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

Case Reference : CHI/29UQ/LIS/2013/0030

Property : 21 Kings Park, Kingswood Road, Tunbridge Wells,
Kent TN2 4XF

Applicants : Mr D Greene and others

Representative: in person

Respondent : Proxima GR Properties Ltd and OM Property
Management Ltd, represented by Peverel Property Management

Representative : Mr Azmon Rankohi, Legal Consultant, Peverel
Property Management

Type of Application : Section 27A of the Landlord & Tenant Act 1985

Tribunal Members : Judge S Lal (Legal Chairman)
Mr R Athow FRICS MIRPM
Mr P Gammon OBE

**Date and venue of
Hearing** : 3rd September 2013, determination on the papers

Date of Decision : 4th September 2013

DECISION

Application/Background

1. This matter was listed for hearing on 29th July 2013.

CROWN COPYRIGHT 2013

2. The Tribunal inspected the subject premises on the morning of the hearing. It consisted of a purpose-built block of 12 flats on three floors with garaging underneath. It forms part of Kings Park which was developed about 1990 and comprised a large site with other blocks of flats and houses in the scheme. From the outset the whole estate was managed as one unit, but in May 2012 the block known as 9 – 21 Kings Park exercised its Right to Manage. All of the properties in the scheme are of high calibre.
3. The Tribunal was informed at the outset of the hearing on 29th July 2013, that the issues in dispute had narrowed considerably and both parties were afforded further time in which to seek a resolution. Following this, the parties informed that Tribunal that they had agreed the vast majority of the matters and the Tribunal recorded the terms of settlement below. Both parties provided the Tribunal with a signed agreement. The text reads as follows:

“Recitals

1. *On 2nd May 2013 the Applicants issued an Application before the Tribunal, seeking to challenge various items of service charge expenditure, as set out in the Schedule hereto.*
2. *The items challenged by the Applicants have been resolved on the terms set out herein.*

Terms of Settlement

The parties have agreed to settle the Tribunal proceedings on the basis that:

1. *The adjustments referred to in the attached Schedule will be made to the service charge account by the Respondents, save to the extent that some adjustments have already been made as indicated.*
2. *The parties will use reasonable endeavours to resolve the dispute between them relating to the accounts preparation fee of £1,100. If that dispute cannot be resolved between the parties, they agree that this issue alone will be referred to the Tribunal for determination.*
3. *The Applicants agree that they have no further disputes relating to the years in question.*

Schedule

<i>Item</i>	<i>Amount</i>	<i>Adjustment</i>	<i>Payment outstanding</i>
<i>Garden Maintenance</i>	<i>£90.00</i>	<i>Credited to scheme account</i>	<i>No</i>
<i>Window Cleaning</i>	<i>£103.50</i>	<i>Credited to scheme account</i>	<i>No</i>
<i>Contractor Visit</i>	<i>£180.00</i>	<i>Credited to scheme account</i>	<i>No</i>
<i>Sewage pumps</i>	<i>£7,899.99</i>	<i>Agreed credit of £4,130.19</i>	<i>Yes</i>
<i>Management fees</i>	<i>£4,615.00</i>	<i>Agreed credit of £2,692.00</i>	<i>Yes</i>
<i>Accountancy fees</i>	<i>£250.00</i>	<i>Credited to scheme account</i>	<i>No</i>
<i>Lift works</i>	<i>£284.40</i>	<i>Agreed credit of £142.20</i>	<i>Yes</i>
<i>Accounts Prep fee</i>	<i>£1,100</i>	<i>To be resolved</i>	

4. The Tribunal was however informed that the parties were unable to agree the matter of £1100 for the accounts preparation fee. Both parties indicated that they were happy to try to resolve the matter over the next 4 weeks and were content, in the absence of agreement, for the Tribunal to determine this sole remaining issue by way of written submissions only.

5. The Tribunal expressed their concern that the Respondents had attended the Hearing without appropriate evidence supporting their submissions. In particular it was felt appropriate that they should have attended with a complete printout of their client ledger and bank statements; these would have been of great assistance to the Tribunal in considering the Respondents' case.

6. The Tribunal acceded to the suggestion in 4 above and adjourned the matter. In doing so it made the following Directions. The Tribunal specifically reminded the Respondent that the provision of the material in paragraph 5 above and 7 below should resolve the matter in respect of the £1100 that remained in dispute.

Directions.

7. The Respondent to supply the Applicant within 14 days, that is by the 12th August 2013, all necessary papers that relate to the sum of £1100.
8. If so required the Applicant to serve a Response 14 days thereafter, that is by the 27th August 2013.
9. The Tribunal will determine the matter on the basis of the papers only, that is without a hearing, on the 3rd September 2013.
10. The parties to inform the Tribunal immediately if a settlement is reached.
11. The Tribunal notes that Mr Rankohi confirmed that the Respondent would not be seeking costs in this matter.

Subsequent Events

12. By a letter dated 14th August 2013 the Respondents wrote to Mr Greene and enclosed a spreadsheet giving certain information. The Applicant in his letter and bundle of 23rd August 2013 submitted a copy of this letter.
13. The Tribunal received by way of letter dated 23rd August 2013, correspondence from the Applicant informing the Tribunal that the £1100 remained outstanding and inviting the Tribunal to deal with the matters on the basis of written submissions only.
14. In the light of the observations made by both parties at the hearing on the 29th July 2013 that they wished to avoid attending another hearing in the absence of settlement, the Tribunal was content to do so as it was satisfied that it could determine the matter justly. The Tribunal has considered the totality of the documents before it, both from the original hearing on the 29th July 2013 and those received more recently.
15. The Tribunal has had regard to the 23rd August 2013 communication and attachments received from the Applicant. In summary the Applicant submits that the fee of £1100 would have been paid sometime before 15th May 2012 otherwise the sum would have appeared in the closing statement to the 15th May 2012 as a "creditor." The total for creditors was in fact £443.28. The submission advanced is that because there is no creditor shown it must mean that the sum has been paid.
16. In any event the Applicant alleges that the second time that payment for £1100 was taken was 30th May 2012 as disclosed by the Respondent's letter dated 15th March 2013. The sum is alleged to have been taken in a series of different transactions and in any event after the period when OM had ceased to be the property manager for the subject premises.

17. The Applicant accepts that the compound transaction may have been taken unwittingly but in any event it has been taken twice. The Applicant highlights what he perceives as the failure of the Respondent to provide a proper breakdown of the transactions and ultimately relies on the fact that no creditor is shown for 2012. The Applicant submits that the Respondent has not supplied what he was asked to supply at the hearing and that the spreadsheet supplied bears no resemblance to the bank transactions.
18. The Tribunal has also had regard to the latest bundle sent by the Respondent by way of covering letter dated 29th August 2013. This was a substantial bundle submitted in clear breach of Directions as stated above. The bundle was actually received by Tribunal members on the day of the hearing and the Tribunal was minded not to admit the bundle. No explanation has been provided why it was so late. Be that as it may the Tribunal has decided, with some reluctance, to admit it, as it is satisfied that it would be fair to do so in particular with regard to the overriding objective and also the desire of the Applicant to have a final resolution of the remaining issue in dispute.
19. The Tribunal has considered the contents of the Bundle and the letter dated 29th August 2013. In this the Respondent submits that the scheme Bank account was checked and submitted by a company solicitor. It is accepted that the spreadsheet does not show all sums paid from the account but instead shows all payments to OM during that period
20. The Tribunal has considered the submissions advanced and the documents supplied. The Tribunal is disappointed that the Respondent has served its material so late and in direct contravention of the Directions made on 29th July 2013. Be that as it may the Tribunal is satisfied, upon a true analysis of the 15th May 2012 closing statement, that as the cost arose in 2011 it should either have appeared as a creditor item in that statement or if it had been paid as a non-creditor item. The Tribunal is satisfied that the fact that it does not appear as a creditor item than it is more probable than not that it has in fact been paid.
21. Furthermore the Tribunal is satisfied that the second amount was taken in a series of compound payments for lesser amounts by reference to the accounts preparation fee. On the balance of probabilities the Tribunal is satisfied taking the 2012 closing statement in conjunction with the subsequent accounts, the sum of £1100 has been paid in 2011 and should not have been paid again in 2012.

22. In the circumstances the Tribunal decides that the taking of an additional £1100 was neither lawful nor reasonable. In the circumstances this money is to be refunded to the Applicants.
23. The Tribunal makes no further order.
24. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
25. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
26. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge S Lal (Legal Chairman)