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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00ML/LIS/2014/0013**
Property	:	**First Floor Flat 11 Gladstone Terrace Brighton BN2 3LB**
Applicant	:	**Messrs McDonnell Gargan and Ratcliffe t/a Utilec Properties and Utilec Properties Ltd (tenant)**
Represented by	:	**Mr C Gargan**
Respondent	:	**11 Gladstone Terrace (Brighton) Ltd**
Represented by	:	**Mr J Ullah, Director**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 , Schedule 11 Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Mrs F J Silverman Dip Fr LLM** **Mr N I Robinson FRICS**
Date and venue of hearing	:	**30 July 2014** **Brighton**
Date of Decision	:	**4 August 2014**

DECISION

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DECISION

In so far as the Tribunal has jurisdiction to do so and subject to the qualifications in paragraphs 13-15 below it determines that the Respondent landlord's demands for unpaid services charges for the service charge years 2011, 2012 and 2013 as detailed below are valid, reasonable and substantiated and are payable in full by the Applicant tenant.

The Tribunal has no jurisdiction to deal with any service charges fees or costs which have been the subject of county court claim number 3XV05803 in which Judgement was obtained against the Applicants on 28 March 2014.

No order under s20C Landlord and Tenant Act 1985 was requested by the Applicant.

REASONS

1 By an application dated 1 November 2013 the Applicant tenant asked the Tribunal to determine the reasonableness of service charges demanded by the Respondent landlord for the service charge years 2011, 2012 and 2013 and an estimate of the 2014 charges. Directions were issued by the Tribunal on 27 March 2014, 23 May 2014 and 9 July 2014.

2 The matter came before a Tribunal sitting in Brighton on 30 July 2014 at which the Applicant was represented by Mr Gargan and the Respondent by Mr Ullah. Each party had submitted a separate bundle of papers for consideration by the Tribunal and all the papers submitted were so considered.

3 The Tribunal inspected the property immediately before the hearing in the presence of both parties' representatives. The property which is the subject of this application comprises a large Victorian mid-terraced house which has been divided into four flats each of which is let on a long lease. The Applicant is the tenant of the first floor flat and by his lease has covenanted to pay one fourth of the total service charge for the building (clauses 1 and 7th Schedule). The landlord's repairing obligations are set out in clause 3 and the seventh Schedule to the lease.

4 The property has a small paved front garden area enclosed by a low wall which separates the property from the pavement and passing traffic on the busy Lewes Road. The front gate, pathway and steps leading to the front door are in poor condition but the front elevation brickwork and roof of the property (in so far as they could be inspected from ground level) appeared to be in reasonable condition. The Tribunal was not concerned with the windows of the flats which form part of each demise and are not part of the structure and exterior of the property. There is a flat roofed extension at the rear of the property extending from ground to top floor. The roof has been the subject of recent repairs as has

the fire escape and render to the entire extension area has been repaired and repainted and appears to be in good condition. The basement flat has a small sub-ground level terrace at the rear. The ground floor flat enjoys access to a fenced rear garden. The interior common parts comprise a small narrow hallway on the ground floor and a staircase giving access to the first and upper floor flats. The top floor flat is split level with access to its upper floor being gained through an internal staircase. There is no garage or parking at the property and on street parking in the surrounding streets is very limited. The property is however on a bus route , close to local amenities and within walking distance of the city centre and sea front.

5 The Tribunal explained to the parties that it had no jurisdiction to deal with any matter which had been the subject of a county court judgment nor did it deal with ground rent. Its investigation was limited to the service charge years identified on the Application form. Any allegations of breach of covenant made by the Applicant against the landlord did not form part of this application. The Applicant was adamant that the county court judgment in case number 3XV05803 was being set aside but produced no evidence to support that statement. The Respondent said that they had not received any notification that an application had been made to set aside the judgment.

6 The Tribunal attempted to clarify the correct name of the Applicant. Mr Gargan stated that the correct name was as shown on the front sheet to this decision. For the avoidance of doubt the Tribunal included the limited company's name as an Applicant to this application because the difference in status between the partnership and the limited company was unclear.

7 The Applicant asserted that there had been a number of changes to the freehold ownership of which he had not been notified. The Tribunal is satisfied that the only changes which have occurred have been changes in shareholders and/or Directors of the limited company which owns the freehold reversion but that the ownership of the freehold had remained throughout the period in question in the Respondent company.

8 When asked by the Tribunal to clarify which items of the 2011 service charge account he disputed the Applicant said that his argument was that he had never received the demand or accompanying documents because the Respondent had sent them to the wrong address. He added that had he received the demand he would have paid it in full.

9 The Tribunal asked the Applicant to tell the Tribunal which of the items in each of the following years' service charge accounts he disputed (namely 2012 and 2103) and the Applicant reiterated the same reply as is set out in paragraph 8 above ie that he had not received the demands and that had he done so he would have paid them in full. He stressed that because he had not been served with the correct documents within 18 months the Respondent was now barred from recovering any sums from him.

10 The Applicant's application also asked the Tribunal to consider the estimate of charges for the current year, 2014 but no documentation was produced to the Tribunal to enable it to make such a determination.

11 The Applicant also contended that charges demanded by the Respondent in respect of major works were irrecoverable because the Respondent had failed

to follow procedures. By using the expression 'procedures' it is assumed that the Applicant intended to refer to s20 consultation procedures for major works. The only year in which major works were carried out was 2013 where the Applicant had not disputed any individual item of expenditure and in respect of which s20 documentation was included in the Respondent's hearing bundle. The Applicant was happy with the content of the s20 notices but disputed that he had ever received them.

12 Since no item in any of the service charge accounts for any of the years in question were disputed the Tribunal did not need to consider the reasonableness of the charges nor the detailed content of the s20 documentation. The Tribunal is however unable to approve those accounts without qualification because items have been included in the accounts which are not service charge items and cannot therefore be charged to the tenant.

13 In relation to the accounts for service charge year 2011 the Tribunal disallows the sum of £14 in respect of the Companies House filing fee.
This reduces the total recoverable expenditure for the year to £1624.19 of which the Applicant's share is one fourth.

14 In relation to the accounts for service charge year 2012 the Tribunal disallows the sum of £13 in respect of the Companies House filing fee and the sum of £878 for legal fees in respect of which the lease does not include provision for recovery. This reduces the total recoverable expenditure for the year to £3206.99 of which the Applicant's share is one fourth.

15 In relation to the accounts for service charge year 2013 the Tribunal disallows the sum of £13 in respect of the Companies House filing fee.
This reduces the total recoverable expenditure for the year to £19849.07 of which the Applicant's share is one quarter.

16 The Tribunal reminded the Respondent that ground rent was not a service charge item and should in future be kept in a separate bank account and not be shown as part of the service charge accounts. The ground rent income could then be used to settle the company's costs such as the annual Companies' House filing fee.

17 The Tribunal then addressed the Applicant's contention that he did not have to pay any of the demands since he had not received them because the Respondent had sent them to the wrong address. The Tribunal considered a letter included only in the Respondent's bundle (tab 8 p26) dated 23 April 2010 which was correctly addressed to the Respondent and informed them that the Applicant's address had changed to 62 Gladstone Place Brighton BN2 3QD. This was the address to which all subsequent demands and s20 documentation had been sent by the Respondent and their managing agents. The Applicant showed the Tribunal a letter in his bundle (Tab 6 doc 1) dated 21 October 2010 which purported to notify the Respondent of a further change of address of the Applicant. This latter letter was however not correctly addressed to the Respondent company and the Tribunal concludes therefore that it was not validly served on the Respondent.

18 The Applicant could not show the Tribunal any evidence that he had correctly notified the Respondent of their change of address on any date after 23 April 2010. It is the Applicant tenant's responsibility to ensure that he notifies

the Respondent landlord promptly of any change of address and he had failed to do so. He could not therefore complain that he had not received demands and documents which had been served on him by the Respondent at the last known address they had for him. The Respondent said that all envelopes sent out by their managing agents displayed a return address and they were not aware that any correspondence had ever been returned to the managing agents undelivered. That being so the Tribunal concludes that on the balance of probabilities it is likely that the Applicant must have received some or all of the demands and documents sent to them between April 2010 and the present date. The Applicant is a professional landlord and he would have known that service charges and ground rent were due on the subject property but he did not assert that he had raised any queries with the Respondent (the Directors of which are resident in the building of which he subject property forms part) about the missing service charge demands and s 20 documentation.

19 For the above reasons the Tribunal declines to accept the Applicant's argument that he was not liable to pay the service charges for the years 2011-13 inclusive because he had not received the demands timeously or at all.

20 No application was made under s 20C of the Act.

21 **The Law**

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 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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or

each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(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 20C

(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, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Judge F J Silverman as Chairman
Date 4 August 2014

Note:
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