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

Case Reference : **LON/00AH/LSC/2013/0571**

Property : **133A Harrington Road,
London SE25 4NW**

Applicant : **Mr C P Sawyer and
Mrs M Sawyer**

Representative : **Preuveneers LLP Solicitors**

Respondent : **Mr S H R Zaidi**

Representative : **n/a**

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

Tribunal Members : **Miss J E Guest (Judge)
Mr W R Shaw FRICS
Mr A D Ring (lay member)**

**Date and venue of
paper determination** : **27/01/2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **30/01/2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that building insurance in the sum of £542.44 and £556.00 is payable by the Respondent in respect of the service charges for the years 2012/2013 and 2013/2014 respectively.
- (2) The tribunal determinates that the Respondent is liable to pay £300.00 in respect of legal costs.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the building insurance and administration charges payable by the Applicant in respect of the service charge years 2012/2013 and 2013/2014.
2. The Applicant requested that the matter be determined on the papers without an oral hearing.
3. The application was first considered by the tribunal at a case management conference on 12/09/2013. Neither party attended the hearing. Directions were ordered on 12/09/2013. The Applicant complied with the directions and provided a bundle of relevant documents, including the lease.
4. There was no response from the Respondent and it later became apparent that the documents had been sent to the wrong address. Therefore, the application, a copy of the lease and the directions order were sent to the Respondent's correct address on 18/11/2013. As there was still no response from the Respondent, further directions were issued by the tribunal on 05/12/2013.
5. Given that the Respondent did not comply with the directions ordered on 12/09/2013 and 05/12/2013 and neither party requested an oral hearing, the application was decided on the papers without a hearing.
6. The relevant legal provisions are set out in the Appendix to this decision.

The background

7. The property which is the subject of this application is a one bedroom maisonette on the upper floors of a building with its own separate entrance
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 and will be referred to below, where appropriate.

The issues

10. The relevant issues for determination by the tribunal were as follows:
 - (i) The payability and/or reasonableness of building insurance for the years 2012/2013 and 2013/2014.
 - (ii) Legal costs of £300.00 (incl. VAT) in respect of the service of a notice under section 146 of the Law of Property Act 1925.
11. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Building insurance

Tribunal's decision

12. The tribunal determines that Respondent is liable to pay the sum of £542.44 in respect of the building insurance for the service charge year 2012/2013 and £556.00 for the service charge year 2013/2014.

Reasons for the tribunal's decision

13. The lease obliges the Applicant to insure the building (see clause 5(e)).
14. The Respondent is required under the lease to reimburse the Applicant for the cost of the building insurance (see clause 5(g)).
15. The Applicant provided the insurance certificates for the relevant years that confirmed the expenditure had been incurred.

16. The tribunal considered that the cost of the insurance for both years was reasonable.

Legal costs

Tribunal's decision

17. The tribunal determined that the Respondent is liable to pay the legal costs of £300.00 (incl VAT) in relation to the section 146 notice.

Reasons for the tribunal's decision

18. The lease requires the Respondent to pay all expenses, including solicitors' costs, in relation to the service of a section 146 notice (see clause 2(10)).
19. The bundle of documents included the section 146 notice that had been served.
20. The sum of £300.00 (incl VAT) was considered reasonable in the circumstances.

Name: J E Guest

Date: 30/01/2014

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.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).