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

Case reference : **LON/00AE/LSC/2017/0450**

Property : **48B Palermo Road, London NW10
5YP**

Applicant : **Rajesh Tankaria**

Representative :

Respondent : **Genesis Housing Group Limited**

Representative :

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

Tribunal members : **Tribunal Judge Dutton**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **27th February 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (3) The Tribunal dismisses the application for costs made by Mr Tankaria under Rule 13 (see below)

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by him in respect of the service charge years 2016-17 and 2017-18.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property, which is the subject of this application, is a two bedroomed first floor flat in a converted house of two flats. The other flat is at ground floor level and is owned by the Respondent and let.
4. There have been proceedings between the parties. One such action culminated in a decision in case LON/OOAE/LSC/2011/0512 dated 28th October 2011 and another had been commenced under reference LON/OOAE/LSC/2016/0038 but appears to have been compromised. I have been able to acquire a copy of the application for this later case which shows challenges up to and including January 2016. I believe the application to have been withdrawn.
5. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
6. It has been agreed that this application should proceed as a paper determination and came before me on 27th February 2018 for that purpose.

The issues

- (i) The application continues with the thread of the previous case in 2016, namely that the Respondent has failed to comply with section 21B of the Landlord and Tenant Act 1985 (the Act) by not providing the statutory wording required to accompany demands.
 - (ii) In addition it is alleged that the Respondent has fallen foul of the provisions of s20B of the Act in that as no valid demand was served within 18 months of costs being incurred they are irrecoverable. This appears to relate to the year 2016-17.
7. I have before me a statement of case in response to the Application prepared by Genesis, a witness statement of Marcelle Douglas, the lease, a notice of variation of the interim service charges for 2016 and 2017 and a final account for the year ending March 2017. In addition I was provided with invoices said to support the final figures for the year ending March 2017 and a statement of account showing arrears standing at £1,360.82.
 8. Mr Tankaria had provided the Tribunal with a statement replying to the Respondent's response and a witness statement in support. Mr Tankaria also seeks costs under the provisions of rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (The Rules).
 9. I have read carefully the documents before me and taken them into account when reaching my decision.

2016-17

10. The terms of the lease for Mr Tankaria flat at Chapter 3.1 requires that the Rent and Service charges are paid by equal monthly payments in advance on the first day of each month. For the year commencing 1st April 2016 this is set at £44.68, there being a right to vary the monthly amounts under the provisions of Chapter 7 of the lease. Such Notice of variation was sent to Mr Tankaria on 11th February 2016. The Notice refers to a more detailed summary of the costs, which I take to be the estimated costs showing a total of £536.15. The Notice also refers to a booklet, which was not supplied, which is said to explain the tenant's rights.
11. A service charge annual statement for the year ending March 2017 has been supplied. This shows actual service charge costs due from Mr Tankaria of £356.28. It refers to the annual estimated charges at 1st April 2016 of £341.64. The figures are not compatible with the letter sent on 11th February 2016. It is said however that there is a deficit of £14.64, which is demanded of Mr Tankaria by a letter of 19th September 2017 and

which he accepts. It seems to me therefore that the actual sum that would be payable, subject to the arguments on recoverability should be £356.28, some £179.87 less than the demanded payments on account.

DECISION

12. It is necessary to consider the impact of sections 21B and 20B on the recoverability of service charges. The wording is set out below. I make the following findings. Section 19(2) deals with the question of payments on account. The lease allows the Landlord to recover payments on a monthly basis on account of costs for the year to come. In this case Chapter 7 allows the Landlord to give notice of variation setting out what sum it is felt reasonable to demand on a monthly basis. At the end of each year a certificate is produced and, as provided for in s19(2) adjustments will be made by "*repayment, reduction or subsequent charges or otherwise*". I do not consider that s20B has any bearing on these payments on account under s19(2). The provisions of s20B will only come into play if the Landlord spends more than he has demanded on account, which, on the papers before me, is not the case for 2016-17.
13. The impact of s21B needs to be considered. I am unclear whether the booklet said to accompany the demand made in February 2016 contained the statutory wording. If it did then the section has been complied with. There is just the one demand setting out the monthly payments. The statutory wording need only accompany this demand, it is not required for each monthly payment on account. If it did not the Landlord will have to serve the statutory wording to be compliant. I do not consider that Mr Tankaria will be prejudiced as he clearly is aware of his rights. He has also accepted that the balancing charge of £14.64 is apparently due. I do not consider that the letter sent on 11th February 2016 is rendered nugatory. It is a request for payment under the terms of the lease and is not avoidable just because the statutory wording may have been omitted. S21B allows the tenant to withhold payment until the section has been complied with. When it has been the tenant is liable.
14. **Accordingly my decision is that the Applicant is required to pay to the Respondent the sum of £356.28 upon the statutory wording being served upon him. This would include the sum of £14.64. I do notice from the statement of account that it would appear that a cheque was tendered in October 2016 for £312.76, but appears to have been returned. I have no further information on this. Payment by cheque which is subsequently countermanded would not assist Mr Tankaria, but I say no more on that subject.**

2017 -18

15. For this year a letter has been sent to Mr Tankaria dated 13th February 2017 seeking monthly payments under Chapter 3 of £48.15. This appears

to be based on an accompanying estimate showing the total estimated at £582.13. If I have understood Mr Tankaria's case he appears to be saying that the payments are not due as no statutory wording accompanied the demand made on 13th February 2017. Again, as with the letter sent by Genesis on 11th February 2016 it refers to the summary and the booklet, which again has not been supplied to me. There would not appear to be any issue under s20B.

16. If the Landlord has not served the statutory wording with the letter of 13th February 2017 it should now do so and the sums due each month will be payable. I do not consider that a demand need be sent each month nor therefore that statutory wording need be sent for each payment on account.
17. **Accordingly my decision for this year is that the Applicant is required to make the payments on account as provided for under the lease and s19(2) of the Act. At the time of the Application, 16th November 2017, it would appear that he was behind by 8 payments of £48.15, being £240.75. That I find is the amount payable, although given my findings he should make the further payment to the end of March 2018, which could be collected when the final account is produced if he does not make the payment before.**
18. I make no order under s20C as I think it would be inequitable to prevent the Respondent from seeking recovery of the costs of these proceedings as a service charge, assuming they are so entitled under the lease.
19. Given the findings I have made I dismiss Mr Tankaria's application under Rule 13 for costs as I do not consider that the Respondent has acted unreasonably.

Andrew Dutton

Name: Tribunal Judge Dutton **Date:** 27th February 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

21B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.