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

Case Reference : **LON/OOAJ/LSC/2013/0590**

Property : **30 Wicket Road, Perivale,
Greenford UB6 8YH**

Applicant : **Downs Court (Ealing) Management
Company Limited**

Representative : **Mc Bride Wilson & Co - solicitors**

Respondent : **Keith Wrigley**

Representative : **none**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge and
administration charges together
with an application for an order
that a breach of covenant or
condition in the lease has occurred**

Tribunal Members : **Mr Andrew Dutton – Tribunal
Judge
Mr T N Johnson FRICS**

**Date and venue of
Determination** : **27th November 2013 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **27th November 2013**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £4,414 is due and owing in respect of the service charges years ending March 2009 through to March 2014.
- (2) That costs in the sum of £528 are payable by the Respondent
- (3) That the Respondent shall pay to the Applicant the sum of £250 being the application fee for bringing the claim to the Tribunal
- (4) The Tribunal makes no determination as to interest allegedly in the sum of £711.21 or the administration costs in the sum of £250
- (5) The Tribunal determines that the Respondent has breached a covenant or condition of his lease pursuant to s168(4) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”)

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of services charges for the years ending March 2009, through to March 2014, the latter being in respect of payments on account for that year. The total sum claimed as being due is set out at paragraph of 13 of the Applicant’s statement of case dated 30th September 2013 in the sum of £4,414.
2. In addition the Applicant seeks to recover interest said to be in the sum of £711.21, administration charges of £250, legal costs, which at the time of the statement of case amounted to £528 and the costs of issuing the proceedings in the Tribunal of £250.
3. As an adjunct to the s27A application the Applicant seeks an order under section 164(8) of the 2002 Act that the Respondent is breach of a covenant or condition of the lease, namely the failure to pay the service charge contributions in accordance with the lease terms.
4. The relevant legal provisions are set out in the Appendix to this decision.

The determination

5. The directions dated 17th September 2013 provided that, in the absence of any request for a hearing the matter would proceed on the papers. As no request for a hearing was received the matter came before us on 27th November 2013 on the basis of the papers lodged by the Applicant.

6. The bundle contained a copy of the applications; the Tribunal directions; the Applicant's statement of case; a statement from Veena Ghelani, the secretary and director of the Applicant company; copies of the freehold title and copies of the service charge demands and audited accounts for the periods in dispute. All were read by us. In addition we were provided with letters from the Applicant's solicitors, McBride Wilson & Co dated 15th and 27th November 2013. The earlier letter attached an email from the Respondent dated 4th November 2013 which was read in conjunction with an earlier email dated 21st February 2013.

The background

7. The property which is the subject of this application is a two bedroomed flat in a purpose built block which appears to form part of an estate of some 70 flats. The Applicant is apparently the freeholder, having acquired title in 1989. Originally it appears that the lease was tripartite with the Applicant being the Management Company, of which the leaseholder was to be a member, carrying out the service charge provisions. The Applicant, although now the freeholder, still has the responsibility for maintaining the property.
8. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
9. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

10. The Respondent has taken no material part in these proceedings. It seems he has not paid any service charges since the year ending March 2009 and was a reluctant payer before then [see paragraph 11 of Veena Ghelani's (VG) witness statement]. On 21st February 2013 he wrote, by email, after expressing surprise at the alleged difficulty the Applicant had in contacting him as follows: *"Please get the management company to send me the relevant invoices and their payment details and I will sort out the outstanding charges and set up a standing order for future payments"*
11. This communication did not result in payment being made. By a further e.mail dated 4th November 2013 the respondent wrote as follows *"My mortgage company will be settling the outstanding service charges this week. Please send me your bank details so I can set up a standing order to cover future amounts..."*

12. In the letter from McBride Wilson & Co dated 27th November 2013 we were told that the Respondent's mortgagee, the Chelsea Building Society had tendered a cheque in the sum of £4,688.40, purportedly in full and final settlement of all service charges and claims whatsoever. This cheque has not yet been banked as the sum claimed exceeds this amount. We are told that the sum will be allocated to arrears if the building society raises no objection by 29th November.
13. Having read the statement of case and the witness statement of VG and having considered the demands and the audited accounts and the, in effect, admissions made by the Respondent in February and November 2013 we conclude that the service charges for the years in dispute are due and owing and that the Respondent is liable to pay the sum of £4,414.

Interest and Administration charges

14. The claim for interest is not a service charge and accordingly is not within our jurisdiction. If the Applicant wishes to recover this sum it will need to bring proceedings in the County Court.
15. We are not satisfied that the lease makes provision for the recovery of the administration charge which is, in effect, compensation for the time spent by two directors of the Applicant company. The Applicant refers to clause 6(b)(2) and (b)(7) of the lease. Clause 6(b)(2) says "*All fees charges expenses salaries wages and commissions paid to any Agent Auditor Accountant Surveyor Valuer Architect Solicitor or other agent contractor or employee whom the Company (the Applicant) may employ in connection with the carrying out of its obligations under this lease...*" Clause 6(b)(7) says *The costs incurred by the Company in bringing or defending any actions or other proceedings against or by any person or authority whatsoever.* It does not seem to us that either clause allows for the recovery of time spent by the directors of the Applicant company on administration matters. Further, no breakdown of the costs allegedly incurred has been provided.

Legal Costs

16. We are satisfied that costs have been incurred under the provisions of clause 2(3) of the lease, relating to the costs *in connection with or incidental to the preparation and service of any notice or proceedings under sections 146 and 147 of the Law of Property Act 1925* as evidenced by the application under section 168(4) of the 2002 Act and our finding set out below. Clause 6(b)(7) would also appear to apply. The only sum for costs produced to us is £528. Although the statement of case refers to "*further costs accruing*" and VG's statement refers to a "*detailed schedule of costs*" being filed no such document has been seen by us. In those circumstances we find that the sum of £528 is a reasonable sum for costs in bringing these two applications. We are not

clear what further order for costs the Applicant seeks by reference to McBride's letter dated 15th November 2013.

- 17 We order reimbursement of the application fee of £250, it being appropriate to do so, given the Respondent's history of non-compliance with the lease and the need for the Applicant to make the applications to us to recover the sums due.

Section 168(4) of the 2002 Act

The Tribunal's decision

18. We determine that the Respondent has been in breach of his lease, clause 3(4), in failing to pay the service charges as due under the provisions of clauses 6 and 7(1) of the lease

Name: Andrew Dutton -
Tribunal Judge

Date: 27th November 2013

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.

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.

168 No forfeiture notice before determination of breach

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) This subsection is satisfied if—

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,

(b) the tenant has admitted the breach, or

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b) has been the subject of determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement