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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AS/LSC/2018/0236**
Property	:	**130B Pinner Road, Northwood, Middx. HA6 1BP**
Applicant	:	**Deborah Mendel-Lion**
Respondent	:	**Addstone Investment Ltd**
Representative	:	**Sterling Estates Management**
Type of Application	:	**Liability to pay service charges**
Tribunal	:	**Judge Nicol** **Mr MA Mathews FRICS** **Mr JE Francis**
Date & Venue of Hearing	:	**29th October 2018** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**1st November 2018**

DECISION

Decisions of the Tribunal

(1) The Tribunal has concluded that the service charges to which the Applicant objects are reasonable and payable, save as to two items, namely a 2016 clearing rubbish charge of £225 and a sum of £82.80 which the Respondent has promised to credit back to the Applicant for work to a door lock.

(2) There shall be no order as to costs, including under section 20C of the Landlord and Tenant Act 1985.

Relevant legislative provisions are set out in the Appendix to this decision.

The Tribunal's Reasons

1. The Applicant is the lessee of the subject property, a two-bedroom first-floor flat in a building with two other flats and a commercial unit on the ground floor.

2. The Respondent purchased the property at auction in mid-2016 and appointed Sterling Estates Management as their managing agents. Unfortunately, the handover from the previous agents, Willmotts, was difficult so that the information available to Sterling has been deficient at times.

3. The Applicant's lease contains clauses to the following effect:

   - 2(14) provides that the Applicant's share of the Respondent's service charge expenditure, as specified in the Sixth Schedule, is 40%;

   - 3(2)(i) provides for the Applicant to pay service charges in advance, based on estimates of coming expenditure, to be credited against any actual expenditure;

   - 3(2)(iii) provides that the Applicant must pay any service charge certified by auditors in accordance with the Fifth Schedule;

   - 3(5) provides that payment of the aforementioned sums is a condition precedent to the performance by the Respondent of their covenants.

4. The Tribunal issued directions on 17th July 2018. In accordance with the directions, the parties compiled and exchanged a Scott schedule setting out the Applicant's particular objections to certain service charges and the Respondent's response. Many of the objections and responses were similar and so the Tribunal's conclusions are set out below under subject headings, rather than in the Scott schedule.

5. The hearing of the case was held on 29th October 2018. The Applicant attended on her own behalf, accompanied by Mr Derek Byrne, the lessee of Flat C. The Respondent was represented by Mr Philip Sherreard, Head of Property at Sterling, accompanied by one of his property managers, Mr Danny Carty.

Payment

6. The Applicant challenged the service charges for the years ending 9th June 2016, 31st December 2017 and 31st December 2018. Her case started with her objection to Sterling's first invoice, dated 7th February 2017, for a total of £1,448.12. This included arrears of £316.12 for 2016 but she had paid Willmotts's last invoice dated 15th December 2015 for £500. Also, she objected to the charges going up from £500 to £1,132, being the balance of Sterling's invoice.

7. Included in the sum of £1,132 were amounts for repairs & maintenance and for a fire risk assessment. By letter dated 31st August 2017, the

Applicant's then legal representatives, Landlord Advice UK, requested Sterling to provide a list of alleged repairs and copies of any risk assessments or reports.

8. Unfortunately, the Applicant's approach stemmed from a fundamental misunderstanding of how service charges normally work and are provided for in her lease. The Willmotts invoice of 15th December 2015 was a charge for expenditure estimated for 2016. Further, Sterling's sum of £1,132 was for the estimated expenditure set out in the budget for 2017. There were no repairs or reports to produce because none had been done yet. Moreover, the accounts for 2017 show that nothing was actually spent in these categories but credit was given for the lessees' liability for the advance service charges.

9. The process is standard practice, namely that agents charge in advance, based on estimates, and then adjust at the end of the year when the actual expenditure is known. If agents spend less than the budget, the surplus is credited against future charges. If they spend more, there is a balancing charge due from the lessee. The Applicant had clearly not appreciated this, despite the experience with service charges which she and her relatives had at this and other properties they owned and despite letters dated 29th August and 9th November 2017 in which Sterling attempted to explain it.

Management fees

10. The Applicant also did not understand management fees which she seemed to think were synonymous with service charges. She queried why she should pay management fees as well as further charges for other items.

11. The management fees are to pay for the services of the agents, Willmotts and Sterling. They charged £270 and £237.50 per unit respectively (plus VAT) which the Tribunal knows from its own knowledge and experience is well within range of the market for this kind of property and arguably on the low side.

12. Both the Applicant and Mr Byrne complained that the agents were unresponsive to their complaints, not returning phone calls or responding to correspondence. If this problem were sufficiently bad, it could be said that the management fees were unreasonably high in the light of the service delivered.

13. However, the evidence presented to the Tribunal did not support the complaint. Mr Sherreard met with Mr Byrne and spoke to him on the phone. He also corresponded with Landlord Advice UK, offering to meet the Applicant at her property to discuss any issues she had. The Applicant said she ignored this offer because she felt out of her depth and intimidated. The Tribunal has no wish to dispute the Applicant's genuine feelings but there was no evidence that Sterling had been anything other than professional and polite when they dealt with her. She complained that she had made a few phone calls which were not

responded to but that is not enough to try to place the blame for insufficient communication entirely on Sterling.

14. In the circumstances, the Tribunal is satisfied that the management fees included in the service charges for each year are reasonable and payable.

Clearing rubbish

15. Willmotts provided a handwritten invoice dated 22nd March 2016 for £225 for "Attending [130 Pinner Rd] and clearing all rubbish from studio and alleyway repairing hasp and fitting padlock and sweeping area up". The studio is a separate building to the rear which is not part of the subject property. The alleyway is part of the communal areas of the property but the Applicant objected that the rubbish which had been there was cleared up by her and a neighbour, not by any contractor, and that there is no sign of any padlock in the alleyway.

16. Unfortunately, Mr Sherreard was unable to shed any light on the subject. The only information he had was contained in the invoice itself because the expenditure was incurred before the Respondent's involvement with the building. This is, of course, a risk inherent in buying a property at auction.

17. The likelihood is that the expenditure was incurred because there is an invoice for it but the Respondent is unable to explain what it was for or to establish that the work was carried out properly. In the circumstances, the Tribunal has no choice but to find that this charge was not reasonably incurred and so is not payable.

New door handle

18. Willmotts provided another invoice dated 24th March 2016 for £182.67 for the installation of a new door handle to one of the communal doors. However, one of the consequences of the way the work was done was that the residents needed to use a key to get through the door from their flat as well as when getting into their flat. This would hamper any escape from fire and would clearly not be safe. The Applicant spent £82.80 fixing this.

19. Very properly, the Respondent has offered to re-pay the Applicant the £82.80 by crediting it against future charges. However, there is no objection to the balance of the charge and so that is payable.

Keys

20. Another invoice from Willmotts showed they paid Great Scott's £18 for four new keys. This is the kind of minor expenditure which may be expected in service charges and there is no reason to think this may not be reasonable. Therefore, it is payable.

Risk assessment

21. Mr Sherreard said that Sterling intended to carry out a fire risk assessment as soon as they were in funds, although priority would be given to re-paying the Respondent who had paid for the buildings insurance out of their own pocket when it fell due for renewal in August 2018.

22. The Tribunal is satisfied that it is reasonable for the Respondent's agents to estimate for this sum even if, ultimately, they do not carry it out if the lessees do not pay their due service charges.

Accountancy fees

23. Sterling incurred £150 paying AK Accountants for the 2017 accounts. The lease requires that auditors certify the accounts so this is not expenditure which can be avoided. The Applicant and Mr Byrne objected to the charge on the basis that Mr Byrne had been to the address stamped on a letter as being the accountants' address and they were not known there. The simple answer, as confirmed by Mr Byrne himself, is that the accountants have moved offices. Service charges do not cease to be payable simply because an out-of-date address stamp has been used.

Building insurance

24. The Applicant admitted that she got somewhat confused when the insurers changed. Also, the whole premium was charged in one year, despite the insurance covering a different period from the accounting year. However, she accepted that there had to be insurance and had no objections to the amounts actually charged.

Land registry charges

25. Sterling incurred two charges of £3 investigating title at the Land Registry to ensure ownership and billing details. They were charged to the Applicant because the investigation related exclusively to her property. She thought they should be included in the management fees but this reflected her misunderstanding, referred to above, as to what the management fees were for.

Electricity

26. Sterling took over management in November 2016. Amongst other tasks, they sought to establish who the suppliers were for the electricity to the communal areas. Before they could do so, in March 2017, British Gas disconnected the supply on the basis of unpaid bills. Sterling wrote to British Gas to have the customer on the account changed to the Respondent. When they then received bills in the Respondent's name, Sterling assumed the supply had been reconnected.

27. It had not and the lessees complained, not only about the lack of electricity but also for ongoing electricity bills and a charge of £450 for the warrant British Gas had obtained to gain entry. Sterling took this up and British Gas have since issued a series of credit notes, taking account of the fact that no electricity has actually been supplied.

28. Also, Sterling asked the Applicant to meet with British Gas in July 2018 to have the supply reconnected. However, on attending the property with the Applicant, British Gas refused to reconnect because the landlord's supply was also linked to a separate unknown meter. Sterling have so far been unable to get UK Power Networks and British Gas to resolve the matter. They have not instructed their own electrician to investigate because they are not in funds due to unpaid service charges.

29. The Applicant objects to the fact that the residents have had to make their own arrangements to deal with the lack of an electricity supply. She has paid for the installation of a security light powered from her flat for the benefit of her tenant. Mr Byrne's tenant has put a light in the communal area on an extension from their flat. The Applicant also objects to having to pay for the warrant when it is the lessor's bill which has not been paid.

30. The Applicant's position is understandable but, by itself, that does not mean that the warrant charge has been unreasonably incurred. In *Continental Property Ventures Inc v White* [2007] L&TR 4 the Lands Tribunal decided that a charge incurred by a landlord can be reasonably incurred by the landlord but if it arose from a landlord's breach of covenant, the tenant may counterclaim for the loss arising from that breach and set off any sums awarded against the service charge liability.

31. The Applicant was, unsurprisingly, unaware of this subtlety of the law and has not set out a counterclaim. For example, she did not provide any details of the costs she incurred in installing or running the security light for her tenant. Therefore, there is nothing for the Tribunal to set off. The Applicant's potential counterclaim has yet to be adjudicated on and so she could still pursue it elsewhere if she wanted.

32. The Tribunal is satisfied that the warrant charge is payable as part of the service charges.

Costs

33. Therefore, the Tribunal is satisfied that all the service charges which the Applicant challenged are payable, save for the two elements referred in paragraphs 15-19 above.

34. However the Applicant also applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent should not be permitted to add their costs of these proceedings to the service charges but should reimburse the application and hearing fees she had paid.

The main factors which the Tribunal must take into account are as follows:

(a) If the lease permits a landlord to recover legal costs through the service charge, then that is a contractual commitment by both parties which the Tribunal must respect.

(b) The Tribunal does not follow the rule in court that the loser should pay the winner's costs but who has succeeded on the main issues is relevant. In that context, the Applicant has failed on most issues.

(c) The costs of these proceedings have been incurred because the parties took their dispute to litigation. Parties should always try to avoid litigation where possible by taking steps to narrow the issues between them. A party which does not do so makes it more likely that there will be litigation and higher costs than would otherwise be the case. The Applicant alleged that she had tried to settle the case but met with a lack of co-operation from Sterling. Unfortunately, the Applicant also refused to meet with Sterling when they offered to do so – her excuse for refusing does not stand up to scrutiny, as referred to above. Her case was also based on misunderstandings which Sterling did make efforts to dispel – the Applicant's continued failure to understand suggests that this case would probably not have settled in any event. In the circumstances, it is not possible or just to suggest that the Respondent bears sole responsibility for any lack of settlement.

35. Therefore, the Tribunal is satisfied that there should be no order in relation to costs.

Name: NK Nicol **Date:** 1st November 2018

Appendix 1 – 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 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.

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.