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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BH/LSC/2015/0087**
Property	:	**Flat 44, Hillcrest Road, London, E17 4AP**
Applicant	:	**Ground Rents (Regisport) Limited**
Representative	:	**Alan Mullen from Gateway Property Management Ltd**
Respondent	:	**Triplerose Limited**
Representative	:	**Mr Babad from Avon Estates (London) Limited**
Type of application	:	**Liability to pay service charges and administration charges**
Tribunal member	:	**Judge Robert Latham** **Mr Hugh Geddes RIBA MRTPI**
Date and venue of hearing	:	**24 June 2015 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**17 July 2015**

DECISION

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(1) The Tribunal determines that the sum of £1,025 is payable by the Respondent in respect service charges for the years 2006-2014. In so far as any interest is payable on this sum this is to be agreed by the parties or determined by the County Court.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The Tribunal determines that the Respondent shall pay the Applicant £190 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

(4) Since the Tribunal has no jurisdiction over county court costs, fees and interest pursuant to Section 69 of the County Court Act 1984, this matter should now be referred back to the Southend County Court.

The Application

1. The Applicant landlord seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent tenant in respect of the service charge years 2006 to 2014. On 8 December 2014, the Applicant issued proceedings in the County Court Money Claims Centre claiming arrears of service charges in the sum of £6,547.91. On 22 December 2014, the tenant filed a Defence. The tenant disputed the sums claimed in respect of insurance and attached alternative quotations in the sums of £204.50 and £241. It also disputed the other items and complains that inadequate particulars have been provided. On 28 January 2015, District Judge Ashworth, sitting at Southend County Court, transferred the case to the Tribunal to determine the reasonableness of the service charges and the insurance premiums. The tenant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985.

2. In its Claim Form, the landlord claims £6,547.91. A statement of account is attached to the pleading which totals £7,102.91. The difference between these two sums is explained by entries in respect of HMCTS Court Fee of £455 (27.11.14) and Solicitor's costs of £100 (27.11.14). These are matters for the County Court and fall outside the jurisdiction of this Tribunal.

3. The statement of account in the sum of £6,547.91 is made up of the following sums:

   (i) An opening balance of £3,929.19 (21.3.12).

   (ii) Three advance service charge demands of £400 (1.1.12, 1.1.13, and 1.1.14).

   (iii) Legal expenses of £300 (15.4.13). This is an administration charge.

   (iv) Interest on the outstanding arrears, namely £156.76 (24.10.14) and £781.96 (24.10.14).

4. On 17 March 2015, this Tribunal gave Directions at an oral case management hearing attended by Mr Alan Mullen and Mr Ben Day-Marr of Gateway Property Management Ltd ("Gateway") which manages the property on behalf of the landlord. Mr Babad of Avon Estates (London) Limited ("Avon Estates") which manages the property on behalf of the tenant, appeared for the tenant.

5. At the case management hearing, Mr Mullen explained that Gateway had only been managing the property since 2011. Prior to this, the property was managed by Countrywide Estate Management ("Countrywide"). Gateway has had no responsibility for collecting either the ground rent or the insurance. This is rather collected by Pier Management Ltd, a fully owned subsidiary of

the landlord. It is apparent that Countrywide had collected insurance on behalf of the landlord.

6. Pursuant to the Directions, on 9 April, the landlord sent to the tenant the following:

   (i) A breakdown of the sums claimed and any sums paid. The Statement of Account at p.207 of the Bundle explains how the Opening Balance of £3,929.19 (21.3.12) is computed. This dates back to 31 December 2006. During this period, the tenant made no payment towards its service charge liabilities.

   (ii) Service Charge Accounts for the relevant years (2007 to 2014) at p.70-162 of the Bundle. For the years 2007 to 2011 these were prepared by Countrywide; and 2011 to 2014 by Gateway. We have been provided with two sets of accounts for the year 2011.

   (iii) Various demands for payment (at p.38-67). A Summary of the Tenant's Rights and Obligations is to be found at p.63.

   (iv) A statement from Mr Alan Mullen, dated 7 April.

7. On 9 April 2015, the tenant sent to the Tribunal its Schedule (at p.231-236) setting out the items that it disputes. The landlord complains that it was not sent a copy of this Schedule until 21 April and was only able to add its response on 26 May (at p.239-241). On 16 June, the tenant sent a Reply (at p.259). The tenant has also provided a statement from Mr Israel Moskovitz, a director of Triplerose Ltd (at p.229-30).

8. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

9. The Applicant was represented by Mr Alan Mullen, the Area Manager of Gateway. He was accompanied by Mr Ben Day-Marr, the Director of Operations at Gateway. Neither had visited the property.

10. The Respondent was represented by Mr David Babad, of Avon Estates. He was accompanied by a colleague, Mr Joe Gurvits. Mr Moskovitz who had provided a witness statement, did not attend to give evidence. Neither Mr Babad nor Mr Gurvits had any personal knowledge of the subject property. It is sub-let, but they did not know what rent is being paid by the sub-tenant. They were unable to offer any explanation as to why the Respondent tenant has paid no service charges to its landlord for the past eight years.

11. The evidence before the Tribunal was far from satisfactory and we were not provided with the assistance from the Applicant which we might reasonably expect. The Tribunal asked Mr Mullen about a sum of £794.50 debited from the tenant's service charge account on 1 January 2007 (see p.207). We were told that this was an advance service charge. We asked whether there was any documentation to support this charge. Mr Mullen told us that there was not. He added that this included the cost of insurance. This was clearly wrong as

there was a separate debit of £457.53 in respect of insurance. Mr Mullen conceded that the managing agents had been demanding the payment of service charges without having any regard to the provisions of the lease.

The Background

12. The subject premises are a first floor flat which apparently has two bedrooms and is in a two storey inter-war building which comprises four flats. The ground floor flat is No.42. The only information available to the Tribunal about the flat is to be found in the lease plan (at p.203).

13. The Respondent tenant derives its interest from a lease dated 18 June 2002. It is the original tenant. The Applicant acquired the landlord interest in 2005.

14. Whilst the Respondent tenant has not paid a penny in rent over the past 8 years, the Applicant landlord has not spent a penny on either repairs or maintenance. The most significant items of expenditure are for management fees (increasing from £352.48 in 2007 to £509.00 in 2014) and audit and accountancy (ranging from £58.75 in 2007, to £247 in 2011 and £48 in 2014).

15. In recent years, the landlord has demanded payment in January of an advance service charge of £400 from each tenant. Where the service charge has exceeded the expenditure, the surplus has been carried over to reserves. This is not in accordance with the provisions of the lease.

16. The lease requires the landlord to decorate the exterior of the property every three years (Second Schedule, paragraph 3). No such decorations have been executed. The landlord has included Section 20 Notices in respect of external decorations dated 20 November 2012 (at p.163-4); 30 April 2014 (p.165-166) and 9 January 2015 (at p.167-89). A Specification of Works, dated 16 March 2015, appears at p.170-185. This seems to be no more than a pro forma template. There is no evidence before the Tribunal to satisfy us that any representative from the managing agents has inspected the property over the last 8 years. Had they done so, we would have expected there to be some written record recording the condition of the property.

The Lease

17. The lease is at p.186-205. The Tribunal highlights the following provisions:

    (i) The "property" is Nos. 42 and 44 Hilcrest Road, namely the ground and first floor flats.

    (ii) The tenant is required to pay a "maintenance rent" of one half of the costs and expenses that the landlord incurs pursuant to its covenants in the Second Schedule;

    (iii) The "maintenance year" ends on 31 December;

    (iv) The "payment dates" are the usual quarter days;

    (v) The "on account payment" is £300 per annum;

(vi) The landlord is entitled to charge interest on any arrears (Clause 4(g));

(vii) The landlord is required to keep the structure and exterior in repair, but not the window frames (Schedule 2, paragraph 1);

(viii) The landlord is obliged to redecorate the exterior of the property, including the window frames, every three years (Schedule 2, paragraph 10);

(ix) The landlord is obliged to insure the property (Schedule 2, paragraph 9);

(x) The landlord is permitted to employ managing agents and accountants (Schedule 2, paragraph 10);

(xi) The cost of the services is to be ascertained and certified by the landlord's managing agents to 31 December and payment shall be made within one month of production of the certificate. Until so verified, the tenant is obliged to make the on account payment by equal payments on the usual quarter dates. The tenant is entitled to receive a credit against the next maintenance rent payment where costs of the services have been less than the sums paid on account (Schedule 2, paragraph 11);

(xii) If the landlord's managing agent is of the opinion that the amount of the on account payments shall be insufficient to cover the cost of the services, they shall be entitled to serve one month's notice requiring an increase in the on account payments which shall, on the expiry of the notice, become the future on account payment (Schedule 2, paragraph 12);

(xiii) The landlord is entitled to maintain a sinking fund (Schedule 2, paragraph 2).

Our Determination

Issue 1: The Limitation Act 1980

18. The Claim was issued in the County Court on 8 December 2014. Mr Babad, for the tenant, argues that any claim for a service charge arising prior to 8 December 2008 is statute barred. This relates to the first seven items in the schedule, namely (i) insurance (2006) - £442.65; (ii) Insurance (2006) - £160.05; (iii) management fee (2007) – £352.48 (wrongly described in the Schedule as "audit fees"); (iv) audit fee (2007) – £58.75 (wrongly described in the Schedule as "management fees"); (v) insurance charges (2007) - £457.33; (vi) management fees (2008) - £448; (vii) audit fees (2008) - £57.50, a total of £1,859.76. All these sums arose before Gateway took over the management of the property.

19. Section 19 of the Limitation Act 2080 provides:

> "No action shall be brought, and the power conferred by section 72(1) of the Tribunals, Courts and Enforcement Act 2007 shall not be exercisable, to recover arrears of rent, or damages in respect of arrears

of rent, after the expiration of six years from the date on which the arrears became due.

20. The service charge payment is reserved as rent ("the maintenance rent"). We are satisfied that this aspect of the claim is statute barred.

Issue 2: The Management Charge

21. The following sums are claimed as management charges for the property: £437.04 (2009 at p.94); £446.52 (2010 at p.113): £456 (2011 at p.130); £418 (2011 at p.147); £494 (2012 at p.152); £494 (2013 at p.157); and £509 (2014 at p.161). Two management charges appear for 2011, namely for Countrywide and Gateway. The Applicant contends that there was no double charging as there was a reconciliation at the end of the year. Given that the tenant has paid nothing towards its service charge liability, our task is merely to determine what is payable and reasonable in respect of the cost of employing managing agents.

22. Mr Mullen, for the landlord, referred us to two decisions of Leasehold Valuation Tribunals in support of his contention that a management fee of £275 per flat was reasonable in London. In LON/00BG/LSC/2008/0192, the LVT found that £275 was reasonable for a flat in London, whilst in CAM/00KF/LSC/2011/0064, a LVT found that a charge of £175-225 per flat would be reasonable in the Southend area. Mr Babad argued that only £25 per flat is reasonable given the minimal management services that have been provided.

23. This is a specialist tribunal. We accept that a management fee of £250 to £300 per flat may be reasonable in London. The issue is what management services are provided. We have not been provided with any management agreement between the landlord and its managing agents. Mr Mullen, who has been responsible for the property for the last 6 to 7 months, has not visited the property. He could not tell us when the managing agents last visited the property. The Bundle before the Tribunal extended to 259 pages. It included no file note in respect of any inspection.

24. The Tribunal accepts that a higher management fee would be payable were the managing agent to be arranging for insurance. Countrywide arranged for insurance; Gateway did not. The property has no common parts. The managing agent would be expected to carry out an annual inspection and respond to any complaints of disrepair. It would also need to arrange for planned maintenance. The lease requires the property to be decorated every three years. A managing agent is likely to have a portfolio of similar low maintenance properties. We conclude that a reasonable management fee would be £200 per flat (inc. VAT) when the managing agent is arranging for insurance and £150 per flat when it is not.

25. The Tribunal is not minded to make any reduction in respect of the quality of the services that have been provided. Whilst the property has not been decorated for many years, there is no evidence that the tenant has complained about its condition or that the landlord has failed to respond to any complaint of disrepair.

26. We reduce the management fees charged by Countrywide to £200 for the years 2009 and 2010; and by Gateway to £150 for the years 2012, 2013 and 2014. In 2011, we allow £175, namely £100 for the six months when the property was managed by Countrywide and £75 for the six months when managed by Gateway. We allow a total of £1,025 in respect of management fees.

Issue 3: Audit Fees

27. The following sums are claimed for audit fees for the property: £58.75 (2009 at p.94); £73.25 (2010 at p.113): £247 (2011 at p.147); £107 (2012 at p.152); £48 (2013 at p.157); and £48 (2014 at p.161).

28. The landlord contends that the audit fees relate to the preparation of the Year End Service Charge Accounts. It is part of the overall management fee but is shown separately to offer transparency. The tenant contends that the charge has been unnecessarily incurred and is not payable.

29. The Tribunal is satisfied that, having regard to the limited work involved in managing the property, this audit fee should be included in the basic management fee of £200/£150 per flat that we have allowed. We further note that the managing agents have failed to operate the service charge account in accordance with the terms of the lease.

Issue 4: Miscellaneous Items

30. Arrears Collection - £69 claimed for 2009 (see p.95): The tenant contends that there is no provision in the lease to enable the landlord to claim this as a service charge. We are referred to Schedule 2 (at p.195-197). We agree and disallow this item.

31. Health and Safety - £172.50 claimed for 2009 (see p.95): The invoice from Watson, Wild & Baker Ltd is at p.98. Whilst the landlord refers us to the ARMA Health & Safety LAN03 Advisory Note at p.255-7 of the Bundle, Mr Mullen conceded that it was not the practice of Gateway to commission health and safety reports for two storey properties with no common parts. We agree that this sum has not been reasonably incurred and disallow it.

32. Valuation - £690 claimed for 2009 (see p.95). The invoice from Morgan Sloane is at p.99. The landlord argues that the RICS guidelines indicate that an insurance revaluation is required every 3-5 years. The tenant contends that the charge is not payable as there is no provision in the lease for such a sum to be payable. Schedule 2, paragraph 9 of the lease requires the landlord to insure the property. However, the Tribunal is satisfied that this should be a landlord's cost. It is in the landlord's interest to ensure that its property is fully insured. We therefore disallow this sum.

33. Professional Fees - £57.50 is claimed for 2009 (see p.95). The invoice is at p.112. This relates to the freeholder's approval administration fee for the service charge budget. We are satisfied that this is not a charge that it is appropriate for the landlord to pass on to the tenants through the service charge account and disallow it.

34. Professional Fees - £223.50 is claimed for 2010 (see p.113). The invoice from Morgan Sloane is at p.128. This relates to a Stock Condition Survey. We have not been provided with a copy of the survey. The landlord asserts that this was a cost properly incurred on behalf of the freeholder in order to maintain the fabric of the building. The tenant contends that the lease makes no provision for this. The landlord has not satisfied us that this was properly incurred as part of the service charge account. It was rather a landlord's cost to protect the value of its asset. We disallow this sum.

35. Legal Fees - £300 is claimed for 2013 (see p.157). Mr Mullen informed the Tribunal that the landlord was no longer intending to proceed with this claim. It would rather seek to recover interest on the arrears pursuant to the terms of the lease.

36. Other Items: The service charge accounts include modest sums for postage and bank charges (£12 at p.152 and p.157). These are not included in the Schedule. These seem to be no more than estimates, rather than reflect sums actually expended. The landlord has not sought to justify them. The Tribunal are satisfied that these should be included in the basic management charge.

Application under s.20C and refund of fees

37. The Respondent tenant applies for an order under section 20C of the 1985 Act arguing that it is just and equitable in the circumstances for an order to be made so that the landlord may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. The tenant has been largely successful in that the sum claimed by the landlord has been reduced from £6,547.91 to £1,025. However, the tenant has paid nothing towards its service charge liabilities over the past eight years. The Respondent is a buy-to-let landlord which has been receiving a substantial rent from its sub-tenant. This is not a case where the tenant has withheld rent because the property has been in disrepair. Prior to the issue of proceedings, the tenant did not challenge the service charges that were demanded. It is rather a wilful refusal to pay any sums due under the lease. The Tribunal is therefore satisfied that the Applicant had no option but to issue these proceedings. In these circumstances, the Tribunal is not minded to make an order under Section 20C.

38. The Applicant made an application for a refund of the fees that he had paid in respect of the hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the hearing fee of £190 paid by the Applicant within 28 days of the date of this decision.

The next steps

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

39. The Tribunal has found that the sum of £1,025 is payable by the tenant. The landlord is further entitled to interest on the sum due pursuant to Clause 4(g) of the lease. We leave it to the parties to agree the interest that is due. Alternatively, this can be determined by the County Court, whether pursuant to the terms of the lease or Section 69 of the County Court Act 1984.

40. This Tribunal has no jurisdiction in respect of the County Court costs. This matter should now be returned to the Southend County Court.

Judge Robert Latham

17 July 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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.