FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AC/LSC/2013/0200**
Property	:	**Flat 8, Eagle Lodge, Golders Green Road, London NW11 8BD**
Applicant	:	**Eagle Lodge (Flat Management) Ltd**
Representatives	:	**Dr Jeremy Conway (director)** **Mr Jeffrey Goldstein (director)** **Mr Mark Cymerman FRICS, of Marcus King & Co LLP**
Respondent	:	**Ms Rachel Hobdell**
Representative	:	**In person**
Type of Application	:	**Section 27A, Landlord and Tenant Act 1985**
Tribunal Members	:	**Margaret Wilson** **Neil Martindale FRICS** **John Francis**
Date and venue of Hearing	:	**4 July 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**4 July 2013**

Background

1. This is an application by a management company ("the landlord) under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine the liability of the respondent leaseholder, Rachel Hobdell ("the tenant"), to pay service charges in respect of the years 2011, 2012 and 2013.

2. The tenant holds a long lease of a flat in a purpose-built development dating from the 1930s which comprises 58 flats in four blocks. Block A, in which the tenant's flat is situated, has four storeys as do Blocks B and C, and Block D has five storeys. The landlord is a party to the lease and all the leaseholders, including the tenant, are members of the landlord company. Four of the five directors of the landlord are leaseholders and the block is managed on the landlord's behalf by Marcus King & Co LLP. The tenant acquired her lease and became a member of the landlord in 2007.

3. The tenant's lease contains a wide range of covenants on the part of the landlord to maintain the buildings and to provide services to the cost of which the tenant is liable to contribute by way of a service charge. The expenses to which is required to contribute include, at paragraph 19 of the fifth schedule:

> *Such sums as the landlord or the company shall from time to time reasonably require in order to set aside and provide a reserve fund to meet such costs expenses outgoings and matters mentioned in this schedule as the landlord or the company shall reasonably expect to incur.*

4. Paragraph 3(c) of the sixth schedule enables the landlord in its reasonable discretion to use the reserve fund on any of the expenses it is entitled to incur.

5. Paragraph 1 of the sixth schedule also provides that the amount of the service charge for each accounting year is to be *reasonably estimated* by the landlord or its managing agent and the tenant's share of the estimated charge is to be paid in two equal instalments in advance, and paragraph 4 provides

that as soon as practicable after the end of the accounting year the tenant must pay any balance of the service charge within 14 days of demand.

6. By its application, which was received on 15 March 2013, the landlord seeks a determination that the tenant was liable to make payments towards the sinking (or reserve) fund demanded for the period from between 24 June 2011 to 24 March 2013, the balancing service charges for the year ended 24 June 2012 and the on-account charge for the quarter from 25 December 2012 to 24 March 2013.

7. Directions for the hearing were made on 18 April 2013 at a pre-trial review which was attended by Dr Jeremy Conway, the chairman of the landlord, on behalf of the landlord and by the tenant. The directions provided that the landlord was by 26 April 2013 to send a number of documents to the tenant and that the tenant was by 17 May 2013 to send to the landlord a statement of her case, explaining why she objected to the reserve fund contributions and identifying and explaining her case in respect of every disputed cost and estimated cost. The landlord was to respond to the tenant's statement by 31 May 2013 and the hearing was fixed for 4 July 2013.

8. Under cover of a letter dated 23 April 2013 the landlord complied with the tribunal's direction to disclose documents, but the tenant did not send a statement to the landlord by the date directed or at all. In the absence of a statement from the tenant to which it could respond it served a statement from Dr Conway dated 30 May 2013 explaining the circumstances in which the reserve fund was set up and operated and why in the landlord's opinion there was no justification for the tenant's withholding payments towards it or for her failure to pay in full the service charges demanded of her. He said that he considered the tenant's actions to be vexatious and obstructive and asked for the application and hearing fees paid by the landlord to be reimbursed and for an order that the tenant should pay £500 towards the landlord's costs, which comprised £600 (£500 plus VAT) charged by the managing agent for dealing with the proceedings.

9. The tenant has herself issued two applications against the landlord, both received by the tribunal on 1 May 2013. One is for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 and the other is under section 27A of the Act to determine her liability to pay service charges for the years 2003 to 2015. Those applications were stayed by order of the tribunal dated 4 June 2013 and were not before us.

The hearing

10. At the hearing on 4 July 2013 the landlord was represented by Dr Conway and Mr Jeffrey Goldstein, a director of the landlord, and by Mr Mark Cymerman FRICS of Marcus King. The tenant appeared in person, accompanied by her son, Benjamin Hobdell, and the leaseholder of another flat in the development, Mrs Lea Hoffman.

11. Asked by the tribunal to explain why she had not provided a statement of her case as directed at the pre-trial review the tenant said that she had sent emails to the landlord asking for information but had not received adequate replies. We were not satisfied with that explanation, which did not in our view provide a sufficient reason for her failure to state her case. We decided to allow her to proceed, but on the basis that she could not raise wholly new matters in respect of which the landlord had not had the opportunity to obtain evidence and that she confined herself to the reserve fund and other service charge demands in respect of the years 2011, 2012 and 2013.

12. Asked by the tribunal to say what service charge costs she challenged in respect of those years the tenant said that she challenged only the demands for contributions to the sinking fund, the costs of cleaning and the costs of gardening. She confirmed that she did not object to any other service charge costs for the years in question. As the hearing proceeded she said that she had "not much to say" about the cost of gardening and that the cost of cleaning was "not so important", and she made no specific challenges either to the cost or to the standard of cleaning and gardening. Dr Conway explained the costs

referable to cleaning and gardening for the years 2011, 2012 and 2013 which appeared to us to be reasonable. We see no reason why the tenant is not liable to pay her share of those costs.

13. The tenant's main concerns related to the reserve fund. She considered that Dr Conway, who is the sole signatory on the landlord's cheques, was not trustworthy and she said that she wanted Mr Cymerman, of whom she said that she had a high opinion, to be responsible for the management of the development's finances. She said that she had not seen proof of the amount held in the sinking fund, and she was concerned that improper payments had been made out of the sinking fund, including payments in respect of the replacement of windows carried out by leaseholders. She and Mrs Hoffman both said that they regarded Dr Conway as too dictatorial.

14. Dr Conway said in his written statement, supplemented in his oral evidence, that the reserve fund had been instigated in June 2005, that the development had been badly neglected in the past and that the landlord required funds to pay for the necessary major works. He said that the roofs had already been refurbished and works were now in hand to repair the roadways and footpaths which were hazardous and in relation to which three people had made claims relating to injuries they had suffered by tripping. He said that the first statutory consultation notice had been given to the leaseholders in relation to those works which were likely to cost in the region of £100,000 and that no objection to them had been received from any leaseholder. He and Mr Goldstein said that the internal common parts of the blocks were badly neglected and required refurbishment. He said that the amount reasonably required as a reserve fund levy in order to undertake all the necessary major works had been set at £132,300 per annum for the current year and that the landlord had taken account of the ability of leaseholders to pay when it set the amount required for the reserve. He said that as at 24 June 2013, the end of the accounting year for service charge purposes, £99,225 was held in reserve. He said that, with the exception of the tenant and of one other leaseholder who was in the process of selling his flat, the service charge arrears stood at that date at less than £4000. He said that

the service charge accounts were prepared by an independent chartered accountant. He produced a copy of counsel's written advice to the effect that the landlord was liable to repair or replace window frames but that it should reimburse leaseholders who had replaced their own window frames because they required replacement and the landlord had not performed its repairing covenant in that respect.

15. Mr Cymerman said that he trusted Dr Conway implicitly and that Dr Conway spent many hours, unpaid, working in connection with the management of the block.

The relevant law

16. Section 27A of the Act provides that an application may be made to the tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A "service charge" is defined by section 18(1) of the Act as *"an amount payable by the 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"*. Relevant costs are defined by section 18(2) and (3). By 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 provision 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"*. By section 19(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 of subsequent charges or otherwise"*.

Decision

17. We are satisfied that the landlord has acted reasonably in setting the amount required for a reserve. It is not possible for a landlord, which is a leaseholders' management company without assets of its own, to let a contract for major works until it has the funds in hand to meet the probable cost. We have no reason to suppose that the landlord's affairs are conducted other than honestly and responsibly and with proper regard to the leaseholders generally. Ms Hobdell did not begin to make a case that the reserve fund demands have been excessive. Nor did she seek to suggest that any other service charge costs for the years in question, namely 2011, 2012 and 2013, were not reasonably incurred.

Costs

18. Dr Conway asked for an order under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"), (which replicate regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003, now repealed), requiring the tenant to reimburse the fees of £250 which the landlord had paid in respect of the application and hearing. We are satisfied that it is appropriate to make such an order because the tenant's case was totally without merit and she did not comply with the tribunal's pre-hearing directions.

19. In addition, Dr Conway asked for an order that the tenant pay the sum of £500 towards the costs it had incurred in respect of the proceedings, which were part of the fee of £500 plus VAT, a total of £600, which the managing agent had charged for preparing the landlord's case and appearing at the hearing. He made the application on the ground that the tenant had behaved unreasonably in relation to the proceedings in not complying with the tribunal's directions and in making vague and largely irrelevant allegations which she did not substantiate. The application was made under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, which

remains in force in respect of applications made earlier than 1 July 2013, although it is replaced by Rule 13 for applications commenced on or afterthat date.

20. We are satisfied that the tenant behaved unreasonably in connection with the proceedings in not complying with the tribunal's directions and not properly particularising her case, thereby putting the landlord to unnecessary expense. We are satisfied that it is appropriate to make an order under paragraph 10 of Schedule 12 to the 2002 Act on the ground that she has behaved unreasonably in connection with the proceedings.

CHAIRMAN.....

DATE: 4 July 2013