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

Case Reference : LON/00BG/LSC/2017/0238

Property : Flat 78 Abbots Wharf, 93 Stainsby Road, London E14 6JN

Applicant : Abbots Wharf Management Ltd

Representative : TWM Solicitors LLP

Respondent : Mr Sam Chinenye Okeke-Ewo

Representative : N/A

Type of Application : For the determination of the reasonableness of and the liability to pay a service charge

Tribunal Members : Tribunal Judge Richard Percival

Venue : 10 Alfred Place, London WC1E 7LR

Date of Decision : 4 September 2017

DECISION

Procedural

1. Proceedings were originally issued in the County Court at Clerkenwell and Shoreditch under claim number D18YX452. The claim was transferred to this Tribunal by order of District Judge Pigram on 10 May 2017.
2. The case was allocated to the paper track.
3. The Tribunal gave directions on 20 July 2017. In those directions, the issue was identified as the reasonableness and payability of the service charges for the years 2015-2017, to a sum of £5,905.09. The Tribunal also noted that the claim for ground rent, which had purported to be transferred by the District Judge, would be referred to the County Court, as the Tribunal has no jurisdiction in relation to ground rent.

Determination

4. The applicant has set out the service charge account and provided copies of the service charge demands. The Respondent's defence in the County Court was expressed in the most general terms. In his statement of 3 August 2017 (see further below), he provides some limited further particulars. However, for the reasons set out below, it is not necessary to consider the detailed merits of the rival claims (insofar as it might be possible to do so on the material before me).
5. In his 3 August 2017 statement of case, the respondent states:

“However, the Defendant had made an offer ‘without prejudice’ by sending a cheque for £5905.00 which is the exact amount the Honourable Tribunal identified at the hearing on 20 July 2018 to the Claimant solicitors on 2 August 2017”.
6. The applicant's solicitors have copied to the Tribunal its letter of 7 August 2017 to the respondent, returning the respondent's cheque, because it was made out to the freeholder, rather than to the managing agent or the solicitors' firm.
7. In response, the respondent sent a cheque to the solicitors, payable to the managing agent. However, this cheque was incorrectly made out, in that while the sum in digits was correct, the words on the face of the cheque read “five thousand, nine hundred and 5 pence”. The solicitors returned the cheque and asked for another to be issued.

8. The above was communicated to the Tribunal by a letter from the respondent's solicitors' dated 25 August 2017. In that letter, they note that it is unlikely that any replacement cheque would have cleared by the time that the Tribunal came to consider the case.
9. In a letter dated 29 August, but apparently received by fax by the Tribunal on 27 August 2017, the respondent appears to have forwarded a replacement cheque. In that letter, the respondent asks the Tribunal to "vacate the forthcoming hearing" in view of the settlement. A photocopy of the cheque is enclosed. The sum is correctly stated. However, it carries the date "29/8/15".
10. On the date of this decision, a letter was received from the applicant's solicitors, referring to the dating of the cheque referred to in paragraph 9 above.
11. The respondent's correspondence, copied to the Tribunal, does not declare itself to be "without prejudice". Further, the payment offered is in full settlement of the dispute which is within the jurisdiction of the Tribunal.
12. In the light of what appears to be a third wrongly drafted cheque, the Tribunal is not prepared to accept that the respondent's mind is in truth going with his purported acceptance of the applicant's claim in respect of the service charge.
13. In the circumstances, the conduct of the respondent is such that the Tribunal does not consider that he has any viable defence in place to the applicant's claim; but that the Tribunal retains jurisdiction, given the doubts I express in paragraph 12 above.
14. Accordingly, the Tribunal finds in favour of the applicant in the sum of £5,905.
15. The relevant legal provisions are set out in the Appendix to this decision.
16. In their letter of 25 August 2017, the solicitors advert to the issue of their costs before the Tribunal, but in a form that does not amount to an application for costs under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13. The applicant is at liberty to make an application in the proper form.

The next steps

17. The tribunal has no jurisdiction over ground rent or County Court costs. This matter should now be returned to the County Court at Clerkenwell and Shoreditch.

Name: Tribunal Judge Richard Percival **Date:** 4 September 2017

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.