10109

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BN/LSC/2013/0130** **MAN/00BN/LDC/2014/0006**
Property	:	**Temple Apartments, 51-55, Cornishway, Manchester M22 0LB**
Types of Application	:	**s27A Landlord and Tenant Act 1985 ("the First Application")**
		S20ZA Landlord and Tenant Act 1985 ("the Second Application")
Applicant of the first Application	:	**Mr.V.Glendinning ("the First Applicant")**
Respondent to the First Application	:	**Westshield Homes Limited**
Respondent's Representative	:	**Residential Management Group Limited ("RMG")("the First Respondent")**
Applicant of the Second Application	:	**Landmark PG General Partner Limited ("the Second Applicant")**
Applicant's Representative	:	**RMG**
Respondents to the Second Application		**Mr.&Mrs.O.Jibuike ("the Second Respondents")**
Tribunal Members	:	**Mrs C. Wood (Judge)**
		Mr D. Bailey
Date of Decision	:	**28th July 2014**

DECISION

Decision

1. The Tribunal determined as follows:

1.1 in respect of the First Application, that the costs which had been reasonably incurred in respect of the works to the electric gates at the Property ("the Works") carried out from in or about March – July 2012 are £4638.00;

1.2 the amount which the First Applicant is liable to pay as service charge for the Works is £231.90;

1.3 as the liability of tenants who are required to contribute to the cost of the Works is less than £250 per tenant, the consultation requirements under s20 of the Landlord and Tenant Act 1985 ("the 1985 Act") do not apply and the Second Applicant is not therefore required to seek dispensation from those requirements under s20ZA;

1.4 if the Tribunal had been required to consider the Second Application, it would have determined that it was reasonable to dispense with the consultation requirements.

Background

2. By an application dated 2 September 2013, ("the First Application"),the First Applicant sought a determination under s27A of the 1985 of the reasonableness of, and his liability to pay, certain amounts charged as service charge prior to the service charge year ended 31 December 2009 and in respect of the Works carried out during the 2012 service charge year costs of £6354.

3. At a Case Management Conference held on 12 March 2014, ("the CMC"), RMG, acting on behalf of the First Respondent to the First Application, confirmed that the amount of £1043.70 said to be arrears of service charge for years prior to 12 July 2010, and interest on such arrears, would be removed from the First Applicant's statement and not subsequently demanded.

4. Directions dated 17 March 2014, ("the Directions"), were issued requiring the First Respondent to confirm the statements made at the CMC and to provide relevant documentation relating to the cost of the Works.

5. By an application dated 20 March 2014, ("the Second Application"), the Second Applicant sought a determination under s20ZA of the 1985 that it was reasonable to dispense with the consultation requirements under the 1985 Act in respect of the Works.

6. As none of the parties requested a hearing, the matter proceeded by way of a paper determination.

Evidence

7. The evidence contained in the Statement of Case dated 31 March 2014, ("the First Respondent's Statement"), issued pursuant to the Directions, is summarised as follows:

7.1 that the charges of £1043.70 in respect of alleged arrears which had arisen prior to 12 July 2010 had been written-off. A copy of the First Applicant's statement of account as at 31 March 2014 showing this was attached. Further, it was stated that no interest had been, or would be,charged in respect of these alleged arrears;

7.2 copies of quotes for the Works from 3 contractors together with the invoices supporting the costs of £6354 actually charged were attached;

7.3 a brief summary of the history of the gates and why it was not appropriate to claim under the insurance for the cost of the Works;

7.4 the relevant provisions of the lease dated 23 February 2007, ("the Lease"), which obliged the First Respondent to repair the gates and which entitled it to seek reimbursement of those costs as service charge from the First Applicant. Specifically, the First Respondent referred to clause 11, Part C of the Sixth Schedule and clauses 8 and 9 of the Seventh Schedule;

7.5 also attached were a copy of the Lease and the Service Charge Accounts for the year ended 31 December 2012 ("the 2012 Accounts").

8. In the First Applicant's response dated 16 May 2014, the First Applicant commented as follows:

8.1 that, although costs of £6354 had been included in the 2012 Accounts, he could only identify costs of £5898 in respect of the gates;

8.2 querying the costs of £1207 incurred in respect of lift repairs and of £1570 in respect of engineering and lift insurance;

8.3 that he had been charged £35 for a key fob on 24 May 2012 although this cost was also included in the costs for the Works;

8.4 that the Works had not been put out to tender and that the consequential increase in the service charge had not been communicated to the leaseholders;

8.5 that there was some apparent discrepancy over the amounts (if any) charged by the Council for refuse bins.

9. In the Second Application, the Second Applicant stated that :

9.1 the reason why they had not consulted about the Works was because the original quote from the contractor who ultimately carried out the Works was for £4260 (including VAT). This meant that, as the cost per tenant was £213, it would be below the limit required for consultation. It was the additional cost of £1050 plus VAT for 30 new key fobs that meant that the cost of the Works would exceed the limit per tenant;

9.2 the intention was to re-sell the fobs to leaseholders and to maintain a stock;

9.3 in the 12 month period up to the repair in March 2012, RMG received 39 calls regarding the gates not working and asking when they would be repaired.

10. In the Second Respondents' Statement of Case dated 13 June 2014, ("the Second Respondents' Statement"), they state as follows:

10.1 they request that the matter be dismissed because of a failure by the Second Applicant to send information to them;

10.2 that the Second Applicant had ample time in which to consult the leaseholders about the Works but deliberately chose not to do so;

10.3 that they had retrospectively obtained quotes for the Works which were completed in March 2012;

10.4 that the increase in the service charge for the 2012 Service Charge year is not limited to £213 per apartment as suggested by the Second Applicant but is in addition to amounts already paid for that year;

10.5 that the Second Applicant had charged £6354 for electric gate repairs and £3576 for fobs;

10.6 that the lack of consultation by the Second Applicant/RMG has been an ongoing problem since 2007;

10.7 that there are other examples of poor service and high management charges.

Inspection

11. An inspection of the gates took place on Friday 4 July at 1030am which was attended by Mr.V.Glendinning, the First Applicant, and Mr.P.Hitchen for RMG.

The Law

12. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(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.

13. Section 19 provides that –

(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.

14. Section 27A provides that:

(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 date at or by which it is payable, and

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) .....

(4) No application under subsection (1)...may be made in respect of a matter which –

(a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

15. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

16. Section 20 of the Act provides:

(1) Where this section applies to any qualifying works...the relevant contributions of tenants are limited...unless the consultation requirements have been either –

(a) complied with in relation to the works...,or

(b) dispensed with in relation to the works...

(2) In this section, "relevant contribution", in relation to a tenant and any works...is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works...

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

17. Section 20ZA(2) f the Act defines "qualifying works" as "works on a building or other premises".

18. Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003, ("the 2003 Regulations"), prescribes that the appropriate amount for the purposes of section 20(3) of the Act is an amount which results in the relevant contribution of any tenant being more than £250.

Deliberations

19. In making its determinations in respect of the First Application, the Tribunal took into account the following matters:

19.1 that the relevant costs were those included on the invoices which appeared at pages 45 and 46 of the First Respondent's Statement;

19.2 that the invoice which appears at page 43 (which, although it references the wrong property, the Tribunal considered did relate to the Property because of the common property reference number) was insufficiently proximate in time to the carrying out of the Works to be considered as part of the costs of those Works;

19.3 that the invoice which appears at page 44 of the First Respondent's Statement relates to the pedestrian side gate at the Property and should not be included as part of the Works;

19.4 that the amount included for the provision of key fobs in the invoice for the Works at page 45 of the First Respondent's Statement, namely, £1050 plus VAT, should not be included as part of the costs for the Works. In reaching this determination, the Tribunal noted the Firts Applicant's evidence that he had been charged £35 for a replacement key fob in May 2012, and the First Respondent's statement that they were intending to re-sell the key fobs to the leaseholders and to retain a stock presumably for replacement of lost fobs etc. To charge these costs as part of the service charge payable by the First Applicant would mean that he was paying twice;

19.5 taking into account the matters set out in paragraphs 19.1-19.4 above, from the £6354 included in the 2012 Accounts as the costs of the Works should be deducted the following amounts:

(i) £264 (£220 plus VAT) (invoice @ page 43);
(ii) £192 (£160 plus VAT) (invoice @ page 44);
(iii) £1260 (£1050 plus VAT) (cost of keyfobs on invoice @ page 45)
Total £1716; leaving a net amount for the cost of the Works of £4638;

19.6 in accordance with the terms of the Lease (which, for the purposes of this determination, was assumed to be in a common form as between the First Applicant and the Second Respondents), the First Applicant and the Second Respondents are liable to pay 5% of the cost of the Works;

19.7 as a result, the amount payable by the Second Respondents is less than the amount specified under Regulation 6 of the 2003 Regulations and the Second Applicant was not required to consult in accordance with s20ZA;

19.8 the Tribunal was satisfied that, even if the contribution of the Second Respondents had been greater than £250, it would have been reasonable in the circumstances to grant dispensation from the consultation requirements.