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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BE/LSC/2013/0138**
Property	:	**43, Heversham House, Tustin Estate, Ilderton Road, London, SE15 1EL**
Applicant	:	**Vincenzo Romitelli**
Respondent	:	**London Borough of Southwark**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 (the 1985 Act). Determination of the reasonableness and payability of service charges.**
Tribunal Members	:	**Mrs HC Bowers BSc (Econ) MSc MRICS** **Mr M Taylor FRICS** **Mr O Miller BSc**
Date and venue of Hearing	:	**10th July 2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**28th October 2013**

DECISION

DECISION

For the following reasons the Tribunal finds that:

- **The service charge element in dispute for 2010/2011 is reduced from £415.51 to £375.00**
- **The services charges for 2011/2012 are determined to be £1,578.61 and reflect the sums conceded by the Respondent.**
- **The Tribunal determines that the consultation process was correctly followed.**

REASONS

Introduction:

1.) This matter is an application made under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) regarding the reasonableness and payability of service charges in respect of 43, Heversham House on the Tustin Estate (the subject property). The case was considered at a pre-trial review that was held on 27th March 2013 and Directions were issued on that date.

The Law:

2.) A summary of the relevant legal provisions is set out in the Appendix to this decision.

The Hearing:

3.) The hearing was held on 10th July 2013 at Alfred Place, London. The Applicant attended the hearing and was represented by his daughter Miss L Romitelli. The Respondent was represented by Mr G Brutton and evidence was given by Mr G Dudhia the accounts manager and by Mr D Stevenson the capital works administration officer.

4.) Given the nature of the Applicant's complaints, detailed below and that the principles of the overheads and administration charges on similar blocks within the Tustin estate were already subject to the decisions of the Upper Tribunal. This Tribunal delayed its decision pending the outcome of those appeals.

Background:

5.) The service charge years in dispute are 2010/2011 and the disputed items are included in the heading of un-itemised charges of £415.87; 2011/2012 where various elements are disputed in the total, amended charges of £1,578.61.

The Lease:

6.) The lease for the subject property is dated 13th July 1987. The lease identifies the London Borough of Southwark as "the Council", the landlord in this case and the lessees as Vincenzo and Maria Romitelli. The lease is for a term of 125 years from 13th July 1987. The Particulars of the lease defines the building, the estate and the flat. The lease requires the lessees to pay the service charges and makes provision for the recovery of a reserve fund contribution.

7.) Clause 5 of the lease sets out the obligations of the landlord in respect of the repair and maintenance of the building and the estate. The third schedule sets out the arrangements for the collection of and items to be included in the service charge and the reserve fund, described in the lease as the "capital expenditure reserve charge".

Inspection:

8.) Given the nature of the issues in dispute, the Tribunal did not carry out an inspection of the subject flat, building or estate. Plans and photographs in the bundle illustrated the extent of the Tustin estate, and the buildings and communal areas that form that estate.

Representations:

9.) At the start of the hearing we were able to clarify what items remained in dispute between the parties and these are detailed below. The Tribunal had full consideration to both the written submissions and evidence included in the trial bundle, together with the oral evidence and submissions made at the hearing. A summary of each parties' case is provided below.

10.) In respect of the 2011/12 service charge year the actual charges were shown on page 60 of the bundle and the total charge excluding the ground rent was £2,514.13. However, it was agreed that a sum of £850.47 for heating had been mis-applied to this account and the total should be reduced by this sum and that the administration charge should also be re-calculated. Accordingly the revised service charge for 2011/12 claimed by the Respondent was £1,578.61. There are elements within this sum that have been challenged by the Applicant and these are detailed below.

2010/2011

Un-itemised charges - £415.51

11.) Miss Romitelli identified four items of expenditure within this category of works, that were considered to be excessive. The first item was a sum of £1,753.76 dated 2nd July 2010 for *"Take out existing and fix only UPVc or aluminium window and sub-frame any size including fixing glass, all cover strips, bedding in cement mortar or expanding foam dpc, silicone pointing one side and decoration both sides"*. The second item was £2,710.56 dated 13th

September 2010 and the reference is "*As per report 4613752 1 renew UPVc rear door*". The third item is £984.94 dated 5th October 2010 for "*As per estimate 8243 for window renewal*" and the final item is a sum of £910.84, dated 15th April 2010 and described as "*As per 4473336 1 renew multisecure fed*". It was impossible to identify these works and as such the Applicant had not provided any alternative quotations. Mr Romitelli explained that as he lived on the estate he was able to observe what work is undertaken and he considers that there is no control or supervision of any work.

12.) Mr Brutton explained the system of how works were procured with authorised contractors and that there was an agreed schedule of work rates. The contracts were put out to tender and a judgement was taken as to be the best contractor, not only having regard to the cost but also the quality of the workmanship. In respect of checking the quality of the works undertaken it was explained that there was random checking of approximately 20% of the work undertaken. There were approximately 20,000 items of work carried out every month of the Respondent's portfolio. It was not possible to identify whether these disputed works had been checked. It was clarified that the phrase "fed" on the last item related to a "front entrance door". The total of disputed invoices under this head of expenditure was £6,360.10 and the Applicant's contribution to this element amounted to £74.08.

13.) Another specific item identified in this year was a gross sum of £11,976.85 described as total block allocation (page 204). Miss Romitelli stated that there was no explanation of this item. It was identified that this referred to the figure of £12,200 under work order 5501581927 and the contractor was A & E Elkins Ltd (page 97). An invoice was produced for the relevant sum, but the invoice was dated 18th August 2008 and was accompanied with email correspondence from December 2010. The Respondent explained that the sum related to drainage work that had been carried out, but no other details were available.

14.) Included in the bundle was exhibit Bii (pages 178 – 184) that itemised all the costs that accumulated to £11,976.84 and Miss Romitelli stated that there were a number of invoices that were duplicated, including the same work order, the same descriptor and on some occasions, the same cost. The first duplication was a sum of £75.60 and the Respondent conceded that this was a duplication. Other duplications were identified. There were no inspection reports and Mr Dudhia was unable to confirm whether these figures had been checked.

<u>2011/2012</u>
<u>Responsive (minor) repairs (un-itemised repairs)</u>
15.) The total cost under this head was £13,910.46 (page 205 of the bundle) and the Applicant's contribution to this cost was £162.02. Miss Romitelli identified that within the £13,910.46 a sum of £1,947.06 was included for overheads, and

this was calculated at 17.28% of the costs. In the previous year the overheads had been charged at 12.38%, so the increase in the percentage for the overheads had gone up by 40%, which was thought to be excessive. In Miss Romitelli's opinion the increase should be no more than the rate of inflation.

16.) The Applicant also raised a number of specific concerns about the un-itemised repairs. A figure of £695.70 (page 205) as the estate block allocation was queried. This sum was calculated as an element of total works of £3,039.76 (page 83). Miss Romitelli stated that she had concerns about the costs of a repair to a metal ramp that totalled £2,470.00. It was noted in the commentary that it the invoice was missing. Miss Romitelli submitted that the expenditure seemed high. The Respondent was unable to identify any invoice and stated that as the work would have related to electronic mechanism of the ramp, then the sum was not unreasonable.

Lighting

17.) The total sum allocated for lighting was £7,148.79 (p205) and the proportion due from the Applicant was £83.27. Within this heading was a sum of £927.47 described as "*block overheads on estate lighting*" and £936.56 described as "*estate to block allocation*". Miss Romitelli disputed two aspects of this, namely the increase in the percentage of the overhead charge as compared to the previous year and whether there was some element of duplication. Additionally there was concern about the EDF charges that totalled £3,580.10 as it was uncertain if these were actual or estimated charges. It was confirmed that the subject block comprised of 93 flats with three entrance areas and the associated common parts with lifts and lighting.

18.) Mr Brutton stated that the issue of the "overhead charging" on the Tustin estate was already being considered in the Upper Tribunal under two cases (LRX/105/2001 AND LRX/178/2011). The cases were heard at the end of May and the parties were advised the decision would be available within six weeks. It was confirmed that the respondent would follow the decision in those cases and apply that decision retrospectively if necessary. The decisions of the Upper Tribunal were handed down on 18th September 2013. In fact those decisions related to a property on the St Crispins Estate and a property in Herne Hill., however it is appreciated that the principles being considered, mirrored the approach taken on the Tustin estate.

Grounds Maintenance

19.) Miss Romitelli raised an issue regarding the complex calculations undertaken to produce the service charge figures. This was identified in respect of the sum of £21.17, a sum labelled as grounds maintenance. Mr Dudhia explained the calculation was based on 88.57 hours work, but that productivity was only approximately 62%. And that sum was charged to the block and

apportioned out to the leaseholders. Miss Romitelli did not wish to pursue the figure and it was acknowledged that the calculation was to the benefit of the Applicant, but stated that this was an indication of the lack of clarity on behalf of the Respondent.

Lift Repairs

20.) The total sum incurred for lift repair was £17,475.06 and the Applicant's proportion is £203.54 (page 205). From the £17,475.06 the major element was £10,081.222 and the Applicant identifies £3,939.00 (page 76) as being in dispute. There is no detail as to what this sum relates to, although the Respondent states that it was for the Electronic Monitoring System and this was for the part replacement of the systems in all three lifts in the block. There were two invoices on pages 76a and 76b of the bundle that appeared to support this work (the two invoices total £3,939.00 but are exclusive of VAT)

Consultation

21.) The final issue that was raised by Miss Romitelli on behalf of her father was the consultation process. It was stated that consultation letters that were dated 8th March and 11th November 2011 were not in the Applicant's possession and therefore they concluded that they were never received. The first knowledge of the major works was on 26th April 2012. In response to questioning Mr Romitelli explained that he knew one leaseholder who had received the correspondence, but had thrown the paperwork away and had no knowledge of any other leaseholder who had not received the paperwork. In the subject block there are 93 flats and only 6 flats are occupied on a leasehold basis.

22.) The Respondent indicated the Notice of Intention letter dated 8th March 2011 and the Notice of Proposal dated 30th November 2011 in the bundle. Both these letters were correctly addressed. It was stated that the Notice of Intention was hand delivered and included in the bundle was a "Statement of Delivery" with a typed name of Peter Olufawo under the name and signature section, a delivery date of Tuesday 8th March 2011 and a typed date of Wednesday 9th March 2011 as the date the document was signed. There was no explanation why Mr Olufawo did not sign the "statement of delivery". It was explained that there were 5 different blocks were the notice was served and in total there would have been 60-70 leaseholders. It was stated that the Respondent was not aware of any complaints of non-delivery in the last five years. Mr Stevenson explained that he had delivered the second letter, the Notice of Proposal dated 30th November 2011. There is a "statement of delivery'" dated 5th December 2011 signed by Mr Stevenson, with the delivery date of 1st December 2011.

Section 20C Application:

23.) Mr Brutton confirmed that the London Borough of Southwark will not add any of the costs in relation to these proceedings to any future service charges. This assurance is noted by the Tribunal.

Discussion

2010/2011

Un-itemised charges - £415.87

24.) There are three main issues in respect of this head of expenditure. The first issue was in respect of four items of expenditure, identified by the Applicant. Whilst we note that the Applicant considers these items to be excessive, we have not been provided any evidence by the Applicant to support this observation. Accordingly, due to the lack of evidence we conclude that the expenditure is reasonably incurred and is therefore payable.

25.) The second aspect was in respect of the invoice from A E Elkins Limited dated 18th August 2008. It appears that there is a gap of over two years from this invoice to December 2010 when the Respondent seemed to action this within the accounts department. We have no evidence before us to indicate that there was any compliance with section 20B of the Act. Accordingly the sum of £12,200 should be deducted from the service charge account.

26.) The Applicant identified a number of invoices that appear to have been duplicated. Although the Respondent acknowledged the first duplication of £75.60; there was no explanation of the other items that were highlighted by Miss Romitelli. The Tribunal considers that the invoices appear to be a duplication and has therefore removed the following items, in doing so it has given the Respondent the benefit of the doubt and allowed the higher costs. Item A £75.60 (conceded); B £493.40; C £234.72; D £737.69; E £603.56; F £335.85; G £268.25; H £167.66; I £35.82; J £40.29 and K £35.82, these sums total £3,028.66.

27.) In dealing with the items in paragraphs 25 and 26 above, the reduction for the estate costs is £12,200 and £3,028.66. This reduces £52,331.43 to £37,102.77 and the allocation for the block reduces from £11,976.84 to £8,491.53. If these figures are worked through, the sum due from Mr Romitelli for this element of the service charge of £415.87 is reduced to £375.00.

2011/2012

Overheads issue

28.) In the two Upper Tribunal cases LB Southwark v Paul and Banks and others (LRX/105/2011) and LB Southwark v Benz (LRA/178/2011) three questions were identified as requiring determination i) whether the charges for overheads and administration are recoverable in principle; 2) whether these charges are

recoverable as a matter of fact and 3) whether the amounts demanded were a "fair proportion" of the total. The Upper Tribunal reviewed previous decisions and concluded that the principle that indirect costs could properly form part of the service charge was well established and that administration charges can be raised on the overhead charges as well as the direct costs. The Upper Tribunal confirmed that the approach taken by LB Southwark in those cases to arrive at the overheads to be allocated in respect of the physical work carried out on the estate was not flawed and that the administration charges, calculated at 10% reflected the activities dealing with the day to day management of the leaseholder portfolio. The final question considered by the Upper Tribunal was dependent upon the particular facts on that case and was a consideration on how the costs were apportioned and as such not relevant in this case.

29.) Considering the current case in the context of the decision of the Upper Tribunal, it would appear that the principle of charging an overhead element and an administration charge, identifying two separate areas of expenditure is acceptable. As such there is no duplication of costs. The approach taken by the Respondent as to how the level of the overheads was calculated was also considered and approved by the Upper Tribunal. This Tribunal understands that the Applicant is concerned about the level of increase on a year-by-year basis. However, as the Upper Tribunal has accepted the approach and we have no specific evidence from the Applicant as to show that the difference in cost is unreasonable, then we confirm that the level of overheads is reasonable and payable.

Metal ramp

30.) Although the Applicant suggested that the expenditure on this item seemed high, no evidence was adduced to demonstrate that point. Accordingly the tribunal were unable to state that such a sum was unreasonable. There is no deduction in the service charge for this item.

Lighting

31.) As to the estimated electricity charges, whilst this is not ideal, there will in due course be a balancing exercise when actual meter readings are taken, at this point, any over estimation should be credited to the Applicant's account or any under estimation may result in an additional claim for electricity charges. An estimated charging system is not ideal, but is a practical issue that affects most developments, the comfort is that there will be a rebalancing exercise in due course and the expenditure will reflect the actual electricity charges at that time.

Lift Repairs

32.) The Respondent was able to produce the invoices for these disputed costs. We had no evidence from the Applicant to demonstrate that these costs were

unreasonable. Therefore we determine that the sums incurred for lift repair are reasonable and are payable.

Consultation

33.) We understand the Applicant's position that as he does not have copies of the relevant papers relating to the consultation, he has concluded that they were never received. However the evidence from the Respondent seems quite clear that these notices were delivered. The system of hand delivering the notices with the "statements of delivery" seems a sensible process that is difficult to dispute. Accordingly, we conclude that the relevant notices were served on the Applicant.

Chairman: Helen C Bowers **Date: 24th October 2013**

APPENDIX

LANDLORD AND TENANT ACT 1985

Section 19 Limitation of service charges: reasonableness

(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 of 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 20B Limitation of service charges: time limit on making demands

(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 21B Notice to accompany demands for service charges

(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 forma 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.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation 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 it which it is payable.....

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred fro 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 it 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 subject of determination by a court, or

(d) has been 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 20C Limitation of service charges: costs of proceedings

(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 ..... or leasehold valuation tribunal ....., 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.

.....

(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 12 paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2),

(2) The circumstances are where –

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonable in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed –

(a) £500, or

(b) Such other amount as may be specified in procedure regulation.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.