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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOKA/LSC/2013/0106**
Property	:	**28 Farley Lodge, Ruthin Close, Luton LU1 5EN**
Applicant	:	**Farley Lodge Limited**
Representative	:	**Mr R L Cattell director**
Respondent	:	**Mr Y and Mrs R Albohayre**
Representative	:	**Mr D Albohayre**
Type of Application	:	**Liability to pay service charges s27A Landlord and Tenant Act 1985 (the Act)**
Tribunal Members	:	**Tribunal Judge Dutton Miss M Krisko BSc (Est Man) FRICS Mr P J Tunley**
Date and venue of hearing	:	**Luton Magistrates Court 18th March 2014**
Date of Decision	:	**26th March 2014**

DECISION

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DECISION

The Tribunal determines that the Respondents are liable to pay the service charges totalling £320 within 28 days of the date of this decision.
The Tribunal determines that the administration charge in the sum of £250 is not payable.
The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 ("the Act") considering it just and equitable so to do in the circumstances of the case and the Applicant's expressed indication that costs would not be claimed in these proceedings.
The Tribunal records the Applicant's confirmation that it will not seek to recover the interest claimed in the sum of £27.63.
The claim for £840 is not pursued as the sum has been settled by the Respondents.
Any remaining matters as set out on the particulars of claim are remitted back to the Watford County Court. Enforcement of this decision will be through the County Court system and the parties will need to apply to the Court for this purpose and for the referral of any outstanding issues.

BACKGROUND

1. On 17th December 2013 the Watford County Court in claim number 3YJ82203 transferred the action between the Applicant and the Respondents to this Tribunal for *"the determination of the reasonableness of service charges and administration charges"*
2. Directions were issued on 14th January 2014 and were complied with. The matter came before us for hearing on 18th March 2014.
3. Prior to the hearing we received bundles containing the Court papers, a sample lease, site plan, statements of case for both parties with supporting papers, annual accounts and relevant correspondence.
4. On the morning of the hearing we inspected the development in the company of Mr Albohayre, Mr Cattell and Mr Price, Mr Cattell's co-director and it appears partner in Link Property Services.

INSPECTION

5. The development comprises five three storey purpose built blocks, with flat roofs, in a linear format. There are 60 flats, each appearing to have a balcony. The development is served by what appears to be a somewhat unkempt private roadway which is consistent with the environ. We inspected the entrance to the block which housed the Respondents' flat, which we found to be clean but drab, showing evidence of water leakage.

HEARING

6. Mr D Albohayre represented his mother, his father having sadly died sometime ago. Mr Cattell represented the Applicant. It appears that the Applicant is a Right to Manage Company formed in 2005. We were told

that all leaseholders are members, although Mr Albohayre was not aware that his parents and now his mother had such status. It seems that Mr Cattell and Mr Price are the only directors, although neither now owns a flat at Farley Lodge. Indeed we were told that there are presently no owner occupiers of the flats. The day to day management of the development is being carried out by Link Property Services, a firm of which Mr Cattell and Mr Price are the partners.

7. After some initial comments by Mr Albohayre on the documents supplied, which had no bearing on the issues before us, we were able to confirm that the three issues for us to determine were:
    - A charge of £300 being the equalising balance payment due from leaseholders in respect of the service charge year ending December 2009
    - A charge of £20, being a shortfall on a quarterly payment due in September 2010 for the year ending December 2011
    - An administration charge of £250 levied in respect of non-payment.

8. In respect of the £300 charge Mr Albohayre said that his parents had not received notice of same. Mr Cattell said that the demand was sent on 11th January 2010 to the correct address. Further, subsequent demands, for example one dated 21st April 2010, showed this additional sum being sought, albeit under the caption "additional extraordinary service charge" and was received by the Respondents. A review of the 2009 accounts showed that the amount due from each leaseholder, based on a 1/60th share would be £927.95. The statement of account issued on 8th October 2009 shows payments due of £600 for the year ending December 2009 and accordingly Mr Cattell said that the additional sum of £300 was consistent with the accounts for that year and was due and owing.
9. The additional sum of £20 for the year ending December 2011 arises in a slightly different way. We were told by Mr Albohayre that again his parents had not received such a demand. In the year they had made quarterly payments, one of £150 and three of £180. It was said by Mr Cattell that an additional demand of £20 had been made in January 2011, to be added to the payment of £150, when it became apparent that the quarterly payments were likely to be insufficient to cover the actual expenditure for the year but this sum had not been paid.
10. In so far as the administration charge of £250 was concerned Mr Albohayre said the cost was "unfounded" and did "not appear in any of the Applicant's statements prior to their Court Claim". Mr Cattell told us that the regulations in the lease at the Fifth Schedule had been amended following an AGM of the Applicant on 4th May 2004 to provide that individual leaseholders could be held responsible for costs arising from the recovery of service charges. He was not able to confirm that the Respondents were aware that this charge, in this amount, would be payable by them. Nor could he provide justification for the amount other than he thought it would represent 5 hours spent in bringing proceedings as they did not use solicitors for this task.

11. We should record that Mr Ablohayre had prepared a statement of account for his parents purporting to record payments made and demands they had received. We will comment upon this in the findings section.

THE LAW

The Law applicable to this matter is set out on the attached appendix.

FINDINGS

12. We will firstly comment on the "statements of accounts" prepared by Mr Abolhayre and to be found at pages 47 to 59 of the papers attached to his statement of case. Unfortunately this was fatally flawed at the first page. A credit allegedly in the sum of £175 was not carried forward and on the second page a payment of £450 did not appear to be correctly recorded. In those circumstances we can place no reliance on the figures he said were due and owing.
13. The sums of £300 and £20 we find are due. We accept that the demands were sent to the Respondents at the correct address. The papers filed on behalf of the Respondents show demands before and after which indicates to our mind that there was no problem with the delivery of correspondence from the Applicant to the Respondents. Further we note that there have been two County Court judgments obtained against the Respondents for non-payment, in March 2005 and again in July 2007 and proceedings commenced in 2008 which were struck out because the Applicant did not attend the hearing in January 2009 and this matter comes before us as a result of a County Court referral. The Respondents therefore, have something of a record of non-payment and we preferred the evidence of Mr Cattell that the demands had been properly sent and that they were due and owing.
14. Whilst we can see the equity in seeking to recover the costs of claiming service charges from the individual leaseholder we do no accept that this can be done by amending the regulations. The lease, at paragraph 6 in part II of the fourth schedule includes wording enabling the recovery of costs as a service charge. The only provisions in the lease entitling the Landlord to recover costs from an individual leaseholder is to be found at clauses 3 (16) and (17), relating to forfeiture and consents. We do not find that the regulations can be amended to create a financial liability for an individual leaseholder. The regulations are negative in their wording, that is to say they impose a prohibition. The ability to amend the regulations is provided for at clause 10 of the lease and is in the "interest of good estate management.. regarding the Lessor's Property the Building or the flats therein..(but so that any such regulations shall not conflict with the terms of the lease).. To impose a financial penalty, unquantified, in our finding would require an amendment of the lease. If we are wrong in that regard would disallow the sum claimed in any event as being unreasonable within the provisions of schedule 11 to the Commonhold and Leasehold Reform Act 2002, as no warning of the penalty was conveyed to the Respondents and further Mr Cattell could not produce evidence that

the amount demanded was reasonable. It related to the costs of the Applicant in bringing proceedings in the small claim court, which is generally a "no costs" jurisdiction. The best he could say was that it might represent 5 hours work. By whom and at what rate was not stated.

15. Mr Cattell confirmed that the Applicant would not be seeking costs on this matter before us and that he would not be seeking to recover interest, which seems appropriate given the comments we shall make in a moment. We should also record our doubt that the costs of £286.60 apparently claimed in respect of action 8LU02263, which was struck out on 15th January 2009, would be recoverable, but make no formal finding as this matter is not within the remit of the case sent to us by the Court. As to whether the costs of £285.15, apparently in respect of action 7QZ08932 where judgment was obtained against the Respondents is recoverable we leave for another occasion. Mr Cattell indicated that it might be part of the judgment sum of £1470 and if it is clearly it is recoverable.

16. We would just wish to make a few comments, which we hope will help going forward and prevent unnecessary future litigation. The lease provides for the accounts to "audited" (see Fourth Schedule paragraph 3). They do not appear to be audited service charge accounts but instead to be Company Accounts. It might be appropriate for the accountants to consider some simple service charge accounts complaint with the Act which are stated to be audited. We do not require the Applicant to revisit the accounts currently issued, to do so would merely impose unnecessary cost. No real challenge was made by the Respondents to the figures in the accounts. Complaint was made of a general nature concerning refuse collection and the general condition of the development but no specific allegation relating to the actual costs was raised. In addition the earlier demands do not appear to be compliant with section 47 and 48 of the Landlord and Tenant Act 1987. This has been corrected and we do not require the Applicant, and indeed nor did Mr Ablohayre, to reissue same. It does however support Mr Cattell's confirmation that interest would not be claimed. In addition we cannot see any provision in the lease for a reserve fund. It is unclear as to how surpluses are dealt with as we were not provided with accounts for all years. Mr Cattell told us that any surplus was credited to the following years and any interim quarterly demands made take that credit into account. This was not clear from the accounts provided to us and we did not see any credits on the demands that were included in the bundle of documents. If that is indeed the case that would seem to be correct as the lease provides that any surplus should be "allowed" to the tenant (see paragraph 4 of Part I of the Fourth Schedule).

Andrew Dutton
Tribunal Judge

26th March 2014

Appendix of relevant legislation

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).