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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LSC/2015/0480**
Property	:	**18 Leybourne Street, London NW1 8BX**
Applicants	:	**Mr H. and Mrs H. Georgiou (leaseholders)**
Representative	:	**Not represented (accompanied by their son Mr C. Georgia)**
Respondents	:	**London Borough of Camden (landlords)**
Representative	:	**Ms M. Moloney (court officer) with Mr N. Goodes (accountant) and Mr M. Capper (contracts manager) all of London Borough of Camden**
Type of Application	:	**An application seeking a determination of service charges under section 27A of the Landlord and Tenant Act 1985 ('the Act') and an application for a determination under section 20C of the Act**
Tribunal Members	:	**Professor James Driscoll (Judge) and Mrs Sarah Redmond BSc MRICS**
Date and venue of Hearing	:	**20 January 2016**
Date of Decision	:	**28 January 2016**

DECISION

Summary of our decisions

1. The landlord's claim for service charges for the April 2014 to March 2015 accounting period in the sum of £2,552.78 is reduced by the sum of £578.

2. This reduction reflects the failure to provide heating and hot water for part of that accounting period.

3. The recoverable service charges for this period is reduced to the sum of £1,974.78.

4. As Ms Moloney the landlord's representative told us at the close of the hearing that no costs for the time taken preparing for the hearing, or the hearing itself, will be included in a future service charge claim, it was unnecessary to make an order under section 20C of the Act.

Introduction

5. This is an application by Mr and Mrs Georgiou who are the joint leaseholders of a maisonette in the subject premises. Their landlords are the London Borough of Camden.

6. The subject premises consists of a maisonette being part of a block of 25 units. We were told at the hearing that 9 of the units are held on long leases and the remainder are rented (we assume on secure tenancies) by the landlords. Mr and Mrs Georgiou purchased their maisonette under the right to buy in 1984. It consists of three floors with separate access. On the ground floor there is a living room/ hall area, a dining room and a separate kitchen. There are three radiators on the ground floor. The first floor has a bedroom and a living room and two radiators. On the third floor are two bedrooms and a bathroom. There are three radiators on this floor.

7. Heating and hot water is provided centrally through the Leybourne Street communal heating system via the use of two gas fired boilers situated in the boilerhouse. The costs of this is charged through service charges to the long leaseholders and to the tenants.

8. Mr and Mrs Georgiou have had many disputes over service charges with the landlords over, we were told, many years. Some of these disputes have been determined by applications to this tribunal; others in the county court.

9. In an application made under section 27A of the 1985 Act, the leaseholders seek the determination of certain charges for the April 2014 to March 2015 accounting period. (The landlord's accounting period for calculating costs and service charge claims are based on the financial year in question).

10. The application was received by the tribunal on 10 November 2015. Directions were given on 18 November 2015. The Directions identified two issues to be determined: the reasonableness of the heating charges and the costs of installing a new television aerial system. A hearing date was fixed with an estimated duration of two hours.

11. As directed the landlords prepared a bundle of documents but this was not indexed as directed and there was no statement in reply to the claim made on behalf of the landlords. The leaseholders did not prepare any written statement apart from what they stated when they completed the application form, and supplied no documents on which they wished to rely prior to the hearing.

The hearing

12. The hearing took place on 20 January 2016. As noted above the leaseholders attended and they were accompanied by their son. The landlords were represented by one of their court officers who was accompanied by two other members of staff who had signed statements relating to the application. Mr Georgiou addressed us at some length and he produced additional documents. He did not call any witnesses. Mrs Georgiou indicated to us that she broadly speaking agreed with her husband's statements.

13. During the hearing it emerged that the charges the landlord makes for the external aerial works relate to major works carried out to allow digital TV reception and are charged as part of the current service charge year (that is April 2015 to March 2016) and so are not part of the charges which the leaseholder has challenged in his application. We explained and repeat now that we did not have jurisdiction to make a determination for matters outside the 2014/5 period referred to in the application. We simply note this and that the landlord's confirmed that these works were preceded by a statutory consultation as required under section 20 of the Act, that a notice under section 21B had been served and that a demand for a contribution to these charges was sent to the leaseholders in October 2015. Mr Georgiou told us that he considered the charges to be far too high but he accepted that this could not be considered as part of this application.

14. We proceeded to hear the application over the heating charges. According to the leaseholders the heating system did not work at all during 2014/5. Hot water was provided except for a period of 45 days. The landlords provided temporary heating in the form of three oil-filled radiators. The leaseholders complained that they had suffered considerable discomfort and cold infections. However, the leaseholders had not kept any diary or other notes of the dates on which the heating was out of order, or when hot water was not provided.

15. The leaseholders argue that their discomfort should be reflected by reducing the heating costs to nil. Although their landlords claimed that a cheque in the sum of £342 had been sent to them as compensation, they had not received it. In any event they do not consider this offer is enough to compensate them.

16. Ms Moloney called Mr Capper to give evidence and he spoke to his statement dated 4 January 2016 and to a copy of detailed email sent by his colleague Ms Kose dated 13 October 2015. Mr Capper has worked for the landlord for one year

and he became involved with this property in February 2015. His colleague Mr Hunt was involved before that time. According to Mr Capper it is only the ground floor radiators that have not worked though he agreed that Mr Hunt appeared to have accepted that the radiators on the other floors were not working from time to time (see Mr Hunt's email to Ms Ugah dated 20 January 2015).

17. Mr Goodes spoke briefly to his statement dated 4 January 2016 and he sought to explain how the landlord's heating costs are calculated for buildings such as this one where there is a central supply of heating and hot water. This is done differently for the landlord's secure tenants and the leaseholders.

18. It is common ground that the heating was not functioning during part at least of the 2014/15 period and that there had been no hot water supply for a period. We told Ms Moloney it might have been better if she had produced a statement from Mr Hunt who was involved with this property throughout that period. There was another element of uncertainty as Mr Georgiou seemed during the hearing to accept that for parts of this period the heating was working.

Reasons for our decisions

19. Doing the best we can with this far from conclusive evidence we have concluded that the heating was not working for about one half of the year concerned and that it was agreed that hot water was not provided for 45 days. These conclusions are, we consider, a fair interpretation of the available evidence we had, that is Mr Georgiou's oral evidence, that of Mr Capper, that of Mr Goodes and the documents provided. We have also borne in mind that the lack of heating during the summer months would not have inconvenienced the leaseholders and that the landlords provided alternative heating (which the leaseholders told us they did not like as it emitted odours).

20. Having reached this conclusion, it is common ground that under the lease the landlord is responsible for providing heating and hot water and that it has been in breach of these obligations for part of the 2014/5 accounting period. The parties agreed that other leaseholders and tenants in the block have suffered similar problems.

21. Mr Georgiou handed us a copy of a letter sent to a tenant of 5 Leybourne Street who was offered a total of £479.87 as compensation. The landlord's representatives were unable to shed any light on how this was assessed. This letter stated that compensation is payable for days when service is interrupted and and additional sum of £115.60 is payable for periods over two weeks when the supplies are not working. We have concluded that there is a total of at least 91 days at the subject property when there was no heating and or hot water. Disregarding the fuel aspect of the refund to the tenant at number 5since we are told that each of the units is charged on a 'weighted' scale we assess the amount to reflect the poor level of service in respect of provision of heating and hot water to reflect the level of additional compensation included in the offer to the tenant of 5 Leybourne Street. We determine that a sum of £578 should be deducted from the service charges claimed for the 2014/15 accounting period to reflect the quality of service. As the leaseholders enjoyed the benefits of some heating and hot water

(including the temporary radiators) the submission that they should be charged nothing at all is rejected.

22. According to the documents on the service charges claimed for this period and the breakdown of those charges a total of £2,552.78 was claimed. This should be reduced by the figure to be deducted to a new figure of £1,974.78.

23. As Ms Moloney told us that they will not seek any costs incurred in dealing with this application no order is made under section 20C of the 1985 Act.

James Driscoll and Sarah Redmond
28 January 2016

Appendix (extracts from relevant statutory provisions)

Landlord and Tenant Act 1985, section 19

Limitation of service charges: reasonableness.

(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.
(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 20B

Limitation of service charges: time limit on making demands.
(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

Limitation of service charges: costs of proceedings.
(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.
(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.]