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

Case Reference : **CHI/21UG/LIS/2014/0022**

Property : **25/27 Rotherfield Avenue
Bexhill
TN40 1SY**

Applicant : **Mrs Rachel Waterton**

Representative : **Godfrey John & Partners**

Respondent : **Trevor Ralph Lewarne
Joy Elsie Lewarne**

Type of Application : **Section 27A of the Landlord and Tenant Act
1987**

Tribunal Members : **Judge D. R. Whitney
Mr. N. Maloney FRICS**

**Date and venue of
Hearing** : **25th July 2014
The Law Courts, Redhill**

Date of Decision : **25th July 2014**

DECISION

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BACKGROUND

1. This matter concerns an application by the freeholder to determine the reasonableness and payability of service charges relating to 25/27 Rotherfield Avenue Bexhill on Sea TN40 1SY ("the Property"). The Applicant is the freeholder and owner of flat 25. The Application is made on the Applicant's behalf by her managing agent Mr John of Godfrey John & Partners.
2. The Respondents are the owners of Flat 27 the only other flat in the building.
3. The Application was dated 17th April 2014.
4. An oral case management hearing was held on 6th May 2014 at which the Applicant's representative attended and to which the Respondents had sent a letter. Directions were given for the progress of the matter including in light of the Respondents submissions as to their age and health that the matter be dealt with on paper submissions and without a hearing.
5. The parties substantially complied with the directions.

THE LAW

6. The relevant sections for this application are sections 19 and 27A of the Landlord and Tenant Act 1987 which are annexed hereto. The Tribunal had regard to these sections and also section 20 of the Landlord and Tenant Act 1985 in reaching its decision.

THE LEASE

7. The tribunal was provided with a copy of the lease relating to the respondent's flat. The current lease is dated 15th May 2006 being an extension of the original lease dated 2nd December 1987.
8. The extended lease relies upon the covenants within the original lease as to service charges and the mechanism for calculation and recovery of the same. References to clauses from the lease within this decision are to clause numbers of the lease dated 2nd December 1987.
9. Under clause (1)(g) of the preamble to the lease the Respondents are responsible for 50% of the service charge costs. Clause 2(b) of the lease requires the Respondents to pay their proportion of the costs of the Applicant complying with their covenants (including covenant to repair the Property) as set out in clause 3. Clause 3(c) allows the Applicant to appoint a managing agent and to recover the cost of the same. Clause 3(d) requires the Applicant to insure the building.
10. The mechanism for determining the service charge and recovering the same is set out in the Third Schedule of the lease.

DISCUSSION AND DETERMINATION

11. The tribunal had regard to the comprehensive bundle supplied by the Applicants which included the Respondents submissions. Any reference to page numbers within this determination is to that bundle.
12. The Applicant seeks a determination for the actual service charges for the years ending April 2013 and April 2014 and the interim service charge levied for the year ending 2014. In short these are the Managing Agents costs and Insurance premium for both years and an interim payment for repairs.
13. The Respondents object to all payment of all costs.
14. The Respondent alleges that the Applicant has failed to comply with the terms of the lease and so payments are not payable. With regard to the fees for the Managing Agent they allege that they have not been consulted and they should have been. In respect of the Insurance it is said the policy is not compliant with the lease and they rely upon a quotation from Churchill Insurance at page 87 in the sum of £249.10.
15. At pages 26 and 31 are "Statements of Expenditure" for the years ending April 2013 and April 2014. These both contain a statement that in the managing agents view these are a fair summary.
16. Within the bundle are various demands. These include the Applicants name and address and have attached a statement of rights and obligations (see pages 41-43 inclusive for example).
17. At pages 37 and 38 are copies of the budget for the year April 2013 to April 2014. A sum of £500 in total for repairs is allowed together with the management fee of £150+VAT per flat for that year.
18. At pages 78 to 80 is a statement from the Respondents setting out their objections and referencing other documents.
19. In reaching its conclusion the tribunal has read and had regard to all the documents within the bundle. It seems unfortunate to this tribunal that this matter has come before it. The Applicant is plainly endeavouring to put in place a proper service charge regime in accordance with the lease. The Respondents indicate that they have been advised that the appointment of a manager would be sensible yet object to the fee.
20. The tribunal is satisfied that sums have been properly demanded in accordance with the lease. The statements of expenditure are certified and the demands contain all information required by the various statutory rules and regulations.

21. Turning to the sums claimed and the Interim charge first. The lease allows within the Third Schedule for anticipated expenditure to be recovered. The Applicant has sought sums for the managing agent's costs and for repairs. Leaving the managing agents costs to one side (as the actual amount for that year will be determined below) it is reasonable to budget a figure of £500 in total as described at page 37A. The tribunal determines that the sum of £250 as an interim payment for repairs during the year ending April 2014 was a reasonable interim charge and is payable by the Respondents.
22. As to the insurance the tribunal reminds itself that the Applicant does not have to accept the lowest quote but any charge made must be reasonable. In this tribunal's experience the policy relied upon by the Respondents from Churchill is not adequate for this property or appropriate for a property with two leasehold flats within the building as a whole.
23. The policy for each of the two years in question was placed with Allianz. It appears that a broker Viking Insurance Services arranged the policy. The interest of the Respondents (and the Applicant's mortgage lender) is noted. In this tribunal's determination the policies for both years claimed are reasonable and 50% of the cost is payable by the Respondents.
24. Turning to the managing agents costs a copy of the fee quotation is included at pages 20 and 21. This tribunal is satisfied that this is not a long term agreement which requires consultation. The tribunal determines that the Applicant is entitled to appoint a manager and recover the reasonable costs of the same.
25. Whilst the work of a managing agent is often unseen and leads to the appearance (and often assertions from Lessees) that little work is undertaken, this tribunal accepts that regardless of the size of premises a significant amount of administration and management has to be completed in order to just comply with statutory and regulatory requirements applicable to residential property and it is apparent that in this case, the managing agents' efforts have been hampered by the Respondents who have clearly engaged in correspondence with the agents. As to the reasonableness of the fee no alternative is suggested by the Respondents, simply that it is not recoverable from them. Having regard to the fee claimed of £150+VAT per flat payable in arrears the tribunal is satisfied that the fee is very reasonable in the market place generally available to this Applicant because of the small nature of the property concerned.

26. The tribunal finds that the following sums are recoverable and payable by the Respondents for their flat:

Year Ending 2013

Insurance charge	£228.37
Management fee	£180

Year Ending 2014

Insurance charge	£249.71
Management fee	£180

Interim charge for the year ending 2014

Budget for repairs	£250
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TOTAL	£1088.08
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27. The Applicant also seeks to recover 50% of the application and hearing fees incurred together also with 50% of the managing agents costs of £96 inclusive of VAT for attending at the case management hearing. This tribunal determines that the Respondents should pay to the Applicant 50% of the application and hearing fees within 14 days of itemised demand being sent.

28. As to the managing agents costs the tribunal is satisfied that these are a reasonable service charge expense which can be recovered from the Respondents although the same have not been demanded as a service charge under the lease and so are not yet payable. Once properly demanded these will be payable by the Respondents.

29. The tribunal reminds the parties that given there are only two flats within the building it is in both parties interests that they work together to ensure the effective management of the building and try and put behind them whatever differences may have existed in the past.

Judge D. R. Whitney

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.

ANNEX

Sections 27A and 19 of the Landlord and Tenant Act 1985

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 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 a leasehold valuation 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.

(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 of an application under subsection (1) or (3).

(7)The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

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 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.