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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/29UE/LIS/2015/0057**
Property	:	**31C Salisbury Road, Dover, Kent, CT16 1EX**
Applicant	:	**Waterglen Limited**
Representative	:	**Mr David Bland LLB (Hons.) Legal Executive Lawyer for the Regis Group**
Respondent	:	**Ms M Scott**
Representative	:	**In person**
Type of Application	:	**s27A LTA85**
Tribunal Members	:	**Judge D Dovar** **Mr R Athow FRICS MIRPM**
Date and venue of Hearing	:	**20th January 2016, Dover**
Date of Decision	:	**28th January 2016**

DECISION

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1. This is an application under section 27A of the Landlord and Tenant Act 1985 ('the Act') for a determination of the payability of service charges for the years ending 2006 through to 2014 and for the first demand for estimated charges for the year ending 2015.

2. The Applicant commenced proceedings in the County Court Money Centre in December 2014 claiming a sum of £5,995.87 arrears of service charge. That claim was defended (and a counterclaim was made) and by order of DJ Hugman dated 21st April 2015, the matter was transferred to this Tribunal for a determination as to 'the reasonableness of the service charges for the period 1st January 2006 onwards and the manner in which the charges have been made to the lessee.'

3. The Tribunal gave directions on 2nd September 2015 and identified various issues to be determined, including: whether there had been compliance with section 20 of the Act; whether the cost of works were payable by the tenant under the terms of the lease; whether the cost of works were reasonable (in particular in relation to the nature of the works, the contract price and the supervision and management fee); whether an order under section 20C of the Act should be made or whether reimbursement of the application and/or hearing fee should be made.

4. The parties complied with the directions as to service of statements of case and the provision of a bundle. Both parties also relied on a number of authorities.

Inspection

5. On the morning of the hearing the Tribunal inspected the Property. It is a mid-terrace four storey house converted into three flats situated in the centre of Dover close to all amenities. The Property was built about 125 years ago of traditional construction over four floors, and has brick elevations and a tiled roof. There are uPVC gutters and downpipes and what appears to be timber soffits and barge boards. These require redecoration. All windows are demised to each flat and are of uPVC

construction. The forecourt is fully concreted over. The Tribunal could not gain access to the rear of the property and as a result can make no observations thereon.

6. The lower floor is at semi-basement level with its own entrance. The other two flats are approached via a set of external steps leading up to the front door. The communal entrance hall is small with doors to both of these flats. The internal communal facilities are minimal; there is only one electric light which, the Respondent said was wired directly off the supply to the ground floor flat.

Terms of the lease

7. Ms Scott's lease is dated 7th July 1989 and is for a term of 999 years from 29th September 1988. She purchased the Property in 2006. The relevant terms of the lease are

    a. Paragraph 7 of the particulars states that the Lessee is to pay 50% of the total annual expenditure incurred by the Lessor in performing the obligations under the lease;

    b. By clause 1.6 the accounting period is set as 1st January to 31 December each year;

    c. Clauses 1.12 defines the 'Interim Charge' as 'the amount specified in paragraph 1.3 of the 5th schedule;

    d. Clause 4.4 provides for the Interim Charge and the Service Charge to be paid in the manner provided for in the 5th Schedule in default of which it is recoverable as rent in arrears;

    e. Clause 6 states that the Lessor's covenants set out in clause 6 are subject to and conditional on the Lessee paying the Interim Charges and the Service Charge;

    f. By clause 6.7.1, the Lessor covenants to 'employ at the Lessor's discretion a firm of Managing Agents to manage the Building and to discharge all proper fees salaries charges expenses payable to

such agents or such other person who may be managing the Building including the cost of computing and collecting the rents in respect of the Building or any parts thereof';

g. Further by clause 6.7.2, the Lessor covenants ' to employ all such surveyors builders architects engineers tradesman accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building';

h. A reserve fund is permitted by clause 6.11, which enables the Lessor to 'set aside (which set aside shall for the purposes of the Fifth Schedule hereto be deemed an item of expenditure incurred by the Lessor) such sums of money as the Lessor shall reasonably require to meet future costs as the Lessor may reasonably expect to incur of replacing maintaining and renewing those items which the Lessor has hereby covenanted to replace maintain or renew.'

i. The 5th Schedule provides for the Service Charge in the following manner:

    i. The costs and expenses covered include that of employing Managing Agents and of any Accountant or Surveyor employed to determine the total expenditure and the amount payable by the Tenant;

    ii. The Service Charge is the actual expenditure in the yearly period from 29th September;

    iii. The Interim Charge is such sum as 'the Lessor or his Managing Agents so specify at their discretion to be a fair and reasonable interim payment' and is payable in March and September each year;

    iv. Where there is a surplus of Interim Charge over Service Charge that is to be credited to the Tenant;

v. 'as soon as practicable after the expiration of each Accounting Period there shall be served upon the Tenant by the Lessor or his agents a certificate containing' the total expenditure for that accounting period and the amount of the Interim Charge paid.

Sums claimed

8. Waterglen claimed a total of £5,995.87 by way of service charge arrears. In order to make out their claim for those sums they provided:

    a. a statement of account going back to 1st January 2006;

    b. various statements of actual expenditure;

    c. various demands;

    d. evidence from two of the managing agents who had managed the Property over the years.

Items in dispute

9. Ms Scott challenged a number of items within each year. Before dealing with each year in turn and the challenges raised by Ms Scott, one recurring issue was that of the management fee. This was challenged on a number of bases.

10. The managing agent has changed over the years in question. Originally it was Wood Management (DGA plc), then Countrywide from about 2006 and then the current managing agents, Gateway Property Management Limited.

No work carried out

11. Ms Scott essentially said that the managing agents had not done anything to warrant their fees. On an initial look at the actual expenditure for each year the Tribunal was struck with the fact that in the 8-9 years under scrutiny, the majority of the actual expenditure consisted solely of management fees and accountancy fees; in most cases the one justifying

the other. Further, that there appeared to be little by way of consideration as to what the budgets for each year should be. When asked as to what sort of fee the Respondent considered would have been justified, she said £100 per flat per annum.

12. Mr Bland on behalf of Waterglen accepted that little work had been carried out over the years, but relied on the fact that no service charges had been paid by Ms Scott. He made the simple point that no works were done because no money was paid by way of service charge. Whilst the Tribunal can see the force in that proposition, the evidence provided to the Tribunal did indicate that little was done by way of management to justify the fees claimed. There was no written evidence setting out what was done by the managing agents. There was no indication that anyone had given proper consideration to any budget; the majority of the budgets provided were far in excess of the previous years expenditure and no thought appeared to have been given to what might be needed in the coming year. Save for the first year in question, insurance was placed by a third party. Indeed, for the first year under scrutiny, the evidence suggested that no end of year reconciliation had been carried out (it was certainly not applied to the statement of account) and the budget included items, such as electricity, for which an agent who had undertaken a review of the property, would have realised was not payable.

13. Mr Bland contended that the management fee was in line with the industry and that generally it included inspecting the property, setting budgets, invoicing the service charge, dealing with leaseholder enquiries, and the appointment of contractors. The Tribunal was told that the property managers undertook visits; first being every four months, then four times a year from 2009 and presently they undertake 6 visits a year.

14. The Tribunal has taken these factors into account when making its determination as to the level of management fee recoverable for each of the years in question. Section 19 of the Act permits Waterglen to recover the cost of management fees only so far as those costs were reasonably incurred and/or the work carried out was to a reasonable standard.

Whether management fee should include accountancy fee

15. Another recurring aspect was that of the separate charge for accountancy fees. Ms Scott maintained that they should form part of the management fee and should not be billed separately as they invariably had been done over the years. She relied on the RICS Service Charge Residential Management Code (2nd Ed) paragraph 2.4 which suggested that the fee should normally include the production and circulation of service charge accounts. She also relied on a number of Tribunal decisions which referred to this paragraph.

16. Mr Bland submitted that it was legitimate to make both charges as: a.) the lease specifically provided for these costs to be recovered in the 5th Schedule; and b.) the expenditure was warranted and the management code did not prohibit such additional charges. Further if it were to be part of the management fee that would only cause that fee to increase.

17. The Tribunal agreed that the management code did not prohibit such charges, but suggested that in most cases it should form part of the management fee. However, in this case it was hard to see what warranted any additional fee or external work given that this was probably the simplest accounting exercise that it was possible to carry out. As already mentioned, most years only had two items of expenditure: management fees and accountancy fees. As a result, the Tribunal did not consider that a separate accountancy fee was necessarily warranted in this case. However, it has allowed some of the fees incurred in part and has borne that in mind when setting the management fee recoverable for each year.

Statutory consultation

18. Ms Scott challenged the management fee and the insurance charges on the basis that Waterglen had failed to follow the statutory consultation procedures prescribed by section 20 of the Act. The Tribunal did not consider there was any merit in these challenges given that these items were neither major works nor qualifying long term agreements (both insurance and management contracts not being in excess of one year).

Year end 2006

19. For the year end 2006, a total of £1,702 was demanded by way of service charge in advance (two tranches of £851). Waterglen was unable to provide any end of year account for this year and there was no indication on any of the statements of account provided that any reconciliation had been carried out in respect of these sums.

20. The parties agreed that, had that reconciliation been carried out, it would have had an effect on the sum claimed. The Tribunal is therefore in a difficult position in that it is clear that the figure claimed by Waterglen is based on a statement of account that is not accurate.

21. The budget upon which the interim demands were based has been provided; although that has a total of £2,220, which would not tally with the sums charged to Ms Scott. Her contribution is 50% of the whole, so the on account demands should not have been more than £1,110. In any event, that budget provides for: £960 insurance; £500 repairs; £100 electricity; and £660 management fees.

22. Having considered the other years in contention and taking into account the points made above, the Tribunal considers that the following sums are recoverable by way of expenditure for this year:

    a. £300 for management fees; and

    b. £960 for Insurance.

23. No evidence of actual expenditure was given and it does not appear that there was any. Ms Scott said there was no landlord's supply of electricity and the Tribunal noted that no charge appeared in subsequent years.

24. Therefore for the year end 2006, the Tribunal considers that the total service charge payable is **£1,260** and Ms Scott's contribution is **£630**.

Year end 2007

25. For the year end 2007, the actual expenditure was £1,539.86: being £739.57 for insurance, £660 for management fees and £144.90 for accountants charge (less interest).

26. Ms Scott challenged the insurance premium for this year. She had obtained an alternative quote for £500.99. However, this did not include terrorism cover and it was not clear whether or not the terms were comparable to that obtained by Waterglen. The Tribunal was not satisfied that sufficient comparable evidence had been included to displace the sum claimed by Waterglen.

27. For this year, the Tribunal allows the insurance in full (£739.57), £300 for a management fee and £75 for the accountancy fee. Therefore the total expenditure allowed is **£1,114.57** and Ms Scott's contribution is therefore **£557.28**.

Year end 2008

28. The actual expenditure for this year is £831.93, being: £86.25 accounting and £745.81 management fees.

29. The Tribunal allows £300 for management fees and £75 for accounting. Therefore the total payable for this year is **£375** and Ms Scott's contribution is **£187.50.**

Year end 2009

30. The total expenditure for this year is £1,093.65: being £258.75 for a health and safety report, £144.90 for audit fees and £690 management fees.

31. Ms Scott claimed that no audit had been done. Further she challenged the health and safety report on a number of grounds being: no access to the building was given so it could not be complete; it was not acted upon and so was worthless; and a fire assessment should have been carried out.

32. Mr Bland explained that the reference to the audit fee was not for this year, but for the cost of the 2007 audit fee. However, the document relied on by them as the audit was in fact a notice under section 20B of the Act. The

only breakdown of actual costs incurred was provided by the then managing agents.

33. Mr Bland pointed out that the Health & Safety report was compiled by experts and the reason why the recommendations were not carried out was because, as a result of the failure to pay the service charges, there was no money to carry out that work.

34. The Tribunal allows £300 for management fees, £75 for accountancy fees and the report in full. Even though it was not acted on, the report was something that was legitimate at the point of commission. The Tribunal allows £258.75. Therefore the total allowable expenditure for this year is **£633.75** and Ms Scott's contribution is **£316.87**.

Year end 2010

35. The total expenditure claimed for this year was £816.74; being £111.74 audit fee and £705 management fees. Waterglen was unable to provide an invoice for the audit but claimed that this was in line with the amount that one would expect to see. The Tribunal was not satisfied with that explanation. It was not clear what audit or accountancy work that had been carried out to justify any amount.

36. The Tribunal allows a total of **£300** for management fees, Ms Scott's contribution being **£150.**

Year end 2011

37. The total expenditure claimed for this year is £1,143.24 being audit fees of £90, management fees for 6 months of £360, repair works of £249.60 and surveyors fees of £641.64.

38. Ms Scott challenged the repair works on the basis that the wrong works were carried out and therefore it was a waste of money. However, no expert evidence was provided in relation to suitability of these works. She also challenged the audit fee as there was no audit. Waterglen clarified

that this was in reality the managing agent's fee for providing the accounts for this year. However, no accounts had been provided in the bundle.

39. As for the surveyor's fees: this was in two parts: the first for the repair works that had been carried out, the second a general survey or the property in order to determine what works were needed. Ms Scott challenged these fees on the grounds that as no access had been provided to the building, the report was of limited value. Further, it had not been acted on and so was now redundant.

40. The Tribunal considers that the repair works were reasonable and the survey costs were properly incurred. Waterglen informed the Tribunal that although the survey was a few years old, it had been reviewed and was still relevant and was the subject of a section 20 consultation. It appears that from this point the managing agents were more proactive in that consideration was being given to carrying out major works to the Property.

41. The Tribunal therefore allows the cost of the repair works (£249.60) and the survey in full (£641.64). It also allows £360 for management fees, but that sum includes accountancy/audit fees. Therefore the total allowable expenditure for this year is **£1,251.24** and Ms Scott's contribution is **£625.62**.

Year end 2012

42. The actual expenditure for this year was £1,665, being management fee £742, accountancy £72, bank charges £18, postage £18 and professional fees £815. The latter cost was re-credited in the following years accounts and so the Tribunal does not take it into account.

43. The Tribunal allows £600 for the management fee which includes the other items. The total allowable expenses is therefore **£600** and Ms Scott's contribution is **£300**.

Year end 2013

44. The total expenditure for this year was £850. The costs were identical to that of the previous year. The Tribunal allows the same sums as with the previous year. The total allowable expenses is therefore **£600** and Ms Scott's contribution is **£300**.

Year end 2014

45. The actual expenditure for this year is £1,327; being, £764 management fees, accountancy £72, bank charges £18, postage £18 and legal expenses of £455.

46. The legal expenses were the issue fee for the county court claim.

47. Given that Waterglen will recover this sum from Ms Scott if they are successful in this action, the Tribunal does not think it is reasonable to pass through the service charge. Either they will recover it from her in the proceedings, if they don't, it will follow that it would not have been reasonable for them to issue and the sum should not be recoverable.

48. The Tribunal allows the same sums as with the previous years. The total allowable expenses is therefore **£600** and Ms Scott's contribution is **£300**.

Year end 2015

49. For this period, the only sum in question is the half yearly on account demand for £300. Given that this equates to a yearly anticipated spend of £1,200 and that some attention has now turned to maintaining the Property, the Tribunal considers that this is a reasonable estimate and allows the sum in full; **£300** is therefore payable on the half yearly demand.

Additional costs etc from statements

50. In addition to the yearly expenditure set out above, other items have been added to Ms Scott's statement of account. In particular the cost of letters warning of legal action if she did not pay her service charge arrears. The Tribunal considers that these sums are excessive and in any event should

have been included within the management fees. Therefore the sums claimed on 5th February 2009, 5th March 2009 and 20th November 2009 are not allowed.

51. £300 has been claimed on 1st November 2012 in relation to legal expenses. Again as with the issue fee referred to above, these appear to be costs of and incidental to the proceedings and therefore should not fall within the service charge, but will be recoverable in total from Ms Scott if Waterglen are successful in these proceedings.

52. The final three items on the statement of account and the claims for interest were items which Waterglen accepted were matters for the County Court and not this Tribunal.

Total payable

53. Therefore for the years in question (being from 2006 to the first payment on account for the year 2015), the sum of **£ 3667.27** is payable, made up as follows:

2006	£	630.00
2007	£	557.28
2008	£	187.50
2009	£	316.87
2010	£	150.00
2011	£	625.62
2012	£	300.00
2013	£	300.00
2014	£	300.00
2015	£	300.00
Total Due	£	3,667.27

This figure does not take into account any sums actually paid by Ms Scott in this period.

Section 20C

54. Ms Scott made an application for an order under section 20C of the Act, precluding Waterglen from putting the cost of these proceedings through

the service charge. She stated she had been asking for clarification of all these matters and had not been provided with accounts and those that were submitted were difficult to read. In response, Waterglen contended that all the correspondence had all been responded to and this application was necessitated because of the total failure of Ms Scott to make any payment in respect of service charges. It was therefore proper for this claim to be made.

55. The Tribunal acknowledges the fact that no service charges have been paid for a significant time. However, the Tribunal also considers that Ms Scott has to some extent been justified in her approach. Not only because of the reductions made to the sums recoverable but also because of the lack of work undertaken. The Tribunal therefore makes a partial section 20C order limiting Waterglen to submitting £350 in respect of its costs of these proceedings through the service charge account.

Judge D Dovar

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.