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

Case Reference : **MAN/00DA/LSC/2013/0024**

Property : **1004 The Gateway North, Marsh Lane, Leeds,
West Yorkshire, LS9 8BY**

Applicant : **The Gateway (Leeds) Management Limited**

Respondent : **Mrs Bahareh Naghash**

Type of Application : **Landlord & Tenant Act 1985 – S27A
Landlord & Tenant Act 1985 – S20C**

Tribunal Members : **K M Southby (Judge)
M Bennett (Valuer Member)**

Date of Decision : **12 November 2013**

DECISION

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DECISION

1. The amount of service charge is to be reduced only in so far as the sum attributable to the gym is to be reduced by 50% and the sum attributable to the CCTV is to be reduced by 20%. All other elements of the service charge for the period in question are payable by the Respondent.
2. No order is made under s20C Landlord and Tenant Act 1985

PRELIMINARY

3. This matter originated through a claim made by the Applicant on 29 June 2012 against the Respondent in the sum of £1624.75 in respect of unpaid ground rent and service charges for the period 1 October 2011 to 20 June 2012. The claim included an administration fee and "claimant's solicitors legal costs incurred in enforcing the terms of the lease".
4. The case was transferred from the County Court to the Tribunal by an order dated 31 January 2013. The Tribunal's jurisdiction is limited to those issues in the original court case, namely payability and reasonableness of the service charge. The Tribunal's jurisdiction does not extend to ground rents.
5. The period of time which the Tribunal is asked to consider is 1/10/2011 to 20/6/2012

THE PROPERTY

6. The Property is within the North block of a large mixed use development occupying a triangular-shaped plot in central Leeds. There are substantial internal and external communal areas, including paved courtyard areas, planted containers, a water feature and a large car park.
7. The Tribunal inspected the property on 12 November 2013 in the presence of Mr E Shamsizadeh, Mr I Shamsizadeh and Mr Jalali. There was no attendance by the Applicant. At the time of the inspection the property was observed to be clean and well maintained, although the 'waterfall' water feature was not operational. Window cleaning was taking place whilst the Tribunal was on site and the building was observed to be in a generally good state of repair. It was observed that the nature of the Property is such that such repair and maintenance that was required would necessarily be relatively costly by virtue of the nature of the materials used in the buildings and issues of accessibility in reaching parts of the buildings.

THE LEASE

8. The Tribunal was shown a copy of the Respondent's lease, the relevant terms of which are as follows:

3. The Tenant covenants with the Landlord and the Company:

3.1 to pay the Rents on the days and in the manner set out in this lease and not to exercise or seek to exercise any right or claim to withhold the Rents or any of them and for the avoidance of doubt it is agreed and declared that the rents shall continue to be due and owing in respect of any periods during which the Premises are vacant.

3.2 to pay to the Landlord and the Company on demand interest accruing in respect of any of the sums due from the tenant to the Landlord and the Company under this Lease (whether or not lawfully demanded) which remain unpaid for more than 14 days whether or not any such sums have been refused by the Landlord or the Company so as not to waive any breach of covenant

.....

3.19 to pay to the landlord and the Company on an indemnity basis all costs fees charges disbursements and expenses (including without prejudice to the generality of the above those payable to counsel solicitors and surveyors) incurred by the Landlord and the Company in relation to or incidental to or in reasonable contemplation of:

.....

3.19.2 the preparation and service of a notice under the Law of Property Act 1925 section 146 or incurred in reason of or in contemplation of proceedings under the Law of Property Act 1925 Section 146 or 147 notwithstanding that forfeiture is avoided otherwise than by relief granted by the court

3.19.3 any other action taken in consequence of any breach of covenant by the Tenant

3.20 to be responsible for and to keep the Landlord and Company fully indemnified against all damage damages losses costs expenses action demands proceedings claims and liabilities made against or suffered it incurred by the Landlord arising directly or indirectly out of:

3.20.2 any breach or non-observance by the Tenant of the covenants or other provisions of this lease or any of the matters to which this demise is subject

THE HEARING

9. At the hearing the Applicant was represented by Miss Phillipson of Counsel and Mr Dean of Braemar Estates, the management company. Also in attendance at the hearing were Mr Ebrahim Shamsizadeh (husband of the Respondent, and representing the Respondent), Mr M Jalali (friend of the Respondent) and Mr Iman Shamsizadeh (brother of the Respondent).

10. It became apparent at the hearing, and was agreed by Mr E Shamsizadeh that the issues over which the Respondent, through her representative, wished to challenge the Applicant's case were relatively narrow and limited to:
- a. Cost of the Gym
 - b. Window Cleaning
 - c. CCTV
 - d. Cleaning of communal areas including car park
 - e. Security

The other elements of the service charge claimed by the Applicant from the Respondent are not disputed by the Respondent and being considered by the Tribunal in its expert opinion to be reasonable are therefore payable by the Respondent.

11. The Tribunal were not provided with any accounts for the year ended March 2013. Accordingly the Tribunal is unable to assess precisely what sums were charged to the Respondent's service charge account for the full period in question. The Tribunal has therefore dealt with any amendments to the service charge payable by way of a percentage variation.

GYM

12. The Respondent argues that the service charge costs in relation to the residents' gym are unreasonably high. These costs were £49,231 for the entire premises for the year ended March 2012. No accounts were produced in relation to the period ended March 2013 which would include the last three months of the period which the Tribunal is asked by the Applicants to consider.
13. Tribunal heard that the freeholder of the Property Scotfield leases the part of the building used as the gym for an annual payment of £39,000 which forms the majority of the service charge. Mr Dean informed the Tribunal that it was payment of this rent which had led to the service charge for the gym being so high. Other costs associated with the gym included monthly inspections, television licenses replacement of stolen televisions and a notional allocation for electricity. Mr Dean argued that per apartment the cost of the gym was very low, being on average £73 per annum for each apartment.
14. Mr Dean informed the Tribunal that the Management Company had a binding agreement for lease with a term of 10 – 15 years. Mr Dean was unable to inform the Tribunal whether or not there was a break clause in the lease. He was also unable to confirm the identities of the parties to the lease and despite requests for the same no copy of this lease was provided for the Tribunal's benefit.
15. It was accepted by Mr Dean that the size of the gym was similar to that of a standard 2 bedroom apartment within the block. The Tribunal invited the Applicant to comment on the Respondent's suggestion that a rent of £10-15,000 would be more reasonable. Mr Dean conceded that 'superficially it did seem to be

expensive, and one would certainly rather be a Landlord than a Tenant'. Miss Phillipson for the Applicant argued that the Tribunal could not go behind the binding commercial agreement and that there was a potential cost of renegotiating any such agreement, although in the absence of the agreement no figures as to the actual costs of breaking the lease or renegotiating were forthcoming. She stated that the Respondent had purchased the lease at a time when the gym was in situ and was therefore well aware of the obligations that came with it, and had also had the benefit arising from it.

16. The Tribunal does not agree with this analysis and notes that the role of the Tribunal is to consider whether service charges are in themselves reasonable. Section 19 of the 1985 Act provides as follows:

“19. Limitation of service charges: reasonableness

(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.”

17. The Tribunal finds that whilst the amount paid per apartment for the gym appears relatively small, the overall amount charged to the service charge account for the gym was unreasonably high for what was being obtained. The Tribunal considered that the sum charged to the service charge account was approximately twice as high as was reasonable and therefore orders that it should be reduced by 50%.

WINDOW CLEANING

18. The Respondents queried the reasonableness of the charges for window cleaning, and also challenged whether or not the work had actually been carried out. The Tribunal observed at the inspection that window cleaning needed to be carried out by way of abseil due to the nature of the building. The Tribunal were provided with invoices for the window cleaning for the period in question which reconciled with the sums charged to the service charge account.
19. The Tribunal were informed by Mr Dean that whilst on a practical level it is virtually impossible to check that work has been carried out without visiting every apartment they operate a permit to work system and so are able to verify that contractors are on site. The Tribunal were also shown minutes of meetings which recorded Tenants confirming that cleaning had been seen to be carried out during the period in question.
20. Having considered the evidence the Tribunal accepts that the window cleaning was carried out, and having considered the charges finds that whilst they are high they are not unreasonable for the nature of the work which needs to be undertaken. The charges for window cleaning are therefore payable by the Respondent.

CCTV

21. The Respondent through her representative challenged the sum payable for CCTV as being unreasonably high. The Applicant provided no supporting invoices for the CCTV charges, but stated that the figures in the service charge accounts were certified and therefore the figure of £39,887 for the entire complex was therefore reliable. The Tribunal would have preferred to have seen the documents behind the figure but accepts that this is the sum which has been incurred.
22. The Tribunal requested Mr Dean to explain how this figure was made up and why this figure was reasonable. Mr Dean informed the Tribunal that the Freeholder Scotfield had entered into a lease purchase agreement and that as a consequence the management company was obligated to make periodic payments. It was described to the Tribunal as an inherited agreement which as it was now approaching the end of its term was intended by the management company to be left to expire whilst an audit process was undertaken and a future plan arrived at. No copy of the agreement was provided to the Tribunal or details of the terms, parties or obligation and constraints in breaking the agreement.
23. Mr Dean explained the position to the Tribunal in the following terms "Yes the Tenants have been paying more than they should have been but it is a way for a developer to defray their construction costs by passing these costs on to the tenants".
24. Miss Phillipson argued that the hands of the Applicant were tied in relation to this agreement and therefore the charge was not unreasonable the Tribunal should not go behind it. The agreement was not produced to the Tribunal. The Tribunal does not accept this and has considered what would be a reasonable charge for the CCTV services being supplied. The Tribunal noted that this is a substantial property with a system of 66 cameras which will require significant maintenance. The Tribunal notes that no alternative quotations were provided by the Respondent despite the Respondent's representatives stating they have considerable experience in this sector. However concludes based upon the evidence provided to the Tribunal that the sum being charged to the service charge account was 20% higher than was reasonable and therefore orders that the Respondent's service charge account for the relevant period be reduced by 20% in respect of CCTV.

CLEANING (including CAR PARK)

25. The Respondent argued through her Representative that the charge for cleaning was too high and that there had been no cleaning carried out in the car park. It was claimed that pictures had been taken of the lack of car park cleaning at the relevant period but these were not produced to the Tribunal.
26. Mr Dean from the managing agents asserted that a regular programme of cleaning had taken place throughout the period. He explained to the Tribunal that car parking cleaning was problematic because a motorised cleaner was used and to achieve a fully effective clean they had to get all tenants to move their cars which proved practically very difficult.

27. The Respondent's representative suggested that cleaning was being done by the business of the building's concierge and suggested that the contract may have been awarded in an unfair way. Mr Dean explained the tendering process for the cleaning contract which had been undertaken with three companies, the successful contractor being Carroll cleaning for whom Mr John Hudson, the concierge, is an employee. No invoices for cleaning were produced. Instead it was argued that as the figures in the service charge accounts were certified, they could be relied upon.
28. The Tribunal accept Mr Deans assertion that cleaning was taking place on a regular basis and that efforts were made to tender independently. The Tribunal also heard suggestions from the Respondent's representative that there had been manipulation of figures within the service charge account to avoid consultation requirements. The Tribunal has not been asked to specifically make any determination on consultation but the Tribunal would note that it has not observed any such manipulation, and the breakdown of the service charge account into different sub-headings appeared to the Tribunal to be a practical means of managing the sums involved, rather than an attempt to avoid statutory compliance as was being suggested.
29. The Tribunal considered the charges levied to the service charge account for cleaning including car park cleaning and considers them to be reasonable. The Tribunal notes the assertions by the Respondent's representatives that they are aware of other properties where the equivalent charges are less. The Tribunal notes that it is not a requirement that the lowest possible charges should be incurred, but that the charges should be reasonable. Since in the Tribunal's view these charges for cleaning are reasonable and reasonably incurred it follows that they are payable by the Respondent.

SECURITY

30. The Repondent's represenatative drew the Tribunal's attention to the global figure for security staff which was £68,430 for one security guard, which they argue was an excessive salary for a sole security guard. Mr Dean informed the Tribunal that there was one security guard on site overnight and at weekends. During the day the concierge and several other individuals were on site but the costs associated with these individuals did not form part of the security cost.
31. Mr Dean went on to point out that the cost quoted by the Respondent's representative included not only the hourly rate paid to the security guard but also national insurance, uniforms, VAT and an element of profit for the providing company.
32. The Tribunal was informed that the concierge is on site from approximately 8am to 6pm Monday to Friday. Accordingly a security guard is on site for 14 hours per day 5 days a week, and 24 hours a day on Saturday and Sunday. This represents 94 hours a week of security cover, which is provided by several individuals. The global cost figure above represents approximately £14 per hour, including

uniforms, NI, VAT and profit. The Tribunal finds this figure to be reasonable and therefore orders that the service charge element attributable to security is payable by the Respondent in full.

COSTS

33. The Tribunal heard an application without notice from the Respondent's representative under s20C of the Landlord and Tenant Act 1985 seeking an order that costs of the Tribunal proceedings should not be added to the Service charge account. The Tribunal declines to make such an order observing that it was only through the Applicant bringing proceedings that the Respondent narrowed her position from non payment of any service charge at all. The Applicant was entitled to bring proceedings and no order under s20C is appropriate.