10783

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LSC/2015/0090**
Property	:	**Ground Floor Flat, 15 Gleneldon Rd, Streatham, London SW16 2AX**
Applicant	:	**Raman Ltd**
Representative	:	**Mr Paine of Circle Residential Management Ltd**
Respondent	:	**Mina Amin, did not appear**
Type of Application	:	**Liability to pay service charges**
Tribunal	:	**Judge Adrian Jack, Professional Member S Coughlin MCIEH**
Date and Venue of Hearing	:	**3rd June 2015 ; 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**3rd June 2015**

DECISION

Determination

The Tribunal:

(a) determines that £2,157.30 is payable by the tenant to the landlord in respect of the interim service charge demand for 2015;

(b) makes no order in respect of the fees payable to the Tribunal by the landlord.

Background

1. By an application dated 27th February 2015 the applicant landlord has applied for a determination under section 27A of the Landlord and Tenant Act 1985 as to the payability of the interim service charge for 2015. The Respondent is said to be liable for 30% of the total estimate of £7,191 which is broken down as follows:

(a) Building Repairs	£3,659
(b) Building Insurance	£1,600
(c) Year End Accounting	£360
(d) Health & Safety	£612
(e) Management Fee	£960

2. 30% of £7,191 is £2,157.30. The service charge year is the calendar year. The lease, which is granted for a term of 99 years from Christmas 1986, contains standard provisions for the payment of an interim service charge with balancing payments (or credits) once the final accounts are available. There are three tenants in the block.

3. A case management hearing was held on 19th March 2015 but no-one attended. The landlord complied with the directions given, but the tenant took no part in the further proceedings and did not appear at the hearing on 3rd June 2015.

Determination

4. In the absence of any contest by the tenant, the Tribunal determines that the sum of £2,157.30 is payable by way of interim service charges for 2015.

Costs

5. The landlord seeks to recover the fees payable to the Tribunal in respect of the application, £125, and the hearing, £190, under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, which gives the Tribunal a discretion as to which party should pay those costs. In our judgment, it is appropriate to make no order in respect of these costs. We acknowledge that this is an unusual order where the landlord (who has borne the payment of the fees) has won

comprehensively, but it is appropriate on the unusual facts of this case, which we hope never to see repeated.

6. The respondent tenant, Ms Amin, is the original tenant under the lease. The current landlord completed on the purchase of the freehold on 22nd May 2014. At that time, as Mr Paine told us, Ms Amin owed no arrears of service charge. Circle Residential Management Ltd ("Circle") took over management shortly afterwards.

7. Circle put in hand steps to carry out major works of roof repairs. On 22nd September 2014 they gave a Stage 1 notice under section 20 of the Landlord and Tenant Act 1985. On 6th November 2014 they gave a Stage 2 notification with quotations from two firms, the cheapest of which (from Southern Roofing and Guttering) was for £2,300, including VAT, but to which professional fees etc would need to be added. Mr Paine told us that there was a demand raised in November 2014 for a payment on account in respect of the major works, but the demand was not in evidence before us and Mr Paine said that the landlord did not rely on it.

8. On 15th December 2014 Circle wrote to Ms Amin and said: "[I]f the Flat Owners do not agree that the proposed works and cost thereof are reasonable the Landlord can apply to the First Tier Tribunal (Property Chamber) to determine the matter." It required the tenant to return a signed copy of the letter acknowledging that the works and the cost thereof were reasonable.

9. The Tribunal notes that (as Mr Paine conceded) there is no legal basis on which Circle could require the tenant to make such a concession. There may be rare cases where the sums involved in proposed works are very large or where there is a genuine doubt about whether works are recoverable under the service charge provisions of the relevant leases. In such cases, efforts to establish that there is no dispute about the recoverability in principle of the works prior to commencement can sometimes be justified. This is not such a case. The proposed works are standard and modest.

10. Circle sent a chasing letter on 12th January 2015 in which they said: "If we receive all signed s27 letters from the leaseholders then an application to the First Tier Tribunal (Property Chamber) would not be necessary." Ms Amin replied by email on 14th January 2015 in which she said: "This is all new to me as there was no such management arrangement before and I don't live in the UK, hence it was a shock. I hope I didn't give you the impression that I am disputing, I'm just questioning... As I explained I am now looking in the issues, taking action to raise funds to help me cover and also seek advice as I am to cover huge costs for the communal area which I have no access or need to even enter into and on top of this I have to cover a huge non communal area on my own." The letter continues and explains that Ms Amin would want to discuss the matter with the other tenants in the

block. She also raised an issue about whether there was double counting of insurance for the period from May 2014 to December 2014.

11. The following day there was further email correspondence about whether a £480 payment already made was being put against insurance in 2015 or in 2014. Ms Amin said that if the insurance was "May 15 to May 16, there is no duplication for me, and you have the opportunity to shop around for a more reasonable rate. The only issue then is that the budget is too large."

12. On 3rd February 2015, the landlord served audited accounts for 2014, showing £3,698.83 of recoverable expenditure and gave an estimate for 2015 of £7,191.00.

13. On 11th February 2015 the landlord made a formal demand, complying with sections 47 and 48 of the Landlord and Tenant Act 1987 for payment of £2,157.30. Credit was given for £480.00 already paid by the tenant on 30th January 2015. This was the demand on which the landlord could have relied at the hearing before us.

14. On 20th February 2015 the tenant paid a further £600 to the landlord on account of service charges. The application to the Tribunal was made on 27th February 2015. Although Mr Paine told us that the final service charges for 2014 had not been paid by Ms Amin, the application includes no request to determine her liability in respect of those sums.

15. On 2nd March 2015, Ms Amin paid a further £1,002.30. This reduced the outstanding balance on the interim service charge demand to £75.

16. The Tribunal held a case management conference on 19th March 2015. Neither side appeared. The landlord did not inform the Tribunal that the amount left unpaid had been reduced to £75. In consequence the Tribunal gave directions for a hearing on 3rd June 2015. On 2nd April 2015 the landlord paid the hearing fee of £190. On 20th April 2015 Ms Amin paid the last £75. All these monies were allocated to the 2015 interim service charge demand, so nothing remains to be paid.

17. At the hearing Mr Paine said that the fees which Circle charged for the application and his appearance would be about £2,000 plus VAT, a total of £2,400. The total costs incurred by the landlord are therefore about £2,715, which is more than the total of the interim service charge demand.

18. In our judgment the course adopted by Circle was disproportionate. This was not a case of a tenant who was flatly refusing to pay. She had modest queries about a modest budget and was wanting some time to pay. Circle had only recently taken over management of the block. Its approach was in our judgment one of a bully. There was no legal justification for their demand that the tenants accept that the proposed works and costs were reasonable. In our judgment making such a demand was an attempt to manufacture a dispute, so that the landlord could make an application to the Tribunal. Moreover, even if the

tenant had signed the letter as Circle demanded, that would have afforded the landlord very little comfort, since tenants can always challenge the final service charge demand.

19. Landlord and their managing agents need to understand that resort to the Tribunal should be a last, not a first, resort. (The same goes for resort to the Courts.) In the current case, the formal demand for payment was made on 11th February 2015. The application to the Tribunal was made on 27th February 2015, a mere sixteen days later. That in our judgment is grossly unreasonable. Further the costs of bringing this Tribunal application are, and would always have been, disproportionate. Sometimes, of course, a landlord has no alternative but to bring proceedings, even where the cost is disproportionate, but this is not such a case. Spending £2,715 in respect of an interim service charge demand for £2,157.30 requires particular justification and that is simply not forthcoming in the current case.

20. For these reasons we refuse to make an order that the tenant reimburses the landlord for the fees payable to the Tribunal.

21. We should add that, even if we were wrong in our assessment of the landlord's overall behaviour, we would still have refused an order in respect of the £190 hearing fee. By the time of the case management conference, the only sum outstanding was £75. Rule 3(2)(a) of the Procedure Rules (the overriding objective) requires cases to be dealt with in "ways which are proportionate." Rule 3(4)(a) puts a duty on the parties to "held the Tribunal to further the overriding objective." Here the landlord should have drawn the Tribunal's attention to the modest amount in dispute. The Tribunal would almost certainly have ordered a paper determination of the matter, so that the hearing fee (and much of Circle's expenditure of time) would have been saved. The landlord could have asked for a variation at any time up to 2nd April 2015, when Circle paid the hearing fee.

22. We were not shown any provision of the lease which would permit the landlord to recover the costs of the current proceedings against the tenant. (The copy of the lease provided to us omitted at least Schedules 1 and 2.) However, if there is an attempt to recover the costs of the current proceedings against the tenant, either individually, or against the tenants collectively, through the service charge account, then it would be open to Ms Amin to make an application to the Tribunal under section 20C of the Landlord and Tenant Act 1985.

Name: Judge Adrian Jack **Date:** 3rd June 2015

Schedule of 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.

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) the appropriate 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.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Service Charges (Consultation Requirements) (England) Regulations 2003

Schedule 3

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS UNDER QUALIFYING LONG TERM AGREEMENTS AND AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

Notice of intention

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;

(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;

(e) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

Inspection of description of proposed works

2. (1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works and estimated expenditure

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any

tenant or the recognised tenants' association, the landlord shall have regard to those observations.

Landlord's response to observations

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.