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

**Case Reference** : LON/00BJ/LSC/2013/0616

**Property** : 7, Osborne House, 414, Wimbledon  
Park Road, London, Sw19 6PW

**Applicant** : Mr D J Kadhim

**Respondent** : The Executors & Trustees of HD  
Greenhalgh (deceased)

**Type of Application** : Section 27A Landlord and Tenant Act  
1985 (the 1985 Act). Determination of  
the reasonableness and payability of  
service charges.

**Tribunal Members** : Mrs HC Bowers BSc (Econ) MSc MRICS  
Mr TaylorFRICS  
Mrs WestMBA

**Date and venue of  
Hearing** : 23<sup>rd</sup> January 2014  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 23<sup>rd</sup> January 2014

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**DECISION**

**For the following reasons the Tribunal finds that:**

- For the service charge year 1<sup>st</sup> January to 31<sup>st</sup> December 2012 the service charge on account for the whole year of £3,437.81 is reasonable and payable.
  - For the service charge year 1<sup>st</sup> January to 31<sup>st</sup> December 2013 the service charge on account for the half year due on 31<sup>st</sup> May 2013 of £1,755.00 is reasonable and payable.
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## **REASONS**

### **Introduction:**

1.) This matter is an application dated 21<sup>st</sup> August 2013, made under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) regarding the reasonableness and payability of service charges in respect of 7 Osborne House, 414, Wimbledon Park Road, London SW19 6PW (the subject property). The case was considered at a case management conference (CMC) on 17<sup>th</sup> October 2013 when Directions were issued.

### **The Law:**

2.) A summary of the relevant legal provisions is set out in the Appendix to this decision.

### **The Hearing:**

3.) A hearing was held on 23<sup>rd</sup> January 2014 at Alfred Place, London. The Applicant attended in person and represented himself. Mrs Howard-Jones of J C Francis & Partners Ltd, the new managing agents for the development, represented the Respondent. Mr Munro, a director of J C Francis & Partners Ltd and Mr Salam also attended the hearing.

### **Background:**

4.) The application indicated that Mr Kadhim was disputing the level of increase in his service charge contributions. He specifically stated that the charge of £2,264.88 due on 30<sup>th</sup> November 2012, which included an adjustment for the whole of the 2012 service charge year, was an excessive increase from the previous level of charges.

5.) A letter from J C Francis addressed to Mr Kadhim, dated 29<sup>th</sup> October 2013 helped to clarify the disputed sums. For the service charge year 1<sup>st</sup> January to 31<sup>st</sup> December 2012 the total sum claimed on account from Mr Kadhim was £3,437.81. For the 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2013 service charge year, the first half year payment on account, due on 31<sup>st</sup> May 2013, was £1,755.00.

### **The Lease:**

6.) A copy of the lease for the subject property was provided. The lease is dated 10<sup>th</sup> December 1971 and is for a term of 99 years from 30<sup>th</sup> May 1971. Under the lease the lessee covenants to pay a contribution to the "costs expenses outgoings and matters" mentioned in the Fourth Schedule of the lease. Clause 4(ii) explains the service charge mechanism and clause 4(ii)(a) states that if the caretaker's flat ceases to be used by a caretaker, then the service charge proportion applicable for Flat 7 would be 3.9%. The Fourth Schedule sets out a full range of items covered by the service charge provision. At the hearing it was

confirmed that the caretaker's flat had been sold off and therefore Mr Kadhim's proportion was 3.9%.

**Inspection:**

7.) Given the nature of the issues in dispute, the Tribunal did not carry out an inspection of the subject development. However, the Tribunal had a brief description of the development from the parties and from various reports included in the submissions.

8.) The development was described as one building, divided into three blocks. The building is six storeys, including a lower ground floor. There are a total of 32 flats; one block has twelve flats and the other two blocks have ten flats each. A report from DHP dated May 2013 described the building as a purpose built development dating from the 1970's, of reinforced concrete framed construction with external brick walls and a flat roof. There are three passenger lifts in the building. The development has car parking and communal grounds.

**Representations:**

9.) The Tribunal had full consideration to both the written submissions and evidence included in the trial bundle, together with the oral evidence and submissions made at the hearing. A summary of each party's case is provided below. Reference is made to the page number in the bundle.

**Applicant's Case**

10.) Mr Kadhim explained that the previous managing agent, J J Homes, had run the building for over ten years and had left the building in a poor state. Mr Kadhim had been involved and had encouraged a change of manager. J C Francis had taken over the management of the building in August 2012. In December 2012 he had received a service charge invoice of £2,264.88 and this included an adjustment from the earlier on account figure. This equated to an increase of 45.6% from the previous service charge contribution. He considered that the increase was unreasonable and that an increase that reflected the rate of inflation would be appropriate.

11.) Mr Kadhim suggested that as the previous managing agent had been responsible for the neglect of the building, then they should be responsible for the cost of any works to restore the building. However he had no evidence to show any specific works that were required as a consequence of any neglect. He stated that this was purely a point of principle. He relied upon the reports that had been prepared to show that there had been historic neglect of the development.

12.) He questioned the reserve fund situation and how much was transferred from JJ Homes. He claimed that the previous agent should have sought a

reserve fund contribution that took account of future works. He acknowledged that work was now needed to the development and he did not raise any issues with the tendering process that had commenced in respect of the forthcoming major works.

13.) Mr Kadhim raised concerns about the existence of the Residents' Association and whether the new agents had carried out a proper communication process with the leaseholders about the future of the development.

#### Respondent's Case

14.) Mrs Howard-Jones submitted that the increase in the service charge was reasonable. An independent planned maintenance report was prepared by DHP in May 2013 that covered the whole building and a specialist lift report was provided from ILECS Limited dated 17<sup>th</sup> June 2013. From these reports it was identified that numerous works were required. A ten year maintenance plan had been prepared and a copy of this was included in the bundle (p.186). This document was used as a budgeting tool for future service charges and reserve fund contributions.

15.) A priority that was identified was the refurbishment of the lifts. A specification had been drawn up and tenders had been obtained and a tender analysis undertaken. A consultation process had been undertaken with a Notice of Intention sent out on 16<sup>th</sup> October 2013 and a Statement of Estimates sent out on 25<sup>th</sup> November 2013. Mrs Howard- Jones stated she was confident that they had acted within the guidance of the RICS Code of Practice.

16.) The service charge accounts for the service charge year that ended 31<sup>st</sup> December 2011, during the regime of the previous managing agent, indicated a deficit of approximately £4,000 (p.69). JJ Homes had failed to set a budget for 2012 and the sums collected during that year reflected the actual expenditure of £61,000 from the previous year. No reserve funds had been collected.

17.) J C Francis took over on 1<sup>st</sup> August 2012 and in December 2012 wrote to the leaseholders to explain the financial background to the development and explained the details of the proposed increase to the service charges. This included an increase of the on account charge to cover the day to day expenditure.

18.) There had been communication with the leaseholders and the Residents' Association. A meeting had been held and the views of the leaseholders had been canvassed as to the length of any implementation plan and how the works would be funded. It had been agreed that a ten year implementation plan was appropriate to undertake the necessary repairs and that reserve funds should be

accumulated to help spread the cost of the works and that reserve funds should be built up over the longer term to reflect future needs.

19.) It was confirmed that on the change of management a sum of £12,500 was transferred from the previous managing agent, with a further sum of £10,000 transferring in January 2013. It was stated that there were substantial arrears at the development. At the end of 2012 the reserve funds were £83,371.88, but that included leaseholders' arrears of approximately £61,000.

20.) In respect to the historic neglect issues raised by the Applicant it was suggested that it was difficult to prove the historic neglect. Works had been deferred but this had not necessarily resulted in additional costs. The leaseholders have not previously been asked to contribute to extensive maintenance works so had benefited from historically low service charges.

21.) The Tribunal heard evidence from Mr Salam who is the secretary of the Osborne House Residents' Association. Mr Salam explained the history of his involvement with the development and how there had been an initial reluctance on the part of the Freeholder to change the managing agents, but continued pressure had resulted in the abrupt dismissal of JJ Homes and the appointment of the current managing agents. The approach of the previous agents was to undertake the minimum amount of work and this had resulted in a historic, low financial contribution from the leaseholders. It had been appreciated that such an approach could not continue and that eventually the leaseholders would have to finance the proper maintenance of the development. In the long term the works will enhance the value of the flats. As to whether the work is as a consequence of historic neglect it was suggested that patch repairs had been carried out in the past so outgoings for the leaseholders had been minimised.

Tribunal Findings:

22.) Mr Kadhim has not raised any issues about the necessity of the work, the consultation process or the anticipated costs of the works. His sole argument is whether the previous poor management had resulted in neglect to the building. And whether that neglect had increased the subsequent repair costs. He produced no evidence to support his suggestion and stated that it was a matter of principle.

23.) From a financial point of view, the leaseholders have had the benefit of the past minimal service charge contributions which reflected the basic management regime undertaken at that time.

24.) In the opinion of the Tribunal the current managing agents have acted properly by seeking independent reports as to the condition of the development and the planned maintenance scheme to be undertaken. There appears to be an

open communication process and engagement with the leaseholders about the timescales for the planned maintenance works. The current management is responsive to the needs and practical circumstances of the leaseholders.

25.) There is no evidence that the previous managing agents had caused any deterioration in the condition of the building from their maintenance regime. Additionally there is no evidence that the current service charges are unreasonable and that the level of the reserve fund to be collected is unreasonable. It is clear to the Tribunal that the previous management regime of "patching up" the development had been taken as far as it could go. The current arrangements reflected the future needs of the development. Accordingly the Tribunal determine that for the service charge year 1<sup>st</sup> January to 31<sup>st</sup> December 2012 the service charge on account for the whole year of £3,437.81 is reasonable and payable. And for the service charge year 1<sup>st</sup> January to 31<sup>st</sup> December 2013 the service charge on account for the half year due on 31<sup>st</sup> May 2013 of £1,755.00 is reasonable and payable.



**Chairman: Helen C Bowers**

**Date: 17<sup>th</sup> February 2014**

## APPENDIX

### LANDLORD AND TENANT ACT 1985

#### **Section 19 Limitation of service charges: reasonableness**

(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 provision of services or the carrying out of works, only of 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 Liability to pay service charges: jurisdiction**

(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 subject of determination by a court, or
- (d) has been 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.