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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/24UG/LSC/2014/0031
Property	:	Frogmore Court, Blackwater, Camberley Surrey, GU17 0PP
Applicant	:	Stephen French, Richard Burgess, Jean Freestone, Josephine Cox, Ian Beardman, Mehdi Daoudi, Janet Penfold, Mr & Mrs Roberts, James Rose
Respondent	:	Gallean Inv. Limited
Type of Application	:	s27A Landlord and Tenant Act 1985
Tribunal Members	:	Judge D Dovar
Date of Decision	:	2nd July 2014

DECISION

Introduction

1. This is an application for the determination of service charges payable under section 27A of the Landlord and Tenant Act 1985 arising out of demands for the year end 2014 in respect of legal costs.

2. Directions were given on 28th March 2014 in which notification was given of the Tribunal's intention to deal with this matter without a hearing.

3. The legal costs arose out of litigation with one tenant of the Property. The Respondent pursued that tenant through the courts and although successful in recovering sums, did not recover all of their legal costs. This appears to be because the matter was allocated to the small claims track where costs are not usually ordered.

The Respondent's case

4. By a letter dated 27th February 2014, Huggins Edwards & Sharp (the Respondent's managing agents) confirmed that the sums added to the service charges was the shortfall in recovery; being £3,712.20 plus an additional £180 added by the managing agents as an administration fee.

5. In their letter dated 28th April 2014 written pursuant to the directions given in these proceedings, the managing agents relied on clause 5(g) as the basis for these charges. That states that '***if requested by a lessee,*** *the lessor will enforce covenants against other defaulting lessee, subject to the lessee indemnifying the lessor for any costs arising from such action.*' (emphasis added).

6. They go onto assert that '*Whilst it is acknowledged that a strict interpretation of this clause requires an approach to the landlord by an individual lessee, requiring action, we would contend that the application of this clause must be implied, since in the absence of a situation in which the landlord is indemnified for his costs, the block would be unmanageable.*'

The Applicants' case

7. The Applicants claim that none of the clauses in the Lease assist the Respondent.

8. They also point out that the defaulting tenant was in difficulty with paying but had offered instalment payments. This had been refused by the Respondent who pressed on with court action and then failed to recover their full costs.

Decision

9. The Tribunal rejects the Respondent's strained interpretation of clause 5 (b). There can be no implication in these circumstances that all or any of the leaseholders would indemnify the Respondent for any shortfall. The words of the clause are clear, at least one tenant must require the action to be taken and to indemnify the Respondent. That is a precondition of the operation of the clause. It has not been fulfilled in this case. It follows the sums are not recoverable.

10. In any event, the Tribunal considers that even if there had been a clause permitting recovery these sums would not have been reasonably incurred for the purpose of section 19 of the Landlord and Tenant Act 1985, given that:

    a. The tenant had made offers to pay in instalments;

    b. The costs accrued were disproportionate to the sum claimed; and

    c. The Respondent must have or should have had advice that in pursing such small amounts, the matter was likely to be dealt with on the small claims track in the County Court and therefore very limited costs would be recoverable.

11. In addition the Respondent seeks a further £180 by way of 'administration fee' it is not clear what this is or on what basis it is

claimed. However, if it is related to recovering the shortfall, then for the reasons set out above, it is not recoverable.

12. The Applicants have also made a section 20C application. The Tribunal considers that the Respondent was wrong to seek to recover these costs from the leaseholders and should have approached the underlying litigation in a more proportionate manner. Accordingly it considers that there are grounds for making a section 20C order and so, if sums are recoverable under the terms of the lease for these proceedings (a point on which the Tribunal makes no ruling) then the costs of these proceedings are not to be recovered through the service charge.

Conclusion

13. The sums in dispute are not recoverable by way of service charge.

14. Pursuant to Section 20C, the Respondent is not to recover any of the costs of these proceedings through the service charge.

Judge D Dovar

Appeals

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.