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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2014/0467**
Property	:	**Flat 2, 13 Murray Grove, London N1 7JY**
Applicant	:	**Emma Ghosh**
Representative	:	**In person**
Respondent	:	**Candle Investments Limited**
Representative	:	**Scott Samuel, director of the landlord**
Type of application	:	**For the determination of the applicant's liability to pay service charges**
Date heard	:	**14 January 2015**
Appearances	:	**Roann Ghosh for the applicant** **Scott Samuel for the respondent**
Tribunal	:	**Margaret Wilson (judge)**
Date of decision	:	**26 January 2015**

DECISION

Introduction and background

1. This is an application by Emma Ghosh, formerly Emma Pearce, ("the tenant") under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine her liability to pay service charges to the landlord, Candle Investments Limited. The application was made naming Scott Samuel, the landlord's sole director who also acts as its managing agent, as respondent, but Candle Investments Ltd, the freeholder, was substituted as respondent at the case management conference.

2. The tenant holds a long lease of Flat 2, a ground floor flat in a block of 19 flats built about 2006. In the application, which was received on 10 September 2014, the tenant asked for a determination of her liability to pay service charges for the year 2014. The service charge accounting year equates to the calendar year and at the date of the application the actual service charges for the year were not known, but the application was prompted by what the tenant considered to be an excessively large demand for estimated service charges (£4395 as opposed to £586 demanded for the first half of the year) which she had just received for the second half of the year 2014. At the date of the hearing the service charge year had ended and the draft accounts for the year were available and at the hearing Mr Samuel, who represented the landlord, said that he accepted that the landlord had not been entitled to demand payment of a greater service charge in July than it had demanded in January, and that the demand for estimated charges which had prompted the application was accordingly not payable. However he invited me to determine the actual service charges for the year 2014 and Roann Ghosh, the tenant's husband who represented her at the hearing, agreed that it would be sensible to proceed on that basis, although he asked that the fact that the application had been directed at an invalid demand should be taken into account when costs were considered.

3. Accordingly, at the request of both parties' representatives, this decision relates to the actual service charges for the year 2014 and not to the estimated charges which the parties had addressed in much of their written evidence. It was possible to determine the actual service charges for the year because the relevant information was before me, and it was clearly sensible to do so, not only because both parties wished me to do so but also because the leaseholders of the flats in the block propose as soon as they can to acquire the right to manage the block and their liability to pay service charges for the year 2014 needs to be established as soon as possible. It is unfortunate that some of the written evidence for the hearing was prepared on the basis of a misunderstanding which would almost certainly have been avoided if the parties had chosen to attend the case management conference, at which, had they attended, the real issues between them would have been better identified

in advance of the hearing which would have helped the parties and the Tribunal and would have saved time.

4. At the hearing on 15 January 2015 M Ghosh and Mr Samuel gave evidence and made submissions. The hearing took five hours.

The statutory framework

5. The Tribunal's jurisdiction in relation to these service charges is derived from section 27A of the Landlord and Tenant Act 1985 which provides that an application may be made to the Tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A *service charge* is defined by section 18(1) of the Act as *an amount payable by the 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.* Relevant costs are defined by section 18(2) and (3). By 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 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.* By section 19(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 of subsequent charges or otherwise.*

The issues

6. The draft accounts for the year under consideration were prepared by Simpson Wreford and Partners, chartered accountants, and Mr Samuel said, and I accept, that the final version of the accounts will be very similar to the draft accounts. Evidence and submissions were made in relation to all the costs listed in the accounts. Contrary to the list of issues identified at the case management conference without the benefit of submissions from the parties, there was no issue as to the apportionment of the costs to the tenant.

7. It was Mr Samuel's case that the amount of service charges he had estimated for the year in question, (£85,000) though largely based on a significant over-estimate of the probable cost of insurance, should stand because other leaseholders had paid it and if the present applicant's service charges were reduced it would be unfair to the other leaseholders.

i. General repairs and maintenance: £10,385 (previous year £432)

8. The figure is broken down in a document at page J7 of the attachments to the accounts. Of the £10,385, £7650, in two payments, one on 21 January 2014 and the other on 1 May 2014, was paid to Urang Property Management Ltd in respect of "management fees for insurance claims"; £111.18 was paid to Urang Cleaning and Maintenance for plumbing work; five payments amounting in all to £1238 were made to Urang Building Ltd for various works; and £1386 to Chigwell Plumbers for tracing a leak following flooding in common areas.

9. Mr Samuel said that since 2009 there had been a recurrent problem with leaks from cracked pipes but from January 2014 it became "a nightmare" with different soil vent pipes cracking, flats becoming uninhabitable and numerous insurance claims, which he listed at page 67 of the landlord's bundle, which resulted in some £74,000 paid out by the block's insurers in 2014. He said that he had considered it necessary to seek the assistance of Urang Property Management to manage the problems by getting leaking pipes repaired, obtaining access to flats (which was difficult because some leaseholders had sublet their flats), procuring plumbers and dealing with the insurer. He said that in his opinion Urang had not added to the cost that most managing agents would have charged in a similarly difficult situation but had "increased the level of service". He said that one of Urang's staff had worked incredibly hard to deal with a critical situation and had done so very successfully. He said "I was flat out and I needed additional capacity". He said that all Urang's fees were justified.

10. Mr Ghosh said that Mr Samuel "jumps to the easiest option every time" by outsourcing, that his main concern was to build up a large property portfolio and that he had no concern for value to the leaseholders. He said that the managing agent whom the RTM company proposed to instruct when it acquires the right to manage had assured the leaseholders that they would have managed all the matters dealt with by Urang within their proposed management fee of £300 per month plus VAT, and in his submission none, or very little, of the fees paid to Urang Property Management Limited were justified.

Decision

11. I see no reason to disallow any of the fees paid to Urang Cleaning and Maintenance, Urang Building Ltd and Chigwell Plumbers, all or most of which appear from the information put before me to have been incurred in carrying out works which were reasonably required to address serious emergencies caused in the main by leaking pipes. Those fees amount to £2735.18.

12. As for the fees charged by Urang Property Management Ltd, the position is not straightforward. Clearly a professional managing agent would not have required the services of another agent to deal with the series of emergencies which took place over a period of a few months from the end of 2013.

However, I do not accept that most managing agents would, without extra charge over and above the fee for routine services, have carried out the large volume of extra work required. The majority of professional managing agents would, in my view, have been likely to have had in place a contract permitting it to charge an additional fee for dealing with insurance claims and out-of-hours work. However such additional fees would have to be reasonable, and I regard the £7650 paid to Urang Property Management Ltd for managing the problems arising from the leaks as far more than a professional managing agent would normally expect to be paid for dealing with a series of emergencies. Doing the best I can I conclude that a fee of £2550, one third of the amount paid, would be reasonable for management carried out by Urang Property Management and that the balance was excessive and would not have been charged by a reasonably competent managing agent. The total amount which I determine to have been reasonably incurred under the heading "repairs and maintenance" is thus £5285.18.

ii. Communal television aerial: £564

12. This charge was for a payment to TV Aerial Installations (invoice at page 113 of the landlord's bundle). Mr Samuel said that he had received three complaints of poor or no television reception and that he considered the fee of £470 plus VAT to be reasonable. He said he did not know how long the workman was there or how much of the charge was for new parts and how much for labour. Asked by Mr Ghosh why he had not first obtained quotations from more than one contractor he said that whoever gave a quotation based on an inspection would have charged for coming to assess the work and he did not believe it would have saved money to obtain alternative quotations. Mr Ghosh submitted that this was typical of Mr Samuels approach and that in all probability a cheaper contractor than TV Aerial Installations, which is based in London SW1, could have been found if Mr Samuel had taken the trouble to look.

Decision

13. I accept that it was not unreasonable for the landlord to instruct one contractor over the telephone who, Mr Samuels said and I accept, had attended the block on a previous occasion, rather than obtain a number of quotations. I agree with Mr Ghosh that the charge sounds as though it may be on the high side and that there are almost certainly contractors who would have done the work more cheaply, but I do not have the evidence on which I could conclude that the cost was outside the range of reasonable charges for the work done, nor do I know precisely what was done and, on balance, I determine that this charge was reasonably incurred.

iii. Bin hire: £624

14. Mr Ghosh agreed this charge.

iii. Buildings Insurance: £26,869.91

14. Mr Ghosh considered that this was on the high side but accepted that it was within the band of reasonable premiums in view of the claims history and did not therefore dispute this cost.

iv. Management fee: £9500

15. Mr Samuel estimated (at page 269 of his bundle) that he had spent 400 - 500 hours managing the block in 2014 which, he said, ought, on one approach, to result in a fee of £45,000 for the year based on 45 hours at a blended hourly rate of £100. And, he said that, using another approach, he had processed 2000 emails, 500 telephone calls and 100 pieces of correspondence and had four site inspections, amounting to 2600 "actions" at 6 minutes each, amounting to 260 hours at £100 an hour and equating to a fee of £26,000. He said that he had limited the charge to £9500, based on £500 per average flat, only because he did not consider that a greater fee would be regarded as reasonable. He said that he had no qualifications as a property manager but is a non-practising solicitor by profession and that he has a portfolio of properties. The management fee charged in 2013 was £4750, based on £250 for an average flat. Mr Samuels is not registered for VAT.

16. Mr Ghosh submitted that the reasonable management fee would be nil. He said that Mr Samuel's general approach to management was to do very little, out-source when he could, over-react to problems and generally adopt "an armageddon approach", treating fairly routine problems as catastrophes. He said that a competent manager would have dealt with the relatively straightforward problem of cracked pipes years ago at little cost, that Mr Samuel had mismanaged a perceived fire risk in the basement of the block by allowing rubbish to accumulate there (photograph at page 213 of the landlord's bundle) and then, at a late stage, attempting to tackle the problem by locking the doors to the basement without warning the residents who needed access to the basement to read their electricity meters or even the resident to whom he had ill-advisedly let storage space in the basement. He submitted that most of Mr Samuels's management was "misdirected effort". He submitted that an annual fee of £3600 plus VAT, the sum quoted to the RTM company for managing the block, would be a reasonable fee for a reasonable standard of management, but that Mr Samuel's management had not been of such a standard.

Decision

17. I accept Mr Ghosh's evidence, which is supported by some of the rather prolix correspondence in the bundle, that Mr Samuels was not a particularly effective manager in that he was inclined to panic and over-react to problems. The number of hours which he claims to have spent managing the block in 2014 is absurd, given that Urang appears to have dealt with much of the management during the crisis period of leaking pipes. The landlord, Candle Investments Limited, is, by clause 9(5) of the lease, entitled *in the*

management of the block ... to employ or retain the services of any employee agent consultant etc and I accept that this entitles the landlord to use the services of Mr Samuel and to recover the cost of so doing, providing the cost is reasonable. Clearly Mr Samuel did carry out some management for which he is entitled to be remunerated but, bearing in mind that he engaged Urang Property Management to help him to deal with the particular problems which beset the block in part of 2014, I am satisfied that, having regard to the fees paid to Urang Property Management Ltd, a reasonable fee for a reasonable standard of management by Mr Samuel in 2014 would have been no more that £250 per unit, or £4750, as was charged in recent previous years.

v. Health and Safety: £430

18. Mr Ghosh accepted this charge.

vi. Legal fees: £330

19. Mr Samuel said that this charge was a fee of £275 plus VAT charged by counsel, Ms Nicola Muir, for advising him on the telephone on whether it would be reasonable to increase the block's insurance excess in order to reduce the likely premium. Mr Ghosh said that a competent manager would have taken such a decision himself without resort to counsel.

Decision

20. I entirely agree with Mr Ghosh. Such a decision is a normal part of management and it was an over-reaction to consult counsel on such a routine issue. This cost was not reasonably incurred.

vii. Accountancy: £1080

21. Mr Ghosh agreed this item.

viii. Surveyor's fees: £12,748

22. This cost was in respect fees of £10,828.20 paid to Knight Frank LLP together with £1920 paid to Floorplanz for drawing plans of the internal layout of the building. Mr Ghosh agreed the fees charged by Floorplanz but disputed the fees of Knight Frank, which he considered to be excessive.

23. Mr Samuel said that he decided that it was necessary to obtain a "benchmark condition report" from a chartered surveyor in connection with the multiple leaks from the internal pipework and that he had sought the views of leaseholders about whom surveyor should be. He said that he had obtained four quotations, one from Hungerford Office of Knight Frank, one

from Cluttons and two others and he decided to instruct Knight Frank, whose quotation of £150 per hour was significantly cheaper than that of Cluttons, who quoted £250 per hour. He said that Robin Gibbons FRICS of Knight Frank, who had produced the reports, had spent three full days at the block and had produced two very thorough reports which included recommendations for remedial works to be undertaken.

24. Mr Ghosh did not take issue with the need for a surveyor's report or with Knight Frank's hourly rate, but he submitted that the number of hours taken was excessive and that Mr Samuel should have instructed a significantly cheaper local firm of surveyors. He said that the leaseholders had themselves obtained a report from Peter Tasker MRICS MCIOB MFPWS of Adams, chartered surveyors, which he believed had cost in the region of £1600 and that no more than around that figure would have been reasonable. He produced a copy of the report.

Decision

25. I have read the reports of Mr Gibbons and of Mr Tasker. The report of Mr Gibbons is the fuller and more informative and, I would say, more helpful. While I have no doubt that many competent building surveyors, such as, no doubt, Mr Tasker, would have provided a satisfactory report for significantly less than the fees charged by Knight Frank, I am satisfied that it was not unreasonable in the circumstances, and particularly given that there might be potential claims against the designers and contractors responsible for the building of the block, to obtain a thorough report from a well-known firm, and I accept that this cost was reasonably incurred and not outside the range of reasonable charges.

ix. Transfers to reserves: £38,165

26. Paragraph 5 of the fourth schedule to the lease is concerned with service charges. Paragraph 5(iii) includes within the definition of costs incurred a *reasonable sum on account of those items of expenditure which are of a periodically recurring nature (whether recurring by regular or irregular periods) ... including a sum of money by way of a reasonable provision for anticipated expenditure ... as the landlord may in its absolute discretion allocate to the year in question as being fair and reasonable in all the circumstances.*

27. Mr Samuel's budget for the year on which his demands for on account service charges were based was a total sum of £85,000. In arriving at that figure he had taken into account that his insurance broker had informed him that, in view of the many claims, the buildings insurance premium would be likely to increase to some £54,000, which had proved not to be the case. He accepted that it was now the actual, and not the estimated, cost of insurance that was now relevant, but, he said, since Mr Gibbons had expressed in his report the professional opinion that expenditure of £75,000 on the soil and

waste systems would be required in 2015 and that expenditure of £90,000 on repairing/replacing windows and doors would be required in 2020, the budget figure of £85,000, though based on an incorrect premise, produced a not unreasonable transfer to reserves of £38,165 which, together with accrued reserves, produced a reserve of £53,335 if all leaseholders paid the amount sought. He submitted that since other leaseholders had paid the service charges for the year in full, the amount demanded of Mrs Ghosh should be determined to be recoverable in full so that all leaseholders had a level playing field.

28. Mr Ghosh submitted that the reserve was excessive and that Mr Samuel could not in any event be trusted with leaseholders' money.

Decision

29. By virtue of section 19(2) of the Act *where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.* The landlord's discretion as to the amount to be held in reserve is thus fettered. However I have seen no evidence that Mr Samuel cannot be trusted with leaseholders' money and am entirely satisfied that it is not unreasonable to demand a total reserve of £38,165 for the year 2014 given the significant expenditure on the fabric of the block which appears to be required in the near future.

30. However I do not accept the submission that Mrs' Ghosh's reasonable service charge for the year should remain at 5.97% of £85,000 as Mr Samuel submitted. To the extent that I have determined that some costs were not reasonably incurred and not payable by her, those costs are not payable. But her share of the transfer to reserves, namely, I assume, 5.97% of £38,165, or £2278.45, is payable but it will not be in effect increased by reason of deductions I have made elsewhere.

x. Costs

31. Mr Ghosh asked for reimbursement of the fees his wife had paid for the application and hearing, an order for the payment of the whole of her costs on the ground that the landlord had behaved unreasonably in its conduct of the proceedings, and an order under section 20C of the Act to prevent the landlord from placing on Mrs Ghosh's service charges any of its costs incurred in connection with the proceedings. Mr Samuel asserted that, on the contrary, the tenant had conducted the proceedings unreasonably in taking action before the end of the service charge year.

Decision

32. I am satisfied that neither party behaved unreasonably in their conduct of the proceedings and that it would not be appropriate to make an order for costs under rule 13(1)(b)(ii) of the Tribunal Procedure (First-tier Tribunal)

(Property Chamber) Rules 2013. Both parties were at fault in choosing not to attend the case management conference, their failure to do so leading to such misunderstandings as there were. Since the proceedings were necessary and the result might be regarded as a draw I take the view that it would be just for the landlord to reimburse to the tenant one half of the application and hearing fees which she paid, which were £125 for the application and £190 for the hearing. The landlord must therefore reimburse the tenant in the sum of £157.50. In my view, given the measure of success which the tenant has achieved in these proceedings it is just and equitable to make an order under section 20C of the Act, the effect of which will be that each side pays its own costs incurred in connection with the proceedings. Insofar as it is within my power to do so I express the view that it would not be just and equitable for the landlord's costs to be placed on the service charges of any leaseholder.

Judge: Margaret Wilson