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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LSC/2014/0455**
Property	:	**13 Windsor Court, Clapham SW4 0JF**
Applicant	:	**Christine Slevin**
Representatives	:	**In person**
Respondents	:	**CoPhil Properties Limited**
Representative	:	**Mr M Cohen, Director**
Type of Application	:	**For the determination of the liability to pay a service charge**
Tribunal Members	:	**Judge W Hansen (chairman)** **Mr P Roberts DipArch RIBA** **Mr L Packer**
Date and venue of Hearing	:	**15th December 2014 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**23rd December 2014**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that all the service charges which are the subject of this application are payable.

(2) The Tribunal declines to make an Order under section 20C of the Landlord and Tenant Act 1985.

(3) The Tribunal declines to make an Order under paragraph 13(2) of the 2013 Tribunal Procedure Rules.

The Application

1. The Applicant is the lessee of Flat 13 Windsor Court ("the Flat"). When built, the Building of which the Flat forms part comprised 4 shops at ground floor level and 15 flats above. The Tribunal was told that there are now 18 flats arranged over 4 upper storeys. By virtue of an application dated 27th August 2014 the Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness and payability of certain service charges charged to the Applicant.

2. The application relates primarily to the reasonableness and payability of the following service charge items for the years 2009 to 2013 inclusive:

Cleaning charges

Management charges

Fire safety charges

3. The application also raises issues in relation to charges levied in respect of works carried out in 2009 ("the 2009 Works") and 2014 ("the 2014

Works") as well as two very minor issues relating to repairs to the front doors ("the Door Repairs").

4. The Applicant's lease ("the Lease") is dated 6th January 1976 and is between The Housing and Land Development Corporation Limited (1) and John Patrick Ronayne (2). The term of years is now vested in the Applicant and the Respondent is the current owner of the freehold interest in the Building. The relevant legal provisions of the 1985 Act are set out in the Appendix to this decision.

5. The Lease was for a term of 99 years from 1st January 1975 at a ground rent of £25.00 per annum. Clause 1(b) provides for the payment "*by way of further or additional rent such sum or sums ... as shall be a one-fifteenth part of the amount which the landlord may from time to time expend and as may reasonably be required on account of anticipated expenditure (i) in performing the landlord's obligations of repair... (ii) in payment of the proper fees of the Surveyor or Agent appointed by the landlord in connection with the carrying out ... of any of the repairs... (iii) in payment of rents rates taxes water gas electricity and other services charges or outgoings... (iv) in providing such services facilities and amenities or in carrying out works or otherwise incurring expenditure as the landlord shall in the landlord's absolute discretion deem necessary for the general benefit of the Building and its tenants...*" It should be noted that the Respondent is in fact charging the Applicant one-twentieth of the relevant expenditure to reflect the additional flats added to the Building since the Lease was granted.

Preliminary Point

6. The Applicant raised a preliminary point. Although she has paid all the service charges in issue in these proceedings, she relied on section 21B(3) of the 1985 Act and sought to claim repayment of all sums already paid on the basis that the demands served upon her had not

contained the information required by The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (SI 2007/1257). In point of fact this is correct in that the demands do not contain the required information. However, the 1985 Act confers a right to withhold payment in such circumstances, not a right to reclaim in the Tribunal sums already paid. We say no more about what other steps the Applicant and Respondent might take in relation to this issue but it is of no further relevance for the purposes of this decision.

The 2009 Works

7. The Applicant challenged her liability to pay any sums in respect of the 2009 Works on the basis that there had been inadequate consultation. The point taken by the Applicant is a short point. The Applicant relies on the terms of a letter dated 30th March 2009 sent by the Respondent to all the lessees, the material part of which reads as follows:

> *"We now enclose the priced estimates received, the lowest being from Coldman & Kerr Ltd. [...] Accordingly we propose to accept the lowest tender received from Coldmans ...*
>
> *In accordance with the Landlord and Tenant Act 1985 as amended ... we now give you one month ... to make your observations to us at our above office. The Surveyor will then instruct the Contractor to commence thereafter."*

8. The Applicant contended that it was clear from this letter that the Respondent had already made up its mind on who to appoint and that the offer of consultation was therefore just "for show". Mr Cohen strongly denied this and told the Tribunal that it was not his intention to appoint Coldman & Kerr regardless of any observations received. Whilst the letter could have been worded better, based on the evidence given by Mr Cohen the Tribunal are satisfied that no decision had yet been made and that the Respondent remained open to observations at

that point, of which (we note) there were none from the Applicant or (so far as we know) any other leaseholder. Accordingly, we are satisfied that the Respondent was entitled to levy a service charge in respect of the 2009 Works and no issue as to dispensation arises.

Cleaning Charges

9. This issue arises in relation to the period 2009-2013. According to the Scott Schedule the sums in question amount to £2,274 per annum. In fact, the Respondent has been charging £167.75 per month = £2,013 but nothing turns on this modest difference. The charge is computed on the basis of 2 hrs a week which equates to 104 hours a year. The hourly rate is therefore £19.36. The duties involved are set out at page 71. The Applicant said the charges were unreasonable and that the work could be done in no more than 1 hour per week and she relied on a number of quotes, the lowest of which was from a domestic cleaner called Maya who quoted £10.80 per hour. The Tribunal noted that none of the cleaners who provided a quote had actually visited the Building or made their own assessment of the time that it would take to clean the Building. The Tribunal noted too that the Respondent had obtained a variety of other more comparable quotes all of which were higher than £167.75 per month (see pages 74-75 and pages 105-108). These contractors had been sent a list of the duties involved before quoting and one had actually visited the Building. Having regard to the nature of the Building and its common parts, the Tribunal concluded that both the number of hours and the hourly rate charged by the Respondent's cleaning contractor were reasonable. The sums claimed in respect of this item are therefore payable for each of the years in question.

Fire safety charges

10. This issue arises in relation to the period 2010-2013. The Scott Schedule identifies the sums in issue as being £1,177.37 for 2010, £444 for 2011, £917.14 for 2012 and £685.24 for 2013.

11. In respect of the year 2010, the charges were 2 x £141.00 for biannual inspection and testing of the fire alarm and emergency lighting and £572.24 for the annual service of the fire extinguishers. This latter sum was made up of 2 invoices from a company called Uny Systems Limited, one for Block A (£287.88) and one for Block B (£284.36). Each invoice covers not only routine maintenance of the fire extinguishers at a cost of £55.00 per Block but also replacement parts and the replacement of 3 fire extinguishers at a cost of £85.00 each. The Applicant contended that bi-annual inspections were too frequent and that annual inspection were sufficient, although she appeared to accept that the relevant British Standards do not say that one annual inspection is sufficient. The Applicant relied on a rival quote which purported to charge £25.00 call-out and £5.00 for each extinguisher. The quote was qualified by the words "*if your fire extinguishers are in good condition*" and did not quote for replacement parts or labour. She also relied on a quote from Elite Fire Protection Ltd which quoted £73.75 per annum + VAT based on 6 extinguishers. There are in fact 11 extinguishers. It was suggested that this quote would cover for example replacement extinguishers because it said "*spares and refills will be supplied free of charge where due to normal and reasonable usage*" but we are not persuaded that it would include replacement extinguishers.

12. The Tribunal is satisfied that bi-annual inspection and testing is prudent and reasonable and that the Applicant's alternative quotes are not truly like for like. Fire safety is of paramount importance. We are further satisfied that for 2010 the charges for inspection and testing and indeed maintenance, including replacement parts and replacement extinguishers are reasonable.

13. In respect of the year 2011, the charges were 2 x £141.00 for biannual inspection and testing of the fire alarm and emergency lighting and £162.00 for the annual service of the fire extinguishers. In respect of the year 2012, the charges were 2 x £141.00 for biannual inspection and testing of the fire alarm and emergency lighting and £386.14 for the

annual service of the fire extinguishers. In respect of the year 2013, the charges were 2 x £144.00 for biannual inspection and testing of the fire alarm and emergency lighting and £397.24 for the annual service of the fire extinguishers. We repeat our observations above. The charges for servicing appear to have depended in part on whether there was a need to replace extinguishers. We are satisfied that for 2010-2013 the charges for inspection, testing and maintenance of the fire safety equipment were reasonable.

Management Fees

14. For each of the years in question, 2010-2013, the Respondent charged a management fee of 15% of the total expenditure. The charges therefore varied considerably from year to year depending on whether there were any major works. Thus for example, in 2010, which included the lion's share of cost of the 2009 Works, the total charge was £10,994.54 whereas in a more typical year such as 2011 the total management charge was £2,887.31. No separate invoices were rendered in respect of these charges. The management was done in house by Mr Cohen, a director of the Respondent, and an employee Chloe Madden.

15. Although the Applicant questioned the quality of the management service provided, the Tribunal was satisfied that the service provided was of a satisfactory quality. So far as the cost of management was concerned, the Applicant produced no alternative quote and we noted too that whereas the Respondent's charge in a normal year such as 2011 was £144.37 per flat, the rival quotes obtained by the landlord suggested that an alternative agent would be likely to charge £250.00 per flat (page 123) or higher (page 124). The Tribunal was therefore not persuaded that the management charges were unreasonable. However, the Applicant's principal argument was that, whether or not the charges were reasonable, the Respondent was not entitled to charge because "*CoPhil Properties is not a managing agent and is therefore not entitled to any fee*". In other words, whilst the Respondent would have

been entitled to recover in respect of sums expended on an agent, the Applicant contended that the Respondent could not recover a fee for management services that it, the owner of the Building, provided.

16. The starting point in resolving this issue is Clause 1(b) of the Lease referred to above. It is clear from that that the Respondent would be entitled to recover the cost of the employment of managing agents. The issue is whether the Respondent can recover, in effect, the landlord's costs of management. In our view the answer is yes. A similar point was considered by the Lands Tribunal in *LB Brent v. Hamilton* (LRX/51/2005). In that case the tenant was liable to pay a reasonable part of the expenditure incurred by the Council in fulfilling its obligations under Clause 6. It was held that a management fee levied in respect of work carried out by the Council in fulfilling its obligations under Clause 6 was recoverable. George Bartlett QC, the President, said this at [11]:

> *"If repairs are to be carried out or windows painted or staircases cleaned someone will have to be paid for doing the work and someone will have to arrange for the work to be done, supervise it, check that it has been done and arrange for payment to be made. Since the council can only act in these respects through employees or agents it will have to incur expenditure on all these tasks. If it does incur such expenditure, the lessee will be liable to pay a reasonable part of it."*

17. The President came to the same conclusion in *Norwich CC v. Marshall* (LRX/114/2007) and Morritt C took a similar approach, albeit in the context of a commercial lease, in *Wembley National Stadium Ltd v. Wembley London Ltd* [2004] 1 P & CR 3 at [44] where he said:

> *"... I can find nothing in the wording of this Lease in general and the definition of "Expenditure" in particular to confine the relevant services to the actual service to the exclusion of any management cost incurred in its provision. Why, for example, should the wages of the employee who actually applied the tarmac to the surface of the car park be included but the salary*

of he who arranged for the employee to do it and for the tarmac to be available for such application be excluded.

18. For these reasons, whilst accepting the principle that service charges provisions must be construed restrictively, and whilst accepting that each case falls to be considered on its own facts, the Tribunal is satisfied, having regard to the terms of the Lease, that the Respondent was entitled to charge a management fee in the way that it did.

The Door Repairs

19. In January 2013 the Respondent charged the service charge with £165.00 for easing the front doors. The Applicant questioned this charge because in December 2012 she herself had paid £150.00 for similar repair work. However, she then deducted this sum from her next payment to the Respondent. The Respondent accepted this deduction and did not seek to recover the £150.00 as a service charge item. So the net result is that the tenants have been charged once in respect of what was a necessary repair. Later in 2013 the tenants were charged £114.00 for adjustments to the door closers. This was a completely different job following a complaint from a resident. The Applicant advanced no real basis for challenging this sum.

20. The Tribunal is satisfied that the charges for the Door Repairs were necessary and reasonable.

The 2014 Works

21. The basis of the challenge here was two-fold: firstly, the Applicant contended that the internal redecoration to the hallways in 2014 was unnecessary coming as it did 5 years after the last internal redecoration; secondly, she suggested that the surveyor's fees of 12.5% were unreasonable.

22. The Tribunal was satisfied that it was reasonable in all the circumstances to undertake redecoration of the common parts in 2014, 5 years after the last redecoration. Mr Cohen told us that he walked the hallways and that they needed redecoration. The entrance doors open outwards. There was heavy usage of the common parts. There were areas of blown plaster. The Surveyor was satisfied that redecoration was necessary and that it was done to a reasonable standard. Whilst the Applicant said that she could see no difference following the redecoration, she produced no photographic or other evidence to support this contention. In these circumstances the Tribunal are satisfied that the cost was reasonably incurred.

23. As to the surveyor's charges, the Respondent appointed Messrs Shaw & Co to oversee the 2014 Works. Their retainer letter dated 16th January 2014 sets out the scope of the services they provided. These included inspecting the Building and assessing the necessary works, drafting the specification, undertaking the tendering process, drawing up the forms of contract and administering the contract and monitoring the progress and quality of the works. The Tribunal was satisfied that their fee of 11% + 1.5% for CDM services was reasonable and in accordance with the prevailing rate in the market for the provision of such services.

Cost Applications

24. The Applicant applied for an order under section 20C of the 1985 Act that the Respondent should not be entitled to add the costs incurred in connection with these proceedings to the service charge. The Applicant has failed in her application. The Tribunal therefore declines to make a section 20C order. In those circumstances, we make no finding as to whether there is any relevant contractual entitlement in the Lease, no such finding being necessary. The Applicant made an application for reimbursement by the Respondent of the application and hearing fees under paragraph 13(2) of the 2013 Tribunal Procedure Rules. For

substantially the same reasons as are set out above, the tribunal declines to make any order.

Name: Judge W Hansen **Date:** 23rd December 2014

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 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

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.