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

Case reference : **LON/00/LSC/2015/0096**

Property : **Flat 39, King Arthur Close, Clifton
Way, London, SE15 2LP**

Applicant : **Mr D Brown**

Representative : **In person**

Respondent : **London Borough of Southwark**

Representative : **Home Ownership Services**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal members : **Judge Mohabir
Mr K Cartwright FRICS
Ms J Dalal**

**Date and venue of
determination** : **27 April 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **27 April 2015**

DECISION

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of his liability the reasonableness of actual fuel/gas charges in the sum of £768.91 demanded by the Respondent as part of the Applicant’s overall service charge liability for the year 2013/14.
2. The Applicant’s overall service charge liability for the year 2013/14 is £1,092.96. Of this amount, the proportion attributable to fuel/gas is £786.91. In contrast, his actual liability for fuel/gas in the preceding service charge years was ££367.66.
3. In his application, the Applicant simply puts the Respondent to proof as to why his service charge liability for the year in question has increased by such a margin.
4. The Tribunal issued Direction on 4 March 2015. Although the Applicant has filed a bundle of documents, he has not provided a statement setting out his reason for objecting to the disputed service charges. The Respondent’s statement of case is dated 24 March 2015 and is supported by relevant documents.
5. The Applicant is the leaseholder of the subject property pursuant to a lease granted to him dated 28 January 2002 (“the lease”). The Applicant does not deny his contractual liability to pay the disputed service charges. The only issue is the reasonableness of the disputed fuel/gas charges. For this reason it is not necessary to set out the lease terms that give rise to the Applicant’s contractual liability to pay the service charges. In any event, these are set out already at paragraphs 6 to 12 of the Respondent’s statement of case.

Relevant Law

6. This is set out in the Appendix annexed hereto.

Decision

7. Pursuant to the Tribunal’s Directions, the Tribunal’s determination took place on 27 April 2015 and was based solely on the statement of case and documentary evidence before it. There was no oral hearing.
8. The reason given by the Respondent for the increase in the fuel/gas charges for the year 2013/14 was as a result of invoicing delays by its gas supplier, “TBROWN”. As a result, in the 2012/13 year the Respondent did not receive all of the gas invoices for that year.

9. Therefore, the Respondent made an accrual for the sum of £225,000 for the missing gas invoices. It later transpired that the true cost of gas in the 2012/13 year was greater than the accrual provision. When the Respondent received the missing invoices, the shortfall was demanded in the 2013/14 service charge year. This resulted in a higher charge for this year than in previous years.

10. Having carefully considered the documentary evidence provided by the Respondent and the Applicant's lease, the Tribunal made the following findings:
 - (a) that the gas supply was to enable the Respondent to provide central heating and hot water as part of the "services" defined by the lease.
 - (b) that clause 4(2) of the lease obliges the Respondent to provide the defined services to the lessee.
 - (c) that the cost of providing the services is recoverable as service charge expenditure under paragraph 7(2) of the Third Schedule of the lease.
 - (d) that under paragraph 5(1) of the Third Schedule the Respondent is entitled to recover the shortfall for the gas expenditure for the preceding year in the 2013/14 service charge year.
 - (e) that under paragraph 6(1) of the Third Schedule the Respondent is entitled to include in the 2013/14 year the actual cost of providing gas to the subject property in the preceding year.
 - (f) Therefore, that the gas/fuel costs demanded by the Respondent in the 2013/14 year are reasonable.

Fees

11. No application was made the Applicant under section 20C of the Act in relation to the Respondent's costs.

12. As to the Applicant's fees paid to the Tribunal, it does not make any order requiring these to be refunded by the Respondent because he has not succeeded in this application and, therefore, it would not be just or equitable to make such an order.

Name: Judge I Mohabir

Date: 27 April 2015

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.

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.