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

Case reference : **LON/00AZ/LSC/2014/0659**

Property : **Flat 16 Beacon Gate, Kitto Road,
London SE14 5UB**

Applicant : **Beacon Gate (Management Co)
Limited**

Representative : **Neil Spurrier (Company Solicitor),
Aston Rose (West End) Limited**

Respondent : **Juliet Nkyi**

Representative : **(No response to claim)**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal members : **Judge Robert Latham
Neil Martindale FRICS**

**Date and venue of
hearing** : **22 April 2015 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **22 April 2015**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that:
- (i) an advance service charge of £956.43 was payable on 1 April 2012 for the year 2012/3;
 - (ii) an advance service charge of £974.95 was payable on 1 April 2013 for the year 2013/4;
 - (i) an advance service charge of £1,025.75 was payable on 1 April 2014 for the year 2014/5;
- (2) The Tribunal determines that the Respondent shall pay the Applicant £125 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2012-14. The Applicant attached to its application a statement of account dated 22 December 2014 which recorded an outstanding balance of £2,300.70. This included a number of administration charges which we consider hereafter. The Statement suggests that there has been a history of default by the Respondent. The last payment that she seems to have made was on 1 December 2005. Subsequent payments have been made by Northern Rock, presumably as her mortgagee in order to avoid the risk of forfeiture.
2. On 22 January 2015, the Tribunal gave Directions. The Tribunal identified that the issue in dispute was the service charges payable for the years 2012-2014:
 - (i) The Respondent tenant was required to file her Statement of Case in the form of a Schedule by 19 February. The Respondent failed to do so. Indeed, the Respondent has played no part in these proceedings.
 - (ii) The Applicant has filed a Bundle of Documents which includes a Statement from Neil Spurrier.
 - (iii) The Tribunal directed that the matter should be determined on the papers, unless either party requested an oral hearing. Neither party has done so.

3. The relevant legal provisions are set out in the Appendix to this decision.

The Tribunal's Determination

Service Charges

4. The Respondent has played no part in these proceedings. The Tribunal therefore looks to the Applicant to prove its case as set out in its application form. As stated, this relates to the payability and reasonableness of the service charges demanded for the years 2012-2014.
5. The Applicant occupies her flat at 16 Beacon Gate pursuant to a lease dated 29 June 1995. The Service Charge provisions are set out in Part IV of the Schedule to the lease. The Applicant is required to pay 2/112 of the service charges payable in respect of the block. The landlord is required to take an account on 31 March of each year. The landlord shall within two months of the account being taken, serve on the tenant a Notice in Writing stating the expenditure for the that year and an estimate of the sum required for the following year. The tenant is required to pay the advance service charge. There should be a reconciliation when the final accounts have been certified.
6. The Applicant has provided the Tribunal with the following:
 - (i) The Accounts for 2012/3 and 2013/4;
 - (ii) The budget for 2014/5;
 - (iii) Service Charge Demands dated 14 March 2013, 13 March 2014, and 8 July 2014.
 - (iv) A Statement of Account, dated 25 November 2014 which is identical (apart from the date) to that attached to the application form.
7. The Statement of Account records the following:
 - (i) On 21 July 2011, there was an end of year balancing credit of £43.23. This seems to have been the last year in which a reconciliation was made. However, in subsequent years, there has only been a modest surplus or deficit on the service charge account, namely 2011/2: a surplus of £574; 2012/3: a deficit of £705.61; and 2013/4: a deficit of £4,676.
 - (ii) On 1 April 2012, the landlord required payment of £956.43 as an advance service charge for the year 2012/3.

(iii) On 1 April 2013, the landlord required payment of £974.95 as an advance service charge for the year 2013/4.

(iv) On 1 April 2014, the landlord required payment of £1,025.75 as an advance service charge for the year 2014/5.

8. The Tribunal is satisfied that this sum is payable pursuant to the terms of the lease. There is no suggestion that any of the claims claimed are not payable or reasonable. The Tribunal finds that the sum demanded is both payable and reasonable.

Administration Charges

9. The Statement of account also includes a number of administration charges. Strictly, these were not part of the issues which the Applicant invited the Tribunal to determine in its application. However, the Tribunal makes the following observations, which are not strictly part of our determination:

(i) On 17 January 2013, a court fee of £95 was debited. The Tribunal has been provided with no information relating to these Court proceedings. It would be a matter for the County Court to determine what costs, if any, are payable in such proceedings.

(ii) On 17 January 2013, £14.68 was debited as interest for late payment. This would seem to be payable pursuant to Clause 3(5)(b) of the lease.

(iii) Various debt recovery fees are claimed, namely £150 (22.6.12); £150 (24.5.213) £150 (8.7.14). There is no evidence that these were incurred for the purposes of or incidental to the preparation and service of a Section 146 Notice (see Clause 2(5)). Paragraph 9 of Part IV of the Schedule would only seem to permit the landlord to pass on the cost of debt recovery through the service charge account borne by all tenants.

Costs

10. The Applicant seeks an order for costs under Rule 13(1)(b) of the tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in the sum of £2,969. A Schedule of Costs is at p.59. Costs are claimed on grounds of the unreasonable conduct of the Respondent. This Tribunal is normally a "no costs" jurisdiction. An order under Rule 13 will only be made in exceptional circumstances. The mere failure of a party to respond to a claim cannot be characterised as "unreasonable conduct".

11. The reasonable cost of these proceedings party may be a cost which the Applicant could charge to the service charge account pursuant to Paragraph 9 of Part IV of the Schedule. The Respondent has not asked the Tribunal to make an order pursuant to Section 20C of the Act. We would not have been minded to do so, had such an application been made.
12. The Applicant finally asks us to consider whether the landlord could recover these costs against the Respondent as an administration charge pursuant to Clause 2(5). This is not a matter raised in the application form and is therefore not an issue upon which the Respondent has been given an opportunity to respond. The landlord would need to satisfy the Tribunal that these costs were incurred “for the purpose of or incidental to the preparation and service” of a Section 146 Notice. We have had to regard to the Court of Appeal decision in *Freeholders of 69 Marina v Oram* (“69 Marina”) [2011] EWCA Civ 1258; [2012] L&TR 4 and the decision of the Upper Tribunal in *Barrett v Robinson* (“Barrett”) [2014] UKUT 0322 (LC). In *Barrett*, the Deputy President, Martin Rodger QC, gave guidance on how *69 Marina* should be applied by Tribunals. Having regard to his guidance at [51] and [52] and to the papers before us, the Tribunal would not have been satisfied that these proceedings were anything more than a debt collection exercise. No pre-action correspondence has been filed indicating that this application was a prelude to forfeiture proceedings.
13. In the light of the decision that we have reached on the service charge claim, the Tribunal orders the Respondent to refund tribunal fees of £125 paid by the Applicant within 28 days of the date of this decision.

Judge Robert Latham

22 April 2015

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.

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.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).