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

Case reference : **LON/00AG/LSC/2016/0371**

Property : **Second Floor Flat, 98 Fortune
Green Road, London, NW6 1DS**

Applicant : **Sharesense Ltd**

Representative : **Miss Hanstock of Counsel**

Respondent : **(1) Mr A Khira
(2) Mrs H Khira**

Representative : **In person**

Type of application : **For the determination of the
reasonableness of and the liability
to pay service charges**

Tribunal members : **Judge I Mohabir
Mr M Cairns**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **26 January 2017**

DECISION

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 each of the service charge years from 2013 to 2016.
2. The service charges upon which the Applicant sought a determination are set out in the Schedule annexed to this decision.
3. At the hearing, the Respondents helpfully stated that all of the service charges claimed by the Applicant were agreed save for the management fees claimed in respect of each year. This decision is, therefore, limited to that single issue.
4. The relevant legal provisions are set out in the Appendix to this decision.

Decision

5. The hearing in this case took place on 26 January 2017. The Applicant was represented by Miss Hanstock of Counsel. The Respondents appeared in person.

Management Fees

6. Ms Hanstock, for the Applicant, submitted that the management fee of £154.21 contended for by the Respondents only represented one quarter's charge by the previous managing agent. She said that the current management fee now included the preparation of the service charge accounts, which was being dealt with in house.
7. The current fee of £750 including VAT represented the fee for all of the 3 flats in the building. Apportioned, the Respondents' liability came to £224.47 including VAT. Miss Hanstock submitted that this was a very low figure when compared to industry norms.
8. In reply, the Respondents submitted that the management fee was unreasonable because the property was in a general state of disrepair, especially the common parts. They referred the Tribunal to photographs of those areas and pointed out that there are no buttons on the intercom system. Furthermore, they said that the damp present in their flat was a direct result of the Applicant's failure to repair the holes in the roof despite having reported this to the managing agent since 2007.

9. In the circumstances, the Respondents submitted that a total management fee of £525 plus VAT was reasonable. This was based on the management fee being charged by the previous managing agent. However, the Respondents did not provide any comparable evidence of management fees being charged by other managing agents to provide the level of services being offered by the present agent.
10. It was common ground that the management functions carried out by the managing agent, as a minimum for all of the relevant years, included arranging the buildings insurance, dealing with the electricity bills and carrying out accountancy tasks including the preparation of the service charge accounts and demands.
11. Having regard to these matters, the Tribunal found that the overall management fee of £750 including VAT was reasonable. It was clear that the Respondents' calculation of their figure of £525 plus VAT was unrealistic. It was based on the previous managing agent's fee of £154.21 for one quarter only and this did not include the additional accounting function now being performed by the current managing agent without further charge. No doubt, had this been dealt with externally, the cost would be greater to the Respondents than the amount being claimed.
12. Accordingly, the Tribunal determined that the management fee of £750 including VAT for each of the relevant years was reasonable and payable by the Respondents.

Costs - Section 20C & Fees

13. The Respondents made an oral application under section 20 C of the Act at the hearing.
14. The discretion afforded by section 20C allows the Tribunal to make an order preventing a landlord from being able to recover all or part of its costs where it is just and equitable to do so.
15. The Respondents submitted that the Applicant should not be entitled to recover its costs because had it provided the disclosure they asked for in relation to the disputed service charges, either the application or the hearing would have been necessary. However, they were unable to provide any evidence of when the Respondent had been requested to provide the disclosure they sought.
16. Miss Hanstock submitted, on instructions, that the Applicant had provided the disclosure requested by the Respondents prior to the issue to the application and certainly no later than 6 weeks prior to the hearing. However, she too was unable to provide any evidence of when the Applicant had provided the pre-action disclosure.

17. Having regard to the relative merits and demerits of the respective assertions made by the parties and in the absence of any substantive evidence either way, the Tribunal considered it just and equitable to make an order that the Applicant is only entitled to recover half of the costs it had incurred in making this application.
18. For the same reasons, the Tribunal also orders that the Respondent shall reimburse the Applicant only half the application and hearing fee in the sum of £150. Both these fees and the service charges that are the subject matter of this decision are payable by the Respondents within 28 days of service of this decision on the parties.

Name: Judge I Mohabir

Date: 26 January 2017

SCHEDULE OF SERVICE CHARGES

| | 2013 | 2014 | 2015 | 2016 (estimated) |
|--|---------------|---------------|---------------|-----------------------------|
| Insurance | 187.35 | 140.02 | 139.61 | 140.07 |
| Electricity | 29.04 | 35.46 | 39.56 | 41.90 |
| Bank Charges | - | 0.41 | 0.43 | 0.60 |
| Management Fee | 224.48 | 224.48 | 224.48 | 224.48 |
| Cleaning | | | | 149.65 |
| Fire Risk Assessment | | | | 89.79 |
| Smoke Alarm Installation | | | | 119.72 |
| Intercom Installation/Maintenance | | | | 224.48 |

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application must include a request for 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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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.