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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case References	:	**MAN/00BN/LSC/2013/0138** **MAN/00BN/LSC/2013/0140**
Property	:	**Apartments 61 and 63, Nepaul Road, Blackley, Manchester M9 4EA**
Applicant	:	**Beverley Gardens Management Company Ltd represented by Scanlans Property Management LLP**
Respondent	:	**Mr.Amratlal Koria**
Type of Applications	:	**Landlord and Tenant Act 1985 – Section 27A Commonhold and Leasehold Reform Act 2002 – Schedule 11, Paragraph 5**
Tribunal Members	:	**Mrs.C.Wood** **Mr.D.Bailey**
Date and venue of Hearing		**Thursday 19 December 2013 at the Tribunal office, 1st Floor, 5 New York Street, Manchester M1 4JB.**
Date of Decision	:	**23 January 2014**

DECISION

Decision

1. The Tribunal determines as follows:

   1.1 that, in respect of actual expenditure in the 6 months ended 31 December 2012, the following amounts have been reasonably incurred and the Respondent is liable to pay them accordingly :

   (1) insurance: £298.00;

   (2) general repairs: £151.00;

   (3) management fees: £1765.00;

   (4) accountancy: £510.00;

   1.2 reserve fund: this item is reduced to £500;

   1.3 that, in respect of the estimated expenditure for the service charge year ended 31 December 2013, all amounts are reasonable subject to reconciliation against actual expenditure at the conclusion of the 2013 service charge year.

The Applications

2. By orders of the Manchester County Court dated 3 April 2013 and 4 September 2013 respectively the question of determination of the service charge and administration charge (if any) was transferred to the Tribunal. Directions dated 9 October 2013 were issued by the Tribunal in pursuance of which:

   2.1 the Applicant's Statement of Case dated 16 October 2013 together with supporting documentation ("the Applicant's Bundle") was submitted under cover of the letter dated 21 October 2013 from Scanlans Property Management LLP ("the Agents");

   2.2 the Respondent submitted letters dated 18 October 2013, 6 November 2013 and 15 November 2013 (together with enclosures) ("the Respondent's Statement");

   2.3 a hearing was scheduled for Thursday 19 December 2013 at 1045am.

The Leases

3. The leases of the Properties (copies of which are at pages 9-41 and 42-74 in the Applicant's Bundle) ("the Leases") are in identical form. The relevant provisions are as follows:

   3.1 under paragraph 6 in Part Two of Schedule 7, the Lessee covenants to pay to the Lessor (or the Management Company) the Apartment Charge Proportion of the Apartment Expenses as provided in Schedule 6;

   3.2 "Apartment Charge Proportion" is defined in clause 2.1 as 1/18th of the Apartment Expenses:

   3.3 "Apartment Expenses" is defined as "...the moneys actually expended or reserved for periodical expenditure by or on behalf of the Lessor or the Management Company at all times during the term hereby granted in carrying out the obligations in Schedule 5";

3.4 Schedule 6 provides as follows:

(1) that the Apartment Charge Proportion shall be payable in advance in 2 equal instalments on 1 July and 1 December in each year;

(2) that a summary of the Apartment Expenses actually incurred shall be sent to the Lessee within 6 months of each period ending 31 December together with a certificate of the Lessor's or Management Company's accountant as to the total amount of the Apartment Expenses for the period to which the certificate relates.

The Law

4.1 Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(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.

4.2 Section 19 provides that –

(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 provision 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.

4.3 Section 27A provides that -

(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 date at or by which it is payable, and

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) .....

(4) No application under subsection (1)...may be made in respect of a matter which -

(a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

4.4. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

Inspection

5. The Tribunal inspected the Properties at 9. 45am on 19 December 2013. Mr. I. Magenis of the Agents and Mr. Koria attended the inspection.

5.1 The development consists of two 3-storey blocks, ("the Blocks"), comprising 18 flats in total. The Blocks are separated by a road. The Tribunal inspected the internal communal areas of the Blocks and the external communal areas of the Block in which the Properties are situated, ("Block A"). The Properties are on the first floor of Block A;

5.2 the external communal areas of Block A comprise car parking, lawned areas and a bin store; the electric gates to the car park are fixed open. The Tribunal was advised by Mr. Magenis that this is because they do not comply with current Health & Safety regulations and the estimated cost of fixing the gates to both Blocks was c. £4500;

5.3 there was considerable evidence of vandalism to the internal communal areas; on the day of the inspection, the fire services were in attendance because of an incident which had occurred the previous night. The locks on both the front and rear entrance doors to the communal areas of Block A were broken; Mr. Magenis explained that the electrical wiring for the door entry system had been removed by vandals on 14 December 2013. Mr. Magenis explained that during the period of their management the door locks had been replaced at least 7 times and the Fire Brigade was now suggesting the installation of deadlocks on both doors. A dummy CCTV camera, installed by the Agents as a deterrent, was removed within 24 hours of installation;

5.4 the stairs in the communal areas are carpeted;

5.5 Mr. Magenis stated that the heaters in the communal areas had been disconnected on the advice of the police to deter youngsters from congregating in the communal areas;

5.6 Mr. Magenis explained that, over the last 6 months, cleaning of the communal areas had been arranged on a 3-weekly cycle, and, over the last

12 months, gardening of the external communal areas had been arranged on a 4-weekly cycle;

5.7 Mr. Koria said that the lighting in the communal areas was on permanently; Mr. Magenis explained that the lighting had been operated by sensors but that these had been damaged;

5.8 Mr. Koria drew the Tribunal's attention to the meter and riser cupboards whose locks were broken; Mr. Magenis explained the difficulty of restricting access to the leaseholders/occupiers to the meters/stopcocks sited in these cupboards.

Hearing

6. A hearing took place at 11.15 a.m. on 19 December 2013 at 5, New York Street, Manchester M1 4JB at which Mr. Magenis of the Agents attended for the Applicant and Mr. Koria attended in person.

Evidence

7. Mr. Magenis made the following submissions on behalf of the Applicant:

7.1 the Agents were appointed in June 2012 following the apparently acrimonious resignation of the previous agents in October 2011; on resignation, they had cancelled insurance on the Blocks;

7.2 the Agents' first priority on appointment was to effect insurance; at that date, no leaseholder had paid any service charge for 7 months and the insurance premium was initially paid by Mr. Hodges, a director of the Applicant, because of the lack of funds available to the Applicant;

7.3 Mr. Magenis referred the Tribunal to the correspondence entered into with the leaseholders, and, in particular, to the letter dated 31 May 2012 (page 139-140 of the Applicant's Bundle) enclosing the budget for the 6 month period 1 July – 31 December 2012, the letter dated 16 July 2012 confirming the effecting of insurance on the Blocks and reminding leaseholders of the need to bring their service charge accounts into credit (page 141 of the Applicant's Bundle), and the letter dated 20 November 2012 enclosing the budget for the service charge year 1 January – 3 December 2013 (pages 142 of the Applicant's Bundle). Mr. Magenis explained that because of the prevailing circumstances on appointment, they were aware that they might have to institute proceedings against leaseholders in order to obtain recovery of unpaid service charges. In fact, they had now received payment of arrears of service charges for the 6 month period 1 July – 31 December 2012 from all but 2 leaseholders, one of whom was Mr. Koria;

7.4 Mr. Magenis also referred to the correspondence between the Agents and Mr. Koria (pages 145-146, 147-148, 149, 150-151, 156-157 (incomplete)) and said that they had sought information from Mr. Koria as to the service charge previously charged (as no accounting information had been made available to them from the previous agents) which would support Mr. Koria's claim that there had been a 250% increase; Mr. Magenis said that they had also offered to discuss any individual items of expenditure of concern to Mr. Koria and to meet on site to discuss the problems being

experienced by Mr. Koria's tenants of the Properties but Mr. Koria had failed to make any such information available, and had declined offers to discuss/meet;

7.5 with regard to the Statement of Anticipated Service Charge Expenditure 1 January – 3 December 2013 (pages 102-103 of the Applicant's Bundle), Mr. Magenis said that the insurance premium of £3500 was a "worst case scenario" based on initial indications from their brokers. In fact, in accordance with the recommendation in a valuation survey obtained by them, the level of cover was increased to £1.7m for a premium of £2800;

7.6 with regard to management fees, Mr. Magenis explained that the initial term of the management agreement (pages 84-99 of the Applicant's Bundle) had expired and was now continuing subject to 3 months' notice by either party. He accepted that the fees of £3500 plus VAT were higher than might normally be expected for a development of this kind but it reflected the particular difficulties of management of this development exacerbated by the lack of any proper "handover" by the previous agents. Mr. Magenis confirmed that there had been no increase in 2013 and that it was intended to review the fees in July 2014 when, it was hoped, the position will have improved because of increased receipt of service charge monies and a reduction in the management fees was expected. At present, the charge per unit for management fees was £199 (plus.VAT) whereas Mr. Magenis suggested a "normal" fee would be £140 (plus VAT);

7.7 Mr. Magenis confirmed that the Applicant was not seeking a determination in respect of the administration costs incurred in connection with the issue of proceedings against Mr. Koria;

7.8 with regard to the £4614 allocated to the Reserve Fund in the Service Charge Statement of Account for the 6 month period 1 July-31 December 2012 (page 113-120 of the Applicant's Bundle), Mr.Magenis said that this represented arrears of uncollected service charge. It was not clear to the Tribunal whether this recorded any actual cash receipt.

8. Mr. Koria made the following submissions:

8.1 he repeated the claims made in the Respondent's Statement that the amounts estimated and/or charged as service charge were not supported by the evidence;

8.2 that, whilst he had no objection in principle to paying service charge, an increase of 228% on what had been payable as service charge to the previous agents was intrinsically unreasonable;

8.3 that he had provided photographic evidence to the Tribunal of the Applicant's failure to maintain the Blocks; he stated that, in his opinion, the locks had never been replaced on the front and rear entrance doors to the communal areas of Block A which meant access to the Properties could be intimidating for his tenants; likewise, he did not believe that any cleaning had been carried out to the internal communal areas;

8.4 it was pointed out that, whilst the Agents maintained that they had de-commissioned the heating in the communal areas in early 2013, it was apparent at the inspection that they were working.

9. In response to the Respondent's submissions and also by way of final submissions on behalf of the Applicant, Mr. Magenis stated as follows:

9.1 the Applicant was not disputing that major maintenance and repair works were needed at the Blocks but that this could not be undertaken until the Applicant was put in funds by all leaseholders paying their service charge in full and on time;

9.2 the Applicant was disputing the Respondent's claim that no services had been provided by the Agents: he said that, if this were so, then the grass in the external communal areas would be 3' high and the internal communal areas would be dirty and strewn with litter: it was apparent from the inspection that this was not the case; the presence of the Fire Brigade highlighted that there was an ongoing problem with anti-social behaviour at the development which was causing particular problems in the internal communal areas of Block A but the Agents were continuing to try to deal with the consequences e.g. by replacing locks etc ;

9.3 he confirmed that the electricity meters had been read quarterly since December 2012: again the delay in arranging this was a consequence of the lack of co-operation from the previous agents;

9.4 he confirmed that the invoice on page 127 of the Applicant's Bundle was the address of the owner of Apartment 70;

9.5 he asserted that the costs which appear on the invoices at pages 131-132 of the Applicant's Bundle were properly chargeable as service charge in accordance with paragraphs 18 and 24 of Schedule 5 of the Leases;

9.6 in conclusion, Mr. Magenis said that he believed that the parties were at this stage because there was a misunderstanding on the Respondent's part as to what the Applicant was charging as service charge i.e. it was anticipated, rather than actual, expenditure. These monies were needed to carry out the works which it is recognised need to be done. The Applicant needs to act in the best interests of all the leaseholders: 16 of the 18 leaseholders have now paid the 2012 service charge in full, and the failure by the Respondent to make payment is prejudicial to the others; further, Mr. Koria had repeatedly failed to provide any evidence of what he had been charged as service charge in the past and whether he had made payment of that amount, and had failed to identify which of the costs included in the service charge for the period 1 July-31 December 2012 and for the 2013 service charge year he objected to and on what basis.

10. By way of final submissions, Mr. Koria stated as follows:

10.1 he queried Mr. Magenis' statement that all the other leaseholders had now made payment of their service charges but, if this was so, questioned why no maintenance works had been carried out;

10.2 there had been no complaints with the previous managing agents: the communal areas had been well-maintained;

10.3 many of the occupiers of the Blocks shared the concerns of his tenants.

Tribunal's Determinations

11. In reaching its decision, the Tribunal concluded as follows:

    11.1 that the Respondent had failed to produce any evidence as to the service charges charged by the previous agents and/or paid by the Respondent;

    11.2 the Respondent's claim that the alleged percentage increase of 228% in that previously charged was intrinsically unreasonable was not accepted;

    11.3 that the Respondent had failed to produce any compelling evidence as to the unreasonableness of the individual items charged as service charge during the 6 month period ended 31 December 2012, or included as estimated service charge expenditure for the service charge year ended 31 December 2013;

    11.4 the Applicant had failed to produce satisfactory evidence that cash funds of £4614 have been actually transferred into a reserve fund account by the Applicant;

    11.5 that, whilst the management fees appeared to be higher than might otherwise be expected, they should be considered in the context of this development. The Tribunal noted that there was an anticipation that these fees would reduce in the future once the Applicant was in receipt of service charge funds from all/a majority of leaseholders; and,

    11.6 that the receipt of service charge monies was not a condition precedent to the performance by the Applicant of its obligations under the Leases.

12. The Tribunal therefore decided to make the Order set out in paragraph 1 of this document.