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

Case Reference : LON/00AM/LSC/2013/0385

Property : 6 Aster Court, Woodmill Road, London
E5 9GB

Applicant : Altius One (Hackney) Management
Company Limited

Representative : Mr Paul Mertons (Counsel)

Respondent : Ms Lilian Chiza

Representative : In Person

Type of Application : Determination of the reasonableness of
and the liability to pay a service charge

Tribunal Members : Mr Robert Latham
Ms Sue Coughlin MCIEH

**Date and venue of
Hearing** : 5 September at
10 Alfred Place, London WC1E 7LR

Date of Decision : 8 October 2013

DECISION

- (1) The Tribunal determines that the sum of £251.54 is outstanding from the 2010 service charge year. This is the sum to which the Applicant is entitled in the current proceedings which seeks to enforce our decision in 1EC.00345 (see [14(ii)] below).

- (2) We record that as at the date of this hearing (5 September 2013), the parties are agreed that there are arrears of £990.47 on the service charge account. We refer to the Schedule annexed to this determination.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Shoreditch and Clerkenwell County Court.

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 the Respondent of service charges.
2. On 22 August 2012, a Leasehold Valuation Tribunal (LVT) determined two applications in LON/OOAM/2012/0014, namely Case Nos. 1EC00345 and 1BE01348. Having determined these matters, the proceedings were transferred back to the Clerkenwell and Shoreditch County Court. We have not seen any orders from the County Court giving effect to these determinations. Our understanding is that no such orders have been made.
3. On 7 January 2013, the Applicant issued a further application in the Clerkenwell and Shoreditch County Court to enforce the award given by the LVT on 22 August 2012 in 1EC.00345 (see p.5). The amount claimed is £2,146.49. The County Court added a new Case Number to this application, namely 3EC.00071 (see p.6). On 24 May, District Judge Sterlini transferred this matter to the LVT "for final determination of the precise amount due and payable by the Respondent" (p.69).
4. On 19 June, the Tribunal gave directions (at p.92). The Tribunal noted that these proceedings had been transferred to the LVT pursuant to paragraph 3, Schedule 12 of the Commonhold and Leasehold Reform Act 2002. On such a referral, the jurisdiction of the LVT is restricted to the question referred to it (see *Lennon v Ground Rents (Regisport) Ltd* [2011] UKUT 330 (LC)). The Tribunal also noted that it was open to either party to issue a separate application to the LVT if there are any other issues within the jurisdiction of the LVT which that party wished the Tribunal to determine. Neither party has taken up the invitation.
5. The Tribunal indicated its view that the matter could be determined on the papers. However, the Respondent requested an oral hearing (p.98).

6. Pursuant to these directions, the Applicant has filed witness statements from James Sturgeon, their Property Manager, dated 17 July (at p.122) and 22 August (at p.190). The Respondent has filed an undated statement (at p.164). The critical document is the Statement of Account, dated 22 August 2013 (at p.226).

The Background

7. On 22 August 2012, a Leasehold Valuation Tribunal (LVT) determined two applications in LON/OOAM/2012/0014 (at pp.21-39):

Case No.1EC.00345

(i) On 25 February 2011, the Applicant had issued these proceedings at Clerkenwell and Shoreditch County Court. On 14 December 2011, the County Court transferred these proceedings to the LVT. The LVT determined that:

(a) none of the administrative charges demanded (£486.04) by the Applicant were payable.

(b) the sum of £558.37 demanded for advance service charges for the year 2010 were payable.

Case No.1BE.01348

On 8 June 2011, the Applicant had issued these proceedings at Bedford County Court. These proceedings were transferred to the Clerkenwell and Shoreditch County Court. On 19 April 2012, the County Court transferred these proceedings to the LVT. The LVT determined that:

(a) none of the administrative charges (£228.50) demanded by the Applicant were payable.

(b) the sum of £1,173.13 demanded for advance service charges for the year 2011 were payable.

The Hearing

8. It is apparent to the Tribunal that the real issue to be determined was not the payability or reasonableness of any service charges, but rather the manner in which the Applicant have maintained the Respondent's service charge account. The Statement of Account, dated 22 August 2013, did not accurately set out the service charges that were due.
9. In their application dated 7 January 2013 (at p.5), the Applicant asserted that £2,146.49 was the sum awarded by this Tribunal in

1EC00345. This was not correct. This Tribunal had found that the sum of £558.37 was payable for advance service charges. However, we noted that this finding was largely academic as the annual accounts had now been prepared and the appropriate reconciliations had been made. This claim related to the service charges on account for the year 2010.

10. The real problem is that the Applicant has debited various administration charges, legal fees and deferred payment charges to the account. The Applicant has subsequently conceded that these have not been payable. The service charge account has not been correctly adjusted in the light of findings of this Tribunal. During the course of the hearing, it became apparent that the Applicant had still not credited sums to the Respondent's account to reflect the decision of this Tribunal.
11. These errors in the service charge account had also been the issue at the earlier hearing (see [17] of the earlier decision). It is a trite observation that if a landlord does not maintain an accurate statement of account, its tenant will not know what sums are outstanding.
12. During the morning session, we sought to reconcile the Service Charge Account against the findings made by this Tribunal. Mr Mertens conceded that a number of credits which should have been made, had not been made. Further credits of £906.23 were due. At 14.00, he produced a revised Statement of Account indicating that the sum of £990.47 was outstanding.
13. During the lunch adjournment, the Tribunal carried out a separate exercise. We took out all administration charges from the Service Charge Account and prepared a separate Schedule of the Sums Due for each year and the Sums Paid in respect of service charges. This also computed that a sum of £990.47 was due. We annexe this analysis to our decision.
14. We took the Respondent through this analysis and she confirmed that she agreed to it. To avoid any future uncertainty, we explain the basis of our analysis:

(i) On 1 January 2010, arrears of £306.83 were carried forward. This is the figure of £231.83 at p.170 to which ground rent of £75 must be added. This document also appeared at p.286 of the Bundle in the previous application. This figure has always been accepted by the Respondent.

(ii) In 2010, service charges of £1,177.08 were due. £925.52 was paid. This was a shortfall of £251.54. This is the sum to which the Applicant is entitled in the current proceedings which seeks to enforce our decision in 1EC.00345.

(iii) In 2011, service charges of £1,173.13 were due. Payments of £452.46 were made. However, one payment of £226.23 was not credited to the account (see [17(x)] of our earlier decision). This sum had been paid to Property Debt Collection, the Applicant's debt collectors. Further, when the Applicant reconciled the actual expenditure against the estimated expenditure for the years 2007-2011, further credits of £292.38 became due (see 17(v) of our earlier decision). On 11 May 2012, when the Tribunal determined 1EC.00345, the LVT had identified that this credit was due. £183.11 was only credited to the service Charge Account on 24 July 2012, the day before the Tribunal determined 1BE.01348. The additional sum of £109.27, was only credited on 6 March 2013. This was after the current action was issued in the County Court. Thus credits of £957.57 were due leaving an outstanding debt of £215.56. This is the sum to which the Applicant would have been entitled in the current proceedings had it also sought to enforce our determination in 1BE.01348.

(iv) In 2012, a total of £1,400.03 was due on account. Six payments, totalling £1,400 were made. There was an insignificant shortfall of £0.03. It is thus apparent, that the Respondent was now meeting her current liabilities.

(v) In 2013, a total of £1,564.55 was due on account. Six payments, totalling £1,564.55 have been made.

(vi) There is one outstanding sum in dispute which this Tribunal have not been asked to determine in any of these proceedings. On 8 November 2011, the Applicant charged the Respondent £216.15 in respect of the installation of CCTV. The Respondent disputes that this sum is payable pursuant to the terms of her lease. We hope that the parties will now be able to determine this dispute without further recourse to this Tribunal.

15. The Tribunal notes that the sums claimed for both 2012 and 2013 are demands for service charges in advance. We were told that there has now been a reconciliation between the actual and the estimated expenditure for 2012 and that a further sum will shortly be due.
16. Given that both parties agreed to our analysis of the Service Charge account, there are now no issues for us to determine. The Applicant has credited all administration charges and court fees which had been debited to the service charge account. The sum of £990.47 is therefore the total that the Applicant contends is owed by the Respondent as at the date of hearing (5 September).
17. We recognise that we have gone beyond the remit given to us by the County Court, namely to determine the outstanding services charges for 2010 which had been the substance of the claim in 1EC.00345. 'necessarily where there is a claim for outstanding sums due for just one

year, there is potential for dispute as to the service charge year to which any payment should be attributed. However, the real concern of both parties is to reach agreement on the current state of the service charge account. We hope that we have enabled the parties to reach agreement on this point.

Application under s.20C and Refund of Fees

18. At the hearing, the Respondent applied for an Order under Section 20C of the 1985 Act. Mr Mertens did not oppose this application. This application would not have been necessary had the Applicant maintained an accurate record of the Respondent's service charge account and made the adjustments required by our earlier decision. The current application was issued in the County Court on 7 January 2013. Not only did the Respondent concede at the hearing that sums totally £906.23 needed to be credited to the account; a further sum of £109.27 had been credited on 6 March 2013. The Tribunal is quite satisfied that it is just and equitable in the circumstances for an order to be made so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. Neither would it be appropriate to order the Respondent to refund the hearing fee which the Applicant has paid.

19. Either party has the right to appeal to the Upper Tribunal (Lands Chamber) (s.175 Commonhold and Leasehold Reform Act 2002). Permission to appeal is required which should initially be sought from this Tribunal.

Robert Latham
Tribunal Judge
8 October 2013

Appendix

Analysis of Service Charge Account

Sums Due	Sums Paid/Credited	Outstanding Debt
Carried forward on 1/1/10: £306.83 (1)		£306.83
	2010	
Service Charge in Advance: £1,177.06	£925.52 Payments of £226.35; £306.83; £196.17; £196.17)	£251.54
	2011	
Service Charge in Advance: £1,173.13	£957.57 1. Payments of £117.73; £95.00; £226.23. 2. Uncredited payments of £226.23 (2) 3. Reconciliations of Accounts for 2007-2011: £292.38 (3)	£215.56
	2012	
Service Charge in Advance: £1,400.03	£1,400.00 Payments of £270; £270; £270; £270; £270; £50	£0.03
	2013	
Service Charge in Advance: £1,564.55	£1,564.55 Payments of £300; £300; £300; £300; £300; £64.55	-
	Totals	
£5,621.60	£4,847.64	£773.96
	8.11.11: Installation of CCTV charge in dispute: £216.51	£216.51
		£990.47

1. See p.170: £231.83 + ground rent of £75.
2. See para 17(x) of the decision of 22.8.13 at p.76 of the Bundle.
3. When the actual expenditure was reconciled against estimated expenditure, credits became due to the tenant (see 17(v) of decision of 22.8.13 at p.75 of the Bundle. £183.11 was credited on 24.7.12 and £109.27 on 6.3.13.