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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00AD/LSC/2016/0239**

Property : **30 Drake Crescent, Thamesmead
SE28 8PZ**

Applicant : **Holding & Management (Solitaire)
Ltd**

Representative : **First Port Property Services**

Respondent : **Mr Jean Michel Kah-Guei**

Representative : **Mr Kah-Guei in person**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Mrs S O'Sullivan
Mr J Barlow FRICS
Mrs R Turner JP**

**Date and venue of
Hearing** : **9 March 2017 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **19 May 2017**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision
- (2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the respondent in respect of the service charge years 2015 and 2016 .
2. Proceedings were originally issued in the Northampton County Court under claim no. C4CW95E3. The claim was transferred to this tribunal, by order of District Judge Smith on 9 June 2016. In the County Court the respondent makes a counter claim in the sum of £18,000. However at case management stage the tribunal confirmed it would not determine the counter claim as it was more appropriate for it to be dealt with in the county court.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The applicant was represented by Mr Galtrey of Counsel at the hearing. Also attending for the applicant were Sandy Patel , a legal consultant, Mr Foster, the property manager and Mr Bettinson, group head of insurance. The respondent appeared in person. Also attending were Mrs Kah-Guei, Ms Udebiuwa (Flat 27) and Mr Davies (Flat 29).
5. The tribunal heard evidence from both parties and a summary of that evidence is set out below.

The background

6. The property which is the subject of this application is a flat contained within a block on a small development. Counsel for the applicant confirmed that it is not in dispute that the condition of the property requires some attention and that there is a section 20 consultation underway in relation to the replacement of the windows and communal doors. A notice of intention under section 20 of the Landlord and Tenant Act 1985 has been served.

7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
9. Directions were made dated 8 November 2016 further to which both parties lodged bundles for use at the hearing.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the years ending 31 December 2015 (actual) and 2016 (estimated). The respondent disputes various categories as set out below.
 - (ii) Whether or not the an order under section 20C should be made.
11. The applicant relied on witness statements of Mr Bettinson and Mr Foster. The respondent had made a statement of case but also relied on comments provided by Urang Property Management (“Urang”). Oral evidence was also given for the respondent by Ms Udebiuwa, Mr Davies and Mrs Kah-Guei.
12. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

BLOCK CHARGES Y/E 31 December 2015

Insurance

13. The applicant confirmed that the insurance is placed annually and that no long term contracts are in place. It is confirmed that the total cost is £3,696.70 and the respondent’s share is £308.07. The tribunal heard from Mr Bettinson, group head of insurance. He gave evidence that the policy is renewed annually and the property remarketed in 2016. He informed us that the claims history has impacted on the premium with £40,594 having been paid in premiums since 2010 but £58,409 having been paid in claims.

14. The respondent says there is no evidence of any insurance and that the amount demanded is unreasonable. It is said that the applicant does not try and obtain alternative quotations.

The tribunal's decision

15. We allowed the cost of insurance in full. The respondent produced no evidence that the amount was unreasonable in amount and we accepted Mr Bettinson's evidence in relation to the regular remarketing of the policy and the impact of the claims history.

Communal area cleaning

16. The total cost of the cleaning for 2015 is £1245.
17. The applicant confirmed that this was a one year contract and that no issues of consultation arose. The contract was heard to cover the basic cleaning of the internal common parts including vacuum cleaning and general dusting. In 2015 the cleaning was carried out fortnightly although it has now been changed to weekly. The total cost is £85.80 per visit. Mr Foster's evidence was that the company had been cleaning for 4 years and that a sheet is placed on the notice board which is signed by the contractors on each visit.
18. The respondent says that the standard of cleaning was poor and that the cost is unreasonable. It is said that prior to these proceedings the cleaners were never seen. The respondent relied on the schedule provided by Urang to suggest an alternative cost of £1,000.

The tribunal's decision

19. We allowed the cost of the cleaning in full. We had no real evidence that the cost itself was unreasonable such as alternative quotations. We did not have any details as to how Urang had reached their suggested cost but it seemed to us that Urang had not provided a full quotation based on the specification carried out by the current cleaning company. As for the standard of the cleaning we had no evidence such as photographs or letters of complaint dating from 2015 to suggest the cleaning was of a poor standard at that time.

Fire Systems Maintenance

20. The total cost of this item was confirmed at £288 with the respondent's share being £24. In the circumstances the respondent confirmed this was no longer challenged.

General Maintenance

21. The total cost of the block general maintenance for 2015 was £5077.44. The items were itemised on page 263 of the bundle and the respondent was given a break to look through the invoices and identify which items if any he challenged. After the break the tribunal considered the following invoices which were disputed;

- i. Invoice in the sum of £2,700 in relation to the replacement of windows to flat 37. The respondent queried why his windows had not been replaced. The applicant confirmed that the windows to flat 37 had been replaced as they had become a safety concern and that the applicant was carrying out a piecemeal replacement of the windows whilst it attempted to build up sufficient funds.

We allowed this amount as it is a recoverable item under the service charge and we considered the cost to be reasonable.

- ii. Invoice in the sum of £480 in relation to the replacement of an extractor fan in flat 48. The respondent challenged this as he considered this should be recovered from the leaseholder.

We allowed this sum as reasonable and falling within the service charge.

- iii. Invoice in the sum of £369.60 in relation to works to the bin store. The applicant explained these costs represented the installation of a closer. The respondent said he had not seen the closer.

The tribunal had been provided with a copy of the invoice and was satisfied the costs had been incurred.

- iv. Invoice in the sum of £498 in relation to blocked pipework to the respondent's flat. The respondent challenged these costs on the basis that they only became necessary due to a lack of maintenance. The applicant submitted that even when there is proper maintenance problems are often caused to drains and pipes by the actions of the other occupiers.

We allowed these costs. We had sight of the invoices and did not have any evidence the costs were incurred due to a lack of maintenance.

Management fees

22. See below under Estate Costs

Health & Safety

23. The total cost of this item is £108.96 with the respondent's share being £9.08. This represented the cost of testing the emergency lighting twice a year.

24. The respondent had said the health and safety charges should be nil as they were "non-existent".

The tribunal's decision

25. We accepted the applicant's evidence and had sight of the relevant invoices. We considered that charges to be reasonable in amount and allowed them in full.

ESTATE CHARGES

Grounds maintenance

26. The total cost of the estate grounds maintenance was £7029.40. This was made up a regular monthly charge of £400 including Vat for regular grounds maintenance items and additional costs for the removal of dumped items and tree works. The respondent confirmed that the invoices for the removal of dumped items and tree works on pages 292 and 293 of the bundle were not challenged. We heard that the monthly charge included lawn mowing, sweeping, litter picking, leaf clearing and tidying litter bins.

27. The respondent says that the grounds maintenance was not carried out to a reasonable standard. He submitted it was only maintained once a year. He was unable to produce any photographs or letters of complaint although he said he had complained by phone. He relied on the Urang suggestion of £3000 and said that this had been produced by a director of Urang who had visited and taken photographs. He was unable to say exactly what would be carried out by Urang.

The tribunal's decision

28. We found the charges reasonable and allowed them in full. We had no evidence that the grounds had been in poor condition in 2015. As far as Urang's alternative quotation was concerned we had no details of the specification upon which it was based and whether it was directly comparable with the contract in place.

General maintenance

29. The general maintenance costs were set out on page 294. Again the respondent was given a short break to look through the invoices and identify those he disputed as follows;

- i. The respondent queried whether page 295 had been duplicated but on looking at the invoices we agreed with the applicant that the costs had been apportioned on page 279.
- ii. Several dump fees were challenged on the basis that the local authority would have removed the items for free. The applicant explained that commercial enterprises could not use this free service and having regard to our experience we accepted this explanation and allowed those costs.

We would however suggest that in future the managing agent be more proactive in how the issue of dumped items is dealt with, by way of example letters could be sent to residents asking that they use the free local authority collection service and notifying them that if items must be collected by specialist firms those costs will be added to the service charge.

- iii. An invoice in the sum of £1050 for painting car park spaces was challenged on the grounds that the cost was unreasonable. We heard that this involved simply painting out markings for 12 cars.

We agreed the cost was excessive for a straightforward job which was unlikely to require specialist equipment and allowed 50% of the cost.

- iv. An invoice in the sum of £1020 for releveling slabs was challenged on the basis it was too high. We had little information about what this entailed and given the size of the estate could not take a view on whether the cost was reasonable. We therefore concluded that on the basis of the evidence we had no option but to find this reasonable.

Management fees

30. Management fees for the block were 11% of the total costs at £151.45 per unit. For the estate management costs were around 21% at £240 per unit. The total cost to the respondent for 2015 was £391.45.
31. The applicant says that this is not an easy estate with serious issues with fly tipping and the ongoing problems with the windows. It was also said that there was a high turnover of tenants and tenants often did not respond to correspondence. It was confirmed that the duties provided were general management duties.
32. The respondent says that the service was not carried out to a reasonable standard and that the cost is not reasonable in amount. However Urang's quotation at £4320 inclusive of vat worked out at £460 per unit which was higher than the cost being charged.

33. The respondent complained the service was poor, in particular it was said that the windows were in a very poor condition; the property manager didn't visit and did not keep promises.

The tribunal's decision

34. We allowed a management fee of £300 for 2015. We considered this is a small block which does not require extensive management and the problems reported to us are ones which would fall within a standard management remit.
35. We would suggest that in future half yearly meetings should take place with residents and residents should notify the managing agents promptly if standards are poor. The specifications for cleaning and grounds maintenance should be provided to the leaseholders so that they are aware what to expect.

Estimated charges year ending 31 December 2016

36. The respondent says that the estimated charges for 31 December 2016 should be based on the amount determined as reasonable by the tribunal for the year ending 31 December 2015.

The tribunal's decision

37. We allowed the estimated charges for the year ending 31 December 2016 in full save that we consider the management fee should be reduced to £300 per flat.
38. We would mention that Counsel suggested that the witnesses who gave evidence for the respondent were not entirely truthful. In our view this assertion was not supported by the evidence and any inconsistencies were most likely due to poor recollection of historic events.

Application under s.20C

39. The respondent has applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that no order should be made under section 20C.

The next steps

40. This matter shall now be returned to the County Court for the consideration of the counter claim.

Name: S O'Sullivan

**Date: 19
May
2017**

Appendix of 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
 - (b) 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.
- (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 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.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

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 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 that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.