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

Case Reference	: LON/OOBD/LSC/2013/0632
Property	: FLAT 2 15 THE BARONS TWICKENHAM MIDDLESEX TW1 2AP
Applicant	: MS MARIE SKRIVANEK and MR WAYNE HOBDEN
Representative	: No representative
Respondent	: QUEENSGATE CAPITAL LTD
Representative	: Messrs Marquis & Co, Managing agents
Type of Application	: Reasonableness of service charges and costs of these proceedings under Sections 27A and 20C of the Landlord and Tenant Act 1985 ("the Act")
Tribunal Member	: JUDGE T RABIN MR T JOHNSON MRS L WALTER
Date and venue of hearing	: 16 th December 2013 at 10 Alfred Place, London WC1E 7LR
Date of Decision	: 15 th February 2014

DECISION

THE PANEL'S DETERMINATION

- (a) The cleaning costs were waived by agreement
- (b) The sum of £12 for the Applicants share of drain clearance costs in service charges year 2012 is payable by the Applicants and is due if not paid
- (c) The sums of £92 for service charge year 2012 and £82 for service charge year 2013 for the Applicants share of gardening costs are payable by the Applicants and are due if not paid.
- (d) The sums of £174 for service charge year 2012 and £76 for service charge year 2013 are payable by the Respondent and are due if not paid
- (e) The Tribunal makes an order under Section 20C of the Act
- (f) The Tribunal fees will be split 50/50 between the parties

THE PROCEEDINGS

The application

1. The Tribunal was dealing an application by the Applicants who were seeking a determination pursuant to Section 27A of the Act as to whether the service charges for the service charge years 2011 to 2013 were reasonable and payable by the Applicants. The application relates to Flat 2 15 The Barons Twickenham TW1 2 AP ("the Flat"). The Applicants are the long leaseholders of the Flat and the Respondent is the freeholder of the property known as a tenant owned company where the shareholders are the long leaseholders and the Respondent is the freeholder of 15 The Barons aforesaid ("the Building"). The Applicants hold the Flat under the terms of a lease dated 9th December 1991.
2. The Applicant also seeks an order for the limitation of the Respondent's costs in these proceedings under Section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act").
3. The relevant legal provisions are set out in the Appendix to this decision.
4. In view of the nature of the claim it was determined that an inspection was not necessary.

The Hearing.

5. The hearing took place on 16th December 2013. The Applicants were both present and represented themselves and the Tribunal heard from both Applicants, Mr M Donaldson, the surveyor employed by the managing agents, Marquis & Co and Ms C La-Valle, the accounts manager.

6. The Tribunal identified the following issues as being in dispute. The management fee, professional fees, internal cleaning, landscape/car park maintenance and cleaning costs and reserve fund.

Evidence

7. The Tribunal dealt with each of the issues separately

Cleaning of the common parts

8. At the outset of the hearing Mr Donaldson stated that he accepted that the cleaning was below standard and waived the charges for cleaning at £70 per half year for service charge 2012 and £69 per half year for 2013. He also said that the original contractors had been dismissed and new cleaners appointed.

Drains

9. Although the Applicants did not feel that sufficient attention had been given to their complaints about water leaking, they accepted that the drains had been cleared at a cost of £96 including VAT and that their share of £12 for service charge year for 2012 was due and payable.

Gardening

10. The Applicants said that there was a communal garden to the right of the Building and alleged a lack of general gardening and had concerns about a large tree which they said was cracking the boundary wall. They also complained that leaves were rarely cleared and when they were, they were left at the front of the Building.
11. Mr Donaldson accepted that the gardening had not been done to a high standard. As a result, the original contractors have been dismissed. The trees were all the subject of a general tree preservation order but consent to remove one tree and lop others had been obtained and that work was going to start in January. Mr Donaldson offered a fifty per cent discount in the gardening charges and the Applicants accepted this. The gardening costs will therefore be £92 for 2012 and £82 for 2013.

General repairs

12. Mr Hobden complained that there repairs were never carried out on the section of the Building where access to Flats 1 & 2 was obtained. The owners of Flats 1 & 2 did not have access to that part of the Building where the remaining six flats were located. He also complained that the security light outside the front door of the entrance to Flats 1 & 2

and the hallway light serving those flats had not worked for some time. Mr Hobden, has made many complaints, all of which were ignored.

13. Mr Hobden accepted that in accordance with Clause 4(4) and the Fifth Schedule of the lease the Applicants are required to contribute towards all the costs of maintaining and repairing the Building. However, he had noticed a complete lack of services to the part of the Building where the Flat is located since the current managing agents took over about five years ago. He did not challenge that work had been done in accordance with the invoices produced or the reasonableness of the cost of this work.
14. Mr Donaldson said that the managing agents were reactive and had not undertaken any repairs to the common parts serving Flats 1 & 2, as none had been required, whereas there had been repairs needed to the other common parts. He had recently arranged for an electrician to fix the security light complained of. He said that the cyclical maintenance required under the lease was not done in accordance with the requirements of the lease, as there was a lack of leaseholders' funds.
15. The Tribunal noted that the Applicants were not challenging the amount of the costs but were complaining that no repairs had been done which would have benefitted Flats 1 & 2. The lease is a contractual document and the Applicants by signing it have agreed to its terms. Although no repair work has been undertaken to the section of the Building where the Flat is located, Mr Donaldson has stated that they would be undertaken had there been any need. He said he has now arranged for the security light to be repaired. It is, in the Tribunal's view, unfortunate that the Applicants have tried to speak to the managing agents and have had no result. The Tribunal finds that the sums of £174 for service charge year 2012 and £76 for service charge year 2013 are payable by the Respondent and are due if not paid

Management fee

16. Mr Donaldson said the management fee was £262.50 per flat per annum during the whole of the disputed period. Asked to explain why the managing agents fees had increased by 35% between 2012 and 2013, Mr Donaldson explained there was an undercharge in 2012, which was corrected in 2013. Ms La Valle failed to explain satisfactorily the accounting process but there were audited accounts in the bundle.
17. The Tribunal prefers to consider audited accounts and these showed that for 2012 the management fee was £1,636 including VAT coming to £204.50 per flat. For 2013 the management was £2,478.80 including VAT coming to £309.85 per unit. This makes an average of £257.17. The Tribunal noted that none of these figures tallied with the figures given by Mr Donaldson.

18. It is clear that the Building has been poorly managed. The cleaners and gardeners have been replaced, as has the Marquis & Co employee responsible for the Building. The Tribunal has also heard from Mr Hobden that his e-mails and telephone calls complaining about the service had gone unanswered.
19. Ms Skribanek suggested that the management fee should be reduced by 75%. Mr Donaldson accepted that there were failings but that a 20% deduction would be more than adequate.
20. In the Tribunal's view the fee charged would be reasonable for a good management service but this has not been offered. Using its own knowledge and experience the Tribunal considers that a reduction of 50% would be appropriate to reflect the level of management. The sums payable by the Applicants for service charge year 2012 would be £102.25 and that for service charge year 2013 would be £154.92. These sums are due if not paid.
21. Apart from the obvious deficiencies in management apparent from the evidence, the Tribunal could not understand why there was no reserve fund to allow for the cyclical redecoration. This was surprising as the lease allows for a reserve fund to be collected under Clause 5 (5) (f). Mr Donaldson assured the Tribunal that matters would improve and that he would personally supervise the management in the future.

Conclusion

22. The Tribunal noted that the Building was a small property comprising only six flats and the management should be smooth. However, it appears that an employee was allowed to offer a less than satisfactory service for some time before his employment was terminated. Mr Hobden said in evidence that the Applicants felt that they had no alternative but to bring the matter before the Tribunal in order to have their complaints heard.
23. Mr Donaldson has assured the Tribunal and the Applicants that he will supervise the running of the Building from now onwards. It is hoped that this will be the case and that the management will proceed smoothly and that the Applicants will be able to have a proper response to issues raised without feeling that had no alternative but to bring the matter to the Tribunal

SECTION 20C OF THE 1985 ACT and REFUND OF FEES

24. The Applicant made an application under Section 20C of the 1985 Act requesting that the costs of these proceedings should not be considered relevant costs for the purpose of calculating the service charge.

25. Mr Donaldson said that he would not be charging the costs of these proceedings to the service charges. However, in the light of the Tribunal's findings the Tribunal considers it appropriate to make such an order. Accordingly the Tribunal makes an order under Section 20C of the 1985 Act.
26. Fees should be shared 50/50 as suggested by the Applicants. The Respondent should therefore refund half the fee paid by the Applicants and this sum is due.
27. No order for costs will be made.

Tamara Rabin

Judge of the First Tier Tribunal

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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).