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

Case Reference : **LON/00AW/LSC/2016/0212**

Property : **Flat 89, Sherbourne Court,
Cromwell Road, London SW5 0SU**

Applicant : **Sherbourne Court management
Limited**

Representative : **Colman Coyle, Solicitors**

Respondent : **1. Pritesh Vallabhdas Soni 2.
Bhavna Pritesh Soni**

Representative : **Self**

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

Tribunal Members : **Judge Hargreaves**

**Date and Venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **22nd August 2016**

INTERIM DECISION ON SERVICE CHARGES

Decisions of the tribunal

1. Reasonable service charges (or the balance thereof) payable by the Respondents for the year ending March 2013 amount to £1660.35.
2. Reasonable service charges for the year ending March 2014 payable by the Respondents amount to £5420.04.
3. Reasonable service charges for the year ending March 2015 payable by the Respondents amount to £5579.68.
4. Reasonable service charges for the year ending March 2016 payable by the Respondents amount to £5573.74.
5. The demand for service charges in the sum of £2843.67 on account for the year March 2016-March 2017 is reasonable and payable by the Respondents.
6. If the Applicant wishes to satisfy the Tribunal that it is entitled to recover (i) the amounts referred to in paragraph 5 below (ii) contractual interest then it must file and serve on the Respondents an additional statement of case verified by a statement of truth explaining the contractual and legal basis on which it is contended that the additional amounts are recoverable under (i) and (ii), and providing all supporting documentation, by 5pm 14th September 2016.
7. The Respondents have until 5pm 28th September 2016 to file and serve a reply in response to any further submissions made by the Applicant under paragraph 6 above after which a further determination will be made.
8. If the Respondents do not comply with paragraph 7 then the Tribunal will proceed to deal with any further submissions raised by the Applicant pursuant to paragraph 6 without further reference to the Respondents who will be debarred from making any submissions on the points.

REASONS

1. The Respondents are in substantial arrears in their account with the Applicant. Although this does not prove the Applicant's case for the Applicant, the Applicant relies heavily on a previous decision of this Tribunal¹ dated 8th October 2013, after a hearing which took place on 16th September 2013. On that occasion the Respondents took numerous technical points, at least one of which, on the validity of the service charge demands prior to September 2012, was successful. But they raised no substantive defence on the reasonableness of the service charge demands. They did not appear at the Tribunal because they remained in Brazil, but instructed counsel to make an application for an adjournment, which failed. They did however file some submissions, though not in accordance with directions.

¹ LON/00AW/LSC/2013/0442

2. In the 2013 decision the Tribunal determined that over £9000 was payable in respect of charges for the period March 2010- September 2012. This case picks up from September 2012, no payments having been made in respect of those determined by the 2013 decision, and none for the period from September 2012, despite Mr Soni's email to the Applicant dated 3rd June 2016 (p66 of the hearing bundle) indicating his wish to resolve the question of arrears (by then exceeding, on the Applicant's calculation, £31,000 (p65)).
3. Apart from that email, it does not appear that the Respondents have engaged in the Tribunal process at all. Directions were issued on 25th May 2016. The Applicant complained about the Respondents' failure to comply and applied by letter dated 5th August for an order debaring the Respondents from defending the application. The Respondents were asked by the Tribunal's letter of 9th August 2016 to explain their failure to comply, but they have not done so. The Tribunal made it quite clear that it would proceed to determine all issues in the absence of a satisfactory response, and I have no hesitation in proceeding to do so with two exceptions (see below and directions 6-8, relating to interest and possible administration charges). No debaring order has in fact been made but the Respondents have had chances and not availed themselves of them. It remains the case that there is nothing to suggest that they have any, not to mention any substantial, defence on the merits.
4. The Applicant filed and served a very brief statement of case, exhibiting the service charge demands relied upon, and have supplied the accounts for the years ending March 2013 – March 2015. The Respondents are liable to pay service charges by virtue of clause 4 of the lease (dated 14th September 1979) of Flat 89 and car parking space 3: see p93 of the bundle. Sums are payable in advance on 25th March and 29th September, with any balancing payments being calculated after 25th March. The proportion due from the Respondents is 33/4445. There is provision for contractual interest to be paid on unpaid service charges (clause 4(iii))² and for payments towards a reserve fund (clause 4(vi)).
5. Apart from lack of clarification concerning contractual interest, the other point on which I consider it necessary to have further clarification, submissions, and evidence, is the question of charges for debt collection evidenced by the invoices at pages 26, 28, 32, 34, 44, 46, 48, 50. These invoices provide a total of over £9500, a sum which requires the explanations required by directions 6-8 above. They suggest that other legal proceedings might be in the hands of another firm of solicitors but whether and how these invoices are recoverable in these proceedings is a matter which justifies some further detailed attention, both in terms of satisfying the Tribunal and giving the Respondents an opportunity to comment, the charges being presented as an integral part of the service charge

² The statement of case refers to the intended service of a schedule, but none has yet been provided

regime, which they are not. Nothing in the Applicant's statement of case approaches what is required in respect of these charges.

6. Once the invoices relating to debt recovery/legal proceedings are put to one side, then the position is clear enough, and is as follows.
7. At p24 is a demand dated 29th September 2012 for a sum of £1660.35 for the period up to 24th March 2013. There is nothing to suggest that these charges are unreasonable, and they are payable. They must be the balance due taking into account the earlier application.
8. At p30 is a demand dated 25th March 2013 for the 6 months ending 28th September 2013 for £1596.31 and a contribution to the reserve fund of £1113.71. These figures are replicated in the demand at p36 dated 29th September 2013 for the period to March 2014. Again, I can see no reason why these amounts are not reasonable or not payable (£5420.04).
9. At p38 is a demand dated 25th March 2014 for the 6 months ending 28th September 2014 for £1676.13 and a contribution to the reserve fund of £1113.71. These figures are replicated in the demand at p41 dated 29th September 2014 for the period to March 2015. Again, I can see no reason why these amounts are not reasonable or not payable (£5579.68).
10. At p52 is a demand dated 30th June 2015 for the period 25th March 2015 for the 6 months ending 28th September 2014 for £2786.82 (ie £1676.13 and a contribution to the reserve fund of £1113.71). These figures are replicated in the demand at p56 dated 14th September 2015 for the period to March 2016 for the sum of £1673.21 and £1113.71. Again, I can see no reason why these amounts are not reasonable or not payable (£5573.74).
11. At p60 is a demand dated 18th April 2016 for charges as above for both the flat and the car parking space for the period 26th March 2016-28th September 2016 (£1625.22, £1046.12, £104.84, £67.49). The total is £2843.67. Again, there is nothing to indicate why this is neither reasonable nor payable.
12. In concluding that the charges referred to above are reasonable and payable I have considered the service charge accounts, and given weight to the fact that there is not one particularised submission on behalf of the Respondents which might amount to a challenge of any sorts to the Applicant's basic claim for service charges.
13. The other items will be dealt with in accordance with the directions given above.

Judge Hargreaves
22nd August 2016

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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (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

- (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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).