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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BU/LIS/2013/0028**
Properties	:	**Flat 13 & 14 Limehurst Street, St Margarets Road, Altrincham, WA14 2BG**
Applicant	:	**Limehurst Services Limited**
Respondent	:	**Mr & Mrs Oakes**
Type of Application	:	**Section 27A & 20C Landlord & Tenant Act 1985** **Schedule 11, Commonhold & Leasehold Reform Act 2002**
Triubnal Members	:	**Mrs Wood** **Mrs Franks**
Date of Decision	:	**22 July 2014**
Date of Correction	:	**06 August 2014**

CORRECTION CERTIFICATE

This is a certificate under the powers conferred on the Chairman of the Tribunal by Rule 50 under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to correct clerical or accidental errors that have been discovered in the above mentioned document. In the interest of transparency I have decided to re-issue the decision.

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BU/LIS/2013/0028** **MAN/00BU/LIS/2014/0004**
Properties	:	**Flats 13 and 14, Limehurst, St. Margaret's Road, Altrincham WA14 2BG**
Applicant	:	**Limehurst Services Limited**
Respondents	:	**Mr.& Mrs.C.N.Oakes**
Type of Application	:	**Sections 27A and 20C Landlord and Tenant Act 1985 ("the 1985 Act")** **Schedule 11, Commonhold and Leasehold Reform Act 2002 ("CLARA")**
Tribunal Members	:	**Mrs.C.Wood** **Mrs.A.Franks**
Date of Decision	:	**22 July 2014**

DECISION

Decision

1. The Tribunal determines as follows:

1.1 that the costs of £2730 incurred by the Applicant in respect of damp proofing works between December 2012 and May 2013 as set out in the invoice dated 14 May 2013, ("the Works"), are reasonable;

1.2 that the Respondents' liability for the costs of the Works in accordance with the terms of the leases each dated 21 December 2006 and made between Limehurst Developments Limited (1), Limehurst (Services) Limited (2) and the Respondents (3) ("the Leases") of the Properties is:

1.2.1 £251.16 in respect of Flat 13, which liability is, in the absence of consultation in accordance with section 20 and any application for dispensation in accordance with section 20ZA of the 1985 Act, is however limited to £250; and,

1.2.2 £196.56 in respect of Flat 14;

1.3 that the Respondents are not liable to pay the £60 debt collection charge claimed in respect of each of the Properties;

1.4 that, in the circumstances, it would not be just and equitable to grant the Respondents' application under section 20C of the 1985 Act.

Background

2. By orders dated 5 December 2013 and 18 March 2014, the applications were transferred to the Tribunal from the Macclesfield County Court in order for the Tribunal to determine the Respondents' liability to pay and the reasonableness of service charges and administration charges in respect of each of the Properties for the period from 1 July 2012 to 30 September 2013.

3. Directions dated 10 April 2014 were issued to the parties pursuant to which the following written evidence was received:

3.1 the Applicant's Statement of Case dated 1 May 2014;

3.2 the Respondents' Statement of Case dated 1 June 2014 and witness statement of Mr.C.Oakes dated 1 June 2014;

3.3 the Applicant's Reply to Respondent's Statement of Case dated 11 June 2014.

4. The written evidence submitted by the parties is summarised below.

4.1 In the Applicant's Statement of Case, the Applicant:

4.1.1 summarised the identities of the parties;

4.1.2 detailed the claims issued by the Applicant against the Respondents, ("the Claims"), and the defences submitted by the Respondents;

4.1.3 summarised the procedural steps which had culminated in the transfer of the Claims to the Tribunal;

4.1.4 identified the following issues as relevant in respect of the determination under s27A of the 1985 Act:

(i) that, under the terms of the Leases, the Respondents are liable to contribute to the service charge costs in respect of both buildings on the Estate and the Estate itself;

(ii) in making its determination the Tribunal has no jurisdiction to determine the reasonableness, or otherwise, of the terms of the Leases which impose such liabilities upon the Respondents;

(iii) the Tribunal is required to consider whether the expenses incurred in accordance with the terms of the Leases were reasonably incurred and reasonable in amount;

4.1.5 referred to the definition of "the Estate" in the Leases, and explained the construction history of the buildings on the Estate;

4.1.6 referred to the provisions of the Leases in support of the Applicant's contention as to the liability of the Respondents: specifically, clause 4.1 in each of the Leases which specified the percentage contribution of the respective lessee to the service charge expenses, which is 9.2% in the case of Flat 13, and 7.2% in the case of Flat 14; Schedule 7 which lists the service charge expenditure; clause 4.1(f) which imposes an obligation on the lessee, if required by the management Company, to pay service charges by monthly payment in advance; and to the Applicant's conclusion that, as the Leases contained no provisions distinguishing between the two buildings on the Estate, the Respondents' liability was to pay service charges in respect of the costs incurred in accordance with Schedule 7 on all buildings on the Estate;

4.1.7 stated that, in view of the Respondents' admissions in their defences that demands have been made for service charges, it is not an issue within the jurisdiction of the Tribunal;

4.1.8 detailed each head of claim under the Claims for each of the Properties as follows:

(i) unpaid service charges for the period 1 June 2012 to 1 July 2013;

(ii) the monthly service charges for the period from 1 June 2012 to 31 May 2013 was £158 for Flat 13, and £169 for Flat 14; the monthly payments then increased on 1 June 2013 to £177.22 for Flat 13 and £184.21 for Flat 14;

(iii) a levy of £208.29 in respect of each of the Properties for essential damp repairs to external walls "...for which the Applicant received dispensation";

(iv) debt collection charges of £60 each recoverable as an "administration charge" as defined in clause 1(1)(d) to Schedule 11 of CLARA, namely, "...in connection with a breach (or alleged breach) of a covenant or condition in this lease" where the breach is the Respondents' failure to pay service charges;

(v) legal costs which are not a matter for determination by the Tribunal.

5. In the Respondents' Statement of Case and in Mr.Oakes' Witness Statement, the Respondents:

5.1 provided a brief history of the construction of the building in which the Properties are situated, and contrasted its state of repair with that of the older original building;

5.2 explained the background to the dispute: until recently, they had made payment of all service charges, but this had changed because of recent decisions to carry out extensive repairs to the older building. The Respondents' argument was that the 4 leaseholders in the new building should not be expected to contribute to these costs as it was inequitable for them to do so. Specifically, they are being asked to make a financial contribution to a period building that they have no use of, do not have access to and derive no benefit from;

5.3 accepted that it was convenient to group certain of the costs for services such as insurance, gardening, cleaning, heating and lighting of communal areas

across the two buildings but that maintenance works should be separated so that only the leaseholders of the particular building are required to contribute;

5.4 confirmed that the Respondents have continued to pay service charges save those which comprise additional levies for additional maintenance on the old building;

5.5 confirmed that all of the costs and associated administrative charges set out on the Scott Schedule prepared by the Applicant are challenged;

5.6 confirmed that the Respondents wished to make an application under s20C of the 1985 Act.

Inspection

6. An inspection took place on Friday 20 June 2014 at 1000 which was attended by Miss Phillips of Counsel for the Applicants and Ms.R.O'Neil of Guthriesand Mr.C.Oakes of the Respondents.

Hearing

7. The hearing took place on Friday 20 June 2014 at 1130 at the Tribunal's offices at 5, New York Street, Manchester and was attended by the same parties.

The Law

8. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(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.

9. Section 19 provides that –

(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 if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

10. Section 27A provides that:

(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 date at or by which it is payable, and

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) .....

(4) No application under subsection (1)...may be made in respect of a matter which –

(a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

11. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

Hearing

12. At the hearing, the parties confirmed that the only matters remaining in dispute were:

12.1 the levies;

12.2 the administration charges; and,

12.3 s20C application.

13. Further the Respondents accepted that the following monthly service charges were reasonable:

13.1 Flat 13: for the period 1 July 2012 – 31 May 2013: £158; for the period 1 June 2013 – 31 August 2013: £172.22;

13.2 Flat 14: for the period 1 July 2012 – 31 May 2013: £169; for the period 1 June 2013 – 31 August 2013: £184.21

14. The following oral submissions were made on behalf of the Applicant:

14.1 contrary to the statements made in the Applicant's Statement of Case, no s20ZA dispensation had been sought, or granted, in respect of the costs giving rise to the levies;

14.2 Miss O'Neill described the works which had been carried out which gave rise to the levies and, with Mr.Oakes' consent, the invoices for the Works were e-mailed to the Tribunal during the course of the hearing. The Works were

required because of a roof leak in the old building towards the end of 2012; the Works were carried out in or about March/April 2013, and the invoices are dated May 2013. Miss O'Neill subsequently confirmed that only the works/costs on the invoice dated 14 May 2013 gave rise to the levy;

14.3 Miss Phillips reiterated the submissions made in the Applicant's Statement of Case that the provisions of the Leases (which are identical save for the percentage proportions of the service charge contribution) make no distinction between the "old" and the "new" building and imposes no obligation on the Applicant to only charge the leaseholders of the "old" building for costs incurred on it, or the leaseholders of the "new" building for costs incurred on the "new" building; that the "black and white" reading of clause 4.1 of the Leases was that the Respondents were liable to pay the respective percentage contributions towards the costs incurred in respect of "the Building" (which include the old and the new buildings) and the Estate;

14.4 Miss Phillips also made the point that if the Respondents accepted the wording of the Leases in respect of the "general" service charge, then there cannot be a different interpretation for the levies;

14.5 Miss O'Neill confirmed that a budget was prepared for each year which was discussed at the AGM; the previous year's accounts were sent to each leaseholder with the notice of the AGM;

14.6 she also confirmed that the levy invoices sent out in October 2012 were based on estimates received for the works. It was a clerical error to invoice both Properties for the same amount;

14.7 with regard to the £60 debt recovery charges, Miss Phillips submitted that there does not have to be any provision entitling the charging of such a fee under the Leases; provided that there has been a breach of covenant or condition, then there is a statutory entitlement under Schedule 11, paragraph 1(1)(d) CLARA to make such a charge, the only limitation being that it must be reasonable;

14.8 in this case:

14.8.1 if the Tribunal determines that the levy is payable, then the breach is the failure to pay that levy;

14.8.2 alternatively, in view of the Applicant's admission that the service charges (other than the levy) are reasonable, then the breach is the failure to pay those service charges;

14.8.3 alternatively, the matter should be remitted back to the County Court to determine exactly what payments were made at what point prior to and following the issue of proceedings.

15. Mr.Oakes made the following oral submissions:

15.1 whilst accepting that the Leases made no distinction between the two buildings, he suggested that the Applicant had a discretion under the wording of clause 4.1 to apportion costs between the two buildings and that, in the interests of fairness and reasonableness, they should have exercised this discretion in respect of the Works;

15.2 that he had been requesting sight of the invoices relating to the Works for years and that it was unreasonable that they should have finally been produced at the hearing;

15.3 that the level of detail included on the invoices about the Works was deficient and this, together with their very late production, made it difficult to challenge their reasonableness;

15.4 that he believed that he was still trying to negotiate with the Applicant to resolve the matter when they issued proceedings;

15.5 that the pre-emptive conduct of the Applicant in issuing proceedings when Mr.Oakes believed that they were still in negotiations, and their failure to produce the invoices relating to the Works until the hearing were reasons why the Tribunal should grant the Respondent's s20C application.

16. In final submissions, Miss Phillips made the following points:

16.1 the Applicant should be entitled to charge the costs incurred in bringing this matter before the Tribunal as service charge as a matter of principle. The s20C application should be refused in view of the Respondents' very late admission, at the hearing, that the service charges (other than the levy) were reasonable. The Applicant had had to bring this matter to the Court, and then for it to be transferred to the Tribunal, in order to obtain a determination of reasonableness which, in respect of the service charges other than the levy, had now been accepted are reasonable;

16.2 with regard to the levy, the Respondents are challenging the charging of the levy on the basis that to treat both buildings as one is inequitable, and on the ground, first raised at the hearing, that clause 4.1(a) of the Leases gives the Applicant discretion to apportion costs incurred on maintenance and repairs between the two buildings;

16.3 it was conceded that the invoice for the Works was submitted late to the Tribunal;

16.4 whilst there is some dispute as to exactly when the Respondents made payment of outstanding service charges included in the Claims, the Applicant submits that payment was not made until February 2014, at which point some service charges had been outstanding for about 2 years. In this context, the issue of proceedings was reasonable conduct;

16.5 whilst the assessment of costs is a matter that will be determined by the County Court following the Tribunal's determination, if the Tribunal grants the s20C application, then the Applicant will be prevented from recovering them as service charge.

17. In final submissions, Mr.Oakes again reiterated that, in the Respondents' view, the Applicant had acted unreasonably in issuing proceedings and, whilst accepting that the service charges (or some of them) may have been outstanding at the date of issue of the Claims, they have since been paid in full (save for the levy). It was disputed that any service charge payments had been outstanding for about 2 years.

Tribunal's Deliberations

18. In reaching its determinations, the Tribunal took into account the following matters:

18.1 the Applicant's failure to produce the invoice for the Works to the Respondents prior to the institution of proceedings and its very late submission (with the Respondents' consent) at the hearing which made any assessment as to the reasonableness, or otherwise, of the costs incurred very difficult, if not impossible, for the Respondents. The Tribunal further accepts the Respondents' submissions that the information as to the extent and nature of the Works as set out on the invoice was limited;

18.2 there was no evidence before the Tribunal of the Applicant's compliance with the terms of clause 4.1(g) of the Leases, namely, the requirement to provide an account of the service charge payable by the Tenant for the year in question following the issue of the certificate required under clause 4.1(b). It appeared to the Tribunal that this provision alone under the Leases authorised the Applicant to seek recovery of a shortfall between the monthly amounts paid by tenants on account of the service charge for the year and the amount finally determined to be due;

18.3 the Respondents' submissions that they were still trying to resolve the issues when proceedings were issued by the Applicant;

18.4 the possibility that, had the Applicant provided the information requested by the Respondents at a much earlier date, a resolution of the issues may have been reached without the need to issue proceedings;

18.5 the incorrect interpretation by the Respondents of clause 4.1 of the Leases which led them to defend the proceedings on the misguided basis that it was not "fair and equitable" that they should be held liable to contribute to the cost of maintenance and repair works to the "old" building when it was clear that their contractual liability under the terms of the Leases obliged them to do so. The reasonableness, or otherwise, of the costs for the Works was therefore a secondary issue to the issue of liability to pay;

18.6 the Respondents' admission at the hearing that service charges (other than the levy) were reasonable;

18.7 the Applicant's failure to apportion correctly the estimated costs of the Works as between the Properties and the possible incorrect apportionment of the monthly service charges for the period from 1 June 2012 – 1 July 2013 (and maybe since);

18.8 with regard to the debt recovery charges as administration charges, there was no provision under the Leases imposing liability on the Respondents to pay the costs, charges, expenses etc incurred by the Applicant as a result of a breach of covenant. Clause 3.5(a) is clear that the costs, charges and expenses to which it relates are those "...incidental to the preparation and service of a Notice under Section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under section 147 or 147 of the Act...". In the case of clause 3.5(b), the expenses to which it relates are those "...incurred by the Lessor of and incidental to the service of all notices and schedules relating to want of repair to the Flat...". There was no evidence presented to the Tribunal that either of these circumstances were relevant in this case;

18.9 that, in view of the Tribunal's determination in paragraphs 1.1 and 1.2 of this Decision, it (reluctantly) considered that it would not be just and equitable to grant the Respondents' s20C application.