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

Case Reference : LON/00AY/LSC/2013/0368

Property : 3 Arragon Gardens, London SW16
5LY

Applicants : Mr L.Wiak & Ms I Stanislawska (A)
Mr K Middleton & Ms S Willoughby
(B)
Mr S Carey (C)

Representative : Mr S Carey

Respondent : Haywoods Investment Ltd (In
administration)

Representative : RBMS Managing Agents

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

Tribunal Members : Ms M W Daley LLB (hons)
Mr M Taylor FRICS

**Date and venue of
Paper Determination** : 10 Alfred Place, London WC1E 7LR

Date of Decision : 17 July 2013

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £ 810.00, is payable by the Applicants in respect of the service charges for the year ending 31 December 2012 and that the sum of £2046.00 is payable on account of the service charge budget for the year ending 31 December 2013.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The property which is the subject of this application is an Edwardian house, which has been converted into three flats. Flat A is a ground floor "garden flat", Flat B is a two bedroom first floor flat, and flat C is a one bedroom second floor flat.
4. The Applicants hold long leases 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 and will be referred to below, where appropriate.
5. The Applicants in this matter are the three leaseholders who have requested that this matter be dealt with expeditiously on the grounds that the freehold of the property is due to be auctioned on 24 July 2013, and in the circumstances it is in the interest of the parties that the issues concerning the reasonableness and payability of the service charges be determined.
6. Directions were given on 21 June 2013. At the Directions hearing, it was noted that both parties were willing for the matter to be dealt with as a paper determination. The Directions provided that the matters be

listed for the week commencing 15 July 2013, with the determination to be issued as soon as possible after that date.

The issues

- (i) The issues are the reasonableness and the liability to pay the service charges for the years 2012, and the current service charges for the year ending 31 December 2013.

Service charge item & amount claimed

7. The sums claimed for service charges for the periods in issue is set out below:-

Service charges claimed	Year ending 31 December 2012
Monthly cleaning of the communal area	£312.00
Emergency lighting maintenance	£120.00
Front area maintenance	£175.00
Installation of Consumer unit	£210.00
Cost of Diversion of cables	£144.00
Rewiring of Circuits	£1,080.00
Installation of new main fuse	£1,320.00
Management fee	£810.00
Total	£6,156.00

8. The Applicants objected to the above charges on the following grounds- : (i) that on purchase of the properties they had been given a considerably lower estimate of the service charges of £2,158.00. (ii) Secondly there was acceptance by the managing agents that various items of work had not been carried out. (iii) that some of the items that related to the installation of a new meter, were subject to section 20 consultation which had not been carried out (iv) The final objection was that the cost of the management of the premises was excessive.

9. In reply the managing agents accepted in their reply to the applications case (by letter dated 3 July 2013) and in email correspondence dated 25 June 2013, that work had not been undertaken. In the email correspondence of 25 June 2013 at paragraph 4, Mr Dixon the Property Manager employed by RBMS Management services, stated:-

“ On the subject of parts 1 to 3 of the service charge, you are correct that these have not taken place... For this reason we are currently drawing up accounts for the period to get these funds returned to yourselves and offset against further invoices. As per your lease.”

10. In the same correspondence, Mr Dixon explained that the work that was due to be carried out to the meter had not gone ahead as a cheaper alternative was being explored, which was under the section 20 consultation threshold. The intention was to refund the difference.
11. Although no submissions were made on the reasonableness of this work, it appears that the electricity for the communal parties was not on a separate meter, and that currently one of the leaseholders was paying for this. The intention was for a separate meter so that the cost could be itemised. Mr Carey did not express any objection to this proposal. The main area of contention appeared to be the proposed costs that were set out above.
12. The Tribunal noted that the cost set out above in relation to this work had been conceded on the Respondent's behalf.
13. The only other issue was the management fee, which the Applicants did not specifically deal with in their statement of case; the only issue raised was as set out in the application, in which the Applicants stated – at *“I. For {Management Fee} there was almost no work done or communication undertaken during the year, there can be little justification for any management fee.”*
14. In reply to the statement of case, the Respondent's agent states:- *Management fees have not changed and where set at £810 for the block, £270 per unit per annum inclusive of VAT. They had been agreed prior to your arrival at the property, with the freeholder. Although some services were held back, we have worked behind the scenes liaising with the freeholder, assessing all aspects of the property and compiling a budget. We had been inspecting the property throughout the year, and provisioning for works to be put in place once RBMS and the freeholder were in agreement and money had been received. These amounts for us to manage your property we have found to be in line with and in some places, cheaper than other residential property management companies, we believe this to be fair and reasonable.*

15. The Applicants did not provide any evidence of alternative management fees.
16. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision

17. The tribunal noted and accepted the concessions made by the Respondent in respect of all of the items of service charges claimed for the end ending 2012 save for the management fees, as these sums have been conceded the Tribunal have not made a determination on the reasonableness of these sums, It does however find that the sums claimed are not payable save for the management fees **in the sum of £810.00.**

Reasons for the tribunal's decision

18. The Tribunal considered the lease dated 6 January 2012, the Tribunal noted that in respect of the Service cost, provision was made for the employment of managing agents as set out under Service cost (b) the costs, fees and disbursements reasonably and properly incurred of (i) managing agents employed by the Landlord for the carrying out and provision of the Services..."
19. The Tribunal noted that the Respondent provided a reasonable explanation for the cost of the fees, and that the Applicants had not provided any alternative fees for the Tribunal to consider. Accordingly the Tribunal used its knowledge and experience of such fees, and in so doing find that the sums claimed for managing of the property are reasonable and payable.

Service charge item & amount claimed

20. The service charges claimed for the year ending 31 December 2013 are as follows:-

21.

Service charges claimed	Year ending 31 December 2013
General repairs-external common parts	£300.00

General repairs-internal common parts	£300.00
Electrical repairs including bulbs and emergency lighting	£200.00
Gutter cleaning and drain maintenance	£520.00
Entry phone system maintenance and repair	£180.00
Garden Maintenance	£220.00
Emergency out of hours help line	£36.00
Management fee	£810.00
Total	£5,092.00

22. The Applicants queried the necessity of the work in relation to the emergency lighting, and also queried whether the guttering work should be agreed with the Applicants. There was also an issue as to the need for the entry phone repair, given that it was in good working order.
23. In relation to the garden it was noted that the residents carry out their own gardening. The Applicants also objected to the managing agent's fees on the same basis as set out in relation to 2012, in addition they queried whether the help line actually existed as they had never had to make use of the emergency out of hours service.
24. In reply the Respondent's agent stated that provision was made for a competent contractor to be on call in the event of a fault in the emergency lighting, and that in the event that this service was not utilised, the sum would be credited to the Applicants.
25. It was conceded on the Respondent's behalf, that work to the guttering had been carried out whilst the roof was being repaired, and that as a result the Applicants would not be separately charged for this item.
26. The Respondent's agent noted that there was a contract for gardening to be carried out three times a year, and that the first visit had been undertaken by Rectory Gardens on 17 May 2013.

27. The Respondent relied upon the matters set out in relation to the managing agents fees for 2012, and in addition stated that the out of hours service was available, and was a reasonable provision to make, in managing the premises.
28. The Respondent's did not provide a specific response to the matters raised by the tenant in relation to the cost of repairs and the items relating to the entry-phone.

The tribunal's decision

29. The tribunal determines that the amount payable in respect of service charge item for the estimated cost for 2013 is the sum of £2,046.00

Reasons for the tribunal's decision

30. The Tribunal noted that the sum claimed in respect of the cleaning of the gutters and drains had been conceded by the Respondent, on the grounds that the work had been carried out by the roofers on repairing the roof.
31. The Tribunal noted that other than the gardening, the helping cost and the management fees, in respect of the other charges that they were in effect provisional sums which had been set out the budget. Given this the Tribunal consider that the sums set out were reasonable provisions to make.
32. The Tribunal noted that the lease provided for payment of service charges to be made in advance on 1 January and 24 June of each year, accordingly the Respondent would have to estimate the nature of the expenditure which might fall due in advance of the sums being incurred.
33. The Tribunal finds that the sums set aside for internal and external repairs, and for lighting repairs are reasonable and payable. The Tribunal in coming to this conclusion noted that Schedule 4 of the lease at clause 2.3 provides that -: "*... If, in respect of any Service charge year, the estimate provided by the Landlord of the Service charges is more than the Service Charge, the Landlord shall credit the difference against the Tenant's next instalment of the estimated Service Charge...*" Accordingly the Respondent has to sensibly look ahead at what sums might be necessary during the year, with the added safeguard that there is an entitlement for the tenant to receive a credit for any sums which have not been incurred.
34. Given this, the Tribunal find that reasonable provision has been made.

35. The Tribunal noted the Respondent's agent explanation for the gardening cost and that some gardening had been undertaken by the contractors on the landlord's behalf, accordingly the sum claimed by the Respondent is reasonable and payable.
36. The Tribunal consider the management fee to be reasonable and payable as previously set out. In relation to the "out of hours help-line" the Applicant stated that they have not made use of this service. This does not however mean that the Respondent is not entitled to ensure the provision of such a service and make a reasonable charge for the same. Accordingly the Tribunal finds the cost reasonable and payable.
37. **Application under s.20C and refund of fees**
38. In the Application, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant
39. In the application form and in the statement of case, the Applicant applied for an order under section 20C of the 1985 Act. Having considered the submissions from the parties and taking into account the determinations above, the tribunal determines that the Applicants have only succeeded in reducing service charges that were conceded by the Respondent. The Tribunal has no reason to consider that these charges would not have been credited under the terms of the lease, accordingly the Tribunal does not consider that it is just and equitable to make an order under section 20C of the 1985 Act, so that the Applicant.

Name: Ms M W Daley

Date: 17.07.2013

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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) a leasehold valuation 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 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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.