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

Case Reference : LON/00AW/LSC/2013/0817

Property : Flat D, 48 Draycott Place, London
SW3 2SA

Applicant : R Waldschmidt
J Stephenson

Representatives :

Respondent : R J Moore

Representative :

Type of Application : Section 27A Landlord and Tenant
Act 1985 (as amended) application
for service charges

Tribunal Members : Miss A Seifert FCI Arb
Mr T N Johnson FRICS

Date and venue : Paper determination on 14th March
2014 at 10 Alfred Place, London
WC1E 7LR

Date of Decision : 14th March 2014

DECISION

The application

1. The property, which is the subject of this application, is a Flat D, 48 Draycott Place SW3 2SA ("Flat D")
2. The applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act") of the reasonableness of and the respondent's liability to pay service charges in respect of his leasehold interest in the flat.
3. Directions dated 7th January 2014 were issued by the Tribunal. The applicants complied with the directions. There was no compliance by the respondent.
4. The directions stated that the application would be determined on the papers unless either party requested a hearing. There was no such request, and the Tribunal proceeded to determine the application on the papers before it.
5. A bundle of documents was provided by the applicants, which included a Scott Schedule which had been directed by the Tribunal, to enable the parties to provide details of the claim and response. The applicants filled in the relevant parts of the Scott Schedule and provided supporting documentation. The respondent failed to respond and did not complete the Scott Schedule.
6. The Tribunal is satisfied that the application, associated documents, and the Tribunal's Directions were duly served on the respondent. The Tribunal accordingly determined the application on the papers in the applicants' bundle.
7. The relevant legal provisions are set out in the Appendix to this decision.

The issues

8. The relevant issues for determination were whether the service charges for the service charge years 2012 and 2013 were reasonable and reasonably incurred and whether these were payable by the respondent to the applicants. The applicants also applied for an order for reimbursement of the application.

The background and evidence

9. The property which is the subject of this application is one of a block of five flats, in a desirable area of Central London.

10. The property was subject to a lease dated 13th August 2004 (“the lease”), made between Hetton Properties limited and the respondent, Mr R J Moore. The landlord’s interest under the lease was transferred to the applicants. The respondent is bound by the terms of an under lease dated 12th July 1984 (“the under lease”). Copies of the lease and the under lease were provided.
11. Clauses in the under lease relied on by the applicants were set out in the applicants’ Statement of Case, which was included in the applicants’ bundle, namely clauses 2(1) and (2), 2(2)(e), 2(2)(f), 2(2)(g), 4, 5, 6 and 7, and the Fourth Schedule (pages 64-66 of the bundle).
12. A witness statement dated 21st January 2014 was provided by Mr Waldschmidt, the first applicant, in support of the application.

The Tribunal’s decision

13. Having considered all the evidence and documents provided, the Tribunal finds that:

The following sums were reasonable and reasonably incurred by the applicants.

2012 service charges - £1,796.20

2013 service charges - £7,999.60

The above sums are due and payable by the respondent to the applicants subject to:

(1) Credit for any payments on account that have been made by the respondent to the applicants; and

(2) Subject to proper service charge demands having been served by the respondent on the applicants.

Reasons for the Tribunal’s decision

14. The Tribunal accepts the evidence provided by the applicants, which was not contested by the respondent.

Service charge year 2012

15. The sums referred to in the application and in the demand dated 21st February 2013 were rounded figures. In the Service Charge Account dated 30th June 2013 (page 168 of the bundle) the final figures for 2012

were set out, which differ from the earlier figures. The Tribunal prefers actual figures rather than estimated figures. Accordingly, the Tribunal has relied on the figures stated in the Service Charge Account prepared by the applicants' accountants, Messrs. Spilkin Knight.

16. The items included in the service charge for 2012 were:

	£
Insurance	5770
Accountancy and management	600
Electricity	127
Legal costs	199
Banhams	550
Scanlon locks	160
Emergency lighting	406
Rubbish removal	200
Cleaning	876
Bank charges	69
Annual Return	14
Total	8981

The respondent was liable under the terms of his lease / under lease for 1/5 of the above figure, namely £1,796.20.

The Tribunal determines that a service charge of £1,796.20 is payable from the respondent to the applicants, subject to (1) credit for any payments on account that have been made by the respondent to the applicants; and (2) proper service charge demands having been served on the respondent by the applicants.

Service Charge year 2013

17. There were no copies of demands for the service charges for 2013 in the bundle. The Tribunal has relied on the Service Charge Account dated

30th June 2013 (page 168 of the bundle) in which the final figures for 2013 were set out. These differed from the figures in the application. In the absence of a demand, the Tribunal prefers actual figures noted in the accounts rather than the figures set out in the application.

	£
Insurance	3384
Accountancy and management	1416
Electricity	171
Legal costs	12
Cleaning	1740
Bank charges	68
Annual Return	13
Wheelie bins	114
TV aerial company	2815
Push Design	<u>30265</u>
Total	39998

The respondent was liable under the terms of his lease / under lease for 1/5 of the above figure namely £7,999.60.

The Tribunal determines that a service charge of £7,999.60 is payable by the respondent to the applicants, subject to (1) credit for any payments on account that have been made by the respondent to the applicants; and (2) subject to proper service charge demands having been served on the respondent by the applicants.

Application for refund of fees

18. The applicants applied for reimbursement of the application fee of £125.

19. The Tribunal may make an order under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, ordering a party to reimburse the other party the whole or part of the amount of any fee paid by that other party. The Tribunal considers that it is reasonable to make an order that the respondent reimburse the applicants the whole application fees of £125. The respondent has failed to respond to the application or comply with the Tribunal's directions and the applicants have succeeded substantially in their application.

20. The Tribunal orders that the respondent reimburse the applicants the whole of the application fee of £125.

Name: A Seifert

Date: 14th March 2014

Judge of the First-tier Tribunal

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) Complied with in relation to the works or agreement, or
 - (b) Dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) If relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) If relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) An amount prescribed by, or determined in accordance with, the regulations, and
 - (b) An amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]