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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/29UC/LSC/2013/0050**
Property	:	**Dolphin Court, 110 Central Parade, Herne Bay, Kent CT6 5JP**
Applicant	:	**Mrs K. Hennelly** **Mr. B & Mrs D Meade** **Mr G Faulkner** **Mrs P Roberts** **Mr K & Mrs L Croucher** **Mr S & Mrs S Fletcher**
Representative	:	**Mrs K Hennelly** **Mrs P Roberts**
Respondent	:	**Ideal Investments Limited**
Representative	:	**Mr J Sunderland of Fell Reynolds** **Mr A West of Harvey Richards & West**
Type of Application Act 1985	:	**Sections 27A and 19 of the Landlord and Tenant**
Tribunal Members	:	**Judge D. R. Whitney** **Mr R Athow FRICS MIRPM** **Ms L Farrier**
Date and venue of Hearing	:	**24th September 2013** **The Marine Hotel, Whitstable, Kent**
Date of Decision	:	**2nd October 2013**

DECISION

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1. This application is made by six of the long residential leaseholders at Dolphin Court, 110 Central Parade, Herne Bay, Kent ("the Property") to determine the payability and reasonableness of service charges for the years 2012 and 2013. The Respondent is the freeholder and was represented by Mr Sunderland of their current managing agents Fell Reynolds assisted by Mr West of Harvey Richards and West, the managing agents until on or about 13th February 2013.
2. The Tribunal had previously heard two earlier applications relating to previous years service charges. The references for these cases are: CHI/29UC/LSC/2010/0099 and CHI/29UC/LSC/2012/0162.

INSPECTION

3. On the morning of the hearing the Tribunal inspected the property together with Mr Sunderland and Mrs Hennelly. Mrs Roberts also showed the Tribunal the inside of her flat, being flat 3 of the Property.
4. The Property is a late Victorian building which it is believed was previously a hotel until it was converted into 11 residential flats and a gym area in the basement. The Property consists of 4 stories and a basement with gardens to the front overlooking the seafront and a paved patio area to the rear.
5. Externally the building appears to be in need of redecoration. The Tribunals attention was drawn to various items of disrepair including a defective down pipe to the side elevation and at the rear of the property at the basement level defective rendering and problems relating to damp.
6. Internally the communal areas were carpeted and generally not in poor order save that redecoration appeared to be required. In the basement is an area known as the gym. There were 4 items of gym equipment, storage units and items the Tribunal were told belonged to various leaseholders. The Tribunal noted that there was a distinctive damp smell in the air of the basement.
7. Mrs Roberts showed the Tribunal (and Mr Sunderland) the interior of her flat. Of particular concern for her was damage being caused by water penetration from what she believed was defective guttering.

THE LAW

8. The relevant law can be found in sections 27A and 19 of the Landlord and Tenant Act 1985:

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.

(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 of an application under subsection (1) or (3).

(7)The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter

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.

THE LEASES

9. The building comprises of 11 residential flats all let on long leases. A lease had been granted to a company for the basement areas known as the gym. The Applicants produced land registry entries which showed that as a result of the company holding the lease having been dissolved the Treasury Solicitor had issued a notice disclaiming the lease and which was registered at the land registry on 6th May 2009.
10. The Tribunal had before it a lease for flat 5 at the Property dated 13th December 2006 and a lease for Flat 4 at the Property dated 23rd August 2009. The lease terms as to service charges were similar in both leases and the Tribunal was advised that the terms relating to service charges were similar in all of the residential leases.

THE HEARING

11. At the commencement of the hearing Mr Sunderland helpfully conceded that the demands for the balancing service charges for the year 2012 and the payment on account for the year 2013 had not been demanded properly, in that they did not contain the name and address of the freeholder of the Property. It was conceded by the Respondents that these sums were not currently properly payable by the Applicants. The Respondents produced land registry entries showing that the freeholder was the named Respondent.
12. It was agreed that the document entitled "Certificate of Service Charge Expenditure" at page 3 of the Respondents bundle set out the sums being claimed for the service charge year ending 31st December 2012. The budget being relied upon was that prepared by Fell Reynolds and to be found in the Applicants bundle at page 37. It

appears Harvey West & Richards may have issued an earlier budget but this was not the one being relied upon.

SERVICE CHARGE YEAR 2012

13. The Applicants conceded that the following charges were reasonable:

WINDOW CLEANING £360

WATER £28.40

14. Accountancy: Mr West explained this charge was for D M Bookkeeping Limited. He explained that he believed it had been agreed by the leaseholders at a meeting that he could use a book keeper rather than a qualified accountant which was required under the lease. No minutes of this meeting were provided.
15. Mrs Hennelly for the Applicants disputed that this was agreed and objected to the charge on the basis that the lease required a qualified accountant to certify the accounts.
16. The Tribunal determines that no part of the £150 charge is reasonable. The lease requires a qualified accountant to be employed and on Mr Wests own evidence D M Bookkeeping Limited are not such.
17. Bank charges: Mr West states that these were the charges made for running the account. Given the small amounts and small number of transactions a relatively high monthly charge was made. Mr Sunderland did indicate that Fell Reynolds operate a client account and so no individual charges would be applied.
18. Mrs Hennelly felt the charges were unreasonable in her experience of running a commercial bank account and the most that should be charged would be the per item fees.
19. The Tribunal determines that in its judgment these expenses are such that should be borne by the managing agent as part of its fee.
20. Cleaning: Mrs Hennelly did not object to the amount claimed as to the amount per visit and numbers of visits. Simply that in the Applicants submission the cleaning had not been undertaken to a reasonable standard and even though complaints had been made to the managing agent this had not improved. The Applicants were also concerned that the cleaners were also cleaning the gym area. Mrs Hennelly accepted that there was a heavy flow of traffic through the communal areas but in her opinion half the fee only should be paid.
21. Mr West suggested that whilst complaints had been made this had been raised with the cleaners. As to the gym this was a modest area and in any event in his

submission the leaseholders were responsible for paying the costs of cleaning this area under their leases. In Mr Wests opinion the standard of cleaning was good.

22. The Tribunal determines that the sum of £1080 is payable. The Tribunal had regard to the frequency of visits and the amount of the charge and felt that these were not unreasonable for the nature of the property and it was accepted cleaners had attended and undertaken cleaning works.
23. Communal Electric: Mrs Hennelly was content to accept and concede the amount of £613.79 provided it was made clear that this included all electricity up to and including the bill from edf energy dated 7th December 2012. The Tribunal noted this and records this fact in this decision in determining that this amount is reasonable.
24. Fire Alarm: Mrs Hennelly was content to pay the cost of the Fireguard invoices but took issue over the invoices from E J A Property maintenance Limited for testing the alarm given the person who undertook the tests appeared to have no qualifications.
25. The Respondents stated that it was good practice to have the fire alarms tested and Mr West said that the advice from Kent fire Service was that this should happen approximately every 4 to 6 weeks. There is no special qualification required and EJA Property Maintenance were a small local concern used by Mr West for small jobs such as this.
26. The Tribunal determines that the sum of £448.40 is reasonable. The Tribunal determines that it is reasonable to pay a modest charge for an odd-job man to test the alarms from time to time.
27. Gardening: Mrs Hennelly on behalf of the Applicants contended that much of this charge amounted to duplication as the cleaners were meant to sweep externally.
28. The Respondents contend that the garden work including spraying to kill weeds which was extra and beyond what the cleaners would do.
29. The Tribunal determines that the sum of £342 is payable. The Tribunal finds that there is not duplication and having inspected it is reasonable from time to time to pay to treat weeds and the like and this goes beyond what the cleaners would be expected to undertake.
30. Management fee: Both Mr West and Mr Sunderland confirmed that they were appointed under a standard form RICS management contract. None of the contracts or letters of appointment were in the bundles or present at the hearing despite the Tribunal having directed that such should be provided. Mr West explained that the fee charged for 2012 for his firm amounted to £150 inclusive of VAT per residential flat. In his opinion his firm had tried their best to manage the building and had dealt with large volumes of correspondence from the Applicants. Mr West said they had held various meetings to try and obtain agreement as to the

way forward. The Respondents in their bundle included an invoice for 2013 (and credit note after Harvey Richards & West ceased to manage) but no invoice for 2012.

31. Mrs Hennelly felt nothing was due. In her opinion whilst she accepted there had been meetings the agents had wholly failed in their obligations to manage the building.
32. The Tribunal determines that £550 inclusive of VAT is reasonable. It is clear that there were various failings in what clearly is a building with a troubled history but the agents had arranged for limited works such as cleaning and gardening to be undertaken.
33. Repairs and maintenance: Mrs Hennelly stated that she felt certain invoices from EJA Property Maintenance amounted to a duplication of other visits they had made. As to certain repairs she felt that the freeholder should have attended to these some years before when first raised. Also an asbestos survey was undertaken and in her submission one should already have been in place.
34. Mr West explained that if EJA Property Maintenance found issues they attended to them and an additional charge was raised, the amounts were modest. As to the repairs to the downpipe these were an attempt to repair matters brought to his attention. In respect of the asbestos survey when he took over management there was not one and he was not provided with one by the freeholder so put this in place. In his opinion this is a requirement and so was reasonable to undertake.
35. The Tribunal determines that £1292 is a reasonable amount for repairs and maintenance. The amounts claimed are relatively modest and it is clear some works have been undertaken. It is reasonable, and prudent, to put in place an asbestos survey where this does not exist and the cost is modest.
36. Buildings Insurance: Mr West explained that this was the cost for a policy between 5th October 2012 and 1st January 2013 as his firm were looking to standardize the start date of all insurance policies on blocks they manage. No invoice was included in the Respondents bundle. Mr West stated that his firm arranged the insurance with a broker not linked to themselves or the freeholder and no commissions were paid.
37. Mrs Hennelly pointed out all these changes of insurer where not to the leaseholders advantage and as a result of the Respondents failure to provide insurance details they had not been able to obtain alternative quotes.
38. The Tribunal determines nothing is payable for insurance. The Respondents were specifically directed to provide full and comprehensive information as to the insurance and had failed to do so. Without such the Tribunal has no evidence as to the policy or the sum claimed and disallows the whole of the sum sought.

39. Section 20 Survey Fee: the Respondents had not included the invoice for this within their bundle. A copy was within the Applicants bundle but no copy of the report was available to the Tribunal within the bundles or at the hearing. The Respondents explained this was for a survey to prepare a specification for major works required to the property.
40. Mrs Hennelly pointed out the Applicants had not had sight of the same even though they had requested a copy, and felt this may simply duplicate earlier reports.
41. The Tribunal determines this cost is not recoverable. No evidence has been adduced by the Respondents as to this expenditure. The Tribunal have not seen the report and therefore do not know what it covers and under the directions this should have been included in the respondents bundle if they sought to rely upon the same and recover this cost.

BUDGETED SERVICE CHARGE 2013

42. Mr Sunderland for the Respondents explained he had prepared the budget on the basis of the figures he had available. The main items followed on from the previous year save for insurance he had taken account of the costs of the insurance his firm had put in place under their block policy. The most significant item (£70,000) was for major works. This was based upon a costing within the Section 20 Survey which was not before the Tribunal. Mr Sunderland also explained that Fell Reynolds had now resigned and their management would cease in about one month from the Tribunal.
43. Mrs Hennelly indicated that there was an RTM company which was due to take over management in or about December although no papers were before the Tribunal. In her opinion the costs were high for the work which had actually been undertaken to date in 2013.
44. The Tribunal determines that the sum of £6283.10 is a reasonable budget figure for the year 2012. The Tribunal finds that the figures estimated by Fell Reynolds for the reoccurring items are reasonable. The Tribunal does not allow anything for the costs of the major works, since whilst all parties agree these are required, no progress has been made and the Tribunal takes account of the fact Fell Reynolds have now resigned and an RTM Company may be taking over the management of the building and so this is best left to them.

SECTION 20C APPLICATION

45. The Applicants had made application under section 20C for an Order that the costs of this application may not be added to the service charge and that the fees paid be reimbursed. The Tribunal was advised that Mrs Hennelly had paid fees totaling £240.
46. Mrs Hennelly submitted that the Applicants had no choice but to make the application as their requests for information seemed to go unanswered or they were passed between Fell Reynolds and Harvey Richards & West for answers which were not forthcoming. Even now, after specific directions were issued by the Tribunal, not all the information including information requestion in the Directions had been supplied by the Respondents.
47. Mr Sunderland explained that Fell Reynolds had taken over shortly after the previous Tribunal hearing. They had tried to get information and to provide answers in so far as they were able and had put in a lot of effort to dealing with the current application.
48. The Tribunal makes an order under section 20 C that none of the costs incurred by the Respondent, Ideal Investments Limited, may be recovered as a service charge expense and that the Respondent do within 14 days of this decision reimburse Mrs Hennelly with the fees paid of £240.

APPLICATION UNDER PARAGRAPH 10 OF SCHEDULE 12 OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

49. Mrs Hennelly seeks to make an application that the Respondents do be ordered to pay costs under the above provision. Mrs Hennelly submits that the Respondents have acted frivolously, obstructively or otherwise unreasonably in connection with these proceedings. The application was included within the Appicants statement of case including the amount she was seeking. In particular the Applicants rely upon the fact that the Respondents have failed to comply with the Directions made at an oral pre-trial review on 12th June 2013 at which their representative attended and had the directions explained. In particular she relies on their failure to comply with direction 2 whereby the Respondents were to explain in detail all sums claimed, provide full details of insurance on the Property and an explanation as to the reserve funds. In her submission they have failed to comply leaving the Applicants in the dark and having to make their own enquiries to obtain information.
50. Mrs Hennelly advised that she was seeking the maximum amount allowed to the Tribunal of £500. She advised that she felt she had spent 750 hours on this application. The Applicants had purchased a lease of the gym at a cost of £23 because this was not provided by the Respondents and £37 using an online provider

to obtain land registry details of the freehold, postage had been £73 and about £100 in printing expenses. Mrs Hennelly was a landlord by way of occupation.

51. Mr Sunderland for the Respondents stated that he had tried to comply with the directions as best he could. He thought he had provided the information required although he conceded that he other documents such as the survey report should have been included in his bundle. His firm had been appointed shortly after the last hearing and found themselves almost immediately involved in these proceedings but he believed they had acted to the best of their ability.
52. The Tribunal makes an order under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 that the Respondents pay to Mrs Hennelly the sum of £500 within 14 days of this decision.
53. The Tribunal makes such an order as it is satisfied that the Respondents have acted unreasonably. The Tribunal accept that Fell Reynolds had only been recently appointed but they had accepted the appointment. The Applicants were making legitimate requests for information. Detailed directions were given which set out what was required. By way of example direction 2 (d) provides that "All details of insurance for the years 2012 and 2013 including the sum insured, valuation, commission, attempts to assess the insurance situation each year and the claims record of the subject property" were to be provided. The Respondents singularly failed to provide the same hampering the Applicants in their case and preparation. This is but one example, the Tribunal did not have before it a copy of the report obtained in respect of major works and supposedly the basis of the budget figure for the major works. Without sight of this both the Tribunal and the Applicants are in a very difficult position as they cannot assess what is said yet the Respondent sought to recover the cost of the same.
54. As a result the Tribunal finds that the Respondent acted unreasonably in connection with these proceedings.
55. As to the quantum claimed whilst the Tribunal does not accept that 750 hours have been spent on this application, it is clear that a huge amount of time and effort has been expended including attending at the hearing and Pre-trial review and in preparing the Applicants case. Also whilst the Tribunal accepts it may have been possible, for example, to obtain land registry entries of the freehold for less than £37 it is clear that the Applicants have been put to significant expense which may have been avoided if the Respondents had complied fully with the directions and provided the information required under the same.

SUMMARY OF TRIBUNALS DECISION

56. No sums have been properly demanded for recovery of the balancing charge for the service charge year ending 31st December 2012 or for the budgeted costs for the service charge year ending 31st December 2013. No sums will be payable until a valid demand compliant with the terms of the lease and statute have been issued.

57. For the service charge year ending 31st December 2012 the following sums are reasonable:

Accountancy	NIL
Bank Charges	NIL
Cleaning	£1080
Communal Electricity	£613.79
Fire Alarm	£448.40
Gardening	£342
Management fees	£550
Repairs & Maintenance	£1292
Window Cleaning	£360
Buildings Insurance	NIL
Water	£28.40
Section 20 Survey fee	NIL
Companies House fee	Credit £14
Total	£4,700.59

58. For the budgeted amount for the year ending 31st December 2013 the Tribunal determines that a reasonable estimate is £6283.10.

59. The Tribunal makes an Order pursuant to Section 20C that none of the Respondents costs of this application may be recovered as a service charge expense.

60. The Respondent will within 14 days of this decision pay to Mrs K Hennelly the sum of £240 being reimbursement of the fees paid to the Tribunal.

61. The Respondent will within 14 days of this decision pay to Mrs Hennelly the sum of £500 towards her costs pursuant to paragraph 9 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

JUDGE D. R. WHITNEY