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FIRST –TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HY/LIS/2016/0031
Property:	Flat 17A, Maristow Street, Westbury, Wiltshire, BA13 3DN
Applicant:	Julie Carr
Representative:	None
Respondent:	City Freeholders Limited
Representative:	Shirley Connor, Director
Type of Application:	Service charges: section 27A of the Landlord and Tenant Act 1985; and section 20C of the Act
Tribunal Members:	Judge David Hebblethwaite (Chairman) Mr Mike Ayres (valuer) Ms Johanne Coupe (valuer)
Date and venue of Hearing:	17 October 2016 at Bath Law Courts
Date of Decision:	16 January 2017

DECISION

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1. On 10 June 2016 the Tribunal received an application from the Applicant in relation to the Property under section 27A of the Landlord and Tenant Act 1985 for a determination as to the payability by the Applicant of service charges for the years 2013, 2014 and 2015 and, in addition, an application under section 20C of the Act.

2. The law relevant to the principal application is as follows:

Service Charge (1985 Act)

Section 18 defines "service charge" as *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.* The "relevant costs" are defined as *the costs or estimated costs incurred or to be incurred by or on behalf of the landlord in connection with the matters for which the service charge is payable.*

Section 19 provides that 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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard.*

Inspection

3. The Tribunal inspected the Property on the morning of 17 October 2016; the Applicant was present, as was Ms Connor for the Respondent and Shelly Hazell, the owner of 17 Maristow Street (the flat on the ground floor beneath the Property). The Property comprises a first floor one bedroom flat converted around 2007. It is accessed via an alleyway which appears to service three properties; refuse bins for them all were stored along one side. The ownership of the alleyway is unclear and it is not adopted. The Property has a small, enclosed garden to the rear. Access to the flat is by a metal staircase out of the garden. There were signs of water penetration in the sitting room which the Applicant said still leaked. The Tribunal noticed signs of previous roof repairs to the front of the building.

4. The Tribunal was able to read, before the Hearing, a bundle of documents. These included the lease dated 20 September 2007. The Property was demised to the tenant for a term of 125 years from 1 January 2007 (the Applicant and the Respondent are both assignees). The 6th Schedule deals with service charges and several other clauses have a bearing on them. In particular, and unusually, clause 6.8 fixed the initial service charge at £650 per annum to be increased by RPI each year and reviewed by the Landlord

every 5 years. It would be the view of the Tribunal that it would not have been legally possible to contract out of the jurisdiction of the Tribunal but in any event this clause does not appear to have been relied upon by either the Applicant or the Respondent during their respective ownerships. The bundle also included copies of the service charge accounts for the three years in question (these are prepared for the building and then half charged to the Property and half to no. 17) and a number of documents, some of which were referred to in the course of the hearing, as well as the parties' respective statements of case.

The Hearing

5. At the Hearing the Applicant appeared in person, supported by Ms Hazell and the Respondent was represented by Ms Connor.

6. The Applicant referred the Tribunal to the spreadsheet that she had prepared (p. 72 in the bundle) and put forward comparables in the form of accounts from two other properties (pp. 73, 74). In the spreadsheet it was noted that for "director's remuneration" the figure of £640 charged in each of the three years was proposed by the Applicant to be £75. She did not know where she got the figure from. It represented £10 per hour for 7 ½ hours. Ms Connor stated that it was what she had been advised to charge by her accountant, representing £320 per flat. The Applicant stated that the management by the Respondent was not of a reasonable standard, citing the amount that she had had to contact the Respondent about the roof and difficulties over arranging calls by contractors. As regards accountancy, the Applicant invited comparison with her two comparables, which were for much bigger developments. Ms Connor stated that she had an agreed annual fee with her accountant and hourly rates were not charged. The accountant's invoices were in the bundle and were divided between the 28 properties owned by the Respondent in respect of which certain costs were shared. The Applicant's view on bookkeeping was that it should be included in the management costs ("director's remuneration") whereas Ms Connor thought it reasonable to treat the fee she paid to a self-employed bookkeeper as a disbursement to pass on. As in the case of accountancy, the bookkeeper invoiced for all the Respondent's properties and Ms Connor divided this up equally. Ms Connor explained that she worked out a figure for Telephone as a proportion of what her phone bills cost, on the basis that she used her private phone to keep costs down. No invoices were produced. Bank charges, said Ms Connor, were on the basis that the Respondent had one bank account for all its properties and made a straight division of charges, regardless of size of property. The Applicant thought this was an unfair way of doing it, leading to an unreasonable amount for the Property. Turning to motor expenses (noting nothing on Applicant's spreadsheet but being part of the application), the Applicant felt that these should be part of the management charges and also said that Ms Connor didn't visit the Property. Ms Connor denied the last point and said that if the Respondent did not charge motor expenses it would be out of pocket.

Section 20C (1985 Act)

7. The Applicant having applied for an order to the effect that the Respondent's costs in connection with these proceedings are not to be treated as relevant costs for future service charges, the Tribunal invited submissions. The Applicant said "I expected more of the landlord when we moved to this property" and "I feel the landlord is fleecing myself and Shelley". Ms Connor said that the Applicant had brought the case and it had incurred a lot of work. The Applicant had failed to take part in the telephone directions hearing and had made no proposals.

Consideration

8. After the Hearing the Tribunal members proceeded to consider the applications. The parties are advised that the Tribunal is constituted as an expert tribunal. Starting with the service charges, the lease allows the lessor to employ managing agents but the Tribunal notes that the Respondent prefers to undertake its own management. Ms Connor is the director of the Respondent and charges "director's remuneration" to the service charge account. There is no direct comparable for this as, if you went to a management company, the Property would be part of a portfolio. The Respondent has included major repairs. It was of note that there are no common parts in the building in which the Property is situated. The Tribunal's approach is to determine what it believes to be a reasonable fee for managing the building and considers that £640 is reasonable but it must include bookkeeping, telephone, bank charges and mileage as these expenses are incurred for fundamental aspects of managing a property. It is reasonable to charge (i.e. pass on) accountant's fees in addition. At this point the Tribunal noted that it did not have copies of the accountant's invoices for all the years under consideration and the Respondent was asked to submit these. This meant that further consideration was postponed. After the invoices had been received and circulated, the Tribunal was able to complete its consideration, apportioning the total cost to each flat covered by the charge and multiplying by the two flats in the building. The Tribunal has dismissed the costs relating to the premier protection scheme, taking the view that such cover provided protection for the Respondent's business and should not be recharged to the tenants. The charges found reasonable by the Tribunal are:

2013: £189.47
2014: £199.99 (£66.66 + £133.33)
2015: £214.28 (£171.42 + £42.86)

Adding £640 to each of the above figures produces the amount considered reasonable for each of the three years under consideration, as follows (and the Applicant will pay half of each amount):

2013: £829.47
2014: £839.99
2015: £854.28

9. Before deciding on the application under section 20C the Tribunal asked the Respondent to submit an account of the costs in connection with these proceedings which it proposed to add to future service charges. The Respondent did so and a copy was sent to the Applicant. Having considered this account, the Tribunal first dismissed the amounts under the heading "Further information requested as per Tribunal letter dated 21/10/16" as this should have been available at the Hearing. That left the sum of £400.18 the subject of the Applicant's application. The Applicant has achieved a substantial reduction in the service charges proposed by the Respondent though not by as much as she asked for. In all the circumstances the Tribunal thinks it fair and reasonable to permit the Respondent to charge half the sum involved, namely £200.09, to the service charge account for the building.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking