



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

Case Reference : **MAN/OOBQ/LIS/2014/0006**

Property : **32 Honiton Close, Heywood, Lancashire OL10 2PF**

Applicant : **Honiton Gardens Management Ltd**
Representative : **Hek Jones & Howards Property Management**

Respondent : **Larrfield Ltd**

Type of Application : **Landlord & Tenant Act 1985 – Section 27A**

Tribunal Members : **Judge N Ali**
Mrs A Franks

Date of decision : **27 November 2014**

DECISION

Decision

The Tribunal determines that the amount payable by the Respondent by way of service charges in total for the years 2011, 2012, 2013 and 2014 inclusive is £5000.97

Background

1. The Applicant is the Management Company responsible for the provision of services to the block of 8 flats of which the Property is a ground floor flat. The Respondent is the long leaseholder of the Property.
2. The Applicant made an application in Northampton County Court for the recovery of the outstanding service charges. The matter was transferred to Bury County Court and thereafter to the First-tier Property Tribunal by an order dated 5th June 2014
3. The Applicant has provided a statement of account with an outstanding balance as at 4th August 2014 of £5000.97

The Lease

4. A copy of the lease relating to the flat was available to the Tribunal.
5. The Lease is dated 31st May 1984 and was made between Alwiyah Developments Limited of the first part and Stephen Chadwick of the second part. It grants a term of 125 years from 1st January 1983 at a premium and a yearly rent payable in two instalments on the 24th June and 25th December of each year.
6. Clause 1(ii) of the lease states '... by way of further or additional rent one eighth part of the costs expenses and outgoings incurred by the Lessor...'
7. The 4th Schedule sets out how the service charge payments are to be made.
8. The 5th Schedule sets out the costs and expenditure which form the service charge. Clause 9 of this schedule states that '... to pay one eighth of expenses of' of all party services and the roof
9. The Common Parts of the flat are defined in the 7th Schedule Clause 2(C)(ii) which includes 'the whole of the wall.. separating such last mentioned part from the exterior of the Building and such part of the window (including glass) therein as is co-extensive therewith'...

Inspection

10. The Tribunal inspected the building and property at 10am, 27th November 2014.
11. The Applicant was represented at the inspection by Mr Howard and Ms Page of Howards Property Management. The Respondent did not attend.
12. The Applicant's Representatives stated that the common areas were cleaned twice weekly and the garden maintenance was carried out fortnightly from April to October and thereafter monthly. The external cleaning of the gutters, soffits down pipes was carried out annually.

The common parts were clean and well maintained. The gardens were landscaped and tidy.

13. The Applicant's Representatives stated that none of the flats were owner occupied but each owner was invited to a quarterly directors meeting where the maintenance and budget was discussed and instructions given to Howard Property Management as to which works were to be carried out.
14. There was no access available to the Property, but from an external inspection, the kitchen window was a white UPVC double glazed and the remaining were wooden single pane in need of repair. The remaining 7 flats had brown UPVC double glazed windows. The Applicant's Representatives stated that it had been agreed at a directors meeting that each owner was to replace their individual flats windows with brown UPVC double glazed. The Respondent was the only one who had not done so.

The Applicant's Written Representations

15. The Applicants Representative stated that it took over the management of the building in January 2007 and the Respondent purchased the Property in June 2007.

Honiton Gardens Management Ltd is a company owned by the Owners of the eight flats within the building and each owner is a director of the company.

16. The Applicant stated that the Respondent has historically been in arrears in the payment of the service charge. The Respondent only paid some monies by way post-dated cheques when a debt collecting agency was instructed to recover the debt and some of these were not honoured.
17. The Applicant provided for each relevant year within its written submissions copies of:-

The budget service charge; and
Individual statements of account;

18. The Applicant confirmed that numerous notices had been served on the Respondent; some of which were acknowledged and some of which were returned as addressee unknown.
19. The Applicant confirmed that the property is generally tenanted but currently vacant.
20. The Applicant by way of a witness statement from its legal representative, confirmed that no breakdown of the amounts claimed in these proceedings was requested by the Respondent. There were other proceedings previously against Mr Bernard Olsberg for which an email request for a break down of costs was requested.

The Respondent's Written Submissions

21. The Respondent has stated that it has, via its solicitor, requested a breakdown of the costs incurred to which no reply was received. It states that it has had to carry out works on the exterior of the property for an amount of £4000 which was the responsibility of the freeholder. It is as a result of this that payment of service charges was withheld.
22. The Respondent provided a copy letter from Delta Estates dated 16th September which stated that over the last 24-36 months approximately £4000 has been spent on the refurbishment of the Property. The letter stated that there was an issue of dampness and a window frame had been replaced.

The Law

23. 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.

24. 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.

25. Section 21 A provides that

- (1) A tenant may withhold payment of a service charge if—
 - (a) the landlord has not provided him with information or a report—
 - (i) at the time at which, or .
 - (ii) (as the case may be) by the time by which, he is required to provide it by virtue of section 21, or
 - (b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section....

(3) An amount may not be withheld under this section— .

- (a) in a case within paragraph (a) of subsection (1), after the [information or report concerned has been provided] to the tenant by the landlord, or .

in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

26. Section 27A provides that

- (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 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.

The Tribunal's Determination

27. The Applicant has provided detailed written submissions setting out the composition of the service charges for the years in dispute.
28. The Respondent did not dispute either that the Lease reserved a service charge or that there was an amount payable.
29. The Respondent disputed the amount that was charged for the years in question as the quality of service provided was questionable as the Applicant had failed to maintain the exterior of the Building which caused dampness to the Property. This has resulted in it incurring repair costs of £4000 and as a result of this payment of the Service Charges due and payable were withheld.
30. The Respondent has not raised any issue with the composition of nor any expense itemised with the Service Charge due for the years 2007 to 2014. The Respondent has not quantified by way of invoices or receipts the repair works that had been carried out and which aspect of the said remedial works was due to inadequate maintenance of the exterior of the building.
31. The Respondent was aware that under the terms of the lease service charges equating to one eighth of costs were due and payable by it for each year in question but had failed to make payment without enforcement action.
32. The Tribunal determined that as the Respondent has failed to identify any amounts within the Service Charges as disputed; the said Service Charges are due and payable.
33. The Tribunal also determined that the composition of the said Service Charges are reasonable.