11016

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/22UN/LSC/2015/0028**
Property	:	**2A Maria Street, Harwich, Essex CO12 3HT**
Applicant	:	Mrs Patricia Janet Davis, 2A Maria Street, Harwich CO12 3HT
Respondent	:	Ground Rent Trading Limited, 5 Sentinel Square, Hendon, London NW4 2EL
Representative	:	Moreland Estate Management, 5 Sentinel Square, Hendon, London NW4 2EL
Type of Application	:	For determination of liability to pay service charges for the year 2015 [LTA 1985, s.27A]
Tribunal Members	:	G K Sinclair & R Thomas MRICS
Date of decision	:	10th July 2015

DECISION FOLLOWING A PAPER DETERMINATION

Summary

1. This is at least the fourth application brought by the applicant tenant seeking a determination by the tribunal of the service charges recoverable by her landlord, Ground Rent Trading Ltd. This is the first such application in which a response has ever been filed or the landlord and its managing agent have even attempted to comply with directions issued by the tribunal. In this case the response has been late, superficial and includes a bold but unsubstantiated application that the applicant be ordered to pay the respondent's costs.

2. For the reasons which follow the tribunal determines, as in previous years, that only the actual insurance premium for 2014–15 of £418.37 is recoverable, of which the applicant's share is one half.

Material lease provisions

3. Clause 1 of the lease dated 11th March 2005 provides that the lessee shall pay the rent specified in the Particulars and, by way of further rent, such monies as shall be paid out by the lessor in insurance premiums for the demised premises pursuant to the covenant in clause 3(e). These obligations are reinforced by the lessee's covenant in clause 2(1).

4. By clause 2(3) the lessee covenants with the lessor to pay a contribution as set out in the Particulars towards the cost and expense of repairing maintaining and renewing the items set out in the Sixth Schedule. The Second Schedule contains the Particulars, identifies the payment date as 1st January and the contribution as one half of the total expenditure. The items to be repaired, listed in the Sixth Schedule, are the main structure, gas and water pipes, drains, wires and cables used in common, and any common pathway. The lease plans do not suggest that there are any pathways used in common. There is no mention of how or when this contribution is to be paid, or that the service charge account requires audit. In particular, there is no mention in the lease of any reserve fund, or power for the landlord to accumulate any surplus service charge funds in such a reserve.

Material statutory provisions

5. Section 18 of the Landlord and Tenant Act 1985 defines the expression "service charge", for the tribunal's purposes, as follows :

   (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.

6. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :
   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.

7. The tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A of the Landlord and Tenant Act 1985. The first step in finding answers to these questions is for the tribunal to consider the exact wording of the relevant provisions in the lease. If the lease does not say that the cost of an item may be recovered then usually the tribunal need go no further. The statutory provisions in the 1985 Act, there to ameliorate the full rigour of the lease, need not then come into play.

Material before the tribunal

8. As neither party requested an oral hearing the application was dealt with on the basis of the documents submitted. An inspection was not considered necessary but, as previous tribunals' decisions make very clear, the building is a modern brick-built structure under a tiled roof, with one flat on the ground floor flat and another (the subject premises) upstairs. Each flat has its own external entrance, parking space and rear garden.

9. Directions were issued on 8th April 2015. These required the respondent landlord to file and serve a Statement in Reply on or before 24th April, with the applicant permitted to respond to that document by 8th May. The parties were also to disclose documents by 8th May.

10. It was not until 10th May 2015 that the respondent deigned to send a copy of its submissions to the tribunal office. These were received on 12th May. By contrast, the applicant had, in the absence of any compliance – again – by the respondent, filed her application bundle with the office on 1st May 2015.

11. By letter dated 13th May 2015 the applicant protested about the late filing by the respondent but made a few observations, also copied to the respondent directly. In particular she challenged the suggestion that there had been regular property inspections (she said none) and that she had failed to contact them before issuing proceedings. She referred to the many attempts she had made to phone, write and e-mail Moreland Estate Management, all without effective response.

12. This letter resulted in the respondent producing yet a further written submission dated 15th May, this time asserting (but without providing any detail or evidence in support) that there had been 23 inspections of the property since Moreland was appointed to manage it on 15th May 2009. Copy accounts for the calendar years 2012, 2013 and 2014 were produced. So too were a copy of the lease, some documentation seeking to show the lack of connection between the landlord and its insurance brokers, and some recent e-mails between the applicant and a Mark Muster of Moreland Estate Management. Nowhere do these written submissions ever identify their author, and nor do they attempt to provide any justification for the amounts claimed.

Findings

13. The tribunal notes that the lease makes no provision for a reserve fund, but yet again the accounts refer to an accumulated service charge surplus while ignoring the fact that the 2012 tribunal decision deprived the managing agent of any fee whatever, and the 2013 and 2014 decisions were even more restrictive, allowing only the insurance premium. These decisions should have been available to the accountant, and as the applicant had paid only the amounts determined by previous tribunals this would have altered the balances shown. No adjustments are shown whatever. This cavalier approach to the accounts does not warrant payment by the tenants of the "audit and accountancy fees".

14. Not once has either the landlord or its manager ever sought to justify budget sums for the various service charge years by reference to problems identified on inspection. Bearing in mind that the applicant has had to organise all repairs herself the tribunal simply does not believe that a London-based manager has ventured out to Harwich more than once, let alone the 23 occasions claimed. If these inspections took place then where are the inspection notes that a competent managing agent would produce?

15. The respondent's first submissions say nothing particularly material, yet boldly include an ill-advised application that the applicant pay its (unquantified) costs. The second submission descends to a few particulars, but it is an unimpressive document which fails to address what is really of interest to the applicant and the tribunal, namely how with its poor history it can justify the budget figure sought for the current year.

16. The fact that Moreland was appointed to manage the property as recently as April 2009 and has since been at the receiving end of adverse tribunal decisions for years 2012, 2013 and 2014 (plus this decision) is illustrative of poor standards which, even if management tasks were undertaken, do not justify the fee claimed.

17. Given a history where the landlord and managing agent have carried out no work at all in the past nor bothered to tell the tribunal why a figure of £280 for general maintenance (unchanged since last year) is considered reasonable, this sum is also deleted.

18. While the applicant may have her suspicions about the manner in which annual buildings cover is obtained it must be remembered that there are few companies operating in this landlord market, and the actual premium does not appear in any way unreasonable. The only sum payable by the applicant is therefore her half share of the insurance premium.

19. A finding of poor management and the levying of unreasonable service charges is enough to trigger service of a notice preparatory to the tenant body applying to a tribunal under Part 2 of the Landlord and Tenant Act 1987 for the fault-based appointment of a manager. There have now been four findings against the landlord and managing agent in just as many years, and this is the first time that the landlord has attempted – but out of time, and rather unhelpfully – even to respond to the tribunal. Previous tribunal findings have not been reflected in accounts later prepared for subsequent years. If ever there were a case inviting an application under the 1987 Act then this is it.

20. Pursuant to rule 13(2) the tribunal orders that the respondent shall reimburse the tribunal application fee of £90 paid by the applicant.

21. No application having been made for an order under section 20C of the Landlord and Tenant Act 1985, no such order is made.

Dated 10th July 2015

Graham Sinclair

Graham K Sinclair
Tribunal Judge