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

Case reference : **LON/00BE/LSC/2013/0789**

Property : **47 Crawford Road, London SE5
9NF**

Applicant : **London Borough of Southwark**

Representative : **Mr Cusack (Enforcement Officer)**

Respondent : **Rose Onwuka**

Representative :

Type of application : **Claim for service charge
transferred from Lambeth County
Court**

Tribunal member(s) : **Tribunal Judge R Percival
Tribunal Judge S Shaw
Mr M Taylor FRICS**

**Date and venue of
hearing** : **3 March 2014 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **3 March 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of **£791.34** is payable by the respondent in respect of the estimated service charge for the first two quarters of the year ending 31 March 2014.
- (2) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The case concerns a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the estimated service charges payable by the respondent in respect of the first two quarters of the year ending 31 March 2014.
2. Proceedings were originally issued in the Northampton County Court under claim number 3YS 06376. On 16 November 2014, the claim was ordered to be transferred to the Tribunal by District Judge Zimmels sitting in Lambeth County Court.
3. Directions were made on 17 December 2013 for the service of the respondent's case, the applicant's case and other matters. The applicant having made the Tribunal aware that the respondent had failed to serve a statement of case and a schedule of disputed items as required by the first directions hearing, the Tribunal made further directions on 11 February 2014. Those directions required the respondent to file her statement of case and schedule on or before 14 February 2014, stating that failure to comply with the direction may lead the Tribunal to bar the respondent from taking further part in the proceedings, in accordance with rule 9 of the Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013. At the time of the hearing, the statement and schedule had not been served.
4. The respondent did not attend either of the case management hearings or the substantive hearing before the Tribunal.

Baring the respondent from taking further part in proceedings

5. The preconditions for barring the further participation of the respondent under rule 9(3)(a) of the Procedure Rules were satisfied. The applicant did not make an application for the respondent to be barred. The Tribunal concluded that the case could best be dealt with fairly, justly and proportionately by making a substantive determination of the issue before it.

The issue

6. The respondent is the leaseholder of the property, which appears to be a purpose built maisonette on two floors in a block, initially sold under the right to buy (Housing Act 1980, part 5).
7. The third schedule to the lease contains provision for a variable service charge. The respondent is required under the lease to pay, by quarterly instalments, an estimated service charge in advance (third schedule, clauses 2 and 3). She failed to pay the quarterly payments due on 1 April and 1 July 2013. The total sum demanded was £796.34, which included £5 in respect of ground rent.
8. As outlined above, the respondent has failed to provide any statement of case. She did serve a defence when the proceedings were in the county court. The defence is in very short form. In it, the respondent accepts she is liable to pay the service charge, but alleges that the applicant “failed to carry out the works for which the service charge is collected” and “failed to repair a leaking roof at the entrance of the building and rain water poured the stairs thereby causing nuisance and filth”. Neither allegation was in any way further particularised. In the circumstances, the Tribunal asked the applicant to justify the reasonableness of its estimated service charge generally.

The service charge

9. The estimated service charge was made up as follows:

Block Services

Block care and upkeep	£275.55
Block responsive repairs	£384.46
Block lighting and electricity	£38.69

Estate Services

Estate care and upkeep	£261.92
Ground maintenance	£258.99
Estate lighting and electricity	£10.95

Building insurance	£208.22
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10. Most, but not all, elements of the service charge are calculated by applying a “bed-weighting” system. Each property is given an initial weighting of four, to which is added a value of one for each bedroom. The respondent’s maisonette has two bedrooms, giving her property a weighting of six.
11. Both the block and estate “care and upkeep” figures are calculated by arriving at an estimate of person-hours necessary to undertake cleaning and general upkeep of the common areas of the block and the estate as a whole and applying to that a figure representing the hourly cost of the work to the landlord. The estate figure is arrived at by giving each block a value using the bed-weighting system and distributing the total costs accordingly. In each case, the figure for each individual property is arrived at by applying the bed-weighting system to the block.
12. The lighting figure for the estate as a whole was arrived at in a similar way to that for estate care and upkeep. The figure for the block was based on estimated actual usage by the block in question.
13. Ground maintenance, which includes maintenance of flower beds and trees in “communal land” on the estate, is allocated on a block basis as for care and upkeep, except that trees are allocated to individual blocks (allowing estimated actual cost to be calculated).
14. Block responsive repairs are calculated according to an estimate of hours likely to be spent on such repairs, to which is applied an hourly rate, and again distributed according to the bed-weighting of the properties in the block.
15. The landlord negotiates borough-wide building insurance cover. The premium paid by the landlord to the insurer is calculated on the basis a break-down of the approximate number and type of dwellings to be covered, and the same break-down is used by the landlord to pass the cost on to leaseholders. The breakdown is given in a useful leaflet explaining the service charge that is distributed to leaseholders.
16. The estimated service charge in recent years has been reasonably close to the actual charge. In 2010/11, the estimate was £222.10 under the actual sum (£1,359.28 was estimated, the actual charge was £1,581.38); in 2011/12 it was a slight overestimate of £99.33 (£1, 565.47 estimate, £1,466.14 actual); and again an overestimate in 2012/13, this time of £209.83 (£1,706.59 estimate, £1,496.76 actual). Overpayment is returned as a credit at the end of the accounting year.
17. We observe that the materials made available to explain the calculation of the various elements of the service charge were, unlike the leaflet directed at leaseholders, difficult to understand and in some cases quixotic in their presentation.

The lease

18. The lease defines the service charge by reference to elements of the landlord's covenants (clause 4 and the third schedule). The effect is that the service charge allows the landlord to recover the cost of:
- (i) Repairing the structure and exterior of the building;
 - (ii) Keeping in repair any other property over or in respect of which the leaseholder has any rights;
 - (iii) Painting as necessary the usually painted outside parts, and internal common parts;
 - (iv) Caretaking and clearing of common areas;
 - (v) Cleaning of windows of common areas;
 - (vi) Providing estate lighting;
 - (vii) Providing refuse disposal;
 - (viii) Maintaining gardens or landscaped areas;
 - (ix) Providing insurance; and
 - (x) Maintaining and managing the building

If managing agents are not employed (they are not), the landlord may also impose an administration fee up to 10%.

19. We note that there may be a question as to the extent to which the lease justifies the attribution of expenditure on the maintenance of the wider estate to the service charge. The issue was not, however, raised or argued before us and we come to no conclusions in respect of it.

Conclusions

20. The applicant submits that
- (i) the estimated service charge is likely to be reasonably accurate, in the light of recent experience; and
 - (ii) the underlying cost of the service charge can be demonstrated to be reasonable.
21. As explained above, there is no particularised criticism of the reasonableness of the estimated service charge from the respondent. It is not for us to seek to plug that gap for her. We must, nevertheless, be satisfied that the estimated service charge is a reasonable one.
22. Our task is to assess whether the service charge is one that is reasonable, not whether it could be lower. Given the failure of the respondent to engage with the proceedings in any significant way, the burden on the landlord is not a heavy one.
23. The landlord has adopted a rational system for undertaking the work required of it. The system for allocating the incidence of the service charge was approved by the Home Owners Council, a body representative of leaseholders in the borough. As the applicant submitted, the same system was not criticised in *London Borough of Southwark v Bevan* UKUT 0114 (LC), (although it was the application of the bed-weighting system, not its reasonableness, that was in issue in that case). The recent record of estimated service charges suggests that the landlord's estimate is likely to be a reasonably accurate one.
24. The Tribunal accordingly finds that the sum demanded is payable by the respondent, less the contribution to the ground rent, in respect of which we do not have jurisdiction.
25. We emphasise that this conclusion relates only to this *estimated* standing charge. Nothing precludes the respondent from making her own application under section 27A, Landlord and Tenant Act 1985 after the standing charge becomes final, if she wishes to contest the reasonableness of the actual charge.

Name: Tribunal Judge R Percival **Date:** 3 March 2014