applicant at the hearing and the Respondent appeared in person.

The background

4. The property, which is the subject of this application, is a three bed flat in a purpose built block of flats forming part of an estate.

5. The Tribunal did not consider that an inspection was necessary as the outstanding issues concerned matters of law and an inspection was not necessary to the determination of the issues.
6. The Respondent holds a long lease of the property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

7. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability of service charges for the years 2012/2013 and 2013/2014 as the demands by the Applicant had not conformed with the requirement of the lease.
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Service charge 2012/2013

9. The Tribunal determines that no sum is due in respect of service charges for this year; *London Borough of Southwark v Dirk Andrea Woelke* [2013] UKUT 0349 (LC) followed.

Reasons for the tribunal's decision

10. The lease was entered into by the parties with effect from 29 March 1999 and states in The Third Schedule as follows:

2(1) Before the commencement of each year (except in the year in which the lease is granted) the Council shall make a reasonable estimate of the amount which will be payable by the Lessees by way of Service Charge (as hereinafter defined) in that year and shall notify the Lessee of that estimate.

4(1) As soon as practicable after the end of each year the Council shall ascertain the Service Charge payable for that year and shall notify the Lessee of the amount thereof.

11. A service charge year runs from 1st April of each year.
12. The Respondent did not seek to challenge the amount of the service charges or the standard of the services provided for either of the two

years in dispute. The Respondent conceded that service charges were liable to be paid by him for either one (but not both) of these two years. The Respondent asserted that the Applicant had failed to serve a notice in accordance with the terms of the lease as the Estimated Notice of Service Charges served in 2012/13, did not include any reference to Emergency Lighting Works (major works). Therefore the demand for payment for these major works, served for the first time in February 2013, appeared to demand payment variously in the 2012/13 service charge year or alternatively the 2013/14 and in any event did not meet the requirements of paragraph 4 of the Third Schedule i.e. a statement of the total Service Charge for 2012/13 or the balance due from the Respondent leaseholder.

9. The Applicant asserted that as the charge for the Emergency Service Works has been re-credited to the Respondents account because, of the effect of section 20B of the Landlord and Tenant Act 1985, the "ordinary" service charges are payable and any later served invoice for major works should be disregarded. Further, the Applicant asserted that these major works had been included in the Estimated Service Charges for 2013/2014 and were not due as part of 2012/13 service charges. In any event, the charge for these works had been re-charged to the Respondent's account and he was not now required to pay for them.

The Tribunal's decision

10. The Tribunal determines that there is no liability to pay the annual ("ordinary") service charges for the year 2012/2013.

Reasons for the tribunal's decision

13. The Tribunal finds that the first major works service charges invoice in respect of these Emergency Lighting works was notified by a letter dated 27/2/13 to which was attached an invoice. The letter stated "*The attached estimated invoice is for the sum of £326.27. In the current year (!April 2012 to 31 March 2013); 326.27 is due.* However, the invoice itself stated that payment was due in 2012/2013 and in full on 1 April 2013.
14. The Applicant did not seek to assert that these works fell under the section 20ZA procedures and accepted that a section 20-consultation process had been gone through in 2012/13. Nor was it asserted that an estimate for these works could not have been served together with the estimate of the "ordinary" service charges at the start of the 2012/2013 service charge year. Therefore, it appears to the Tribunal that the Applicant has repeated its error identified in *Woelke* notwithstanding that the charges for the major works have now been withdrawn. It is the Tribunal's view that a realisation by the Applicant of the effect of section 20B of the Landlord and Tenant Act 1985 and a "re-charge" of

the amount of these ‘major’ works does not provide a mechanism by which “ordinary” sum dues for service charges, which have not been notified in accordance with the lease terms, become payable. Therefore, it is the Tribunal’s view that none of the service charges for 2012/2013 are due from the Respondent tenant.

15. It was accepted by the Respondent that the service charges in the sum of £1,021.63 for 2013/2014 are due and payable. Further, the Tribunal is in any event satisfied that the demand of the estimated service charge costs has been properly notified to the tenant in accordance with the terms of the lease. The Tribunal notes that the Applicant has purported to include the cost of the lighting major works in the 2013/14 estimate of service charges notifications. However, as the Applicant no longer claims these sums and the Respondent concedes he is liable to pay service charges for 2013/14, the Tribunal is not required to deal further with this matter, other than to repeat what has been already stated, that the costs of these works was initially sought from the Respondent as part of the service charges for 2012/13 by way of a separate and late served invoice in February 2013. In any event, it is the Tribunal’s view that a demand for payment of these lighting works in 2013/2014 and subsequently withdrawn does not render ineffective the demand for the remainder of the sums due for “ordinary” service charges for 2013/14.

Reimbursement of the hearing fee.

16. The Tribunal declines the Applicant’s application for a reimbursement of the hearing fee and directs that the same should not be sought from the county court.
17. The Applicant has succeeded only to a minor degree in its application having stated a claim against the Respondent for over £12,000 in respect of unpaid service charges. Nearly £10,000 of that sum was conceded prior to the Tribunal hearing as not being due from the Respondent as the Applicant accepted that *Woelke* should be followed. Therefore, the Tribunal has found that only approximately half of the sum remaining in dispute is payable. The Tribunal therefore, finds it unreasonable and disproportionate to require the Respondent to reimburse all or part of the hearing fee.
18. The Tribunal now remits this matter back to the county court for its final determinations.

Signed: Judge LM Tagliavini

Dated: 17 March 2016