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

Case Reference : **LON/00AN/LSC/2014/0354**

Property : **19 Westside Buildings, Revencroft
Park, London, W6 0TY**

Applicant : **WTA Ltd**

Representative : **Ms P Gostyn of Defries & Associates
Ltd, Managing Agents**

Respondent : **Mr M Abioghasem**

Representative : **In person**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service and/or
administration charges**

Tribunal Members : **Judge I Mohabir
Mr A Manson FRICS**

**Date and venue of
Hearing** : **1 October 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **17 November 2014**

DECISION

Introduction

1. The Applicant had commenced proceedings in the Northampton County Court against the Respondent for service charge arrears in the sum of £1161.37, administration charges in the sum of £228, statutory interest thereon and court fees in the sum of £70. Pursuant to an order made by District Judge Gillman at the County Court in West London dated 1 July 2014, the claim was transferred to the Tribunal to determine the reasonableness of the service and administration charges claimed by the Applicant.
2. The claim in respect of the service charges arises in the following way. The Applicant's managing agent, Defries & Associates ("Defries") prepared a budget in respect of the building, of which the Respondent's flat forms part, for the year ending 23 June 2014. The total budget was for the sum of £54,303, which included a reserve fund provision of £20,000. The estimated service charge contributions payable by the leaseholders on a quarterly basis was £678.79. Of this figure, a contribution of £250 was payable into the reserve fund, as there are 20 flats in the building and the overall liability was £1,000 for the year.
3. The reserve fund contribution was sought by the Applicant to carry out major external works to the building. These are set out in a specification of works prepared by a Surveyor who carried out an inspection of the building in or about May 2012. The Respondent accepted that the proposed works were both necessary and long overdue.
4. On 24 June, 29 September and 25 December 2013, Defries issued service charge demands for each of the 3 respective quarterly periods commencing on those dates. The demands included, *inter alia*, the service charge contribution of £678.79 in relation to the estimated service charge budget for the year ending 23 June 2014. In respect of the first two service charge demands, the Respondent deducted the sum of £241.29 (instead of £250) in respect of the amount payable for the reserve fund contribution. The sum of £678.79 remains payable in

respect of the third demand. Subsequently, the Applicant commenced the claim in the County Court to recover the arrears and the administration charges incurred in pursuing the Respondent for the outstanding amounts.

5. By Directions dated 16 July 2014, the Tribunal identified the issues to be determined were:

- (a) whether the reserve fund contributions are payable by the Respondent.
- (b) whether the reserve fund contributions demanded in respect of the reserve fund are reasonable.
- (c) whether an order should be made under section 20C of the Act.
- (d) whether an order for reimbursement of any application/hearing fees should be made.

6. It should be noted that although the Directions failed to mention the administration fees of £228 claimed by the Applicant in the County Court proceedings, this claim was withdrawn on behalf of the Applicant at the hearing.

7. In addition, at the hearing the Respondent accepted he was contractually liable to pay the reserve fund contributions claimed by the Applicant as set out in clause 5(k) of his lease. Therefore, issue (a) above did not require determination by the Tribunal nor is it necessary to set out the relevant service charge provisions in the lease.

Relevant Law

8. This is set out in the Appendix to this Decision.

Decision

9. The hearing in this matter took place on 1 October 2014. The Applicant was represented by Ms P Gostyn of Defries & Associates Ltd, the managing agents. The Respondent appeared in person.

10. For the avoidance of doubt, at the commencement of the hearing, the Tribunal ruled that it had no jurisdiction to make any determination in relation to the claim for statutory interest. This is because statutory interest is not a “service charge” within the meaning of section 18 of the Landlord and Tenant Act 1985 (as amended) (“the Act”) below. This matter is remitted back to the County Court.
11. When asked by the Tribunal, the Respondent said he had deducted the contribution payable for the reserve fund because he had unsuccessfully attempted on a number of occasions to obtain an explanation from Defries about the reserve fund provision in the service charge budget. Indeed, he said that he had volunteered to meet with Defries on many occasions without success. For these reasons he felt he was justified in deducting the amount claimed for the reserve fund contribution when he paid the first two service charge demands.
12. Materially, the Respondent went on to tell the Tribunal he considered that not only were the proposed major works necessary, but were long overdue and that the reserve fund provision in the service charge budget was inadequate. The reserve fund provision should be greater.
13. Ms Gostyn, for the Applicant, did not accept the Respondent’s assertion about not being provided with the relevant information about the reserve fund provision. She maintained that this had been given to all of the leaseholders.
14. Having regard to the Respondent’s contention that the proposed major works were necessary and the amount being sought in respect of those works was inadequate, the Tribunal was bound to conclude that the amounts claimed by the Applicant are reasonable.
15. Accordingly, the sum of £1161.37 is due and payable by the Respondent.

Section 20C & Fees

16. The Tribunal considered that the basis on which the Respondent withheld payment of the reserve fund contributions was untenable and inevitably the Applicant was compelled to commence debt recovery proceedings against him. For these reasons, the Tribunal did not make an order under section 20C of the Act because it would not be just or equitable to deprive the Applicant from being able to recover its costs.

17. For the same reasons, the Tribunal orders the Respondent to reimburse the Applicant the fees of £245 it has paid to the Tribunal to have the application issued and heard within 28 days from the date this decision is sent to him.

Judge I Mohabir
17 November 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended) ("the Act")

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 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).