12476

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/26UD/LSC/2017/0057**
Property	:	**Flat 5, Castle View, 12-14 Parliament Square, Hertford SG14 1AT**
Applicant	:	**Miss Sarah Ashford**
Representative	:	**Miss Ashford accompanied by her father**
Respondent	:	**Mansuri Properties Limited**
Representative	:	**Mr Galliers of BLR Property Management**
Type of Application	:	**To determine reasonableness and pay ability of service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Miss M Krisko BSc (Est Man) FRICS** **Mr N Miller BSc**
Date and venue of Hearing	:	**Hertford County Court, Fore Street, Hertford on 2nd November 2017**
Date of Decision	:	**9th November 2017**

DECISION

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DECISION

1. **The Tribunal makes the determination set out under the various headings in this decision.**
2. **The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs to the Tribunal proceedings may be passed to the lessees through any service charge.**
3. **The Tribunal determines that the Respondent shall pay to the Applicant £150 within 28 days of this decision in respect of partial reimbursement of the Tribunal fees paid by the Applicant.**

THE APPLICATION

1. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 (the Act) as to the amount of service charges payable by the Applicant in respect of the service charge years in dispute.

2. The relevant provisions relating to the legislation are set out in the appendix to this decision.

HEARING

3. The Applicant appeared in person and was accompanied by her father Mr Ashford. The Respondent appeared through Mr Galliers of BLR Property Management.

4. Prior to the hearing, we had been supplied with a bundle of papers containing the application, directions, summary of service charges disputed and a copy of the Applicant's lease. In addition we were provided with the actual service charge costs for the years 1st January 2014 to 31st December 2014 and the same for the following two years up to December of 2016. We were also provided with the estimated service charge budget for this year.

5. A number of invoices had been produced and we were also provided with copies of some email correspondence.

6. For the Respondents, we had amongst the papers a statement by Mr Ian Howard Lester of Cording Real Estate Group which was dated 4th September 2017 together with numerous exhibits, in particular a schedule showing the service charges for the years in dispute allocated between the commercial and residential elements. Just prior to the hearing we were also provided with a copy of a letter from APAM who are the commercial managing agents dated 27th July 2017 with exhibits and a letter from BLR Property Management (Mr Galliers) also dated 25th July 2017 with copies of some authorities he relied upon and some copy documentation.

BACKGROUND

7. The Property which is the subject of this application is a three-storey building, comprising commercial lettings at ground and first floor level and seven residential flats on the top floor. The ground floor appears to be let to the Job

Centre and to a firm of estate agents. The commercial premises, according to the witness statement of Mr Lester, historically pays 59.4% of the net costs associated with the building and 40.96% of those costs are charged to the residential tenants. We say historically because this arose by reason of an original lease to a company called Hyline Developments Limited. That company at some time in the past converted the second floor of the Property into seven flats. The original lease to Hyline appears to have been surrendered and now vests in the ownership of the Respondent, Mansuri Property Limited. With that came the responsibility for the management of the common parts to the flats, which is undertaken by BLR Property Management (BLR). The commercial area is now managed by APAM Limited who took over from Cording Real Estate Group in November of 2016.

8. Our inspection of the Property before the hearing enabled us to view the internal common parts to the residential area which are in good order. They are bright and modern with stairs rising to the second floor. There is also a lift which was working at the time of our inspection but was in a somewhat dilapidated condition. The floor of the lift needed replacing and it was quite slow. We will return to the element of the lift in due course. The internal common parts were serviced by lighting on a timer switch, what appeared to be fire security systems and three fire extinguishers. It was clean.

9. Externally there are a number of car parking places, seven of which are allocated to the individual leaseholders. There is also a raised garden area reached by fairly steep narrow steps. This comprises essentially a gravel path meandering its way between herbaceous borders with a couple of wooden benches. The backdrop to this is we understand the wall of Hertford Castle.

10. The car parking area is secured by way of electric gates and access to the common parts is likewise by way of coded entry and video entry phone to the individual flats. The Property is well situated for the centre of Hertford.

11. The Applicant holds under the terms of a lease, a copy of which was provided to us. It is dated 2nd May 2008 for a term of 127 years less one day from 1st January 2006. The lease provides for the Respondent, who is now also the landlord and freeholder, to provide services and there is an obligation on the lessees to contribute towards those. It is noted that there appears to be a reference at clause 1.1.8 of the lease to paragraph 5(3) which does not in fact exist but the lessor's obligations to provide services and the service charge requirements are set out at clause 7.

12. The position is that BLR manage only those services relating to the residential area which includes the cleaning of common parts, fire risk assessment, lift maintenance, repairs and maintenance, health and safety issues and other charges. In this case, the challenge was initially to lift maintenance, repairs and maintenance and health and safety. This is apportioned equally between the seven flats. Under the heading Building which includes the commercial element, items such as the cleaning of common parts, electricity, fire safety, grounds maintenance, insurance, gates, snow clearance, cleaning, electrical maintenance and other matters, are subject to apportionment between the commercial and residential occupiers. This is allocated as to 40.96% to the residential and the

balance to the commercial occupiers. The residential lessees then make a contribution of one seventh or 14.2857% of the 40.96%. This is not in dispute.

13. The items that we were required to consider were set out on a spreadsheet prepared by Miss Ashford. The spreadsheet set out each item of expenditure which formed the service charge liability. However, Miss Ashford had limited her concerns and also agreed matters during the course of the hearing. We should record, therefore, that the following items were not the subject of a finding by us:-

Under the heading Residential, Miss Ashford initially challenged lift costs repairs and maintenance and health and safety. The latter is settled on production by Mr Galliers of the health and safety reports which had been commissioned, apparently for two years, which he undertook to provide to Miss Ashford within the next ten days. As to the repairs this related to the repair of a glass partition in the banisters. The total cost was £822 and a copy of the invoice from C2 Maintenance had been produced. There were no alternative quotes from Miss Ashford and she decided not to pursue this cost. That being so, the only item in respect of the Residential unit was the question of lift maintenance.

Under the heading Building, there were a number of items which Miss Ashford had initially queried but after discussing the issues at the hearing and she having had the opportunity of seeing some invoices in support, the items in dispute narrowed considerably. The two areas that still caused her concerns were grounds maintenance, which would appear to include the cleaning, and snow clearance and gritting. The other items which were initially in dispute were all agreed. We are grateful to Miss Ashford for adopting this pragmatic and, if we may say, sensible approach to this case.

14. We will then turn to the specific items and begin on the question of lift maintenance. We should say at the outset that although Mr Lester had provided a witness statement, he did not attend the hearing. Mr Galliers, who did come, had not provided a witness statement and matters were compounded by the fact that he did not appear to have a great deal of knowledge about the development as, we understood, he had not in fact visited it. He was the Director of BLR and the development was looked after by his managing agent who apparently could not attend the hearing as he had to attend an AGM. This did not assist.

15. Miss Ashford told us that her real concern in this case was the increase in the service charges over her period of ownership which she thought was generally unreasonable. However, dealing firstly with lift maintenance, she told us that the lift had been without a light for some considerable time, indeed since she had acquired her interest in 2014. In the end, as a result of the lack of any response, she and six of the other seven lessees got together to purchase a new light for the lift at a cost of £660 inclusive of VAT. We were told she had not made any attempt to contact the managing agents about this until August of 2017 following a query raised by a prospective purchaser. In the past, she had used the lift as something of a dumbwaiter putting her shopping in it and then walking up the stairs to her flat to collect it.

16. In response, Mr Galliers told us that they were aware that there were problems with the lift and were seeking upgrading which could cost up to £75,000. This has only been done recently. Prior to that, he told us, the leaseholders or at least two or three of them, had requested that the lift should not be repaired as they would not be using it. He also told us that they did not have the funds to install a new light. He said it had been out of commission for some time but a review of the service charges indicated that a maintenance fee had been paid for all years in dispute, apart from 2016.

17. Miss Ashford told us the lift had always worked but nobody had wanted to use it because of the lack of lighting. It appears that the maintenance programme had resulted in attendance by Crown Lifts Limited. In the papers before us there were at least two invoices, one being a call out for which a charge of £202.62 was made and another to check communal power sockets at a price of £192.00. The annual maintenance costs for 2014/15 and 2015/16 were represented by two invoices, one totalling £721.91 for the earlier period and the other £750.78 for the later period.

18. The call out charges of which there were those two invoices we have referred to and an earlier one at page A7/324 appear to indicate that after each call out the lift had been left in working order. No mention is made of there being no lighting.

19. The sums claimed in respect of lift maintenance, insofar as Miss Ashford was concerned, were for the year 2014 £123.47, then £142.90 and an estimated cost of £142.86 for the year to December 2017. No charge was made for 2016.

TRIBUNAL DECISION

20. In the light of evidence before us, we have concluded that those charges in respect of lift which we have outlined above, are not recoverable.

REASONS FOR TRIBUNAL'S DECISION

21. Our reason for disallowing these charges is that they would appear to relate to the maintenance cost but this lift appears to have been without any form of lighting since 2014. Indeed, it was not until the residents got together and paid for the lift lighting to be repaired that it was so lit. At the time of our inspection, we tested the lift which was slow, but did work. It is not in a terribly good condition in that the flooring certainly needs to be replaced. We found it strange that Mr Galliers should say that two or three of the lessees had said they did not want the lift to be operational but there appears to have been no attempt to contact other lessees to find out what the position was. Furthermore, with a maintenance contract was in place we cannot understand why the landlord was not advised that the lift was without light.

22. To say that the Landlord was not able to correct this because they had no funds seems to us to be unacceptable and indeed there was no evidence given to us by Mr Galliers that this was in fact the case. There is no indication that the landlord has taken action for the recovery of unpaid service charges and we see no reason, therefore, why this repair cost could not have been undertaken. Whether the sum

of £75,000 is something that is worth spending on a lift which services only two floors is another matter. However, we were unimpressed by the responses given by Mr Galliers to this particular lift issue and we do not consider that there has been any value to the lessees by the maintenance contract which appears to make up the bulk of the annual costs. It is right that there are some call out charges but given that the lessees had apparently requested that the lift should not be put into action, we do not understand why these call out charges would have been incurred and in any event, it still means that the lift was not useable because it had no working light. In the circumstances, therefore, we find that all costs associated with the lift, whether they be call out charges or the annual maintenance charge, should be disallowed.

23. Turning to the Building costs we were asked to consider was that of grounds maintenance, a common part charge, of which the lessees pay their 40.96% which is then divided on a one seventh basis. This cost appears to relate not only to the upkeep of the fairly small garden area but also the cleaning to the car parking areas and external areas to the block.

24. We had the opportunity of inspecting the car parking area and the garden. As we have indicated above, this is a basic area perhaps 20 or so metres in length and no more than three or four metres in width. It is taken up largely of shrubs with a path and two benches. It is reached by a flight of fairly steep narrow steps.

25. The car parking area is reasonably extensive but it would seem that the answer to this issue lies in an email sent by Brijesh Patel, the Property Manager with APAM, to Miss Ashford on it would seem 2nd June 2017. This email says as follows: *"As a way of an update, we have reduced the level of litter picking and landscaping from a total annual cost of £5,583 per annum to £768 plus VAT which is a substantial saving, however, a significantly reduced service will be provided and will be implemented with immediate effect."*

26. At the time of our inspection, the car park was clean and, albeit the garden is nearing winter, was in basic reasonable order. In our opinion it would not take a great deal of work to maintain the garden area. There does not appear to be any grass to mow, just beds requiring weeding and trimming. To us this does show that the costs associated with the previous litter picking and landscaping was excessive. To be able to reduce this expense by over £4,000 without any particular difficulty seems to us to show that the costs previously had been too high. It is right to say, however, that Miss Ashford had not produced any alternative quotes for this work.

TRIBUNAL DECISION

27. The Tribunal determines on the basis of the latest costs for litter picking and for gardening, that a charge of £921.60 inclusive of VAT is reasonable. The costs for the previous years faced with this current cost seem to us to be excessive. No real explanation has been given by the Respondent as to why there is such a difference. We accept there may be a lessening of standards but the apparent previous increase to weekly cleaning and it would seem garden maintenance, was in our view unnecessary. The area to the rear is a car park. It may be that some other users, as we were told by Miss Ashford, leave cigarette butts and such like,

but that would seem to come from the commercial users and the substantial reduction as we have indicated says to us that the costs have been too great going back during the historical period we are asked to consider. In those circumstances, we determine that the relevant cost for litter picking and for landscaping should be the figure which is now suggested it is going to be the cost, namely £921.60 inclusive of VAT of which, of course, the lessee will pay her due proportion under the terms of the lease.

28. The last item that we were required to consider related to the gritting and snow clearance. Miss Ashford's concern was that the costs were high. Mr Galliers explained this on the basis that the original contract in 2015 had been agreed on a fixed charge. This resulted in a number of attendances, the contractors deciding when to attend based on the weather forecast. Over a period of time, this has been gradually reduced until the new contract is now on the basis that the contractors attend when necessary and are paid for each visit. The Respondent believes that the whole of the car park is treated and cleared if necessary, although Miss Ashford disputed this but was unable to produce any real evidence. We were told by Mr Galliers that the contractors provided spreadsheets setting out their visits. As with previous challenges, no alternative quotes were obtained by Miss Ashford for this, although it was suggested that the visit at the rate of £81.00 seemed to be reasonable but it was a question as to whether or not they did in fact attend and what was done.

TRIBUNAL DECISION

29. We find in this case that the charges are reasonable. There are invoices evidencing attendances by the contractors. It has been kept under review. Miss Ashford has not been able to challenge to our satisfaction the number of attendances or the amount of gritting that was undertaken. It clearly needs to be done as there are a number of people using the area and we accept Mr Lester's comments that there is a health and safety requirement to make sure that the area is safe. In those circumstances, therefore, we find that the costs for each are reasonable, the more so as the contract has been under review and is now the subject of a payment on call out.

APPLICATION UNDER SECTION 20C AND REFUND OF FEES

30. At the end of the hearing, the Applicant made an application for a refund of the fees paid in respect of the application and the hearing. We heard from both parties on this and taking into account our determinations above, we have concluded that it would be reasonable for the Respondent to refund 50% of the fees paid by the Applicant within 28 days of this decision. The total fees paid were £300 and accordingly a refund of £150 is the correct amount.

31. In the application form, the Applicant sought an order under section 20C of the Act. Again, having heard submissions from the parties and taking into account our determination, we conclude that it would be just and equitable in the circumstances for an order to be made under section 20C so that the Respondent may not pass any of its costs incurred in connection with the proceedings for the Tribunal through the service charge.

Judge: Andrew Dutton

A A Dutton

Date: 9th November 2017

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.