9755

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LSC/2013/0496**
Property	:	**Flat 1, 74 Birnam Road, London N4 3LQ**
Applicant	:	**Ms F Mihara**
Representatives	:	**In person**
Respondents	:	**Juzar Jeevanjee & Co and Angelana Investments Limited**
Representatives	:	**Neither Respondent was in attendance or represented at the hearing**
Type of Application	:	**For the determination of the liability to pay a service charge**
Tribunal Members	:	**Judge P Korn (chairman)** **Mr J Barlow FRICS**
Date and venue of Hearing	:	**22nd January 2014 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**20th February 2014**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the cleaning charges for 2012 are not payable at all.

(2) The tribunal determines that the remainder of the disputed charges are all fully payable.

(3) The tribunal makes a section 20C cost order against the First Respondent, so that the First Respondent may not add to the service charge any costs incurred by it in connection with these proceedings.

(4) The tribunal determines that the Respondents shall not be required to reimburse the Applicant's application fee or hearing fee nor to pay towards the Applicant's costs.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to whether certain service charges are payable.

2. The Applicant challenges the following items (and she confirmed at the hearing that her challenge only related to these four items):-

   - her 15% share (£195.00) of the cleaning charges for 2012;
   - her 15% share (£250.00) of the annual management fee for 2012;
   - part of the building insurance charges for 2012; and
   - an administrative charge of £150.00 in 2013.

3. The relevant legal provisions are set out in the Appendix to this decision. The Applicant's lease ("**the Lease**") was made between Angelana Investments Limited ("**the Second Respondent**") (1) and the Applicant (2), although the version provided to the tribunal by the Applicant is unsigned and undated and therefore may not fully reflect the completed version.

4. The Applicant is the current leaseholder, and Juzar Jeevanjee & Co ("**the First Respondent**") is the current landlord having apparently acquired the freehold interest in the Property (and the building of which it forms part) from the Second Respondent in or around November 2012.

Preliminary point

5. Neither the First Respondent nor the Second Respondent was present or represented at the hearing, although written representations were received from the Second Respondent's solicitors.

Applicant's case

Cleaning charges 2012

6. The Applicant said at the hearing that there had been no cleaning at all in the common parts of the building from the date of grant of the Lease (February 2012) to the end of the year and beyond. In her view the common parts would be in a very poor state if it were not for the fact that she periodically cleaned them herself.

7. When asked how she could be so sure that cleaning did not take place whilst she was out, the Applicant replied that throughout 2012 she was working from home during the daytime. As the sound-proofing in the building was very poor she would have known if a cleaner had entered the building at any point. In addition, she said that there were no electric points in the common parts and that therefore any cleaner would have needed to ask to use the electric point in the Property in order to vacuum-clean the carpet outside the Property.

8. The Applicant did not have any photographic evidence of poor cleaning as she only decided to make this application once she received a demand from the First Respondent for payment of cleaning charges, by which time it was 2013 and she had carried out the cleaning herself.

Annual management fee 2012

9. In her application the Applicant challenged this fee on the grounds that in her view (a) the Lease did not permit the landlord to charge a maintenance fee and (b) the Second Respondent had only managed the building for 8.5 months.

10. However, at the hearing the Applicant said that in her view the management has been "terrible" and indicated that this was another ground on which she was challenging the management fee. She also argued that the Second Respondent had done nothing other than arrange the building insurance.

Building insurance 2012

11. The Applicant struggled to explain the precise basis on which the building insurance premium was being challenged. The argument

appeared to be that the Second Respondent had only insured the building for 8.5 months, but she was unable to explain how she had reached that conclusion.

12. During the course of the hearing the Applicant said that her challenge, on reflection, was to the 10% management fee charged on top of the insurance premium, although she did not explain the detailed basis for her objection.

Administrative charge 2013

13. The Applicant was unclear what this charge was for. The tribunal said that the evidence appeared to indicate that it was in fact a management charge. In response, she said that if it was in fact a management charge it was not payable as there had not been any management.

Second Respondent's written submission

14. The Second Respondent's primary submission was that the tribunal had no jurisdiction to "make any award ... against the Second Respondent", on the ground that the Second Respondent was not the "landlord" within the meaning of section 30 of the 1985 Act.

15. The Second Respondent's secondary submission was that the disputed charges were reasonable and payable in full.

16. In relation to cleaning, the Second Respondent stated that cleaning was provided by one of its employees who attended once a week to clean the communal parts. It further stated that the poor state of the communal areas was "clearly" caused by the occupant's own living standards.

17. In relation to building insurance, the Second Respondent provided a copy renewal schedule for the period 13th January 2012 to 12th January 2013 together with a copy letter from Towergate Riskline calculating the total amount due as £994.33. The Second Respondent commented that the leaseholders were only charged £883.33 and therefore were actually undercharged. The Second Respondent added that it did not receive any refund following cancellation of the policy.

18. In relation to the management fee, the Second Respondent considered the charge to be entirely reasonable for its administration in relation to the services provided, including electricity and alarm/security.

Tribunal's analysis and determinations

Cleaning charges 2012

19. There is a direct conflict between the Applicant's oral evidence and the Second Respondent's written evidence on the cleaning issue. The tribunal was not able to cross-examine the Second Respondent on its submissions as it did not attend the hearing. However, the tribunal was able to – and did – cross-examine the Applicant, and it considers her evidence in relation to cleaning to have been credible.

20. It is not uncommon for leaseholders to assert that no cleaning has taken place without being in a position to verify this. However, the Applicant's evidence was that she lived in the Property and worked from the Property and that the sound-proofing was poor, so that she would have been in a position to know whether anyone had come regularly or at all to clean the common parts. She also gave evidence that there were no electric points in the common parts and that therefore any cleaner would have needed to ask to use the electric point in the Property in order to vacuum-clean the carpet outside the Property.

21. The Applicant also provided a credible explanation as to why she did not challenge the cleaning at an earlier stage or keep a record of the state of the common parts, namely that she only decided to make this application once she received a demand (in early 2013) for payment of cleaning charges and that she had simply not expected to be invoiced for a non-existent cleaning service.

22. The Second Respondent's written assertion that the poor state of the communal areas was clearly caused by the occupant's own living standards is not considered to be very persuasive as against the Applicant's oral evidence on which she was cross-examined.

23. Accordingly, on the balance of probabilities, the tribunal considers that no cleaning service took place during 2012 and that therefore the cleaning charges for 2012 are not payable at all.

Annual management fee 2012

24. The evidence suggests that the level of management during 2012 was not intensive or overly time-consuming. However, in the tribunal's view it would be an exaggeration to suggest that there was no management. A building insurance policy had been put in place, and the Second Respondent's written submissions – not explicitly disputed by the Applicant in this regard – indicated that electricity had been paid for in relation to the common parts and that alarm maintenance had been arranged.

25. In any event, the initial challenge to the management charges was not on the basis of poor management. The Applicant's initial argument was that the Second Respondent had only managed the building for 8.5 months, but at the hearing the Applicant was unable to justify this assertion or explain how she had arrived at 8.5 months given that the evidence indicated that the handover by the Second Respondent took place in November 2012. In addition, the Applicant has provided no evidence of having been double-charged in relation to this period.

26. As regards the allegation of poor management, the tribunal considers it unfair on the Respondents for the Applicant only to have alleged poor management at the hearing and not before, as this gave them no opportunity – especially as they were absent from the hearing – to comment on her allegations, which in any event were of a very general nature.

27. In the circumstances the tribunal is unable to place much weight on the Applicant's allegations of overall poor management. Although the tribunal notes that it has not seen evidence of a high level of management, the management charges are not particularly high and therefore on the basis of the evidence before it the tribunal's view is that these relatively low management charges are payable in full.

28. However, the tribunal would just add that it has a degree of sympathy with the Applicant in relation to the difficulty that she has had in preparing her case. The submissions received by the tribunal indicate that the First Respondent has not engaged with the process at all, other than to tell the Applicant that she was welcome to apply to the tribunal for a determination. The Second Respondent has at least provided written submissions, although it has not attended the hearing.

Building insurance 2012

29. The tribunal found the Applicant's evidence on building insurance to be weak and confused. The argument appeared to be that the Second Respondent had only insured the building for 8.5 months, but the Applicant was unable to explain how she had reached that conclusion, given that the Second Respondent had sold its interest in November 2012 and that in any event the available evidence indicated that the building insurance policy was renewed in January 2013 and that there was no evidence of any break in cover.

30. The Applicant's alternative argument centred on the element of the insurance premium that had been described by the Second Respondent as a management fee, but again this point was raised for the first time at the hearing in the Respondents' absence and the Applicant failed to articulate her concern in detail or to state – let alone explain or justify – why she considered the overall insurance premium to be unreasonable.

31. The Applicant has not provided any alternative quotations, nor any comparable evidence of insurance premiums being paid on similar buildings, nor any other relevant evidence to show that the premium is too high. In the circumstances, the building insurance premium is considered to be payable in full.

Administrative charge 2013

32. The tribunal has been provided with very limited information as to what this charge relates to. However, it has seen a brief summary of heads of service charge for 2013 which appears to indicate that this charge is not an administrative charge but is in fact the management fee for 2013. In the absence of any better information the tribunal considers that the challenge is in fact to the £150 management fee for 2013.

33. No real evidence has been provided as to the level of management or indeed any other basis for challenging the management fee for 2013, perhaps in part because the charge in question was – wrongly – assumed to be an administrative charge rather than a management fee. In the absence of any detailed evidence and given that the management fee for 2013 is even lower than that for 2012 the tribunal considers that it has no choice but to conclude that the fee is payable in full.

Jurisdiction point

34. The Second Respondent has argued that it is not the "landlord" as defined in section 30 of the 1985 Act and that the tribunal has no jurisdiction to make any award against the Second Respondent.

35. The tribunal agrees that the Second Respondent is not the "landlord" for these purposes, and in relation to the issue on which the Applicant has been successful, namely cleaning, the tribunal is not proposing to make an "award against the Second Respondent". Instead, it will be for the First Respondent to reconcile the service charge accounts in order to reflect the tribunal's decision on cleaning costs.

Cost Applications

36. The Applicant has applied for an order under section 20C of the 1985 Act that the First Respondent should not be entitled to add its costs incurred in connection with these proceedings to the service charge. As the First Respondent has not engaged with the process at all, it is hard to see what costs it could have incurred. However, as the application has been made it needs to be considered.

37. The Applicant has succeeded on the cleaning issue. Although she has not succeeded on the other issues the tribunal considers that this may

at least in part be due to the First Respondent's failure to engage with the process. In the circumstances of its failure to engage with the process, the tribunal considers that it would be inequitable for the First Respondent to be able to put through the service charge any costs incurred by it. Accordingly the tribunal orders that the First Respondent may not add to the service charge any costs incurred by it in connection with these proceedings.

38. The Applicant has also made an application for reimbursement by the Respondents of her application and hearing fees under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Tribunal Rules**"), but the tribunal does not consider that these should be reimbursed by either Respondent. Whilst the tribunal understands the Applicant's frustration in failing to obtain more information from the Respondents, the fact remains that the Applicant has only been successful on one issue and has presented a very weak case on the remaining issues. Accordingly, the tribunal declines to order the reimbursement by either Respondent of the application or hearing fees paid by the Applicant.

39. The Applicant has also made an application for costs under Rule 13(1)(b) of the Tribunal Rules. However, no persuasive evidence has been brought to indicate that the Respondents have acted unreasonably in defending this application, and accordingly the tribunal declines to order either Respondent to pay such costs.

Name: Judge P Korn **Date:** 20th February 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.