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

Case Reference : LON/00AE/LSC/2016/0099

Property : 39 Leeland Way, NW10 1SA

Applicants : Torplus Limited

Respondent : Mrs Neelam Bowry

Parties present : Mr Hinds (Counsel for the Applicant)
Mr Abdelgadir (Managing Agent)
Mrs Bowry
Mr Sukesh Bowry
Mr Sanjay Bowry

Type of Application : Transfer from County Court

Tribunal : Mr M Martynski (Tribunal Judge)
Mr I Thompson BSc FRICS

Date of Hearing : 20 March 2017

Date of Decision : 29 March 2017

DECISION

DECISION SUMMARY

1. *The sum due:* Of the sum claimed in the County Court (£3264.02) in respect of Service and Administration Charges, ***only the sum of £2053.18 is payable.***
2. We have made an order pursuant to Section 20C Landlord and Tenant Act 1985 preventing the costs of the proceedings before the tribunal being claimed as Service Charges against the Respondent.

BACKGROUND

3. 39 Leeland Way ('the Flat') is a property contained within a block containing twelve flats. That block is part of a small estate ('the Estate') which originally, it would appear, contained two other blocks each containing 12 flats. Over the past few years, further flats have been added to the blocks.
4. The freehold of the Building is owned by the Applicant, Torplus Limited.
5. Mrs Bowry holds the long leasehold interest in the Flat. The lease is dated 3 January 1995 and is for a period of 120 years from 2 September 1987.
6. The Estate is managed by Mr Abdelgadir in the guise of ANI Management Limited. We were told that Mr Abdelgadir is a director of the Applicant Company, Torplus Limited.
7. Proceedings were issued in the County Court by the Applicant against the Respondent. In those proceedings the Applicant claimed the sum of £3116.18 plus interest pursuant to the County Courts Act. In the Claim Form the sum claimed is described as "Service charge arrears 2014/15". The total amount claimed however in the Claim Form is given as £3264.02.
8. Mrs Bowry filed a defence to those proceedings dated 28 September 2015.
9. The proceedings were transferred to this tribunal by order of District Judge Bloom dated 29 February 2016. The relevant part of that order reads:-

Transfer to the First Tier (Property Chamber) to resolve service charge issues.

The sum claimed in the County Court and the sum in issue

10. In the Claim Form issued in the County Court, the Particulars of Claim show a figure of £3116.18 plus unspecified interest. In the 'Amount claimed' box there then appears the figure of £3,264.02.

11. In the papers before us was a running Service Charge account for the Flat. At the end of the 2014/15 Service Charge year, that account shows arrears of Service and Administration Charges as £3264.02. We presume therefore that the total sum claimed (excluding statutory interest) in the County Court is the balance on the Service Charge account at the end of the 2014/15 Service Charge account. That account runs from the Service Charge year 2012/13 onwards.

The Respondent's lease

12. The lease contains some definitions as follows:-

“the Building” means All Those premises known as 37-48 Leeland Way

“the Common Parts” means all main entrances passages landings staircases (internal and external) forming part of the Building

“the Estate” means the whole of the land described on plan number 2 attached hereto and edged with green including the Building and any other buildings or erections which may from time to time be erected on the said land

“the Retained Property” means and includes all those gardens gates access yards roads footpaths parking areas (if any) and garage spaces (if any) and bin areas and other areas included in the Estate and provided by the Lessor at its discretion from time to time for the common use of residents in the Building and other buildings erected within the Estate and coloured brown on plan number 2 and their visitors

13. As to Service Charge provisions, the lease contains the following further definitions:-

“Total Expenditure” means the total expenditure incurred by the Lessor in any Accounting Period in carrying out their obligations under Clause 5(5) of this Lease and any other costs and expenses..... properly incurred in connection with the Building and the Retained Property and the remainder of the Estate

“the Service Charge” means one twelfth part of the Total Expenditure save such as shall be incurred in relation to the Retained Property [this is clearly a mistake, the reference should be to ‘the Building’] and one thirty sixth part of the Total Expenditure which shall be incurred in relation to the Retained Property.....

“the Interim Charge” means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessor or their Managing Agents shall specify and apportion at their discretion.....

“the Accounting Period” shall mean the period from 29 September in each year to the 28th day of September in the following year or such other period as the Lessor may at its option from time to time determine

Paragraphs 3, 4 & 5 of the Fifth Schedule which contains the Service Charge provisions state as follows:-

3. The first payment of the Interim Charge shall be made on the execution hereof in respect of the period from the date hereof to the 29th day of

September next and thereafter the Interim Charge shall be paid to the Lessor on the 29th day of September in each year.....

4. As soon as practicable after the expiration of each Accounting period there shall be served upon the Lessee by the Lessor or its agents a statement containing the following information:-

- (a) The amount of the Total Expenditure for that Accounting Period and which shall be signed by the Auditors appointed by the Lessor which signed statement shall be conclusive and binding upon the parties hereto
- (b) The amount of the Interim Charge
- (c) The amount of the Service Charge in respect of that Accounting Period and of any excess or deficiency of the Service Charge over the Interim Charge

5. If the Service Charge in respect of any Accounting Period exceeds the Interim Charge(if any) paid by the Lessee in respect of that Accounting Periodthen the Lessee shall pay the relevant excess to the Lessor within twenty-one days of service upon the Lessee of the statement referred to in paragraph 4(c) hereof

Service Charge accounts and demands

14. ANI Management Limited do not produce separate Service Charge accounts for the Estate. The Service Charge accounts for the Estate are contained within ANI's company accounts.

15. As to demanding Service Charges, it appears that on 29 September in each year, ANI sends out a letter to the Respondent. That letter sets out the Service Charge budgeted for the forthcoming year for the Flat, the Service Charge budgeted for the previous year for the Flat, the actual Service Charge incurred for the previous year for the Flat and the difference between the budgeted amount and the actual amount for the previous year. What is then demanded is the budgeted amount for the coming year plus the difference between the budget for the previous year and the actual for the previous year.

16. Clause 2 of the Respondent's lease deals with the Ground Rent. That clause obliges the tenant to pay, by way of additional rent-

All Those sums payable by the Lessee in accordance with the Fifth Schedule hereto at the times and in the manner set out in that Schedule

17. The letter sent out each year by ANI on 29th September therefore appears to be; (a) a demand on account by way of an interim payment and; (b) a demand for the balance due between the budgeted amount and the actual amount of the Service Charge. Of course, according to the lease, what should be sent to the tenant is a statement showing the amount of the Total Expenditure, that is the total amount spent for the Estate - and that amount should be signed by Auditors. Apart from the Interim Charge, the other amount that can be demanded is the difference between the previous years Interim Charge and the Actual Service charge, not the difference between the budgeted Service Charge and the actual Service Charge.

18. The point of the Service Charge provisions in the lease appears to be to allow the tenant to see the total amount of expenditure for the Estate once each year. This information is not given in the letter sent out by ANI. However, whilst the letter does not appear to comply with the lease so far as demanding the balancing charge for the year, that letter does appear to properly demand the Interim Charge.

The issues raised by the Respondent and our decisions – Service Charge year 2012/13

Insurance - £182.46

19. The insurance cost charged to the Respondent is a 1/39th share. The reason for this split (as opposed to the split provided for by the lease for 'Retained Property' costs – 1/36th) appears to be because further flats have been added to the original 36 on the Estate.
20. The insurance is for the buildings on the Estate. Under the terms of her lease, the Respondent is liable to pay 1/12th of the expenditure in relation to the 'Building', i.e. her block and 1/36th of the expenditure in relation to the 'Retained Property' which is the general (non-residential building) parts of the Estate. It seems to us therefore that buildings insurance is a 'Building' cost, not a 'Retained Property' cost.
21. The total cost of the Buildings Insurance for the year is given as £7,116.00. There is no apportionment of that cost between the buildings on the Estate. According to the Respondent, there are differences between the buildings on the Estate and so there is potential for the cost to be apportioned differently between the buildings. However, assuming an equal split between the buildings, the cost per building would be £2372. A 1/12th share of that would be £197.66 which is more than was charged to the Respondent.
22. We were shown some evidence that there was an insurance policy in force for the period in question. We were not shown an invoice for the insurance. On the balance of probabilities we find that there was insurance paid for in the year in question. In our experience as an expert tribunal, there is nothing unreasonable in a buildings insurance cost of £182.46 for a flat. Accordingly we find that sum reasonable and payable.

Legal expenses - £55.38

23. There was no evidence of these before us and the Applicant conceded that these were not payable.

Entryphone - £46.42

24. We are not sure how these costs have been apportioned. There was no invoice for these costs but there was no real dispute that there is an entryphone system that has to be paid for. The total cost for this year was £1532. This is a Building cost. Assuming an equal split between the

buildings on the Estate, this amounts to £510.66 per building and a 1/12th share is £42.55 and that is the amount that we allow.

Gardening - £123.08

25. There was only one invoice produced for one month for this year. The Respondent's complaint was that they had put to the Applicant that there were cheaper alternative gardening services (although the Respondent did not have any evidence of this) and the Applicant had not investigated this. There was no issue taken that the gardening was done and no issue taken about the quality of the work done.
26. We have allowed this sum. There is some evidence that the cost had been incurred and there was no challenge as to the work done. The cost, in our experience, is reasonable.

Electricity - £53.94

27. This was accepted by the Respondent.

Cleaning - £218.18

28. There was some evidence produced for this year although the evidence of invoices appeared to have slightly incorrect addresses. The Respondent's complaint was that they had put to the Applicant that there were cheaper alternative cleaning services (although the Respondent did not have any evidence of this) and the Applicant had not investigated this. There was no issue taken that the cleaning was done and no evidence that the work was not done to a reasonable standard.
29. We have allowed £200.00. There is some evidence that the cost had been incurred and there was no challenge as to the work done. The cost, in our experience, was reasonable. However, the total cost is £7,200. Cleaning is a Building cost. If the cost is split equally between the buildings, the cost per building is £2,400 and a 1/12th share of that is £200.

Management - £125.64

30. The management service provided by ANI is very poor. There are numerous failings, some examples are as follows:-
- (a) Proper Service Charge accounts are not provided (as we have set out above, the accounts provided are ANI's company accounts)
 - (b) The Building costs are not properly analysed as to the split between the buildings
 - (c) The costs generally are not properly allocated between building costs and Retained Property costs.
 - (d) The terms of the lease are not complied with when it comes to sending end of year balancing demands (as set out above, the Respondent is not provided with proper accounts and the demand is not signed by an auditor).

- (e) Mr Abdelgadir is far from clear in his communications with very poor English
- (f) No thought or attempt has been made to vary the Respondent's lease to take account of the additional flats erected on the estate.
- (g) Mr Abdelgadir was not able to explain properly many of the issues dealt with in the hearing before the tribunal, he appeared not to be familiar with the bundle of documents provided for the hearing. He arrived very late at the hearing, did not have his own copy of the bundle for the hearing and did not even have a pen with him to take notes.
- (h) ANI did not produce full, or any, invoices for many of the sums in dispute in the proceedings.
- (i) There is no evidence of competitive tendering for services
- (j) The invoices for management services appears be from Mr Abdelgadir personally to ANI Management Limited (a mistake according to Mr Abdelgadir)
- (k) There was evidence that ANI were wrongly apportioning costs that were Building costs to Estate costs. This meant that the costs per leaseholder were less – in some cases under £250 per flat. The effect of this was that ANI were carrying out work Relating to the individual buildings without consulting leaseholders. Because the costs were split as Estate costs, the works were could then be presented as being under £250 per flat which would mean that there was no need for statutory consultation – this is entirely wrong.
- (l) There were numerous examples of invoices having incorrect details on the as to what parts of the Estate they related to.

31. The management service provided therefore is not of a reasonable standard. We have allowed a fee of £60 for management to reflect the very basic value that the Respondent gets from the service.

Repairs and maintenance - £226.92

32. We have disallowed this sum in total. No invoices were produced to explain or substantiate this figure.

Accounts fees - £30.77

33. We have disallowed this sum. The accounts produced are the company accounts for ANI limited. Further, we were not shown any invoices for this sum. As set out above, the Respondent is not provided with proper accounts signed by an Auditor.

Bank Charges - £6.15

34. These were conceded by the Applicant.

The issues raised by the Respondent and our decisions – Service Charge year 2013/14

Insurance - £191.56

35. We make the same comments as for the previous year and allow this sum.

Legal expenses - £81.54

36. The invoices for these expenses appear to relate to County Court litigation with other tenants. There was no explanation as to why these costs were not being sought directly against the tenants in that litigation rather than via the Service Charge. These expenses then have either been wrongly attributed to the Service Charge or unreasonably incurred as a Service Charge item and they are disallowed.

Entryphone - £46.42

37. We are not sure how these costs have been apportioned. The total cost for this year was £1532. This is a Building cost. Assuming an equal split between the buildings on the Estate, this amounts to £510.66 per building and a 1/12th share is £42.55 and that is the amount that we allow.

Gardening - £123.08

38. We repeat the comments made for the previous year and allow this sum.

Electricity - £50.55

39. This charge was not contested.

Cleaning - £218.18

40. We repeat what we have said for the previous year and allow £200.00.

Management - £125.62

41. We repeat our comments for the previous year and allow £60.

Repairs and maintenance - £244.10

42. We saw an invoice for £600 to inspect and service the smoke vent systems at 25-51 Leeland Way and allowed 1/36 of this - £16.66.

43. We were also shown an invoice for £3,150 for new emergency lighting relating to the Respondent's block. This invoice appeared to be charged as an Estate Charge. As it relates directly to the block, it is a Building Charge. A 1/12th share of this sum would be £262.50. There was no statutory consultation in respect of this work. Therefore the amount is limited to £250.00. The Respondent argued that this work was poorly

done and showed photographs showing some allegedly poor boxing in. We were not convinced that the work was significantly sub-standard and were told by Mr Abdelgadir that the problem had been rectified.

44. We were then shown an invoice for £6,800. It was not clear from the address given on the invoice as to exactly what part of the Estate this related to but we have assumed from the information that it related to the Applicant's block. The costs were for an industrial clean of the staircase, the redecoration of walls to the staircases, the replacement of windows to communal stairways and the upgrading of the fire alarm. According to the Respondent, this work was carried out following a fire at the block. That work should have been covered under the buildings insurance. They had been trying to find out if an insurance claim had been made but had not got any proper information from ANI. Mr Abdelgadir said that the works were not related to the fire.
45. It appears to us that, given the nature of the work, it was far more likely than not that the works were undertaken as a result of fire damage. Accordingly the cost of that work should have been claimed via insurance. We conclude therefore that the cost of these works was not reasonably incurred.
46. We have however allowed the sum of £244.10 for repairs and maintenance because, as a result of our decision, the actual sum payable would have been £266.66.

Accounts fees – 30.77

47. We have not allowed these for the reasons given for the previous year.

Bank Charges - £4.62

48. No information was provided to support these and we have disallowed them.

The issues raised by the Respondent and our decisions – Service Charge year 2014/15

Buildings insurance - £185.13

49. We have allowed this in full for the reasons given for earlier years.

Legal expenses - £91.79

50. The invoices making up the sums were for; (a) a s.146 notice served on another leaseholder – this cost clearly should have been charged to that leaseholder, not the Service Charge; (b) litigation directly against ANI Limited, clearly this was not a Service Charge item.
51. The costs are therefore disallowed.

Entryphone - £51.08

52. We have allowed £46.82 for the reasons given above for previous years.

Gardening - £123.08

53. We have allowed these costs for the reasons given above for previous years.

Electricity - £74.12

54. Not contested.

Cleaning - £218.18

55. We have allowed £200 for the reasons given for the previous years.

Management - £125.64

56. We have allowed £60.00 for the reasons given for the previous years.

Repairs - £239.41

57. We disallowed costs of plumbing and pest control as they did not appear to relate to the Applicant's block and did not appear to be Estate expenses.

58. We allowed the costs of repairs to brickwork (£3,164). The Respondent claimed that this work was necessary as a result of new flats being built on the Estate but there was no evidence of this. The correct apportionment of this work would be to divide the cost by half as the work appears to relate to two separate buildings and then to apportion a 1/12th share to the Respondent. This produces a figure of £131.83.

59. We allowed the costs of dealing with a water leak (£2,654) which appears to have been carried out to two buildings (again not clear because of the confusing addresses on the invoices). The Respondent argued that this was an insurance cost. We suspect that insurers would have declined a claim for this work. The correct apportionment of this work would be to divide the cost by half as the work appears to relate to two separate buildings and then to apportion a 1/12th share to the Respondent. This produces a figure of £110.58.

60. We allowed the costs of miscellaneous work (£3,274) which appears to have been carried out to two buildings. The correct apportionment of this work would be to divide the cost by half as the work appears to relate to two separate buildings and then to apportion a 1/12th share to the Respondent. This produces a figure of £136.41.

61. The combined total of what we have allowed appears to be more than was actually charged for repairs and maintenance for this year – another

example of poor accounting / management. Therefore the sum claimed is allowed.

Accounts - £79.10

62. Disallowed for the reasons given for previous years.

Bank Charges - £2.64

63. Disallowed as there was no supporting evidence.

Common parts redecoration - £226.67

64. We have disallowed this sum (which was in any event conceded) as we could find no supporting evidence for it.

Administration Charges - £111.03

65. In the running account for the Flat are two Administration Charges. We have not been shown any evidence as to what these charges are for or how they have been lawfully demanded and therefore we disallow them.

Summary

66. We have made total disallowances in respect of Service Charges and Administration Charges in the sum of £1210.84 from the charges on the Respondent's running account which were claimed for in the County Court proceedings (£3264.04) which leaves the balance of £2053.18.

Costs

67. The Respondent made an application at the hearing for an order preventing the costs of these proceedings before the tribunal being charged to her via the Service Charge. We make that order given; (a) the shambolic way in which the case was presented to us by the Applicant; (b) the numerous failings of management that we have found; (c) the fact that the Respondent has been successful on many items.

68. Accordingly, none of the costs incurred, or to be incurred, by the Applicant in connection with the proceedings before this tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent.

Mark Martynski, Tribunal Judge
29 March 2017

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.