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

Case reference : **LON/00AR/LSC/2014/0391**

Property : **Flat 8, Charlotte Court, 68-70 Billet Lane, Hornchurch RM11 1GD**

Applicant : **Riverside Developments Limited**

Representative : **Not applicable**

Respondent : **Mr Christopher Michael Leader**

Representative : **Not applicable**

Type of application : **For the determination of the reasonableness of and the liability to pay service/administration charge**

Tribunal members : **Tribunal Judge R Percival
Mr Michael Cartwright FRICS
Ms J DALAL**

Date and venue of hearing : **15 December 2015
10 Alfred Place, London WC1E 7LR**

Date of decision : **15 December 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal finds that the service charges (or, if applicable, administration charges) demanded are not payable, to the extent that they have not been paid, by the Respondent.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and/or Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges/administration charges payable by the Applicant for some period within or comprising the period from September 2005 to July 2014. For reasons explained below, it is not clear to what period the claim before the tribunal relates.
2. Proceedings were originally issued in the Romford County Court under claim number 9LU2990. The claim was transferred to this tribunal, by order of District Judge Smart on 25 July 2014.
3. By an order dated 24 July 2014, the identity of the claimant was changed from Trinity (Estates) Property Management Limited to Rivercraft Developments Limited. The application for the order, served by the Applicant's then solicitors (Brethertons LLP) stated that Trinity (Estates) Property Management Limited, in whose name proceedings were started, were the managing agents of Charlotte Court Hornchurch Management Company. That company was dissolved in March 2013, and the management thereby reverted to the freeholders, Rivercraft Developments Limited.
4. By an email dated 10 October 2014, Brethertons informed the tribunal that they were no longer instructed. The tribunal refused an application made at the same time for the postponement of the case management conference, which duly took place before Tribunal Judge Hawkes on 14 October 2014. Neither party attended, although the option of a teleconference facility was available.
5. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

6. Before the hearing on 15 December 2015, the Respondent left a message with the tribunal office to say that he would not be able to attend because of a family medical emergency. No communication was received from the Applicant, and the Applicant did not appear.

The background

7. The property which is the subject of this application is situated in a purpose built block of 15 flats, on the same estate has another block of 6 flats.
8. 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.
9. At the time of the hearing, there had been no communication to the tribunal from the Applicant. The directions required the Applicant to send to the Respondent by 21 October copies of all relevant service charge accounts and estimates for the years in dispute, audited and certified where required, together with all demands for payment and details of payments made. Tribunal Judge Hawkes further directed that:

“If the landlord no longer intends to pursue its case that the service charges and administration charges claimed in the County Court proceedings are payable by the tenant and invites the tribunal to determine on the papers that the sums claimed ... are not payable, the landlord may, alternatively, give the tribunal and the tenant written notice that this is its position by 4 pm on 21 October 2014 ...”

10. The directions then made provision for further exchanges of documents and schedules to allow the tribunal to decide the issues on a clear basis.
11. The Applicant has not complied with the directions.

The issues

12. It appears that this case started as early as 2009 in the county court.
13. The Applicant has failed to communicate in any way with the tribunal since its then solicitors withdrew, being uninstructed. We received no application from the Applicant to postpone the hearing. Had we done so, we would have refused it, in the absence of compelling and unanticipated reasons to the contrary. The Applicant has had the opportunity to comply with the directions, to seek amendments to the directions, or to otherwise communicate with the tribunal, and has failed to do so. We must, therefore, decide the case on the papers available. It will be seen that such an outcome was potentially anticipated by Tribunal Judge Hawkes in the direction quoted above.

14. As a consequence of the failure of the Applicant to comply with Tribunal Judge Hawkes' directions, the tribunal does not have an ordered and complete set of documents to consider the substantive issues. The tribunal accordingly must decide the issues on the basis of the papers available to it, which are those inherited from the County Court file. They are not in the form of an ordered and paginated bundle, although there are references to a bundle or bundles in the papers that are available. In particular, we do not have a copy of the Respondent's defence, although there are references to a defence or defences elsewhere in the file.
15. It appears from the particulars of claim dated 19 August 2009 that the claim then related to both service charges and ground rent demanded in invoices dated from 17 September 2005 to 4 June 2008. At that time, the balance outstanding was said to be £1,020.75.
16. A skeleton argument apparently prepared for a hearing in the County Court dated 20 August 2013 refers to the Respondent at that point owing £602.49, in respect of arrears (of both service charge and ground rent) up to May 2011.
17. A witness statement dated 18 July 2014 by one James Donnelly, the regional estate manager of the then managing agents, Trinity (Estates), exhibits an account showing that, at 16 July 2014, the sum owed (again, including ground rent) was £4,169.17.
18. The witness statement of Mr Donnelly also exhibited copies of demands sent to the Respondent from 1 May 2008 to 5 July 2014; budgets for the years ending from 2008 to 2013; and certified accounts for 2008 to 2010.
19. Correspondence in the file indicates that the case (that is, a case with the same number) was struck out in July 2010. What happened after that is not clear.
20. In an undated document which includes his statements from 4 March 2005 to 1 February 2013, the Respondent makes various complaints about the service charges. The document appears to have been prepared to guide the Respondent in making oral submissions. His points include:
 - (i) Unnecessary expenditure for resetting smoke vents triggered by excessive heat;
 - (ii) The cost of electricity;
 - (iii) The choice of contractors for repairs;

- (iv) Repairs to a gate;
 - (v) The investigation and repair of a roof leak; and
 - (vi) That the basis for apportionment of the service charge is flawed.
21. The Applicant must prove its case to the tribunal. On the basis of the papers before the tribunal, we do not know to what period the claim relates, how much it is for, what the breakdown of the arrears claimed is, or indeed how much relates to ground rent, which is outside our jurisdiction, rather than service charges.
22. It is also clear that, given the opportunity, the Respondent would have points to make of both law and fact that might have been valid.
23. In these circumstances, the Applicant has failed to prove that the service charges, or, if relevant, administration charges in issue are reasonably payable.

The tribunal's decision

24. The tribunal finds that the service charges (or, if applicable, administration charges) demanded are not payable, to the extent that they have not been paid, by the Respondent.

The next steps

25. The tribunal has no jurisdiction over ground rent or county court costs. The forum for deciding those matters is the Romford County Court.

Name: Tribunal Judge Richard Percival **Date:** 15 December 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).