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

Case Reference : LON/00AZ/LSC/2016/0100

Property : 69D Deptford High Street,
London SE8 4AA

Applicants : Jagvit Singh Kang
Kalvir Kaur Kang

Representative : Machins Solicitors LLP

Respondent : Pravin Gandesha

Representative : LK Solicitors Ltd

Type of Application : Liability to pay service charges

Tribunal : Judge Nicol

Date of Decision : 23rd May 2016

DECISION

Decisions of the Tribunal

- (1) No service charges are currently payable by the Applicants to the Respondent due to the lack of any demands accompanied by the requisite Summary of Rights and Obligations in accordance with section 21B of the Landlord and Tenant Act 1985.
- (2) The amount charged by the Respondent's broker over and above the actual insurance premium for the years 2010-2015 is not payable and, subject to their being properly demanded, the correct amounts payable in relation to the insurance premiums are listed in the final column of the table set out in paragraph 1 below.

- (3) The Tribunal orders under section 20C of the Landlord and Tenant Act 1985 that the Respondent may not add his costs of these proceedings to the service charge.
- (4) The Respondent shall reimburse the Applicants their Tribunal fee of £125.

The Application

1. The Applicants are the lessees of the subject property. They purchased their interest on 26th March 2015. Through their solicitors, they have demanded information from the Respondent freeholder as to service charges payable for previous years. The Applicants have received no information that any service charges are payable other than for insurance. Paragraph 5 of the Applicants' statement of case set out information in relation to the insurance premiums which the Tribunal checked mathematically and against the evidence which produces the following figures:

Insurance Year	Total premium for building	Amount invoiced to Respondent by broker	Amount claimed from former tenant	Proportion of premium payable by lessee (8%)
	£	£	£	£
2010-11	7,954.26	8,500	680.00	636.34
2011-12	7,293.33	7,845	627.60	583.47 ¹
2012-13	9,502.71	10,437 ²	835.00	760.22 ³
2013-14	9,900.62	10,835	866.80	792.05 ⁴
2014-15	8,377.27	8,377.27	866.80	670.18
2015-16	7,962	7,962	636.96	636.96 ⁵
Total			4,562.16	4,079.22

2. The Applicants applied for a determination under section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of service charges for these years on a number of grounds which are addressed in turn below.
3. Relevant legislative provisions are set out in the Appendix to this decision.

¹ Rounded up

² Corrected in accordance with page 190 of the Applicants' bundle

³ Rounded up

⁴ Rounded up

⁵ The Applicants had wrongly calculated this amount (8% of £7,962) to be £634.56

Service Charges other than insurance

4. In the absence of any demands, accounts or certificates, the Applicants seek a determination that no sums are due to the Respondent for the years 2009-2015 inclusive other than in relation to the insurance premiums. However, the Tribunal has no power to grant this relief which is effectively declaratory. It is a truism that service charges are not owing if they are not demanded but the Tribunal cannot predict a determination to be made if and when they are demanded.
5. The lease requires an accountant's certificate at the end of each accounting period for the service charges. The Applicants assert that the lack of such certificates means that the service charges are not payable. This cannot be correct. The lease requires payment of an interim service charge which is payable before the relevant expenditure is incurred whereas the service charge accounts are provided after.

Insurance premiums

6. The Applicants do not challenge the reasonableness of the amounts demanded for insurance but object to paying the higher amount charged by the Respondent's broker rather than their share of the actual premium. They speculate that the additional amount is a commission but, actually, the Respondent has failed to set out his case in accordance with the Tribunal's directions of 4th March 2016 or at all and so its provenance is unknown. In the absence of any explanation for the additional amount, no service charge derived from it can be payable.

Service Charge Demands

7. Service charge demands must be accompanied by a Summary of Rights and Obligations in accordance with section 21B of the Landlord and Tenant Act 1985. The copy demands for service charges in relation to the insurance premiums provided by the Respondent have no such Summary attached and there is no evidence that they were ever served in the correct form. Under section 21B(3), a lessee may withhold payment unless and until a demand is served accompanied by the requisite Summary. Therefore, the sums demanded are not currently payable.

Costs

8. The Applicants have applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent may not add his costs of these proceedings to the service charge. Given the Respondent's minimal participation in these proceedings, those costs may not amount to much. In any event, his lack of proper or sufficient communication in response to the Applicants' very reasonable demands for information is the main reason for the Applicants making

their application to the Tribunal. It is just and equitable that the Respondent should bear his own costs.

9. For similar reasons, it is appropriate that the Respondent should reimburse the Applicants their Tribunal application fee.

Name: NK Nicol

Date: 23rd May 2016

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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

Section 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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.