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

Case Reference : CHI/00HN/LSC/2013/0117

Property : Flat 7, The Chase, 57 Wellington Road, Bournemouth, Dorset, BH8 8JL

Applicant : The Chase RTM Ltd

Representative : Mr T Crown, Allsquare Legal Ltd

Respondent : Mr Azrim Karimi Beik-Abadi ("Mr Karimi")

Representative : -

Type of Application : Service charges : section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act")

Tribunal Members : Judge P R Boardman (Chairman), Mr A J Mellery-Pratt FRICS, and Mr J Mills

Date and venue of Hearing : 17 January 2014
Menzies Bournemouth Carlton Hotel,
East Overcliff, Bournemouth, Dorset,
BH1 1DN

Date of Decision : 22 January 2014

DECISION

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Introduction

1. In an action issued in Northampton County Court on 2 May 2013 under number 3YL24486 the Applicant claimed the following sums against the Respondent under a lease dated 26 February 1975 :

unpaid service charges :	2509.95
interest	<u>133.13</u>
	2643.08
court fee	95.00
solicitor's costs	<u>80.00</u>
	2818.08

2. The Respondent filed a defence, and the action was transferred to Bournemouth County Court
3. In a counterclaim received by the court on 30 September 2013, as amplified in a statement dated 11 December 2013, the Respondent stated that :
 - a. he was disputing the whole amount as he was most unhappy with the services of Castleford Management
 - b. in May 2008 he paid for the communal halls to be repainted because of their poor state
 - c. in November 2009 he replaced a window in the communal hallway because of its dilapidation
 - d. in July 2011 he arranged for white markings to be laid to ensure that people parked correctly
 - e. the agents had totally ignored comments made by the Applicant and other flat owners about the state of the block and the cleaners they employed; there were cobwebs even after the cleaners had visited
 - f. the agents ignored complaints, or took an exceedingly long time to carry out any essential work, which was why the Applicant had carried out certain jobs himself after speaking to the various flat owners
 - g. Mr Querol of flat 4 had had to repair the outside porch because the agents had not done so
 - h. there was a continual problem with tenants and the dumping of rubbish, and, in the absence of help from the agents or Bournemouth Council, the Applicant had paid for rubbish to be removed on 2 occasions; again, Mr Querol of flat 4 had also removed rubbish and cleaned the whole area
 - i. in relation to the roof, the agents had charged an administration charge of over £1400, which was too high; water had leaked into the downstairs flats, and the agents had blamed the Applicant's decking; the Applicant removed the decking and subsequently replaced it (at a cost of £2000) after the roof works had been carried out, and the agents had now admitted that the decking had not been the cause of the leaks; the roof was necessary for the whole block, and any expenses incurred in renewing the roof should have been met by everyone
 - j. the management had paid out twice to have Mrs Phillips's flat redecorated following damage caused by her faulty boiler,

- whereas the redecoration costs should have been met by her
- k. there had now been a leak into the Applicant's flat, causing damage to the wall, ceiling and skirting in the front bedroom and lounge, which had clearly been caused by the roof works, and the roofers had now returned to fix the problem
 - l. the roof works had also caused a leak in flat 4 when a pipe had been felted over; again, the agents had initially blamed the Applicant's decking
 - m. further leaks in Flat 4 had initially been blamed (in a report from Henry Bowers) on the Applicant's hanging baskets and also leaves, whereas Mr Querol's contractors had now discovered that the problem had been a hole in the membrane of the roofing under the front bedroom patio doors, and, after making good, there had been no further leaks
4. By an order dated 23 September 2013, but issued on 4 October 2013, the Bournemouth County Court ordered the case to "be transferred to the Leasehold Valuation Tribunal for a decision on the issues arising under the Defendant's lease"

The lease

5. The material parts of the lease are as follows :

Clause 2 (tenant's covenants)

(vi) [to pay on 1 January and 1 July in each year a one seventh part of the landlord's expenses under clauses clause 3(1) to (vi), including a reasonable contribution in advance on 1 January and 1 July in each year]

(vii) to pay to the Landlord from time to time on demand a one seventh part of the expenses of the Landlord in connection with the collection of the said contributions referred to in clause 2(vi) aforesaid and the administration of the property (including expenses incurred under clause 7 hereinafter contained) and all appurtenances thereto

(xviii) [to pay costs in contemplation of a notice under section 146 of the Law of Property Act 1925]

Clause 3 (landlord's covenants)

(2)(i) [to insure the block]

(ii) [to maintain and repair the roof, main walls, main timbers and the structure and common parts of the block]

(iii) [to paint repair and where necessary replace the exterior woodwork and iron work of the block]

(iv) [to provide aerials]

(v) [to maintain the gardens and paths]

(vi) [to maintain the drive parking areas dustbin area and fences]

Clause 7 [the landlord to keep proper books of account]

Documents

6. The parties have submitted witness statements and documents, which

are contained in a bundle submitted by the Applicant. References in this decision to page numbers are to page numbers in the bundle

Inspection

7. The Tribunal inspected the Development at 10.00 on the morning of the hearing on 17 January 2014. Also present were Mr Crown, Mr J Brown, office manager of Castleford Property Management, Mr M Hogg, property manager of Castleford Property Management, Ms S Phillips of Flat 2, The Chase, and Mr Karimi
8. The Chase was a 1970's 2-storey brick-built block, with, above, a penthouse, namely Flat 7, and surrounding terrace. There were 3 other flats on each of the ground and first floors. Flat 4, referred to in the bundle, was on the first floor, in the south-east corner of the building. There was a tarmac drive on the right-hand (eastern) side leading to 7 garages at the rear, with a bin area on the right. On the north-west corner of the garage on the left was the aerial referred to in the bundle. There was a lawn and hedge on the left-hand (western) side and at the front. Mr Karimi drew the Tribunal's attention to broken glass in the garden border at the front, and an agents' letting board
9. The main entrance was on the right-hand side. The ground-floor communal lobby was carpeted. The stairs to, and the landings on, each of the other 2 floors were not carpeted but covered with thermoplastic tiles. There were damage marks on some of the walls, apparently caused during removals. There was a new window on the first floor landing, apparently replaced under the service charge provisions 3 or 4 months ago. There was also a new window on the second floor landing, which was the one referred to in the bundle as having been replaced by Mr Karimi. The communal parts inspected were clean and tidy
10. The Tribunal inspected Flat 7. The Tribunal's attention was drawn to evidence of water penetration to the lounge, hallway and bedroom. There was wooden decking on the terrace surrounding Flat 7, apparently laid over the flat roof to the rest of the building and referred to in the bundle. Flat 7, which was tile hung, also had a flat roof. The Tribunal's attention was drawn to a white pipe fixed to the outside wall of Flat 7 and referred to in the bundle

The hearing

11. Present were Mr Crown, Mr Brown, Mr Hogg, Ms Phillips (for the morning only), and Mr Karimi
12. The Tribunal noted that the parties had raised many issues in the papers in the bundle, but indicated that the Tribunal's jurisdiction was limited by the following factors :
 - a. the limited number of matters which Parliament had decided that the Tribunal could deal with, which, so far as was relevant to the present case, were limited to the payability of service charges and of certain administration charges

- b. the limited number of matters referred to the Tribunal by the court in this case, which were limited to the service charges, reserve fund contributions, insurance premiums and administration charges set out in the statement of account (at page 15) attached to the particulars of claim (at page 14); the first item of service charge claimed was dated 1 January 2012, and the last was dated 1 January 2013, so that matters arising before or after those dates were not within the Tribunal's jurisdiction in this case
 - c. the matters which were in issue between the parties
13. The Tribunal accordingly asked Mr Crown which of the matters listed in the statement of account (at page 15) he was submitting were in principle within the Tribunal's jurisdiction, as follows :
- a. 25 December 2011 ground rent : Mr Crown agreed that this was not within the Tribunal's jurisdiction, and was a matter for the court
 - b. 1 January 2012 service charge : Mr Crown agreed that this was in principle within the Tribunal's jurisdiction
 - c. 1 January 2012 reserve fund : Mr Crown agreed that this was in principle within the Tribunal's jurisdiction
 - d. 5 March 2012 aerial upgrade : Mr Crown agreed that this was in principle within the Tribunal's jurisdiction
 - e. 11 April 2012 admin charge : Mr Crown agreed that :
 - although clause 2(vii) of the lease (page 43) provided for the tenant to pay a contribution of one-seventh towards the costs of collecting the service charge, the Applicant had claimed 100% of this cost against the Respondent, rather than one-seventh under clause 2(vii)
 - although clause 2(xviii) (page 45) provided for the tenant to pay costs in contemplation of a notice under section 146 of the Law of Property Act 1925, this was not an administration charge for the purposes of the Tribunal's jurisdiction
 - this was therefore not within the Tribunal's jurisdiction, and was a matter for the court
 - f. 24 April 2012 admin charge : as 13e
 - g. 1 July 2012 service charge : as 13b
 - h. 1 July 2012 reserve fund : as 13c
 - i. 24 September 2012 buildings insurance : Mr Crown agreed that this was in principle within the Tribunal's jurisdiction
 - j. 15 October 2012 debt recovery fee : as 13e
 - k. 25 December 2012 ground rent as 13a
 - l. 1 January 2013 service charge : as 13b
 - m. 1 January 2013 reserve fund : as 13c
 - n. 12 April 2013 interest : Mr Crown agreed that this was not within the Tribunal's jurisdiction, and was a matter for the court
 - o. 12 April 2013 claim form issue fee : as 13e
 - p. 12 April 2013 solicitors fixed costs claim issue : as 13e
 - q. 12 April 2013 Land Registry title search fee : as 13e
 - r. 12 April 2013 claim form preparation : as 13e

14. The Tribunal then asked Mr Karimi which items he was challenging of those matters which Mr Crown had agreed were in principle within the Tribunal's jurisdiction. Mr Karimi accepted that although he had stated in his counterclaim that he was disputing the whole amount claimed as he was most unhappy with the services of Castleford Management, and although he was disputing the debt recovery charges, fees, costs and other administration charges, except the administration charges dated 11 and 24 April 2012, the only other matters he was challenging were as follows :
- a. the cleaning had not been done well : the Tribunal indicated that this item was within its jurisdiction in principle under section 27A of the 1985 Act
 - b. the managing agents had not done a good job : again, the Tribunal indicated that this item was within its jurisdiction in principle under section 27A of the 1985 Act
 - c. he had done work himself at his own expense : the Tribunal indicated that although the Lands Tribunal decision in **Continental Property Ventures Inc v Jeremy White** LRX/60/2005 suggested that the Tribunal could consider counterclaims in certain circumstances, the Tribunal's initial view, subject to contrary submissions (of which there were none), was that none of those circumstances applied here, in that Mr Karimi's counterclaims were for works which were not connected to the service charges claimed; in any event :
 - arguably, the counterclaims were not "issues arising under the Defendant's lease" and had therefore not been referred to the Tribunal by the court's transfer order (page 21)
 - further, the Lands Tribunal decision in **Continental Property Ventures Inc v Jeremy White** LRX/60/2005 suggested that even when it would be within the Tribunal's jurisdiction to consider a counterclaim, it would be for the Tribunal to decide whether to do so, or to transfer the matter to the court; in this case, the matter was already before the court, and the Tribunal's view was that, in all the circumstances, it would be more appropriate for the counterclaim to be dealt with by the court
 - d. the roofing work had not been done well (pages 91 to 93); however, the parties agreed that the roofing works had been carried out in 2010 and that none of the service charge items at page 15 included the costs of the roof works, and that this item was not therefore before the Tribunal
 - e. the agents had "put in an administration charge of over £1400 for the roof saga which I believe is too high as do others" (page 91); however, again, the parties agreed that none of the service charge items at page 15 included that administration charge, and that this item was not therefore before the Tribunal
15. The parties accordingly agreed that out of the items comprising the Applicant's claim before the court only 2 items were before the Tribunal, namely the payability of the cleaning costs and the payability of the management fees

16. The Tribunal indicated that in relation to the amounts claimed for service charges at page 15, there were no service charge accounts before the Tribunal, and the only relevant estimated service charge budget was at page 73, in respect of the year ending 31 December 2013, showing a figure for communal cleaning of £1150, and a figure for management fees of £1330. Mr Crown said that although a service charge account for the year ending 31 December 2013 had not yet been prepared, a service charge account for the year ended 31 December 2012 had been prepared. He showed it to Mr Karimi, who confirmed that :
- a. he had already seen it
 - b. the actual figures for cleaning and management fees shown in the accounts for that year were £1260 and £1323, respectively
 - c. however, he thought that a reasonable charge for the small amount of cleaning actually carried out on the 3 or 4 occasions the cleaners had attended the property would have been no more than £25 a visit; if they had done a proper job they would have cleaned cobwebs; he had shown Mr Hogg dead bugs on the communal window sill, and had shown him the same dead bugs some 2 months later
 - d. a reasonable charge for the limited amount of management carried out would be about £50 to £100 a flat, particularly as the agents charged separately for certain management works, as shown on the budget sheet at page 73, such as accountancy (£475) and “annual return/Companies House/ Company Secretary Duties” (£75)
17. The Tribunal asked whether a short adjournment of the hearing would be helpful to enable the parties to discuss the case generally, and the parties agreed. However, following the resumption of the hearing the parties indicated that they had been unable to reach any agreement
18. The parties’ respective cases about the issues before the Tribunal, and the Tribunal’s decision in each respect, were as follows

Cleaning costs

19. Mr Karimi said that the cleaners had visited no more than 4 to 5 times a year, for no more than 2 hours on any one visit. A reasonable hourly rate would be £10. If they charged £20 a visit the total cost would amount to no more than £100. Even if they charged £40 a visit, the total charge would still amount to no more than £200
20. Mr Crown said that the cost of cleaning the common parts could be included in the service charge by virtue of lease clauses 2(vi) and 3(2)(ii)
21. He produced copies of a cleaning specification for the building entitled “cleaning schedule”, referring to cleaning once a week at £18 plus VAT a week, and window cleaning at a cost of £42.50 plus VAT a month. He also produced a bundle of invoices from Pro-Clean Services Limited, showing fortnightly (not weekly) cleaning and calendar-monthly window cleaning from 2 December 2011 to 31 May 2013

22. The Tribunal gave Mr Karimi time to look at these documents, following which he very fairly said that he had no objection to them being admitted in evidence. He also said that the monthly window cleaning charges shown in the invoices were not in issue before the Tribunal, and that the only issue before the Tribunal was the alleged fortnightly cleaning charges
23. Mr Crown said that the invoices showed that communal parts had been cleaned fortnightly during the period in issue before the Tribunal at a cost of £18 plus VAT a visit, namely £21.60, so that the total cost during the year was 26 visits x £21.60 a visit = £561.60
24. Mr Hogg, in his witness statement at page 85 and at the hearing, said that he had had no complaints from any other resident at the building about the standard of cleaning, except from the Respondent. The cleaning company was known to him and they cleaned some other properties for Castleford. The Respondent had complained about cobwebs being missed, but had submitted only one photograph in that respect. The building had high ceilings and it was possible that cobwebs could sometimes be missed. However, this was not evidence that the cleaning was of a poor or even unreasonable standard. Mr Hogg had raised the issue with the cleaners, who had assured him that remedial action would be taken and that further attention would be paid to cobwebs at the property. Mr Hogg attended the building 4 times a year and had not noticed any lack of cleaning. A call log had been introduced in April 2013, but there had been no complaints about the cleaning to date, despite the same cleaners being used throughout. Mr Karimi had written to Castleford about other matters during the period in issue before the Tribunal (pages 29, 30 and 32), but had not included any mention of any issue with the cleaning of the communal areas. The standard of cleaning on inspection today had been very good
25. In answer to questions from Mr Karimi and the Tribunal, Mr Hogg said that the cleaners brought with them all cleaning materials, equipment and water, although Mr Hogg agreed with Mr Karimi that there was a cold tap outside the building. He did not know what time of day the cleaners attended, but it was during the working week. Castleford had not chosen the cleaners originally; the same cleaners had been in situ since before Castleford took over in about 2007. Mr Hogg did not know when the cleaners had last cleaned before the inspection today. No one had actually checked that the cleaners had attended at the times stated in their invoices, but Mr Hogg had inspected periodically and there had been no complaints about the standard of cleaning. Mr Hogg agreed with Mr Karimi that only 2 leaseholders lived at the property, namely Mr Karimi and a 92-year old, but said that Mr Querol of Flat 4 inspected quite often, despite letting his flat. Pro-Clean cleaned the communal areas once a fortnight and the windows once a month, but invoiced for both at the same time, once a month. Pro-Clean did not clear the bin area; that was done by the gardeners. Mr Hogg did not remember Mr Karimi showing him bugs on a window sill

26. Mr Karimi said that he accepted that £21.60 (including VAT) a visit was a reasonable charge as such for the communal cleaning, but the issue before the Tribunal was whether the cleaners had attended as often as claimed and whether the cleaning had been carried out to a reasonable standard. His letters had not mentioned the problems with the communal cleaning because he had wanted to keep the letters “short and sweet”, as stated in his letter at page 30, but also because he had pointed out the problems to Mr Hogg personally during his attendances at the property
27. Mr Crown said that the Applicant’s case was that the cleaners had attended once a fortnight, as stated in their invoices, that no other resident had made any complaints about the standard of cleaning by these cleaners at this property or at any of the other properties at which Castleford used these cleaners, and that Castleford had been satisfied about the standard of cleaning when Castleford had periodically inspected the property
28. Mr Karimi said that there should be a cleaning log at the property which should be signed by the cleaners on each occasion and counter-signed by a resident, such as Mr Karimi

29. The Tribunal’s decision

30. The Tribunal finds that :

- a. the Tribunal has taken into account all Mr Karimi’s submissions, including that :
 - he lives full-time at the property, and saw the cleaners no more than 4 to 5 times a year
 - the standard of cleaning was poor, with bugs on window sills and cobwebs untouched
 - he had pointed out the problems to Mr Hogg during Mr Hogg’s inspections
- b. the Tribunal has also taken into account Mr Hogg’s concession that no one had checked that the cleaners had attended on each occasion stated in their invoices
- c. however, the Tribunal has also taken into account :
 - the statement by the cleaners in their invoices that they did indeed clean the communal areas once a fortnight
 - the fact, as the Tribunal finds, that there is no evidence before the Tribunal of any written complaint by Mr Karimi about the cleaning, despite written complaints by him about other issues
 - the fact that there is no evidence before the Tribunal about any other resident complaining about the cleaning
 - the fact that Mr Karimi has very fairly conceded that the figure charged of £21.60 a visit, including VAT, is a reasonable charge, as such
- d. having taken all the evidence, submissions and circumstances into account, the Tribunal accepts, on a balance of probabilities,

that the cleaners did indeed clean the communal areas once a fortnight, and that the figure charged of £21.60 a visit, including VAT, was a reasonable charge for the standard of work carried out

- e. the figure charged is payable by way of service charge

Management fees

31. The parties agreed that the budgeted figure for 2012 had been £1330, namely the same as for 2013 (page 73), but that the actual charge, shown in the accounts for 2012, had been £1323, which equated to £189 a flat (£157.50 plus VAT)
32. Mr Karimi said that Mr Hogg had said that he had inspected 4 times a year. It was not fair to charge £189 a flat for simply carrying out 4 inspections, particularly as, according to the budget at page 73, they were charging separately for other work, such as £475 for accountancy work and £75 for secretarial duties
33. Mr Hogg said that the £475 had been paid to a firm of accountants, not to Castleford, and the £75 had been paid to HGW Secretarial Limited, namely Harold G Walker, the local solicitors who carried out this work
34. Mr Crown said that the management fees could be included in the service charge by virtue of clause 2(vii) of the lease (page 43). The management work carried out included not only the 4 visits a year, but also the administration of the property, the administration of contracts, the administration of the reserve fund, the payment of invoices, the invoicing and collection of the service charge, the attendance at the AGM, and responding to, and dealing with, leaseholders' queries and issues. The management fee did not include arranging insurance, as that was carried out by the head lessor. The fee of £157.50 plus VAT a flat was a reasonable fee for the work carried out, and there was no evidence before the Tribunal of any alternative figure. Mr Karimi had suggested a figure of £50 to £100 a flat, but the management could not be carried out for such a low figure. The Applicant had chosen Castleford to carry out the management of the property, and Castleford's minimum fee for all new properties taken on was now £1500 plus VAT, and although for existing properties they usually increased their fee to reflect inflation each year, they had kept their fees for managing this property for 2012 and 2013 at the same figure without any increase

35. Mr Karimi said that he had no additional submissions

36. The Tribunal's decision

37. The Tribunal finds that
 - a. the Tribunal has taken into account all Mr Karimi's evidence and submissions, including that :
 - the figure charged of £157.50 plus VAT a flat was too high for the limited management work carried out, particularly as the

- managers visited the property only 4 times a year and as accountancy and secretarial fees were charged separately
 - a reasonable fee for the work carried out would be no more than £50 to £100
- b. however, the Tribunal accepts the evidence and submissions on behalf of the Applicant that :
 - the work carried out by Castleford involved considerably more than simply visiting the property 4 times a year
 - the accountancy and secretarial fees mentioned in the budget at page 73 were paid to accountants and HGW Secretarial Limited, not to Castleford
 - c. having considered all the evidence and submissions in the round, the Tribunal finds that the figure charged of £157.50 plus VAT a flat was a reasonable fee for the work carried out
 - d. the figure charged is payable by way of service charge

Appeals

38. A person wishing to appeal against this decision 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
39. 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
40. 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 admit the application for permission to appeal
41. 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 which the person is seeking

Dated 13 September 2013

.....
 Judge P R Boardman
 (Chairman)