12089

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AB/LSC/2016/0328**
Property	:	**118A Longbridge Road, Barking, Essex IG11 8SL**
Applicant	:	**Andrew John Harvey**
Representative	:	**No appearance**
Respondent	:	**Mr Chandermani Seth**
Representative	:	**In Person**
Type of Application	:	**For determination of liability to pay service charges and/or administration charges**
Tribunal Members	:	**Judge W Hansen (chairman)** **Mrs Helen Gyselynck B.Sc, MRICS**
Date and venue of Hearing	:	**7th December 2016 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**13th December 2016**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that the Respondent is not liable to pay to the Applicant any of the sums claimed by way of service charge or administration charge in these proceedings.

(2) The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Applicant shall not be entitled to add the costs incurred in connection with these proceedings or the proceedings in the County Court at Romford (Claim Number (C3QZ726X) to the service charge.

The Application

1. This matter began life as a claim in the County Court at Romford (C3QZ726X) for "*sums due to the freeholder by way of service charge*" in the sum of £1,794.53. The claim was issued on 6 April 2016. Nothing more was said in the Claim Form about the basis of the claim. Not surprisingly the tenant put in a defence dated 14 April 2016 in which he said this: "*the Particulars of Claim do not state clearly what the claim is for and the Defendant cannot comment further until he receives this information*". He went on as follows: "*the only financial liability on the part of the Defendant which is contained in the lease is to pay ground rent and building insurance premium and these have both been paid*". The claim was then transferred to this Tribunal pursuant to an order dated 19 August 2016.

2. The claim was brought in the name of Estuary Sands Limited as Claimant albeit the Claim Form recorded that "*the Claimant acts for the freeholder in managing the property*". We are satisfied from the evidence before us that the correct applicant is in fact Andrew John Harvey who is the freeholder and we hereby substitute him as the Applicant.

The Lease

3. The Respondent is the tenant of the first floor flat known as 118A Longbridge Road ("the Flat"). There is one other flat in the building which is the flat on the ground floor, formerly occupied by Eileen Irving. The Respondent holds under a 99-year

lease dated 15 October 1976 ("the Lease"). The Lease is for a term of 99 years from 25 December 1975 and provides for the payment of an annual ground rent of £100.00. It also contains at Clause 4(4) a lessee's covenant in the following terms:

> *"To pay to the lessor ... one half of the aggregate of the expenses and outgoings incurred by the lessor in the repair, maintenance, renewal and insurance of the Building and the other heads of expenditure as the same are set out in the Fifth Schedule hereto such further or additional rent being subject to the following terms and provisions..."*

4. There is then provision for a certificate signed by the landlord's managing agents certifying the amount of the service charge, which certificate is to be supplied to the lessee and *"shall contain a summary of the lessor's said expenses and outgoings ... together with a summary of the relevant details and figures forming the basis of the service charge..."*

5. In Clause 4(4)(d) the lease provides that *"the expression 'the expenses and outgoings incurred by the lessor' ... shall be deemed to include not only those expenses outgoings and expenditure hereinbefore described which have actually been disbursed incurred or made by the lessor during the year but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made"*.

The Claim

6. On 21 September 2016 Tribunal Judge Andrew issued case management directions. He noted the lack of any proper breakdown of the sums claimed and said this: *"By letter of 6 September 2016 the landlord was asked to provide a statement identifying, by reference to the service charge years, the service charges that are in dispute. He has not done that: he has simply provided copies of a running account and a number of demands going back to 2009 that add up to a considerably higher sum than £1,794.53"*. He then identified the sums in dispute as being as follows:

7/3/16	Interest on arrears (Invoice No. 30873)	£115.89
27/11/15	Contingency Fund contribution (30828)	£500.00
3/9/15	LR Search Fee (30786)	£15.00
1/9/15	Late payment admin charge (30785)	£150.00
5/12/13	Contingency fund contribution (30586)	£750.00

29/10/12	Health & Safety & Fire inspection (30386)	£90.00
	Asbestos compliance survey (30386)	£126.00
	Fire & electrical safety signage (30386)	£15.00

7. These add up to £1,761.89 and therefore total less than the sum claimed. We note that there is also an invoice dated 31/3/16 for a court issue fee in the sum of £105.00 which takes the total above the figure in the claim form. No explanation is offered for this.

The Hearing

8. The Respondent tenant is 88 years old, having been born on 9 August 1928. He attended the hearing in person and unaccompanied, having travelled in from Barking. He also complied with the Tribunal directions by providing a hand-written statement of case dated 28/9/16 together with supporting documentation which he helpfully took us through, supplementing it with further evidence in response to questions we asked. He told us that in the 11 or so years that he had lived in the Flat since buying it, he had only ever paid ground rent and insurance. He said that there was an arrangement with the landlord that the lessees dealt with all repairs and maintenance issues themselves. This is borne out by the documents which he appended to his response, in particular a letter dated 9/12/06 sent on behalf of the landlord to the Respondent's then conveyancing solicitors ("*It has been the practice for the lessees to deal with maintenance issues themselves*") and the landlord's replies to enquiries before contract which accompanied that letter: see e.g. Answer 6.1. The Respondent also told us that there had never been any reserve fund until the landlord out of the blue began demanding contributions to a contingency fund in 2013; this too is borne out by the documents he provided (see Answer 6.9). He told us that the landlord had in fact never done any repairs or maintenance and he is not aware of any such plans and has not been explicitly told of any such plans or any intention to depart from the long-established practice whereby the lessees dealt with repairs and maintenance. He also said he had never seen anyone carrying out any repairs or any inspections of the property. He also referred us to an email dated 8 April 2015 written on behalf of the former tenant of the ground floor to the landlord's managing agents which said this: "*No maintenance by yourselves has ever been instructed. 118 and 118A Longbridge Road have never been maintained ... We have*

maintained the property ourselves ... In summary, why are there so many new, random charges? ... I look forward to hearing from you to explain why these outrageous fees have been issued ..."

9. The landlord did not attend the hearing. He did not give all the disclosure ordered in paragraph 9 of Judge Andrew's directions; he did not provide any certificates under Clause 4(4) and he did not provide any survey or inspections reports or any receipted invoices to show that these charges had in fact been incurred. He did not prepare a bundle or make any statement in response to the tenant's statement of case. All he did was provide a letter dated 15 September 2016, as referred to by Judge Andrew in his directions, to which he attached the various demands relied on.

Conclusions

10. We therefore have none of the underlying documents that one might expect, such as the various reports charged for together with evidence of payment for those reports, or any documents to explain and prove the landlord's claims for Land Registry fees, signage, interest on arrears or administration charges. Nor do we have any explanation as to what the contingency fund is ear-marked for and why the sums demanded were in those amounts. Accordingly, even if were to accept that the language used in the Lease was sufficient to entitle the landlord to build up a reserve fund, which we do not, we consider that the sums claimed are in any event unreasonable, given the complete absence of any explanation and the singular non-compliance with the machinery contained in the Lease requiring certification and the like in relation to the charges claimed[1].

11. We accept the evidence of the Respondent in its entirety. The landlord has not complied with the tribunal's directions and his only engagement with the case has been to send the above-mentioned letter dated 15/9/16 with its enclosures consisting of the demands issued. This is manifestly unsatisfactory and leaves us in a position where there is no meaningful evidence to support any part of the Applicant's claim. We consider that the charges levied were rightly described by the former tenant Mrs Irving as "*random*". Having regard to the lack of any proper evidence from the landlord, and having accepted the tenant's evidence in its entirety, we reject this

[1] In *Leicester City Council v. Master* (LRX/175/2007) the Upper Tribunal held that a clause entitling the landlord to recover service charges in respect of costs "*to be incurred*" was sufficient to entitle the landlord to build up a reserve fund but the clause in the present case does not refer to costs to be incurred, only to costs "*disbursed incurred or made*".

claim and determine that none of the sums claimed by way of service charge or administration charge are payable and/or that none of the sums claimed were reasonably incurred.

Name: Judge W Hansen **Date:** 13 December 2016