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

Case Reference:	LON/00AM/LSC/2013/0776
Premises:	35 Springpark Drive, Hackney London N4 2NR
Applicant:	London Borough of Hackney
Representative:	Hackney Legal Services
Respondent:	Mr Abderrazak Elazoua
Representative:	In Person
Date of hearing:	26 February 2014
Appearance for Applicant:	Mr McDermott of Counsel
Appearance for Respondent:	In Person
Leasehold Valuation Tribunal:	Judge E Samupfonda Mrs J Davies FRICS
Date of decision:	13 March 2014

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £962.69 is payable by the Respondent in respect of the service charges for the year 2012/2013. The tribunal was advised that of this sum, the Respondent had already paid £300. The sum of £156.75 in respect of the insurance was not challenged.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge year 2012/2013.
2. Proceedings were originally issued in the Northampton County Court under claim no. 3YJ77313. The claim was transferred to Clerkenwell and Shoreditch county court and then in turn transferred to this tribunal on 12 November 2013.

The hearing

3. Mr M McDermott of Counsel represented the Applicant at the hearing and the Respondent appeared in person. Ms S Ziare-Ford, Hackney Legal Services, Mr D Cassidy, Right to Buy Services, Mr C Bright, Regeneration Team and Mr T Serry, Cleaning Supervisor attended on behalf of the Applicants.

The background

4. The property, which is the subject of this application, is described as being purpose built with four units including two maisonettes on the ground floor with their own entrance and front gardens.
5. The tribunal did not inspect the property and neither party requested an inspection. Photographs of the common parts of the subject block were provided in the hearing bundle.
6. The Respondent holds a long lease of the property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The Respondent did not challenge his liability to pay under the terms of the lease.

The issues

7. At the start of the hearing the parties identified the sum claimed in the county court was £965.30, that the Respondent had paid £300 and that the relevant issue for determination was the payability and/or reasonableness of service charges for year 2012/2013 relating to cleaning and maintenance of the estate, cleaning and maintenance of the block and management fees. The Respondent did not challenge the costs incurred in respect of the building insurance.
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charge item & amount claimed

9. In respect of the cleaning and maintenance of the estate, the Applicant claimed £166.42 and £466.78 for the cleaning and maintenance of the block.

The tribunal's decision

10. The tribunal determined that the amount payable in respect of the cleaning and maintenance of the estate is £166.42 and £464.17 in respect of the cleaning and maintenance to the block.

Reasons for the tribunal's decision

11. The tribunal heard evidence from Mr Cassidy, Mr Bright and Mr Seery as well as the Respondent. All of the Applicant's witnesses gave evidence to the effect that the estate and block were well maintained and cleaned regularly. The cleaner attended daily to inspect and cleaned every Monday. They produced photographs of the block's internal and external common parts as well as the common parts cleaning inspection reports covering the period 15.2.12 to 11.11.13. Mr Elazoua challenged the cleaning on the basis that it was he and his wife that cleaned the common parts of the block. He stated that he had only seen the Applicant's cleaners since the application was made on 4 September 2013. He also produced photographs showing rubbish and staining to the walls. He also said that on occasion human excrement and urine fouled the common parts of the block. This was not disputed by the Applicant's witnesses who said that as soon as it came to their notice it was cleaned. It was also acknowledged that unauthorised occupants had previously occupied the decanted flats but again action was taken and this was no longer the case. Temporary guardians now occupy empty flats.
12. With regards to block costs of £466.78, this comprised the cost incurred for repairs to a concrete step on the first floor of the block, two water tank inspections, block cleaning and block lighting. The concrete repair was said to

have been carried out in June 2012 and that it had cost £29.85 with Mr Elazoua being liable to pay £2.61. Mr Elazoua stated that he was not aware of any such repairs and he asked for evidence to support this claim. None of the Applicant's witnesses were able to provide a job sheet or any independent evidence to support this claim. Therefore the tribunal determined that it could not be satisfied that this cost had been reasonably incurred and disallowed it. However with regards to the costs incurred in respect of the water tanks, the tribunal was satisfied that, on the balance of probabilities, the costs were incurred as part of the routine 6 monthly inspections, which Mr Elazoua accepted he might not have seen, and therefore the tribunal allowed these costs. There was no evidence adduced in regards to the contention that there were no lights and therefore the tribunal allowed this cost.

Service charge item & amount claimed

13. Management fees of £193.73

The tribunal's decision

14. The tribunal determined that the amount payable in respect of is £193.73.

Reasons for the tribunal's decision

15. The tribunal decided that the amount claimed in respect of management fees was reasonable and payable. Although Mr Elouza contended that the Applicant did not carry out any work to the estate because the estate is currently in the process of being regenerated with demolition of many parts, he did not raise any specific argument relating to the reasonableness of this cost. He stated that there were problems with squatters, the block is run down, there's no street lighting, no refuse collection, bushes were over growing, drug dealing in common parts, most the council tenants have been re-housed and he is the only remaining occupant of this block. He claimed that the Applicant's aim is to devalue the property. In response, the Applicant's witnesses stated that the management fee had been reasonably incurred as the day-to-day running costs of the services provided as well as for the administration of the estate as a whole.
16. On the evidence provided the tribunal was satisfied that the amount claimed which equates to £3.73 per week had been reasonably incurred and was therefore payable.
17. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Northampton County Court.

Chairman: Judge E Samupfonda

Date 13 March 2014

Date:

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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.

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) a leasehold valuation 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.