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

Case Reference : **MAN/00BL/LSC/2013/0048/55/69**

Properties : **3,4 & 12, Pear Tree Place,
Summerfields, Bolton, BL4 9RX**

Applicant : **Summerfields (Farnworth)
Management Co. Ltd.**

Representative : **SLC Solicitors**

Respondents : **Mr.A.Mirza & Mrs.S.Amjid (No.3)
Mr.G.Ellison (No.4)
Mr.A.Turner (No.12)**

Type of Application : **Section 27A Landlord & Tenant Act
1985
Schedule 11, Paragraph 5
Commonhold & Leasehold Reform
Act 2002**

Tribunal Members : **Mrs.C.Wood
Mr.J.Faulkner**

Date of Decision : **8 October 2013**

DECISION

DECISION

The Tribunal determines as follows:

1. that the itemised costs in the service charge statement dated 23 July 2010 for the service charge period 1 April 2009 – 31 March 2010 ("S/C

- Year 09/10”) were reasonably incurred, save for the amount of £2126.49 in respect of management fees;
2. that the itemised costs in the service charge statement dated 2 August 2011 for the service charge period 1 April 2010 – 31 March 2011 (“S/C Year 10/11”) were reasonably incurred, save for the amount of £2172.46 in respect of management fees;
 3. that the itemised costs in the service charge statement dated 14 June 2012 for the service charge period 1 April 2011 – 31 March 2012 (“S/C Year 11/12”) were reasonably incurred, save for the amount of £2312.00 in respect of management fees;
 4. that the itemised costs in the statement of anticipated service charge expenditure for the service charge period 1 April 2012 – 31 March 2013 (“S/C Year 12/13”) appear reasonable (subject to section 19(2) of the 1985 Act), save for the amount of £2428.00 in respect of management fees; and,
 5. that for each of the S/C Years 09/10, 10/11, 11/12 and 12/13 the management fees shall be reduced to £1200.

BACKGROUND

6. By orders dated 6 March 2013, 25 March 2013 and 15 April 2013, each of the Applicant’s claims against the Respondents for arrears of service and administration charges were transferred to the Tribunal where it was determined that the cases should be heard together.
7. Directions were issued dated 28 May 2013. Compliance with the Directions was made by the Applicant. The Respondents failed to submit their evidence by the date required under the Directions.
8. A hearing was scheduled for 11.30am on 12 August 2013 following an inspection of the Properties at 10.00am on the same date.

INSPECTION

9. Mr.G.McGinty attended the inspection for the Applicant, as did all of the Respondents.
10. The Properties form part of a block of 12 flats (“the Block”), which is itself divided into two halves with discrete communal areas, built in or about 2005. Defects with the internal communal and emergency lighting, with the door intercom system, missing trim on stairs and “ceiling” tiles on the staircase, the absence of door closers, and externally a “disconnected” downpipe were pointed out to the Tribunal by the Respondents.

EVIDENCE

11. The Applicant's documentary evidence was contained in the Bundle of documents submitted to the Tribunal together with the skeleton argument dated 12 August 2013 in which they state as follows:
 - 11.1 that the Respondents have withheld their service charges for up to 4 years (paragraph 2);
 - 11.2 that there is no claim for administration charges (paragraph 3);
 - 11.3 that the Respondents are obliged under the terms of their leases to pay service charge quarterly in advance by direct debit (paragraph 5);
 - 11.4 that they accept that the communal areas are in need of redecoration but that the Applicant's ability to undertake "more expensive items of maintenance" has been affected by the Respondents' failure to pay their service charges (paragraph 7);
 - 11.5 that the issues raised by the Respondents in the undated letter from ADK Building Maintenance ("the ADK Report") "...are minor, and easily resolvable if the Applicant is in funds" (paragraph 9);
 - 11.6 that the service charges are objectively reasonable and that the Respondents have failed to provide any evidence to challenge these costs; and that the Applicant's ability to provide the services to the Block is prevented by the Respondents' failure to make payment of those service charges.
12. The Respondents' documentary evidence comprised the ADK Report which itemised the following defects at the Block (together with supporting photographs):
 - 12.1 internally, defective communal lighting which constituted both a trip and a fire hazard;
 - 12.2 absence of door closer on main entrance door which constituted a hazard as could cause injury as well as a fire hazard;
 - 12.3 missing cover on lighting switch and missing bulb outside Flat 8 which could cause electric shock "...if messed about with...";
 - 12.4 loose string trims and worn carpet which constituted a trip hazard;
 - 12.5 externally, defective guttering which could cause damp problems.
13. The Respondents also produced a copy invoice of some re-decoration works to the internal communal parts carried out at their cost.

THE LEASE

14. A copy of the lease dated 23 September 2005 made between Lovell Partnerships Limited(1) the Applicant(2) and A.Z.Mirza and S.Amid(3) in respect of Plot 19 ("the Lease") appears in the Bundle at pages 16 – 47.

15. The relevant provisions are as follows:
 - 15.1 clause 3.3: the Leaseholder's covenant to pay the Service Charge;
 - 15.2 clause 5.2.6.1: the Landlord's covenants to maintain, repair, redecorate and renew the "...pipes sewers and drains..." (sub-clause (a)) and "the Common Areas..."(sub-clause (c)); and,
 - 15.3 clauses 7.1 – 7.8.

HEARING

16. At the hearing, the Applicant was represented by Mr.S.Keeling-Roberts of Counsel instructed by SLC, Solicitors, and the Respondents attended in person.
17. In his oral submissions, Mr.Roberts reiterated many of the points set out in the skeleton argument as follows:
 - 17.1 that the total amount owed by the Respondent as arrears of service charge was £8750.00 which affected the Applicant's ability to perform its duties;
 - 17.2 that there was no claim for administration charges;
 - 17.3 that the Respondents had failed to comply with the Directions;
 - 17.4 that the Applicant had no record of any complaints having been received about defects at the Block;
 - 17.5 that the Applicant accepts that the communal parts require re-decoration but that it is difficult to perform more expensive items of maintenance because of the deficit in service charges;
 - 17.6 that the Applicant has not been provided with a key when the front door lock has been changed which has made access difficult and therefore the provision of services;
 - 17.7 that the existence of these areas of dispute does not, by itself, render the service charges unreasonable;
 - 17.8 looking at the anticipated expenditure for the S/C Year 12/13 (page 122 of the Bundle), the aggregate amount is £10,438.00 which works out at c£870.00 per leaseholder, of which the largest items of expenditure are electricity (estimated at £2400) and management fees (estimated at £2428.00);
 - 17.9 that the Applicant accepts that the ADK Report did highlight a number of issues but that, in the main, these were easily and cheaply solvable; the most expensive item is the re-carpeting of the Block. It was likely that if the arrears were paid, there would be sufficient monies to pay for all outstanding items;

- 17.10 that the Applicant accepts that under the terms of the Lease it is required to redecorate and re-carpet the communal parts;
- 17.11 that the service charges are objectively reasonable;
- 17.12 that, under the terms of the Lease, the Respondents are required to make payment of service charge quarterly in advance;
- 17.13 that the Respondents have failed to provide any evidence of what is a more reasonable amount for the costs in dispute and therefore the Tribunal should be slow to find “substitute” amounts in the absence of any cogent evidence of what those alternative amounts should be.
18. The Tribunal requested the Applicant to provide copies of the service charge statements for the S/C Years 09/10 and 10/11 which were missing from the Bundle and also a copy of the Summary Statement of Tenant’s Rights and Obligations which it was submitted was sent with all invoices, demands etc. These documents were received by the Tribunal on 12 August 2013.
19. In their oral submissions, the Respondents stated as follows:
- 19.1 that they were not disputing any costs in respect of cleaning, grounds maintenance or buildings and common parts insurance;
- 19.2 by way of illustration, they referred to the service charge statement for the S/C Year 11/12 (page 131 of the Bundle) and identified the following items as in dispute:
- (1) General Repairs Internal: £202.50
The Respondents claimed that no repairs had been carried out during the period.

The Applicant referred to the copy invoices at pages 246 and 253 of the Bundle.
- (2) General Repairs External: £341.60
The Respondents claimed that no repairs had been carried out during the period.
- (3) Health & Safety: £331.20
The Applicant referred to the copy invoice at page 219 of the Bundle.
- (4) Electricity: £2395.77
The Respondents queried why there were 2 suppliers at different rates, and the considerable increase in the electricity charges from previous years.
- (5) Management fees: £2312.00
The Respondents claimed that these were “extortionate” as the Block was not being managed.

- (6) Audit fees: £1152
The Respondents stated that this was usually £250.00.
The Applicant referred to the account at page 63 of the Bundle.
- (7) Reserve Fund and Miscellaneous
The Respondents queried why there was a deficit on the Reserve Fund as nothing had been done; and also queried the item "Miscellaneous" of £300.
20. The Tribunal considered the following matters in reaching its determination:
- 20.1 the acceptance on the part of the Applicant that the matters in dispute were, in the main, capable of easy and cheap resolution;
- 20.2 that significant arrears had been allowed to accumulate which the Applicant accepted affected its ability to provide services to the Block in accordance with its obligations under the Lease to the detriment of all leaseholders, including those who were paying the service charge;
- 20.3 that, in the Tribunal's opinion based on its inspection of the Block and the evidence submitted by both parties, there were failures in the proper management of the Block.