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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/34UD/LSC/2015/0039**
Property	:	**30 Tyne Way, Rushden, Northants NN10 0GT**
Applicant	:	**Ms Selina Bland**
Representative	:	**In person**
Respondent	:	**Mr John Clark Way Management Company Ltd**
Representative	:	**Miss Colena Calinov and Mr John Osborn, both of Crabtree Property Management LLP**
Type of Application	:	**Determination of the liability to pay and reasonableness of service charges**
Tribunal Members	:	**Tribunal Judge Dutton** **Ms M Henington MRICS** **Mr P A Tunley**
Date and venue of Hearing	:	**Hind Hotel, Wellingborough, Northants on 2nd July 2015**
Date of Decision	:	**14th July 2015**

DECISION

DECISION

1. **Save for a proposed re-adjustment of the insurance premium in respect of directors and officers insurance, the Tribunal determines that the charges set out in the accounts ended 30th June 2014 and the estimated charges as provided for the year 1st July 2014 to 30th June 2015 are reasonable and payable for the reasons set out below.**
2. **The Tribunal determines that a partial order should be made in respect of Section 20C of the Landlord and Tenant Act 1985 (the Act). The Tribunal determines that the Respondent should be entitled to recover 60% of its costs as a service charge for reasons set out below.**

BACKGROUND

1. This application was made by Ms Bland on 17th April 2015 seeking to challenge what she states to be a surcharge of £4,282 in the year 2013/14 and in respect of specific estimated service charges for the following year, details of which are set out in her application.

2. Ms Bland is the leaseholder of Flat 30 Tyne Way, Rushden. There are now four blocks of flats, all purpose built by Bellway Homes from 2012 onwards. There are a total of 36 flats which form the development "for the purposes of the services" and the administration is undertaken by John Clark Way Management Company Limited (JCW) a company referred to in the lease under which Ms Bland holds and of which she is a member. Crabtree Management administer the management of the development for the said management company.

3. We were told that at present, JCW is under the control of certain employees of Bellway Homes Limited but that at the end of this year an AGM will be held and leaseholders will be invited to take up the role of directors of the management company as is foreshadowed in the terms of Ms Bland's lease.

4. In advance of the Hearing we were provided with a bundle of documents which included the Respondent's statement of case, a copy of Ms Bland's lease, certain correspondence, a copy of Crabtree's management agreement, a statement of account, the interim demands and the accounts for June 2014 and a copy of the application made by Ms Bland. In a letter received at the Tribunal on 22nd May 2015 Ms Bland set out matters that she wished to be investigated and this, in essence, formed her complaints to the Tribunal. Prior to that Crabtree had filed a full statement of case, responding to the matters contained or referred to in the application.

5. Prior to the Hearing, we inspected the block in the company of Mr Osborn and Miss Calinov as well as Ms Bland and her partner Joel Ralph. The flat is on the top floor of a three storey, purpose-built block, completed it would seem some time in around 2011/12, on the basis that the lease to Ms Bland is dated 27th October 2012. The entry to the block is governed by a door entry phone system. The internal common parts appear to be in reasonable order as one would expect from a property that is this recently constructed. The stairs are carpeted. There is lighting as well as certain fire safety equipment.

6. To the rear is a garden area with a grassed area of approximately 14 by 9 yards. Within that rear garden area was to be found a cycle store, which was lit. There were also areas of shrubbery. A gate led to secure car parking and to the front of the property there was a bin store, the door of which we noted had been damaged. There was some outside lighting by the rear door to the block and also in the car park itself. There were electric gates providing some security to the car parking area, which also appeared to be used by two adjoining houses, which had garages in the area and used the entrance.

HEARING

7. Those named in the front of the decision attended the Hearing and we considered Ms Bland's concerns. We received evidence, in the main, from Ms Calinov who told us that Ms Bland's block had been largely occupied by the end of 2012 and that three other blocks had been occupied from January 2014 onwards. Reference to the 3rd and 4th schedule in the recent accounts related to costs incurred by two of the other three blocks, but this had no bearing on the amount of money that Ms Bland was being asked to pay. It did, however, mean that the accountancy charges would be increased because the accountants now had to deal with four blocks of flats instead of just one. Ms Bland accepted that the accounting charges in these circumstances were reasonable.

8. We were told that in respect of the estimated charges for communal electricity the actual costs of 2014 had been £307 but this was based partly on an estimated reading. Miss Calinov told us that she had read the meter herself and considered that a reasonable charge for the estimated electricity in 2014/15 would be £500.

9. Discussions then took place with regard to the costs incurred in the running of the Respondent Company. This, for example, was directors and officers insurance and company registration fees. It was pointed out that the directors insurance appeared to be charged in the year ending June 2014 solely to Ms Bland's block and it was accepted by Miss Calinov that in all probability this should be an estate expense which lowered the percentage contribution required. In respect of block costs, Ms Bland is required to pay 16.67% and in respect of estate costs 2.7778%. It was suggested to us that the company costs, being audit and accountancy, directors insurance, statutory requirements, bank interest and bank charges were in fact estate charges. We will comment upon those but we are not convinced that in any event they constitute service charges.

10. In respect of the engineering insurance we were told that cover was provided by Zurich and covered the costs of inspecting, and any mechanical failure to the entrance gates to the car parking area. It seems that the total charge by Zurich was £367.12 but that a fee was added to this by the brokers of a further £46.80, part of which it seems went to Crabtree. In addition to the engineering insurance there was also entry gate maintenance, which provided for an annual check and also for emergency call outs to be paid as and when necessary.

11. We were told that the health and safety costs were incurred on a biannual basis as provided for under the Fire Safety Order 2005. The next inspection we were told would be in the year 2015/16 and no charge for fire risk assessment had been made in the year 2013/14. There was also a charge for fire defence which represented the annual testing of the fire prevention equipment which included an automatic opening

vent and emergency lighting. Apparently the vent was tested twice a year. In addition there were certain costs budgeted for the replacement of the batteries in the lights which based on previous experience of Miss Canilov could be up to £50 per battery plus the costs of fitting. This was included in the estimate for 2014/15 within the £200 that was sought for health and safety and erroneously asbestos management.

12. Another challenge raised by Ms Bland was to the increase in respect of the repairs and maintenance provisions for 2014/15. The actual costs in the year ending June 2014 were £275 but an allowance of £500 had been made. Ms Calinov told us that £400 had already been spent in this year and that therefore the estimated figure appears to be correct.

13. Some concern was expressed in respect of the reserve fund contribution. The lease makes provision for reserve fund payments but also somewhat unusually it provides that if there is an overpayment as between the estimated costs and the actual costs, rather than a credit being given to leaseholders, these monies are attributed to the reserve fund. We will comment on this in the findings section.

14. There were concerns raised with regard to the gardening services but we were told that a local contractor was used, who charges around £17 per week. There was also an issue in connection with bank charges, which Miss Calinov said was covered under the 7th schedule part 3. The question as to a contingency sum was also raised. We were told by Mr Osborn that this was thought to be a reasonable amount to demand, which in the year 2014/15 was £100. This contingency was intended to cover such expenses as may unexpectedly arise, for example pest issues.

15. Finally, Mr Osborn agreed that Ms Bland could seek an order under section 20C of the Act, although her application indicates that she no such wish . He told us that they would be seeking to recover their costs of dealing with the application which would be limited to around £500 plus VAT. Ms Bland told us that she was disappointed in the response that she had received from Crabtree to letters that she had written in 2014. A full response had not been made until January 2015 and when she had written further on 7th February 2015, that letter had received no reply at all, it apparently having been misplaced.

16. We were told that the balance owing by Ms Bland at the time of the Hearing was £570.

THE LAW

17. The law applicable to this matter is contained in the appendix attached.

FINDINGS

18. We heard all that was said by Miss Calinov on behalf of the Respondent Company. We noted also the concerns raised by Ms Bland in the papers before us and as expressed to us at the Hearing. We are of course dealing with the actual costs for the year ending June 2014 and the budgeted figures for the following year. There is no real challenge to the actual costs incurred to June of 2014. A review of those indicate that they are reasonable and that schedule 3 and 4 costs do not relate to Ms Bland, but will in due course set out the costs attributable to the other three blocks, which she could use as a guide to assess the costs to her block. Two of those blocks we believe have 12 flats. The

estimated charges for 2014/15 are not so far removed from the actual costs incurred the year before as to necessitate any interference by us. They are only estimated charges and it would be necessary for Ms Bland to compare these against the final account figures when the accounts for the year ending June 2015 are prepared. On the face of it, however, we could not find fault with the estimated costs for this year in dispute.

19. The "Company Costs Schedule" on the anticipated service charge expenditure account for the year ending June 2015 includes matters which we do not consider to be service charge items, save the audit and accountancy charges. However, it does seem to us those should be included in the accounts and Ms Bland will have to pay them whether as a service charge or more properly as a member of the management company. They are costs properly incurred in running the Respondent Company of which she is a member. What we would, however, say is that in the accounts for the year ending June 2014 the directors insurance should be split on the same basis as it is in the estimated costs for the following year. That is to say that Ms Bland should pay 2.7778% and not 16.67%. It is clear that the directors insurance is for the benefit of the company which deals with the whole of the estate and not just Ms Bland's block.

20. Therefore, we consider that the monies required to be paid by Ms Bland should be amended to reflect that change. We also query the ongoing need for a contingency fund. At the moment monies are being placed into the reserve fund when they exceed the actual costs. There was a surplus in the year ending 2014, including the other blocks insofar as they contributed, of over £4,000, it would seem to give a float to the Respondent Company to deal with such day to day cash items. The terms of the lease make provision for any balancing sum to be credited to the reserve fund account. This places a special onus on the management company to ensure that the estimated charges are not excessive. We do not consider that to date they have been excessive. Once the directorship of the Respondent Company falls into the control of the leaseholders they will obviously have a greater say as to what expense is incurred and on what.

21. One matter we would raise, however, and which was not referred to at the Hearing is whether or not the two houses which use the car park area and the gate for access to their garages make any contribution towards those costs. The car parking area is clearly included within the demise of the building. However, it seems only reasonable that the houses should, if their title allows them, make some contribution towards the upkeep of the electric gates, which are not cheap to run and also the upkeep of part of the car parking area. However, no evidence was given to us on this and we are not in a position to make any findings nor indeed would we do so in the circumstances. It is, however, something which should be considered. We would also suggest for future accounting that the costs appearing under the heading "Company Costs Schedule" should not be Estate costs and should not be treated as such. The lease is quite clear as to what constitutes Estate expenses.

22. Finally, we turn to the question as to whether or not the provisions of Section 20C should apply. Having considered the matter and weighed the failure of Crabtree to reply to Ms Bland's letter in February of this year against the somewhat limited success that Ms Bland has achieved leads us to the conclusion that it would be just and equitable to allow the Respondent Company to recover 60% of its costs of this application. We have borne in mind the willingness of the Respondent, through Mr

Osborn to entertain the s20C application at a late stage. We have also borne in mind that the Applicant and her co-owners in the blocks have no control over the Respondent Company at the moment, which is in effect in the control still of the freeholder. Accordingly a response to the February letter and possibly a meeting might have avoided the need for any application to the tribunal.

Judge: _____

A A Dutton

Date: 14th July 2015

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 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.