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

Case Reference : CHI/18UE/LIS/2015/0021

Property : 7 Barton Road, Whidden Valley,
Barnstaple EX32 8NG

Applicant : Sarum Properties Limited

Representative : Remus Management Limited

Respondent : Mr John and Mrs Mary Cairns

Representative :

Type of Application : Liability to pay service charges and/or
administration charges

Tribunal Member : Mr D Banfield FRICS

Date and venue of hearing : By written representations on 9 February
2016

Date of Decision : 9 February 2016

DECISION

The Tribunal determines that the sums listed in paragraph 1 of this decision are payable in full.

Background

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable for the years 2007 to 2015 as set out below;

2007

Asbestos inspection	£15.67
Out of hours cover	£6.11
Managing agents fees	£152.76
Accountancy fee	£19.16
Health & Safety	£31.33
Professional fees	£109.66

2008

General repairs	£42.50
Out of hours cover	£6.04
Managing agents fees	£164.50
Accountancy fee	£18.76
Professional fees	£44.42

2009

General repairs	£33.97
Health & Safety	£37.38
Building Works	£618.65
Managing agents fees	£166.75
Accountancy fee	£19.16
Surveyors/Professional fees	£146.56

Building insurance 2009/10 £113.62

2010

Out of hours cover	£9.99
Building Works	£40.22
Managing agents fees	£176.25
Accountancy fee	£19.57
Surveyors/Professional fees	£187.56

Building insurance 2010/11 £101.06

2011

General repairs	£22.95
Out of hours cover	£12.00
Health & Safety	£25.20
Managing agents fees	£191.00
Accountancy fee	£19.57
Bank Charges	£2.00
Surveyors/Professional fees	£31.20
Building insurance 2011/12	£107.61

2012

General repairs	£21.25
Out of hours cover	£12.00
Insurance Excess	£62.50
Health & Safety	£25.20
Managing agents fees	£198.00
Accountancy fee	£19.57
Bank Charges	£2.00
Surveyors/Professional fees	£39.90

Building insurance 2012/13 £118.28

2013

General repairs	£47.86
Out of hours cover	£14.40
Managing agents fees	£204.00
Accountancy fee	£19.57
Bank Charges	£2.00
Surveyors/Professional fees	£2.40

2014

General repairs	£22.12
Out of hours cover	£14.40
Asbestos Inspection	£44.70
Managing agents fees	£210.00
Accountancy fee	£19.57
Bank Charges	£2.00
Building reinstatement valuation	£55.50
Professional fees	£10.50
Section 20 consultation fee	£18.00

Building insurance 2014/15 £154.90

Building insurance 2015/16 £130.36

2. A telephone case management hearing was held on 17 September 2015 with participation from Mr Jason Hall of Remus Management following which Directions were made indicating that unless an objection was received within 28 days the matter would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013. Directions were also made as to the exchange of documents between the parties.
3. Following a request from the Applicant further directions were made on 24 November 2015 permitting inclusion of building insurance charges for 2009/10 to 2015/16 inclusive except for 2013/14 where the charge has been met.
4. In response to the apparent failure of the Respondents to comply with paragraph 5 of the Directions dated 17 September 2015 the Respondents were required to comply with paragraph 5 by 22

December 2015 failing which the Tribunal would consider barring them from taking further part in the proceedings. The Respondents have failed to participate in any way in the proceedings.

5. No objection has been received to determining the matter on the papers.
6. On 20 July 2011 the Applicant issued a claim in the Barnstaple County Court (1BP00463) in respect of the Respondents' failure to pay service charges. It is understood that on the day of the hearing the Respondents raised a number of matters relating to the repairing obligations of the freeholder. The Judge adjourned the case and requested that the parties met to resolve the issues. The claim was withdrawn by the Applicants and dismissed without order for costs on 1 December 2011. A meeting took place between the parties on 8 August 2013 but no further contact has been made. The Tribunal is therefore satisfied that no part of the dispute before it has been subject to a previous determination.

The Lease

7. The following sections of the lease are relevant to the matters in dispute;
 - 1.....by way of further or additional rent from time to time a sum or sums of money equal to One quarter of the amount which the Lessor may from time to time expend in effecting or maintaining the insurance of the Unit.....
 2. (c) To contribute and pay one equal quarter part of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto

Fourth Schedule

1. The cost The expenses of maintaining repairing redecorating and renewing;
 - (a)The main structure.....
 - (b)The gas and water pipes.....
 - (c)The main entrances passages landings and staircases.....
2. The boundary walls and fences.....of cleaning and lighting the passages
3. The cost of decorating the exterior.....
- 4.....
5. All other proper and reasonable expenses (if any) incurred by the Lessor in and about the maintenance and proper and convenient management and running of the unit
6. The proper and reasonable fees and disbursements paid to any managing agents appointed by the Lessor in respect of the Unit.....

- 7.....
- 8.....

Evidence

8. Included in the bundle prepared by the Applicants are copies of the service charge account for each of the years in dispute (pages 99-159), the insurance certificate for 2015/16 (pages 96-98) the building reinstatement valuation (pages 186-195), the asbestos reports for 2006 and 2014 (pages 196-216), Risk assessment pages 217-241), survey reports for 2006 and 2014 (pages 242-275), Section 20 notices (pages 276-301) together with invoices for works carried out in 2009 and miscellaneous correspondence.

9.

Statutory Framework

The statutory provisions are found in sections 18, 19, 20 and 27A (1) (3) of the Act:

18 Meaning of “service charge” and “relevant costs”.

(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.

19 Limitation of service charges: reasonableness.

(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 provision 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.

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on

carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

Decision

10. The Respondents have played no part in these proceedings and accordingly have raised neither specific nor general challenges for the Applicant to meet. The Tribunal has therefore considered the information of expenditure supplied to it and considered whether the lease permits recovery by way of service charge.
11. The Tribunal is satisfied that the sums claimed are in accordance with the Lessor's obligations set out in the Fourth Schedule and as such are recoverable under Clause 2(c). Likewise the costs of insurance are recoverable under Clause 1. The Tribunal has no reason to doubt that these sums are properly payable by the Lessee.
12. The Tribunal therefore determines that the sums listed in paragraph 1 of this decision are payable in full.

D Banfield FRICS

9 February 2016

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