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

Case Reference : **LON/OOAM/LSC/2013/0744**

Property : **30A Greenwood Road, Hackney, London E8
1AB**

Applicant : **Mr Harjit Singh**

Representative : **Mr Q Ali of Hexagon Property Company
Limited, Applicant's Managing Agent**

Respondent : **Miss Norma Goldsmith**

Representative : **Mr D Gibson-Lee, Counsel instructed by
Martyns Rose Solicitors**

Type of Application : **Sections 27A and 20C of the Landlord and
Tenant Act 1985**

Tribunal Members : **Tribunal Judge Dutton
Mr K M Cartwright JP FRICS
Mr L G Packer**

**Date and venue of
Hearing** : **10th February 2014 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **3rd March 2014**

DECISION

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DECISION

The Tribunal determines for the reasons set out below that the Applicant shall repay to the Respondent the sum of £1,370.27 in respect of overpaid service charges and a further sum of £250 as a contribution to the Respondent's costs pursuant to Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002. The payment should be made within 28 days but enforcement will rest with the County Court if no such payment has been made. An order under section 20C is also made preventing the Applicant from seeking to recover the costs of these proceedings as a service charge.

The question of any interest or costs arising from the County Court proceedings will have to be dealt with by the County Court if the matter is remitted back to them.

BACKGROUND

1. On 30th July 2013 the Deputy District Judge sitting at the Clerkenwell and Shoreditch County Court in claim number 3YK03550 between the parties in this matter ordered that the issues be transferred to this Tribunal for determination of a.) liability for service charges and estimated service charges claimed by the Claimant, b.) liability for administration charges claimed by the Claimant and c.) the reasonableness of the amount of service charge and estimated service charges and the reasonableness of the amount of administration charges claimed.
2. The order went on to stay the proceedings pending our determination and required that the parties inform the County Court by the end of November 2013 the state of the proceedings before us.
3. On 22nd November 2013 (the County Court case file not having been received by the Tribunal until 30th October 2013) directions were issued which included a provision for the Applicant, by 9th December 2013, to provide complete disclosure relating to the period in dispute.
4. In the County Court action the Applicant sought to recover the following items:-
 - Actual service charge costs due on 5th December 2012 £966.17
 - Estimated service charge first instalment due 5th December 2012 £435, ground rent totalling £700 up to and including 25th January 2013
 - Administration fee due 19th February 2013 £234
 - Claimant's solicitors costs due 23rd February 2013 £831.

In addition to the above the Claimant sought to recover interest in the sum of £88.51 and continuing interest.

5. As the directions pointed out, the question of the recovery of service charge years outside those contained in the County Court proceedings was not within

our jurisdiction and further that we did not have jurisdiction to deal with the ground rent, County Court costs, interest nor solicitors' costs.

6. Prior to the hearing we received two bundles of documents. One was prepared by the Applicant and the other by the Respondent. Unfortunately, it appears that the Applicant was somewhat late in providing documentation and accordingly the Respondent prepared her own bundle. This led to substantial duplication and we have accordingly utilised the Applicant's bundle in the main, unless there were specific documents contained within the Respondent's bundle which were relevant. In fact, that was not the case and accordingly any reference to documentation relates to the Applicant's bundle and the page numbers contained therein.

HEARING

7. The Applicant was represented by Mr Qalab Ali, a property manager with Hexagon who are the present managing agents of the Applicant. The Respondent, Miss Goldsmith, who attended, was represented by Mr Gibson-Lee of Counsel. At the start of the hearing he complained at the lack of co-operation from the Applicant, which had resulted in the two bundles being produced and his concern that Mr Singh had not attended the hearing for the purposes of cross examination. The first issue that he raised with us was the identification of Mr Singh. This had been a common theme in the defence lodged by Miss Goldsmith in the County Court and her statement in these proceedings. Miss Goldsmith's position can be summarised by referring to her defence and counter claim. In essence her position is that she was not contacted until May 2011 by managing agents called SS Properties, who she believed acted for her landlord, Mr Surbjit Singh. They asked for ground rent from the period 24th June 2006 through to 24th June 2011 totalling £500, being £100 per annum payable by equal half yearly payments. In addition they sought a management charge for the period 25th December 2010 to 24th June 2011 in the sum of £75 and a contribution towards the insurance premium for the period 24th June 2010 to 23rd June 2011 of £255.25. The total sum of £830.25 was paid by Miss Goldsmith in June of 2011.
8. After this demand Hexagon Properties managed the building and also introduced the existence of Mr Harjit Singh, who was unknown to the Respondent until that time. She raised concerns that the Landlord and Tenant Act 1987 had not been complied with as there appeared to have been an apparent change of ownership without reference to her and made repeated attempts to contact Hexagon and Mr Harjit Singh to ensure that he was the correct landlord. She says, in effect, that without Mr Harjit Singh proving that he was the landlord she did not feel that it was her requirement to pay any further ground rent or service charge payments. Accordingly, at the time that the matter came before us on 10th February 2014, Miss Goldsmith had not made any payments herself in respect of ground rent or service charges since her payment in June 2011. However, her mortgagees had made a payment. It appears from an email sent by Brethertons LLP Solicitors instructed on behalf of Hexagon, that on 11th March 2013 the sum of £2,155.27 was received from Miss Goldsmith's mortgagees who we believe were Birmingham- Mid Shires. The email from Brethertons to Miss Neiha Basheer, an employee of Hexagon,

confirms that this cheque was received and it was broken down as to: arrears £1,714.17, interest £40.10, legal costs £373, land registry fee £29. It appears that attempts were made to obtain additional funds from the mortgagees but they refused to do so having been told that Miss Goldsmith was in dispute with the landlord.

9. Somewhat surprisingly in the reply and defence to counter claim, strictly speaking a Part 20 claim, dated 1st May 2013, no attempt is made by the instructing solicitors for Mr Singh to apportion the sum of £2,155.27, which they admit they have received, to confirm the then alleged liability of Miss Goldsmith. The defence merely denies that there is a repayment due to the defendant or that the monies were claimed unlawfully. That, therefore, was not as helpful a pleading as might have been the case as it could have clarified the sums outstanding. Be that as it may, the matter came before us on 10th February 2014 and after Mr Gibson-Lee had spent some time raising issues relating to the identity of Mr Singh, which we will return to in the findings section of this decision, we heard from Mr Ali.
10. Mr Ali told us that he had had a working relationship with both Mr Surbjit Singh and Mr Harjit Singh of some ten years. The Singh family appear to have in excess of 100 properties of a similar type which Hexagon manage and, as he pointed out, the directions did not require him to establish the identity of Mr Harjit Singh.
11. Complaint was also made that Mr Ali had telephoned Miss Goldsmith before the hearing, he said to try and see if there was some possibility of effecting a settlement. Mr Gibson-Lee said it was for the purposes of putting pressure on her. It is not a matter which we need to take further.
12. Within the bundle a Scott Schedule had been prepared by Miss Goldsmith's solicitors. Unfortunately, they had not been able to email this to the Applicant and we were left with the position of having a Scott Schedule containing the Respondent's comments and a separate letter in which the Applicant made reply. However, we concluded that use of the Scott Schedule was not going to assist us. Mr Ali drew our attention to the actual accounts for the period ending June 2012 and June 2013 and it seemed appropriate, therefore, to concentrate on those items of expenditure shown on the actual reconciliation accounts rather than matters that have appeared as estimates and were referred to on the Scott Schedule. We would also make the point that the County Court proceedings referred to the estimated service charge in part for the year ending June 2013. As we now have the final accounts for that year, it seems appropriate to deal with the complete year as that formed part of the County Court action. Both parties agreed that this was appropriate.
13. Before we considered the actual expenditure in detail Mr Ali confirmed that he would no longer be seeking to recover the administration charges and that those should, therefore, be removed. On that basis and utilising the information contained on the reconciliation statements we dealt firstly with the year ending June 2012 which was to be found at page 192 of the bundle. As the hearing progressed, in addition to the administration charge, Mr Ali also conceded that the accountancy charge of £240 for this year should also be removed.

14. The three items of expenditure that we needed to consider was a site survey fee of £480, building insurance originally of £340.33 but subsequently increased at the hearing to £520 and a management fee of £480.
15. The site survey was contained within the bundle and was carried out by a Mr A U Rahman BSc (Hons) of G H Chartered Surveyors on 26th October 2011. It was a substantial and full survey making certain recommendations which we should record were not put into effect. In addition also, a copy of the survey has not until these proceedings been produced to Miss Goldsmith. The cost of £480 was not in reality challenged by Mr Gibson-Lee. His concern was that his client had not been told in advance that the survey was being undertaken and matters were compounded by non-production of the report until the action took place. Mr Ali was asked by us why he had not shown a copy of the report to the Respondent and why the terms of the report had not been implemented. He said that they had not been implemented because there were no funds and he could not really answer why the report had not been presented to her but that Miss Goldsmith had now seen it.
16. Insofar as the building insurance was concerned, it appeared that the sum originally claimed related to an earlier year. Miss Goldsmith had in fact paid the insurance up to June of 2011, as demanded of her by SS Properties. The insurance, however, appears to run from September to September and for the period in question was in fact £520 as evidenced by an insurance schedule from AXA showing the period of cover from 16th September 2011 for 12 months. Matters became somewhat complicated at this point. Mr Gibson-Lee challenged whether the insurance had in fact been paid. Miss Goldsmith said that she had not seen the insurance schedule and had therefore insured her own property a year after she acquired the flat in 2007. The reason for so doing, she said, was that she had attempted to obtain insurance details from Mr Surbjit Singh, without success, and being concerned that insurance might not be in place she had affected her own cover, albeit at a higher rate than was now evidenced by the insurance details provided in these proceedings. It has to be said that she was not asked to pay for any insurance until SS Properties contacted her asking for a contribution to the year ending September 2011 which she paid. We had asked Mr Ali to get confirmation that the insurance had been paid for the period in dispute. This request muddied the waters further. The letter from the brokers, which was obtained during the hearing, indicated that the premium for insurance cover to the year ending 16th September 2012 had been paid on 26th July 2012 and was £520. Subsequently Mr Ali told us that the insurance cover for the period September 2012 to September 2013 had been discontinued because the Applicant had not paid the premium. Accordingly, it appears that Miss Goldsmith's property has not been insured by the landlord from September 2012 onwards, unknown to her and contrary to the lease, and remains uninsured by him. Thankfully it appears that she has her own cover in place.
17. As we expressed to Mr Ali, this seems to us to be a wholly inappropriate position and the more so, as we will refer to in the findings section, because Mr Singh had funds from Miss Goldsmith's mortgagees in 2013 to have rectified the insurance position. The upshot of this was that Mr Ali asked for recovery of the the insurance premium in the year ending June 2012 to be increased to £520

but waived the insurance which appears on the reconciliation statement for the following year.

18. On the management fees, copies of the management agreements were in the bundle and these were at the rate of £200 per flat plus VAT giving the figure of £480 which he thought was a reasonable charge given the nature of the property. Mr Gibson-Lee challenged this saying that in reality there was little or no management. There had been a survey arranged which had not been produced nor the findings acted upon, insurance had been arranged which was subsequently cancelled and the accounts were in error.
19. In the year 2012/13 the details of which were set out at page 191 of the bundle, the building insurance of £525.73 was waived as was the bookkeeping and reconciliation charge of £180. This left only the management fees of £432 which had been charged out at a rate of £180 plus VAT, below that which was provided for in the management agreement. The point was made by Mr Gibson-Lee that in this year no management appeared to have taken place and that in fact a substantial sum had been received from Birmingham- Mid Shires in March 2013 which could have been used to meet outgoings.
20. At this point some arithmetic was undertaken and on the Applicant's case he would be entitled to £871 in respect of service charges for the years 2011 to 2013 inclusive and a further £250 in respect of five half yearly ground rent payments due from December 2011 to December 2013. It was agreed, therefore, that taking the Applicant's case at its best, ignoring interest and costs, the maximum liability of the Respondent was £1,121.00. This meant, therefore, that the Applicant had received an overpayment of £1,034.27, which was agreed by the parties.
21. Mr Ali confirmed with us that he would not be seeking to recover the costs of these proceedings before the Tribunal but did seek to resist any claim that might be made by Miss Goldsmith in respect of her costs. These proceedings were commenced before July of 2013 and it was agreed, therefore, that any costs that we might award to Miss Goldsmith would be limited to £500 as provided for in schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002.
22. On this point Mr Gibson-Lee said that we should make an order for costs on the basis that:
 - The Applicants had declined mediation
 - They had delivered their papers late
 - They had continued with proceedings in respect of sums of money when they had been paid
 - They had allowed insurance to lapse
 - That their behaviour during the course of these proceedings fell foul of the provisions of schedule 12 paragraph 10 of the 2002 Act.
23. Mr Ali did not think that the proceedings were avoidable and that the pursuit by Miss Goldsmith of the need "to identify" Mr Singh had no relevance to the matter before us.

THE LAW

24. The law applicable to this matter is set out in the attached addendum.

FINDINGS

25. We will deal firstly with the identity of Mr Singh. Whether or not the provisions of the 1987 Landlord and Tenant Act were complied with is not a matter for us. However, we were told during the course of the proceedings that Mr Surbjit Singh was Mr Harjit Singh's father. This was to an extent borne out by the production of Mr Surbjit Singh's driving licence showing a date of birth of 1958 and an address which is common to Mr Harjit Singh. Mr Harjit Singh's birth certificate was produced, as was an affidavit by him explaining the use of three names, one of which was Mr Harjit Singh. Furthermore, the official copy of the freehold title shows Mr Harjit Singh as the registered proprietor of the property and the transfer from Mr Surbjit Singh to Mr Harjit Singh was also produced showing a consideration of a pound, which on the face of it would appear to be a gift. It may well be, therefore, if the matter is to be considered further, that the exemption from the requirements of the 1987 Act have been made out as this was a gift between close members of the same family.
26. We are satisfied, however, on the basis of the affidavit produced by Mr Harjit Singh, his birth certificate and the copies of the register of title that he is the freeholder and the person who is entitled to recover service charges. In those circumstances, therefore, the defence filed by Miss Goldsmith on this point, would in our view fail.
27. The matter, however, does not rest there because we do need to consider the service charge issues. Our findings in those respects are as follows. In the year 2011/12 we consider that the survey fee of £480 is reasonable and is payable. It is a pity that a copy of the survey was not produced to the Respondent but it is reasonable for such a survey to be carried out and it did highlight that certain issues needed to be addressed. Unfortunately, the survey appears to have been ignored, although we were told by Mr Ali this was because there were no funds. **However, we will allow the sum of £480.**
28. Insofar as the management of the property is concerned in this year, we have noted all that was said but the management was actually limited and the failure of Hexagon to take any steps to implement the recommendations of the survey report seem to us to show a certain lack of interest. Doing the best we can we have concluded the management fee should be halved and that accordingly **Miss Goldsmith will be liable to pay the sum of £120 added to her contribution of £240 in respect of the site survey fee.**
29. Insofar as the insurance is concerned, we accept from the documentation produced, in particular the email from the brokers, that insurance was indeed in place during this year at a premium of £520. This seems to us to be reasonable for the type of property and Miss Goldsmith's contribution is £260. We are aware that Miss Goldsmith has effected her own insurance but the lease does not

require her to undertake this task and having paid the premium for the earlier year it seems to us that she was now on notice as to the identity of the landlord but spent her energies in trying to challenge that identification. However, it does appear that Miss Goldsmith made an overpayment in respect of the demand made by SS Properties. That included a contribution towards the insurance premium which it was agreed had been overpaid in the sum of £85. Accordingly on our calculations Miss Goldsmith's liability for the service charge year ending June 2012 is as follows:-

- Contribution to management £120
- Contribution to survey fee £240
- Contribution to insurance £260 less £85

giving a total liability for the year 2011/12 of £535.

30. We then turn to the year 2012/13. The only item that we were left to consider was the question of management. It seems to us that no management was conducted. Indeed it is worse than that. Funds were available by March 2013 which put Mr Singh in credit and would have enabled him to have insured the property. That was not done. Instead those monies were subsumed in paying liability which was not in fact outstanding at the time that proceedings were commenced. Because of a misunderstanding (putting it at its highest), on the handover from SS Properties to Hexagon, the fact that Miss Goldsmith had paid over £800 on the demand made in 2011 which cleared the ground rent liability at the time the proceedings were commenced, was ignored. Similarly also, there was a failure by Hexagon to get to grips with the accounts and to clarify exactly what sum was due and owing. Accordingly we do not believe that Miss Goldsmith should make any contribution towards the management charges in this year. **Therefore the total liability that she has in respect of the service charges is £535.**
31. In an attempt to try and resolve issues between the parties, it was agreed that we could add in the outstanding ground rent from December 2011 to December 2013 of £250. This means, therefore, that the total liability that Miss Goldsmith has to the Respondent in respect of service charges and ground rent, is £785. Ignoring the claim for interest and solicitors' costs, therefore, **the total liability by reference to the County Court proceedings is £785.** We cannot see that it would appropriate for the Applicant to consider a claim for interest when he failed to give credit to Miss Goldsmith's payments made to the previous managing agents and accordingly if the sum of £875 is deducted from the £2,155.27 paid by Miss Goldsmith's mortgagees in March 2013, it leaves her in credit to the Applicant in the sum of £1,370.27. This sum should be repaid to Miss Goldsmith for, as it seems at the moment, no management is being undertaken at this property and no insurance is in place. This insurance fiasco needs to be resolved as quickly as possible. The lease does not make provision for Miss Goldsmith to insure and in addition she appears to be paying more than would be the case if the insurance was effected, as it should be, by the landlord. We understand that the leaseholder of the other flat in the property has contributed towards the insurance premium and it is unclear whether that person had been told that the insurance has lapsed. This is a wholly

unsatisfactory position and Hexagon must take some share of the responsibility for not dealing with the insurance appropriately. It needs to be addressed immediately without further delay for obvious reasons.

32. We then turn to the question of costs. We heard all that was said by Mr Gibson-Lee and by Mr Ali. The failure to mediate is not helpful and the late delivery of the papers has caused an unnecessary duplication. Furthermore, it seems that the proceedings were commenced claiming sums that were not due and were not discontinued when a sum was remitted by Miss Goldsmith's mortgagees which clearly discharged the totality of the liability. It must be said, however, that she did seek to pursue the question of the identity of Mr Singh and such rights as she believed she had under the 1987 Landlord and Tenant Act further than was necessary. Certainly on production of the bundle it should have become clear to her that the documentation supported Mr Harjit Singh as the landlord. Taking that into account we have concluded that the Applicant has acted in a manner which is contrary to the provisions schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002, which we conclude applies as the proceedings were commenced before 1st July 2013, and we award to Miss Goldsmith the sum of £250 as a contribution towards her costs. **This means that the total sum repayable to her is £1,620.27.** This should be repaid within 28 days. If it is not, then Miss Goldsmith will need to apply to the County Court for the enforcement of the award that we have made.
33. We also make an order under Section 20C of the Act, as it seems to us to be just and equitable in the circumstances that the Applicant should not be enabled to recover his costs through the service charge.
34. Whether the Applicant decides to refer the matter back to the County Court to deal with the County Court costs and the interest is a matter for him, although we would suggest he should take some legal advice and think very carefully about whether he pursues this piece of litigation any further.
35. With respect to the Applicant and his managing agents, more interest in this property needs to be taken and the insurance position resolved as we have indicated above for all parties concerned.

Judge: Andrew Dutton
Andrew Dutton

Date: 3rd March 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.