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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOBH/LSC/2014/0547**
Property	:	**21D Moyers Road, London E10 6JQ**
Applicant	:	**Mr H. Singh (landlord)**
Representative	:	**Hexagon Property Co Limited (managing agents)**
Respondent	:	**Ms S. Chaudry (leaseholder)**
Representative	:	**None**
Type of Application	:	**Application under section 27A of the Landlord and Tenant Act 1985 to determine the liability to pay service charges.**
Tribunal Members	:	**Professor James Driscoll (Judge)** **Trevor Johnson FRICS (Member)**
Dates of Hearing	:	**17 and 18 March 2015**
Date of Decision	:	**4 May, 2015**

DECISION

The Decisions summarised

1. As the leases of the four flats make no provision for a reserve fund the landlord cannot require the leaseholder to contribute to a reserve fund.

2. As we were informed at the hearing that the costs of the insurance for the building are agreed, there was no need for the tribunal to make a determination of the recoverability of the insurance costs.

3. We are required to make determinations as to the payability of service charges (except for the costs of insuring the building) for the years (a) 2012 to 2013, (b) 2013 to 2014 and (c) 2014 to 2015.

4. For the service charge year 2012 to 2013 we determine that the following charges are payable: Fire risk assessment report - £180.00, Health & safety report - £180.00, Site survey - £960.00, communal cleaning costs - £352.00, accountancy fees - £250.00 , management fees at £300 felling trees costs- £900.00, mice extermination costs - £125.00,. This produces a total of £3,247 for which the leaseholder's share is 25% is **£811.75**

5. For the service charge year 2013 to 2014 we determine that the following service charges are payable: general repairs and maintenance - £325.00, communal cleaning - £264.00, accountancy

fees - £250.00, management fees - £300.00 which produces a total of £1,139 so the leaseholder's share of 25% is the sum of **£284.75.**

6. For the service charge year 2014 to 2015 we determine that the following service charges are payable: cleaning costs - £280.00, management fees - £300.00 and accountancy fees of - £250.00. This produces a total of £830 with the leaseholder's 25% share being the sum of **£207. 50.**

7. An order is made under section 20C of the Act preventing the landlord from adding any costs this application to the service charge account.

Introduction

8. This claim was started by Mr Singh the owner of 21 Moyers Road, London E10 which is a property that has been converted into four flats all held on long leases. He is the landlord under the leases. The property has two flats on each of the two floors that is two flats on the ground floor and two on the first floor of the property.

9. Mr Singh brings this claim against Ms Chaudry who is the leaseholder of flat D which is situated on the first floor of the building. The claim is made for the service charge years 1 April 2012 to 31 March 2013 (for which the sum of £1,421.11 is claimed); 1 April 2013 to 31 March 2014 (for which the sum of £842.74 is claimed); and 1 April 2014 to 31 March 2015 (for which the sum of £900.22 is claimed as estimated charges for that year). He seeks a determination of the recoverability of the charges for each of these three years.

10. We were told that major works were carried out to the property following a consultation under section 20 of the Landlord and Tenant Act 1985 but that the costs of these works are not the subject of this application of this dispute.

11. A case management conference was held on 18 November 2014 and directions were given in consultation with those who attended. At that conference, Mr Ali of Hexagon Property Co Limited appeared on behalf of the landlord. The leaseholder attended the hearing but she

was not represented. Following this conference and in readiness for the hearing a bundle of documents (occupying some 455 pages) was prepared for the tribunal.

12. The bundle included relevant land registry documents relating to the property and the four flat leases; statements of case made by or on behalf of the applicant and the respondent; demands and invoices for three service charge accounting periods in dispute; three reports on the property and various miscellaneous documents including management agreements.

13. After the hearing those advising the applicants sent us other statements but these did not prove to be of assistance to us in reaching our decisions.

The hearing

14. At the hearing itself, the landlord was represented by Ms M. Derveni, a solicitor with the firm of D H Law Limited. She was accompanied by Ms Kaur of the managing agents and a Mr Khalid who carries out cleaning works to the property. Ms Kaur told us that she started work with the managing agents in June 2014, that she has no management qualifications, and that she has not visited the subject premises.

15. The leaseholder was not represented but she was accompanied at the hearing by Mr C Ahmed, a friend. She does not live in the subject premises which are currently occupied by her brother, Mr K. Choudry, on a temporary basis. She accepts that she has made few payments for service charges but her position is that the landlord has not actually undertaken work for which the charges have been made.

16. Ms Derveni and Mr Kaur took us through the service charges claimed for the three service charge accounting periods in dispute. For the first, 2012 to 2013 we were told that a health and safety report was commissioned by a company called Amika Consulting at a charge of £180. The same company carried out a fire risk assessment at a cost of £180 whilst a site survey was carried out by a company called Nationwide Surveyors Limited.

17. In addition, general maintenance costing a total of £2,205 was carried out during this period. These costs included works undertaken by Amika Consultancy for clearing the drains (£580) and clearing rubble (£680), tree felling by Keith Archers (£900) and mice extermination carried out by Pestrap at a cost of £125. Communal cleaning was carried out at a cost of £310.67, the costs of insuring the building was the sum of £580 whilst they incurred accountancy fees of £700. The landlords also sought a contribution to the reserve fund of £50 and a management fee of £640.

18. Turning to the next period, 2013 to 2014, general maintenance costs amounted to £650, communal cleaning which was carried out each month by Bishop & Baron Contractors Ltd costs £932, another reserve fund contribution of £50, the costs of insuring the building was the sum of £532.97 whilst the management fees came to £960.

19. We were then addressed on the estimated charges for the period 2014 - 2015. This time the costs of the insurance have increased to the figure of £612.91, monthly communal cleaning cost £932, management fees of £960 were incurred, the estimated costs of maintenance is the sum of £800, accountancy fees of £175 are estimated with a reserve fund contribution of £50.

20. The landlord has also alleged that the leaseholder has sublet without consent in breach of her lease. The leaseholder denies this but this issue is not one that was included in the application or one that we are asked to determine.

21. As to cleaning, a company by the name of Bishop & Baron Limited arrange for the cleaning on a monthly basis of the external and the internal communal areas. They were contracted for this work in June 2010. We were told that the owner or occupier of Flat B lets them into the interior of the building. Mr Khalid who had signed a statement dated 10 February 2015 told us that he charges £77.67 for each visit to the property and each visit takes him two hours. He had taken pictures to show that the common parts had been cleaned but these have been lost from his computer. He told us that he has never received any complaints from the residents over the cleaning.

22. The leaseholder has grave doubts as the value of the various reports the landlord has commissioned. She suggests that much or most of the content of the reports is 'generic' that is to say that they could apply to any building, that much of the content could apply to any building, that they are not specific to the subject premises and the few recommendations contained in the reports have not led to the landlords taking any action.

23. She also has specific allegations and challenges to many of the other items for which she has been charged. Her concerns are detailed first in a 'statement of defence' (which is undated) and in a statement dated 17 February, 2015. To begin with she doubts the authenticity of the Amika invoices and those of Bishop & Baron. She is also doubtful as to the veracity of the tree work as she does not recall there being any trees in the common areas. Also challenged are the works removing rubble as this, she contends, should have been carried out by the contractors who carried out major works (the costs of which are not the subject of these proceedings).

24. We were also told that the leaseholder and other leaseholders have often complained about the lack of cleaning, though she added that the cleaner had dealt with the loosely fitting hall carpet. She has obtained an alternative quotation for the cleaning works at a more competitive rate than the one currently charged.

25. The leaseholder also told us that she has found that the current managing agents are very slow to respond to complaints and to requests for information, such as information on the costs and the level of their insurance cover. As to the landlord she questions whether he is actually the owner of the freehold and the landlord under the lease.

26. In addition she has made comments on other aspects of the charges. The leaseholder considers that the accountancy charges are too high. As to the management charges, she contends that they should be based on £50 per unit not £200 as is presently charged.

27. The internal alarm does not work, there is no light in the internal common parts and no emergency light.

28. The leaseholder also obtained statements from her neighbours. However, they were not called to give evidence and neither we, or the landlord had, the opportunity of asking them questions.

29. Included was a statement from Ms H. Beaumont and we had a copy of her statement signed and dated 16 February 2015. She and members of her family purchased flat 21C in August 2014. In this statement she also complains about the lack of cleaning and the poor quality, as she sees it, of the management.

30. There is a copy of another statement made by Ms A. Salem who has owned Flat 21A one of the two ground floor flats. She too makes complaints about the lack of cleaning in the common parts and the failure of the appointed managers to manage the building effectively. Her statement is dated 17 February 2015. She has now sold her flat, she says in the statement, because the building is so poorly managed.

Our inspection

31. The tribunal inspected the exterior and internal common parts of the property on the 18th March 2015 in the presence of the parties. It is a two storey end of terrace corner property built c.1880 with a more recent single storey side addition. Originally a house the property has been converted into four flats, two on each floor. Access is via a front door leading to a small entrance hall with a narrow staircase leading up to the first floor flats.

32. The property is traditionally built in red brick with a pitched tiled roof and replacement UPVc windows. A new boundary wall had recently been built following the felling of trees adjacent to the Station Road boundary. Generally the exterior of the property was in reasonable condition.

33. Internally the tribunal noted that the staircase leading up to the first floor landing had no handrail, that the emergency lighting did not function properly, that the push button switches and hallway lights did not work, that the stair carpet was poorly fixed in places, that the staircase walls were heavily scuffed, that the fuse board was not boxed

in, and that there was no personal internal mail boxes so that letters and other written communications are laid on the entrance hall floor. Cleanliness generally was reasonable for common parts which are, according to the landlord and his managing agent, cleaned monthly.

Reasons for our decisions

34. After the hearing we received additional statements but we did not, in the event consider it necessary nor appropriate to consider them. They were not solicited and there was no opportunity to test them by asking questions.

35. To begin with a general point, it became clear to the tribunal that relations between the landlord, his appointed managing agents and the leaseholder are very poor. The leaseholder is deeply suspicious of the landlord and the managing agents. She expresses doubts as to whether the 'landlord' truly owns the property, whether the companies used to provide services exist or not, and the manner of the appointment of the managing agents. We are not in a position to reach any conclusions on these challenges and criticisms.

36. This is because our task is under section 27A of the Act to make determinations as to the recoverability of service charges. We are not in a position, nor do we have the evidence, to make decisions on the broader challenges made by the leaseholder such as her view that the landlord does not in fact own the freehold. If she wishes to pursue these allegations, she must take appropriate advice.

37. Instead we now set out our reasons for the decisions which are summarised at the start of this decision.

38. As to the management charges, on balance we prefer the evidence and the submissions made by the leaseholder. We were surprised that the managing agents did not call someone more senior than Ms Kaur to represent them, and to be fair to Ms Kaur, she has had little contact with the property, or the leaseholders. Although the leaseholders did not call any of her witnesses to give evidence, their written statements offer support to her complaints. That point made, we can give only very limited attention to these statements.

39. On balance we determine that some cleaning took place. This is confirmed by our own inspection of the premises and the fact that the leaseholder, despite her criticisms, accepted that the cleaner was there on occasions and that he fixed the carpet in the hall.

40. On the clearing away of rubbish, the felling of trees (for which there is some evidence though the leaseholder claims never to have seen a tree) and the dealing with mice (for which there is some evidence) we determine that these costs are recoverable as service charges.

41. During the hearing, we were told that the leaseholder having been shown relevant documents, now agreed the costs of the insurance, so there is no need for the tribunal to make a determination. Although we have carefully considered the leaseholder's criticisms of the various reports commissioned by the landlords, we accept that such reports are necessary and we did not consider them to be too costly.

42. The landlord is entitled and indeed is required to arrange for the accounts to be audited by a qualified accountant. We were surprised though, at the size of the charges having regard to the relative simplicity of the papers for a block of just four flats. On the basis of this observation, our reading of the relevant accounts and papers and our own professional knowledge, we determine that the costs at the rate of £250 per year can be recovered (to be divided between the leaseholders).

43. As to the management charges, it is hard to see the justification for appointing a manager for a block of four flats where apart from routine maintenance, only the arrangements for the insurance of the building, is usually an issue. It is accepted that the landlord has the right (under the lease) to appoint a manager but we have a duty to determine whether the costs (currently based on £200 per flat) are reasonable or not.

44. On the basis of our professional experience and knowledge of the London market we consider that the current charges are too high. We are concerned that the current agents have commissioned reports on

which they do not appear to have acted. It is noteworthy that the communal stairs are far from safe and the lighting in the common parts is not working. In our view, competent managing agents would have made arrangements for this to be sorted out before now.

45. Without meaning any disrespect to Ms Kaur, we are surprised that the managing agents, who knew from the pre-hearing statements made by and on behalf of the leaseholder that there are complaints about their performance spreading back for several years, sent her along to the hearing when she has only recently been appointed to the firm and who has never seen the property. For all of these reasons, we have little hesitation in determine that a management charge for the building should be £300 per annum which equates to £75 per flat.

46. Turning finally to costs, we have considered whether an order should be made under section 20C of the Landlord and Tenant Act 1985, limiting the landlord's recovery of any professional costs incurred as a result of this application as a future service charge. Although the landlord was perfectly entitled to make the application, there were no legal issues to be argued and we consider that someone senior from the managing agents could and should have attended the hearing.

47. An order is made under section 20C of the Act.

48. Finally, we recommend that the landlord through its agents amends the service charge demands for the three periods adjusted in line with these determinations, which are summarised at the beginning of this decision. The leaseholder should pay the outstanding charges within 28 days of receipt of the revised service charge demands being made.

James Driscoll and Trevor Johnson

4 May, 2015

Appendix of the 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
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.
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.

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

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.

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 leasehold valuation 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 a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.
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.