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

Case Reference : LON/00BB/LSC/2013/0414

Property : Flat 1 and 4, 3 Chester Road, Forest Gate, London, E7 8QT

Applicant : Chamber Estates Ltd

Representative : Mr M Paine of Circle Residential Management Ltd

Respondents : (1) Mr & Mrs K Hussain (Flat 1)
(2) Mr & Mrs Addai Appiah (Flat 4)

Representative : In person

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

Tribunal Members : Judge I Mohabir
Mr T Johnson FRICS

Date and venue of Hearing : 25 September 2013
10 Alfred Place, London WC1E 7LR

Date of Decision : 19 November 2013

DECISION

Introduction

1. This is an application made by the Applicant seeking a determination under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) of the Respondents’ liability to pay and/or the reasonableness of interim service charges for the year ending 31 December 2013.
2. The application was initially brought against Mr and Mrs Hussain, Mr and Mrs Cole and Mr and Mrs Addai Appiah who are respectively the lessees of Flats 1, 2 and 4 at 3 Chester Road, Forest Gate, London, E7 8QT. The interim service charges claimed against each are £618.46, £927.18 and £927.18 respectively. However, the application only proceeded against Mr and Mrs Addai Appiah, as the other lessees had agreed the interim service charges claimed against them.
3. 3 Chester Road is described as a two-storey end of terrace building that has been converted into 4 self-contained flats in respect of each a residential lease has been granted on the same terms (“the leases”).
4. The lessees’ covenant to pay both an interim charge and the service charge is contained in clause 3.2.4 of the leases. This is payable in respect of those costs incurred by the landlord pursuant to the discharge of its obligations set out in clause 5 of the leases.
5. Clause 9.1.3 entitles the landlord to determine what is a fair and reasonable interim service charge that is to be paid in respect of any service charge year which begins on 1 January and ends on 31 December in any given year. Clause 9.3 of the leases obliges the lessees to pay the interim service charge by two equal instalments in advance on 24 June and 25 December in each year. The contractual liability for Flat 4 is stated to be 27.27% of the overall cost.
6. On 5 July 2013, Circle Residential Management Ltd (“Circle”), the managing agent, sent a service charge demand to each of the 4 lessees for payment of the second instalment of the total annual estimated service

charge budget in the sum of £3,400. The budget is comprised of the following heads of expenditure:

Building repairs	£456
Buildings insurance	£1,798
Accounting	£186
Management fee	£960

7. The lessees of Flat 2, Mr and Mrs Cole paid their demand and no further action was taken against them. However, Mr and Mrs Hussain (Flat 1) and Mr and Mrs Addai Appiah (Flat 4) failed to pay their demands and on 19 June 2013 Circle made this application to the Tribunal.

Relevant Law

7. This is set out in the Appendix annexed hereto.

Decision

8. The hearing in this matter took place on 25 September 2013. The Applicant was represented by Mr Paine of Circle. Mr Hussain, the joint lessee of Flat 1, appeared in person. Mr and Mrs Addai Appiah did not attend and were not represented. The Tribunal had received an earlier e-mail from Mrs Addai Appiah stating that she was unable to attend the hearing due to illness on the part of her son. No application to adjourn was made so the hearing proceeded in her absence.
9. Mr Hussain confirmed that he was now willing to pay his outstanding half yearly contribution of £309.23. On the basis of that agreement, the Tribunal no longer retained jurisdiction is so far as the application related to him.
10. The statement of case filed and served by Mrs Addai Appiah dated 9 August 2013 limited her challenge to the reasonableness of the service charges on the basis that that there was little or no management of the building, especially in relation to maintenance and repairs required that

were not being carried out by the Applicant. It seems, therefore, that she was not contending that the expenditure was not being reasonably incurred but that, because nothing was being done, it was excessive.

11. By way of background, Mr Paine explained that the present budget estimates for the various heads of expenditure had been derived from the actual expenditure incurred in the preceding year.

Building Repairs

12. The Tribunal found the estimate of £456 to be reasonable. When compared to the actual expenditure of £501.20 incurred in the preceding year, the lower estimate could not be regarded as unreasonable, especially if Mrs Addai Appiah was contending that repairs were in fact required.

Buildings Insurance

13. The budget estimate was placed at £1,798. However, he told the Tribunal that the actual expenditure was £1,731.66. He said that before the insurance had been placed an insurance rating comparison against 3 other similar properties in the locality had been carried out. The cheapest rate obtained was 0.27p per £100 of value and that was in fact the same rate for the property. Mr Paine also explained that a market review of the buildings insurance was carried out every 3 years by the insurance brokers. Furthermore, the property had been insured with Aviva on preferential terms as part of an overall portfolio of properties insured with that firm for a number of years.
14. The Tribunal accepted the evidence given by Mr Paine that the buildings insurance was being tested on the open market every 3 years to ensure that a competitive rate was obtained in relation to similar properties and that a preferential rate had also been obtained from Aviva. Accordingly, the Tribunal found the actual expenditure of £1,731.66 was reasonable.

Accounting

15. Mr Paine conceded that the leases did not require the Applicant to certify the service charge accounts. Nevertheless, he submitted it was good practice to do so and was recommended under Part 11 of the RICS Management Code. He also submitted that the expenditure was recoverable under clause 5.5.6.2 of the leases.
16. The Tribunal found that clause 5.5.6.2 did allow the accounting expenditure of £186 to be recovered as service charge expenditure. For the reasons given by Mr Paine, the Tribunal also found the expenditure to be reasonable.

Management Fees

17. The management fee of £960 is calculated at £200 per unit plus VAT. The management duties carried out by Circle is set out at paragraph 13.4 of the Applicant's statement of case. It is not necessary to repeat these here, as they are self-evident.
18. The Tribunal had the benefit of the management contract between the Applicant and Circle setting out the management duties required. The Tribunal also accepted the Applicant's evidence that one or more of those duties fell within the requirements of paragraph 2.4 of the RICS Management Code. Accordingly, the Tribunal found the overall management fee to be reasonable.

Section 20C & Fees

19. Mr Hussain had made an application under section 20C of the Act in relation to the Applicant's entitlement to recover the costs, if any, it had incurred in these proceedings. Mr Paine said that this was not opposed on behalf of the Applicant. Therefore, the Tribunal does make an order under section 20C preventing the Applicant from recovering any costs it has incurred in these proceedings.

20. Mr Paine did make an application for an order that the Respondents reimburse the Applicant the fees of £300 it has paid to the Tribunal to have the application issued and heard. The Tribunal grants that application on the basis that the Applicant has succeeded entirely on all of the substantive issues in this matter.

Judge I Mohabir
19 November 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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.