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

Case Reference : **BIR/OOFN/LIS/2013/0025**

Property : **14 Hotoft Road, Leicester, LE5 1EF**

Applicant : **Ms M Lee**

Representative : **Unrepresented**

Respondent : **Hotoft Management (Leicester)
Limited**

Representative : **Unrepresented**

Type of Application : **Under sections 19, 20c and 27A of
the Landlord and Tenant Act 1985
for the determination of liability to
pay and reasonableness of service
charges**

Tribunal Members : **Judge S McClure
Mr V Ward BSc Hons FRICS**

**Date and venue of
hearing** : **No hearing. Inspection carried out
on 8 November 2013**

Date of Decision : **11 December 2013**

DECISION

The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the Leasehold Valuation Tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No 1036) ('the Transfer Order') the functions of Leasehold Valuation Tribunals were, on 1st July 2013, transferred to the First-tier Tribunal (Property Chamber). By virtue of the transitional provisions, applications to Leasehold Valuation Tribunals in respect of which a decision had not been issued before the 1st July 2013, automatically became proceedings before the First-tier Tribunal (Property Chamber).

The Transfer Order also amended the relevant legislation under which Leasehold Valuation Tribunals were referred to by substituting the words 'First-tier Tribunal' for 'Leasehold Valuation Tribunal' within the relevant parts of the legislation. The extracts from the legislation applicable to the present applications that appear below incorporate the changes made by the Transfer Order. In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber).

Decisions of the tribunal

- (1) The tribunal determines that there be a reduction in the sum of £71.25 payable by the Applicant in respect of the service charge for the year 1 July 2007 – 30 June 2008.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge
- (3) The tribunal determines that the Respondent shall pay the Applicant £50 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable by the Applicant in respect of the service charge year 1 July 2007 – 30 June 2008.

The law

Landlord and Tenant Act 1985 (as amended)

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.

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.

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) —
- (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.

The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Regulations 2013

Paragraph 13 Reimbursement of fees, etc

- (2) The tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

The background

- 2. The property (The Property) which is the subject of this application is Number 14 Hotoft Road, and is a first floor flat which comprised a hall,

kitchen, reception room, two bedrooms, bathroom with shower and WC, and a small room designated by the parties as a utility room.

3. The Property is part of a block of six flats, and is within an estate comprised of 102 flats, 19 houses (some or all with garages) and 58 separate garages (the Entire Property).
4. The Applicant holds a long lease of the Property which requires the freeholder and the managing company to provide services and the tenant to contribute towards their costs by way of a variable service charge. The Respondent is the managing company for the Entire Property. In 2003 the Respondent appointed Countrywide (CW) as managing agent for the Entire Property. The freeholder of the Entire Property is Leicester Co-Ownership Housing Society (No4) Limited (the Freeholder). The Freeholder is not a party to this application.
5. An application dated 9 June 2013 was made to the Tribunal for a determination under Section 27A (and 19) of the Landlord and Tenant Act (the Act) of the liability to pay, and for the reasonableness of, a service charge levied in the year 1 July 2007 - 30 June 2008 in respect of the manner in which the Respondent dealt with a leak into the Property.

The information before the Tribunal

6. A hearing was not requested by either party. The Tribunal considered the matter on the papers presented on 8 November 2013 and the further information provided by the Respondent by way of letters dated 17th and 27th November 2013, and copied to the Applicant.
7. The Tribunal carried out an inspection of the property on 8 November 2013. Mr Ron Morse attended on behalf of the Applicant. Also present were the current occupiers of the flat, being the tenants of the Applicant. The Respondent was not represented.
8. At the inspection the Tribunal was told by Mr Morse that the flats had concrete floors and ceilings. The Tribunal noted that there was some discoloration and peeling of the paint to the utility room ceiling and walls.

The issues

9. The Tribunal identified the relevant issues for determination as follows:
 - (i) The reasonableness of the management fee aspect of the service charge for the year 1 July 2007 - 30 June 2008 relating to the manner in which the Respondent dealt with the complaint by

the Applicant of marks appearing on the ceiling of the utility room to the Property.

- (ii) Whether the Tribunal should make an order under S20C of the 1985 Act preventing the Respondent from recovering the cost of these Tribunal proceedings by way of the service charge provisions in the lease
- (iii) Whether the Tribunal should make an order under Regulation 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for reimbursement of the Applicant's £50 application fee by the Respondent.

Service charge item & amount claimed

- 10. The Applicant claims a reduction of £143 in the service charge for the year 2007.

The Applicant's case

- 11. In December 2006 the Applicant was notified by the occupier of the Property, her tenant Mr John Morse, that marks had begun to appear on the ceiling of the utility room in the Property. The Applicant reported the marks to CW. In January 2007 the ceiling was painted by a painter sent to the property by CW. The Applicant says that CW undertook no investigation of the cause of the marks before having the ceiling painted.
- 12. On 8 March 2007 the Applicant told CW that the marks had reappeared and asked that the flat above hers, Number 15, be investigated as a possible source of the leak. The Applicant has no written records for the weeks immediately following 8 March and said she believes that communications regarding the matter were carried out by phone.
- 13. On 15 May the Applicant emailed CW to again ask them to do something about the leak, noting CW was now aware that the problem was the shower to Number 15. On 17 May CW told the Applicant that the Lessee of Number 15, Mr Haytor, had told his tenant at Number 15 to be careful with their use of the shower until a solution to the leak could be found. Around the end of May 2007 there was a meeting between CW, the Applicant, Mr Haytor and a plumber, at which the plumber confirmed the problem was the shower. (Note, the meeting date has been confirmed by the Respondent to be 21 June 2007, this date is not disputed by the Applicant).
- 14. The Applicant says there was little contact between her and CW during July and August because she was away a lot caring for her mother who was ill. There was further contact between CW and the Applicant

during October and November 2007 during which the Applicant was told dates in October and then November when a plumber was going to inspect the utility room, and then that the work was to commence on 8 November 2007. The Applicant was then told on 8 November 2007 that the work was on hold as Mr Haytor was making an insurance claim. The Applicant contacted CW again on 21 November about the outstanding works and understands that the works were carried out in December 2007.

15. The Applicant accepts that under the terms of the lease the responsibility to deal with the shower leak was with Mr Haytor and not the Respondent. However, the Applicant says that the service provided by CW in investigating the cause of the damp patches and then, when it was discovered to be a leak from the shower of Number 15 taking action, was inappropriately and unnecessarily delayed.

The Respondent's case

16. The submission for the Respondent was provided by one of the elected volunteer directors of the Respondent management company, Mr Lawrence Haydon. Mr Haydon says that he cannot verify the details or dates provided by the Applicant or the actions of CW during 2007, as the Respondent was not informed about the repair at the time, as is normal procedure.
17. Mr Haydon says that the Respondent is not responsible for repairs to the shower. Mr Haydon says that once it was established that the leak came from the shower at Number 15 CW correctly told the Applicant that it was Mr Haytor's responsibility. Mr Haydon says that it appears that CW kept a dialogue open with the Applicant regarding the problem and kept her informed of the situation. He says that CW instigated the meeting on 21 June 2007.
18. Mr Haydon said that it was regrettable that the repair took so long, but it took time to trace where the leak originated from, particularly as both flats had sub-tenants and it was difficult to co-ordinate access to the flats to identify and fix the problem. A further delay was caused by Mr Haytor's insurance claim. The Respondent does not agree that the service the Applicant received was inappropriately and unnecessarily delayed.

The Lease

19. The Lease is for a term of 125 years and is dated the 11th of May 1983. Clause 5 of the Seventh Schedule requires the Respondent to provide and maintain a water supply. The June 2004 Repairs Schedule conferred responsibility for water leaks from pipes, tanks, toilets and cisterns upon the Respondent. Clause 16 of the Seventh Schedule

provides for the Respondent to do such acts as are necessary to maintain the Entire Property as first class residential dwellings.

20. Clause 2 of the Fifth Schedule to the lease provides that the lessee must not cause or allow any nuisance to be suffered by another other lessee.

The tribunal's decision

21. Having considered all of the information provided, the tribunal determines that there shall be a reduction in the management fee part of the service charge of £71.25 for the year 1 July 2007 - 30 June 2008.
22. Accordingly, the amount payable in respect of the service charge for the year 1 July 2007 - 30 June 2008 is reduced by £71.25.

Reasons for the tribunal's decision

23. The Tribunal finds that the investigation of the leak to determine the cause was the responsibility of the Respondent under Clause 5 of the Seventh Schedule of the lease, and the June 2004 Repairs Schedule. The Tribunal finds that the Respondent was required under Clause 16 of the Seventh Schedule to take such reasonable steps as were necessary to ensure the leak was fixed by Mr Haytor within a reasonable time, once the leak had been identified as Mr Haytor's responsibility.
24. The Tribunal finds that the leak from the shower of Number 15 into the utility room of Number 14 was a nuisance and that Mr Haytor appeared to be in breach of Clause 2 of the Fifth Schedule. The Respondent was entitled under Clause 16 of the Seventh Schedule to require Mr Haytor to get the leak fixed without undue delay, and should have done so.
25. In summary, when the cause of the leak was unknown the Respondent had a duty to investigate and determine the cause of the leak. When the leak was identified as being the responsibility of another lessee, the Respondent had a duty to take reasonable steps to ensure the leak was fixed within a reasonable time.
26. The information the Respondent has provided to the Tribunal does not show that CW took all reasonable steps to promptly identify the leak and then require Mr Haytor to promptly carry out the repair. A year from notification to repair is too long for this leak. The Tribunal finds that the Respondent failed to take sufficient steps to ensure the cause of the leak was found as soon as reasonably possible and then failed to take sufficient steps to ensure that Mr Haytor got the repair carried out as soon as possible.

27. The Tribunal finds that the service the Respondent provided to the Applicant was not of a reasonable standard and that a reduction in the management fee element of the service charge for 2007 is appropriate.
28. The management fee item of the service charge for 2007-2008 is £142.50. The Respondent doesn't set out what items the management fee covers, but the experience of the Tribunal is that a management fee for an estate of this size and type would include matters such as:
 - (a) Maintaining the principal fabric of the development and communal areas as defined by the terms of the lease, with reference to carrying out any necessary repairs and placing contracts for cleaning and ground maintenance.
 - (b) Arranging building insurance
 - (c) Dealing with health and safety issues
 - (d) Keeping books and records relating to service charge payments and the costs incurred in running the development.
 - (e) Liaising with lessees generally, this would include dealing with issues such as the matter in issue in this application.
29. In coming to the amount of the reduction of the management fee, the Tribunal found that the overall management of the Estate was of a reasonable standard during the relevant period. However, the matter in issue did take a year to resolve and did cause inconvenience to the Applicant. Taking all of the circumstances into account, a reduction in the management fee part of the service charge of 50% was found to be appropriate, being a reduction of £71.25 from the total management fee of £142.
30. The Tribunal cannot look at issues of any financial loss the Applicant says she suffered as a result of the problems with the utility room. Such issues of compensation are a matter for the county court and not this Tribunal.

Application under s.20C and refund of fees

31. The Tribunal on its own initiative may make an order that the Respondent reimburse the Applicant the whole or part of any fee paid by her in her application to the Tribunal. The Tribunal notes that the Respondent made no offer to come to a settlement with the Applicant and, in fact, specifically stated that no settlement would be made as it would set a precedent. An offer of a modest reduction in the service charge for 2007 may have rendered this application unnecessary. Having taken into account the determination at paragraph 28 and all of

the evidence before the Tribunal, the tribunal orders the Respondent to refund the Applicant the £50 application fee within 28 days of the date of this decision.

32. Having considered the submissions from the parties and taking into account the determination above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

In reaching their determination the Tribunal has had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision which is given below (regulation 52 (2) of The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely on in the appeal.

Name: Judge S McClure

Date: 11 December 2013