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

Case Reference : LON/00AY/LSC/2014/0187

Property : Flat 28, Darlington House, Fount Street, London SW8 4SF

Applicant landlord : London Borough of Lambeth

Representative : Mr Cohen of counsel, instructed by Judge & Priestley

Respondent tenant : Mr Saleem S Gul and Mrs Tasneem R Gul

Representative : Mr Gul in person

Type of Application : Liability to pay service charges

Tribunal Members : Judge Jack, Professional Member
Cartwright FRICS, Tribunal
Member Hart

Date and venue of determination : 21s July 2014 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 21st July 2014

DECISION

Background and procedural

1. By a claim form dated 2nd December 2013 under action number 3XZ77811, the landlord sought to recover £1,402.78 arrears of service charge and interest and costs. By order of 31st March 2014 District Judge Mullis transferred the matter to this Tribunal “to adjudicate upon all matters within its jurisdiction.”
2. The Tribunal gave directions on 20th May 2014 and these were substantially complied with.
3. At the hearing Mr Cohen of counsel represented the landlord and Mr Gul appeared on his own behalf and on behalf of his wife. Mr Cohen, on behalf of the landlord, undertook that future service charge demands would be sent to the tenants’ home address.

Discussion

4. The tenants are the purchasers of a right-to-buy lease granted by the landlord in 2002 for a term of 125 years. It contains terms standard to leases of that nature.
5. The tenants rent the flat out, most recently to an elderly disabled man. They complain that the sub-tenant does not forward mail to them. It is common ground that the service charge demands in issue in this case were sent to the flat itself, rather than to the tenants’ home address. In consequence, Mr Gul says, he and his wife did not receive the service charge demands.
6. Mr Gul says that they told the landlord by telephone of their home address, but in our judgment it would be normal for tenants in the position of the Guls to send a letter or email informing the landlord of their address. Accordingly in our judgment the inconvenience caused by the sending of the service charge demands to the flat itself is largely their fault.
7. The tenants have been making regular contributions, latterly of £125 per month, towards the service charge account. The amount claimed by the landlord is thus the balance said to be due. The tenants accepted that they had received the letter before action sent by the landlord’s solicitors, Judge & Priestley, on 31st October 2013.
8. The specific items raised by the tenants are contained a Scott Schedule at page 27 of the bundle. The first item is estate cleaning. They assert that there is no provision in the lease for this. We disagree. Paragraph 2 of Part 2 of the Fourth Schedule to the lease specifically refers to “cleaning” the estate.
9. The second item is estate communal electricity, which the tenants suggest is not a service charge item. Again, we disagree. Again paragraph 2 refers to “lighting”.

10. The third item is estate grounds maintenance. The tenants' objection is that this is an unfair term in the lease. They rely on guidance given in September 2005 by the Office of Fair Trading on unfair terms in tenancy agreements. This guidance is given in respect of assured tenancies and assured shorthold tenancies. It is thus not applicable in terms to a long lease such as the present. In a long lease, it is necessary to have a degree of flexibility to cover the many contingencies which will inevitably arise in the many decades the lease has to run. The language is thus necessarily of a general nature. That does not make the terms unfair.
11. Apart from that difficulty, there is a problem with the application of the Unfair Terms in Consumer Contracts Regulations 1999. The Regulations do not apply to the "main subject matter of the contract": see regulation 6(2)(a). In a long lease, the main subject matter of the lease apart from the demise itself and the reservation of the ground rent is the service charge provision. This lease is thus outwith the 1999 Regulations.
12. Even were that wrong, we would find that the service charge provisions in this lease were fair. They are in a standard form, which has been accepted for many years by both landlord and tenants. It is for the benefit of both sides to the lease and is reasonable.
13. The management charges, both fixed and variable, are within the charging provisions of the lease at paragraph 1 of Part 2 of the Fourth Schedule and in our judgment are due and owing.
14. The tenants in correspondence raised an argument under the Consumer Credit Act 1974. This was not pursued in argument.

Legal costs

15. Legal costs are a matter for the County Court, save for the hearing fee of £190 paid to the Tribunal. The Tribunal has a discretion as to who should bear these. Since the tenants have lost comprehensively, in our judgment they should reimburse the landlord for that fee.

DECISION

- (a) The Tribunal disallows nothing in relation to the service charges, the subject of the action..
- (b) The Tribunal orders that the respondent tenants do pay the landlord £190 in respect of the fees payable to the Tribunal.
- (c) The matter is transferred back to the County Court at Romford.

Name: Adrian Jack

Date: 21st July 2014

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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.