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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CA/LSC/2014/0045**
Property	:	**First Floor Flat, 26, Crescent Road, Southport PR8 4SS**
Applicants	:	**Aida Ozola (represented by Mr D Mortensen)**
Respondent	:	**Steve Marshall**
Type of Application	:	**Reasonableness of service charges**
Tribunal Members	:	**Mr J R Rimmer** **Mr J Faulkner**
Date of Decision	:	**23 December 2014**
Order	:	**The recoverable service charges for the years 2011 to 2013 are as set out in paragraph 30. The service charge account for 2014 may include those amounts currently allowed in paragraph 30.** **An order is made under Section 20C Landlord and Tenant Act 1985 for the reasons set out in paragraph 31.**

A. Application and background

1. The Applicant is the owner and occupier of the first floor flat at 26, Crescent Road, Southport, Merseyside. It is the only flat occupying

the first floor of the building, but there are two additional flats on the ground floor, one of which is occupied by the Respondent freeholder

2. The Applicant holds her flat as an assignee of a lease dated 5th November 2004 granted by the Respondent to the Applicant's predecessor in title at a rent of £5.00 per annum for 999 years from 1st October 2004. The lease provides for an initial service charge payment annually of £250.00 towards one third of the cost of those services provided by the landlord under the Fourth Schedule to the lease. There are eleven services listed, but it is not proposed to itemise them here. Those that are relevant to the application under consideration will be referred to at the appropriate paragraph(s). The Fifth Schedule to the lease then provides the obligation of the tenant to pay the charge to 31st December every year with the initial payment being subject to a balancing payment as soon as practicable after the production of a certified statement of the actual costs incurred for the year in question. There is a separate application in relation to a management charge which treats that charge as an administration charge. For the reasons set out in paragraph 35, below, the Tribunal has considered that charge as being part of the service charges for the property.

3. The Applicant also refers to the £250 annual payment made by her towards the buildings insurance for the whole of the building in which the three flats are situated and specifically challenges in the application the following charges in the relevant years:

- 2010-15 – The nature of the services provided, or likely to be provided for the £250 initial annual payment and the further £250 contribution to insurance given the apparent actual cost of the appropriate policy and cover.
- Associated administrative charges made for providing and overseeing the services, given the level of such services as are provided and the nature and extent of the work to which those charges relate.

4. The Applicant provided the Tribunal with a paginated bundle of documents in support of her case and endeavoured to comply with directions in this matter made by Deputy Regional Judge Holbrook on 16th July 2014. A Response was forthcoming from the Respondent in the form of a number of copy documents seeking to establish the charges that were sought to be recovered and the insurance premiums paid, together with the administrative work carried out by the Respondent in support of his obligations under the lease

5. The Tribunal does feel it necessary to observe that Directions are to be complied with and in this case the Tribunal was not assisted to any great extent by the manner in which the Respondent provided material in support of his case, which was neither timely nor organised. The Tribunal was however able to make progress at its hearing given the relatively simple and limited issues at stake between the parties.

Inspection

6. On the morning of 7th October 2014 the Tribunal inspected the property at 26 Crescent Road and found it to be a large detached property of rendered brick under a tiled roof. The numbering scheme is such that number 26 itself is the first floor flat occupied by the Applicant whilst, the two ground floor flats are numbered 26A and 26B. All flats have their own separate entrances and there are in consequence no internal common parts. Externally there is a common parking area and associated driveway, giving access also to a garage which is occupied by the Applicant. There is a raised verandah to the front of the property which is not in good condition. A rear garden is occupied solely by the occupier of flat 26B, the Respondent, and is not shared with the other tenants. There is some shrubbery and fencing, together with boundary walls establishing the limits of the property, which is situated conveniently for local amenities and transport to Southport town centre.

The hearing

7. The hearing was attended by the Applicant, represented by Mr Mortensen, and the Respondent, assisted by his son, Mr M Marshall. and took place at the offices of the former Tribunal Service on Dale Street, Liverpool, later on 7th September.

8. Mr Mortensen confirmed that he was asking the Tribunal consider the reasonableness and payability of certain elements of the charges levied by the Respondent against the Applicant and was able to identify, with contributions to the discussions by the Respondent and the Tribunal, those matters of concern in relation to the charges for the year 2011 through to the current year and 2015.

9. Mr Mortensen's arguments on behalf of the Applicant were as follows:
   - Although there was a requirement for an initial contribution to service charge costs in each year there was then an obligation on the Respondent to provide a certified statement of the cost of services to justify the initial payment and any further costs

actually incurred in any year. In his view no such certified statements had been provided. There was some dispute between the parties as to what documentation was supplied to the Applicant to support the charges levied.

- No invoices, as that word is usually understood, had been provided to support such costs and charges as were being claimed and the supposed invoices provided by the Respondent were of questionable authenticity.
- Work that was done appeared, to a considerable extent, to benefit the flat occupied by the Respondent rather than the whole of the building and its grounds: for example the fencing to the garden and electronic security gate thereto.
- Some work that was the subject of a claim under the service charge was unnecessary, not done, or was not done to a reasonable standard: for example charges for pursuing the third tenant for non-payment of his charges, jet washing and the closing of the pedestrian access to the parking area.
- The insurance premiums were not supported by genuine invoices for the amounts claimed.
- The charges levied by the Respondent for administering the services and for effecting the annual buildings insurance were not justified.

10. The service charges for the years in question may be analysed on an annual basis as set out below, with separate consideration of the insurance premiums and associated charges dealt with thereafter.

11. **2011**

Charges are levied for:

- Building work by A Rimmer in the amount of £1245.00
- Solicitors costs for breach of lease by the Applicant in an amount of £220.00.
- M&B associates management fee in an amount of £206.50 being 10% of the other charges (including building insurance of £600)

All the above being divided between the three tenants.

12. The building work costs were supported by a copy of a plain A4 sheet of unheaded notepaper, bearing the date 28.12.2011 and apparently referring to three undertakings during the year relating to taking down and re-building the defective rear wall, skip hire and the cutting back of hedges/garden tidying. The document indicated that the amount of £1000.00 was only one third of the total cost.

13. Mr Mortensen suggested that this could not be relied on as a genuine invoice and was not what would be expected to support a

service charge claim. Additionally the work was done for the benefit primarily of the Respondent as occupier of Flat 26A as providing security to his rear garden and of only benefit to the Applicant. Mr Marshall responded that the invoice was genuine, having been provided at the year-end in relation to works carried out throughout the year and only one third of the cost was being passed on to the tenants to reflect the limited benefit but nevertheless contributing to the overall security of the properties by replacing an old wooden fence.

14. The solicitors' costs related to an allegation that for three reasons expressed in a letter by a firm of solicitors to the Applicant, she was in breach of her lease which engendered a lengthy response from the Applicant rebutting the allegations. This information was only apparent from correspondence provided by the Applicant in her bundle of documents and was not supported by any documentation provided by the Respondent.

15. **2012**

Charges are levied for:

- Building work, A Rimmer, £1220.00
- M & B associates, management fee of 10% of costs, £182.00 (again including 10% of the buildings insurance costs)

The documentation in support of the building work, this time relating to the extension of the front wall to block the pedestrian entrance, exterior painting rendering and fixing of new coping stones and then further garden works, was in the same form as for the previous year, but dated 30.12.2012 and was commented upon by Mr Mortensen in the same manner. The Respondent made the same point as before about the style and content of the builder's invoices and explained the rationale behind the blocking of the pedestrian gateway, that again being improved security.

16. **2013**

Charges are levied for

- Building work, A Rimmer, £1885.00.

This incorporates jetwashing the front walkway	£ 85.00
Skip hire	£250.00
Removal of damaged wall	£120.00
Gardening work	£120.00
Bonding and painting works	£550.00
Replacement of lead flashing and repairs	£760.00

- Drainage works (2 Visits) in an amount of £120.00
- Management fee of £260.50, on the same basis as previous years.

17. The wall requiring repair, and removal of debris, was that which formed part of the verandah to the front of the building, apparently damaged by the skip driver during the course of other works and it appeared from the Respondent's evidence that he made a value judgement to charge the cost to the service charge rather than seek any redress from the driver, his employers, or insurers. Mr Mortensen suggested that the cost should not fall on the service charge payers.

18. There was no disagreement that work had been done to the building by way of rendering, painting and repair although the Applicant had no personal recollection of the jetwashing but accepted that all accessible walls had been painted and lead flashing repaired where necessary. Drainage work was required, according to the Respondent to the drains to Flat 26B and required 2 visits, each invoiced for £60.00.

19. **2014**
There is no final account for the current year, as would be expected but correspondence supplied by the Respondent indicates a charge already appearing for the year in respect of solicitors fees of £733.44 for legal costs in relation to further correspondence alleging breach of the lease by the Applicant. Such evidence as there was of this work appeared mainly in the bundle of documents supplied by the Applicant to illustrate the fraught relationship between the Applicant and the Respondent culminating in the police interviewing the Applicant in relation to an allegation of criminal damage to the forecourt of the building by painting a white line to mark her parking space. It appears that the police did not take that matter far, but within the correspondence are two letters from Messrs Hodge and Halsall, solicitors: one, a page and a half in length, alleging three breaches of covenant and then a second letter chasing a reply to the first. There was however a single sheet of unheaded paper purporting to be a schedule of costs for the amount claimed.

20. **Building Insurance**
The lease provides, at paragraph 5 of the Fourth Schedule, for the insurance of the building by the Landlord. The premium is therefore one of the costs recoverable from the tenants under the service charge. In the years under consideration the Respondent has been in the habit of firstly seeking to charge a fixed sum of £250.00 at the start of the service charge year for the insurance cost in addition to the £250.00 initial contribution required in relation to service charges generally. Thereafter at the end of the years 2011, 2012 and 2013 the Respondent has then sought payment of £600.00 for "Building insurance including administration costs".

21. In support of these costs the Respondent produced to the Tribunal at the hearing 4 assorted documents, describing themselves variously as "statement of insurance", "policy schedule" (2), and "premises certificate", only one of which, to the Tribunal's eye at that time, the Renewal Schedule from LV Insurance referring to a premium, including IPT, of £561.99 for the year 21/02/14 to 20/02/15. The Tribunal therefore made further directions for the Respondent to provide further confirmatory details that cover was in place form February 2010 to 2015 and the premiums paid for that cover.

22. Although the directions required the information to be provided by October it was not received in the Tribunal Office until 29th October. The Tribunal is of the view that it is necessary to admit the documents into these proceedings in order to understand the situation in relation to the insurance premiums for the years in question. They provide the following information:
    - A premium for the year from 15th February 2011, including the broker's administration fee, of £535.19
    - A premium for the year from 21st February 2012 including broker's administration fee and legal expenses insurance, of £602.48
    - A premium for the year from 21st February 2013, including broker's fees, of £577.97
    - A premium for the current year from 21st February 2014, including broker's fees, of £586.99
    - All the above appear to include Insurance Premium Tax and in the case of the latest premium matches that in the renewal schedule referred to in the preceding paragraph, with the addition of the broker's fees.

23. Having taken the view that it was necessary for the Tribunal to consider those documents to properly assess the situation in relation to buildings insurance it was appropriate to seek the further views of the Applicant upon the documents themselves and their late submission

24. The Applicant quite properly referred to the late submission and the fact that what was supplied did not comply with the entirety of the direction made. Concern was also expressed as to the delay being engendered and the continuing upset being caused to the Applicant.

25. Reference was also made to particular matters of concern:
    - The appearance on documents covering a five year period of the word "PAID" in identical handwriting which gives the appearance of having been written on one occasion

- The Applicants own enquiries in relation to the 2010suggesting that no premium was paid or cover provided by the broker referred to
- The existence of 2 alleged invoices for 2014 suggesting that if double cover was not in existence one invoice must be false

The determination

26 The law relating to jurisdiction in relation to service charges falling within Section 18 is found in Section 19 Landlord and Tenant Act 1985 which provides:

(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 the are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard

27 Further section 27A landlord and Tenant Act 1985 provides:

(1) An application may be made to a 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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services(subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

28 In applying the above provisions to what it had seen and heard in order to determine the reasonableness and payability of the charges in this case the Tribunal was greatly troubled by much of what it heard from the Respondent, together with the record keeping and other paperwork provided in support of his justification for the charges levied, particularly:

- The lateness of the documentation submitted to the Tribunal for the hearing on 7th October

- The lack of proper invoices, worksheets, estimates or other similar documentation to support much of the work for which payment was sought
- The lack of any certification of the service charge costs, as required by paragraph 1(c) of the Fifth Schedule to the lease in order to justify any over- or underpayment for the year after the interim payment of £250.00
- The questionable benefit of work which had been carried out and was visible to the Tribunal on its inspection, for example the closing off of the pedestrian access from the road and the wall built alongside the drive to the garage (even if the respondent's contention that only 1/3 of the total cost was being sought through the service charge)
- The lack of justification for, or documentation supporting the amounts of solicitors' charges
- The manner in which the cost of remedying the damage caused by the skip driver was attributed to the service charge
- In consequence of the above observations, the management charges levied by the Respondent as a percentage of the other costs being recovered in the service charge.

29 The Tribunal therefore examined with some care the charges for each year in question and drew the conclusions set out hereafter on an annual basis and includes the decision relating to the buildings insurance premium for the relevant year. These conclusions have been reached notwithstanding what has been a cavalier and shambolic approach by the Respondent to both the obligations owed to the tenants and to the duty to assist the Tribunal to reach a proper conclusion. The Tribunal was particularly exercised by the extent of the financial effect upon either one or the other party by the decisions in relation to the insurance premiums.

30 **2011**

- The Tribunal is not satisfied as to the reasonableness of the charge for Building work purportedly carried out by A Rimmer. It is far from clear that the invoice is genuine, or indeed an invoice at all given is format, nor is the Tribunal satisfied that even £1000.00 worth of work on the wall in question represents a cost providing a reasonable benefit to the tenants. The associated skip hire is also disallowed as is the cost alleged in relation to hedge cutting and garden tidying, appearing, as it does on the questionable invoice. The Tribunal was not satisfied by the Respondent's evidence as to the format or dating of that document, nor that the work done in respect of the wall, which the Tribunal accepts

was built, provided a significant security enhancement for any tenant other than the Respondent.

- The Tribunal does not accept, even from the documentation finally provided, that either an amount of £535.19, or any other amount, is an appropriate amount for the insurance premium to form part of the service charge for the year. The documentation provided consisted of a "statement of insurance" from Woodstock Insurance brokers for cover required from 21st February 2011 and then an invoice dated 28th October 2014. Neither document makes it clear if payment has been made, cover arranged, nor what properties may be covered.
- The Tribunal notes the provision in paragraph 8 of the Fourth Schedule to the lease providing for the charges of a managing agent or a 10% surcharge on the service charges actually incurred. As it is a proportional to the charges that the Tribunal ultimately deems to be recoverable it is not unreasonable in so far as it relates to charges the Tribunal considers to be reasonably incurred at reasonable cost.
- There is no certificated statement of service charge costs in the form referred to in clause 1(b) of the Fifth Schedule to trigger the balancing exercise at the end of the year and the Tribunal considered whether this might prejudice the recovery of any costs but the Tribunal considered this to be unjust to the Respondent in relation to insurance premiums paid.

31 **2012**

- The Tribunal make the same observations here as in the previous paragraph in relation to the documentation supplied in support of the claim for building work costs and also the lack of any annual certification. It is also of the view that from what it heard at the hearing there was no benefit to the tenants in the blocking of the pedestrian access to the roadway. The costs claimed relating to the invoice of A Rimmer are therefore disallowed
- Similarly the management costs are allowed for the reasons set out in the preceding paragraph.
- The insurance premium for this year, in the sum of £602.48, is not accepted in this year. The Tribunal notes that the Zurich insurance document originally supplied by the Respondent is a schedule, to be kept "safely with the policy document" (see the smaller print header to the document) whilst the letter from the Brokers, again Woodstock refers to the same schedule or policy number, LIMIMB1, but in neither document is the property subject to the policy identified and

reference to the insurer as Keelan Westall, rather than Zurich, as shown on the schedule, is not explained.

32 **2013**

- There is a further document purporting to be an invoice from A Rimmer for this year and detailing considerably more items of work than those previously considered (see paragraph 18, above). Again, however the document supplied is not an invoice as the Tribunal would normally expect to find one. There is again no certificate relating to final service charge costs for the year. The issue of the damage to the wall caused by the skip driver appears to have been resolved by making the tenants responsible for the cost when it appears that cost could have been reclaimed elsewhere.
- The Tribunal is however prepared to accept that there is visible evidence of the bonding and painting referred to and the replacement of lead flashing, together with roof repairs. Those items are costed out at a total of £1310.00. That does not seem to the Tribunal to be an unreasonable sum for that work and although conscious of the paucity of other supporting information takes the view that a greater unfairness would fall on the respondent if these items of expenditure were not allowed.
- There are also two invoices, which can properly be described as such, from N.P.H. Drainage in respect of which evidence was given by the Respondent, in some part supported by the Applicant, that work had been done. £120.00 is not an unreasonable amount in the circumstances.
- In the light of the observations in the two preceding paragraphs the Tribunal does allow the relevant management fee.
- The insurance premium for the buildings insurance is allowed in the amount £577.97. The Tribunal notes that there appears to have been a change of insurer and a lower premium than in the preceding year. The claim is supported by the original document supplied by the Respondent, in this case a certificate from LV Insurance, identifying the property covered, together with the risks covered, and the SIB insurance brokers invoice subsequently provided.

33 **2014**

The current year is not concluded but the Tribunal notes:

- The insurance premium claimed is £586.99, but the documentation provided consists of a renewal schedule clearly issued prior to the date when a new policy would start and clearly couched in terms suggesting renewal has not taken place, together with an invoice from the brokers upon which the word "paid" appears. There is no receipt; nor is there any

evidence of the policy being brought into force. Against the background in relation to insurance generally, as outlined at various places in this decision, the Tribunal is not satisfied that cover was in place.

- Whilst there has clearly been correspondence between the Respondent's solicitor and the Applicant, and setting aside the separate matter of the complaint of criminal damage, the Tribunal can find nothing other than a schedule of costs in the sum of £733.44 provided by the Respondent and only limited correspondence revealed by the Applicant herself, none of which supports a sum in any way approaching the amount claimed, nor does it, in the Tribunal's view, represent reasonable expenditure on the issues raised.

34 **Conclusion**

For the reasons set out above the Tribunal has determined that the recoverable service charges for the years 2011 to 2014 (and reminding the parties that the Applicant's responsibility will be to pay one third of those costs) are

- 2011- £ NIL
- 2012, £ NIL
- 2013, the sum of £2007.97, plus 10% totalling £2208.76.

Further, the eventual charges for the current year shall include neither The solicitors costs of £733.44, nor the insurance premium of £586.99 but would accept that the position in relation to the insurance premium might be capable of remedy if sufficient proof were forthcoming when final accounts for the current year are produced in an appropriate format in accordance with guidance which is available from a variety of sources

35 The Tribunal has determined that the 10% management charge referred to in paragraph 8 of Schedule 4 to the lease is properly a service charge rather than an administration charge, as it related directly to the oversight of the services provided and is directly proportionate to the costs incurred. The Tribunal therefore makes no separate order in relation to the separate application before it to consider the reasonableness and payability of an administration charge.

36 There is a further application under Section 20C Landlord and Tenant Act 1985 for an order that charges incurred by the Respondent in these Tribunal proceedings shall not form part of any subsequent service charge claim. As there is no provision in the lease to allow the recovery of such costs in any event (save as relate to forfeiture proceedings, not relevant here) and noting that there appear to be no such costs hereto in any event the Tribunal is content to make such an order.

J R RIMMER (CHAIRMAN)