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

Case Reference : **MAN/00BW/LSC/2013/0079**

Property : **22, Tintern Avenue, Astley, Tyldesley
M29 7WL**

Applicant : **Mr. & Mrs. D. Owen**

Respondent : **TARA Limited
Acting by DEM Management**

Type of Application : **Landlord and Tenant Act 1985 –
Section 27A and Section 20C**

Tribunal Members : **Mrs. C. Wood
Mr. I. James**

Date of Decision : **6 January 2014**

DECISION

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1. The Tribunal determines as follows:
 - 1.1 that for the service charge years 1 July 2005 – 30 June 2006, 1 July 2006 – 30 June 2007, 1 July 2007 – 30 June 2008 and 1 July 2008 – 30 June 2009, the amount reasonably incurred as management fees is £50 per annum, and the Applicant is liable to pay these costs as service charge;
 - 1.2 that, for the service charge year 1 July 2009 – 30 June 2010, the following costs have been reasonably incurred:
 - (1) management fees: £50.00;
 - (2) gardening: £59.29;
 - (3) accountancy fees: £7.35;
 - (4) buildings insurance: £86.86;
 - (5) routine maintenance: £43.24;and the Applicant is liable to pay each of these costs as service charge;
 - 1.3 that for the service charge year 1 July 2010 – 30 June 2011, the following costs have been reasonably incurred:
 - (1) management fees: £50.00;
 - (2) gardening: £50.00;
 - (3) accountancy fees: £7.35;
 - (4) buildings insurance: £88.60;and the Applicant is liable to pay each of these costs as service charge;
 - 1.4 that, for the service charge year 1 July 2011 – 30 June 2012, the following costs have been reasonably incurred:
 - (1) management fees: £50.00;
 - (2) gardening: £50.00;
 - (3) accountancy fees: £7.35;
 - (4) buildings insurance: £88.60;
 - (5) routine maintenance: £100.00;and the Applicant is liable to pay each of these costs as service charge;
 - 1.5 that, for the service charge year 1 July 2012 – 30 June 2013, the following costs have been reasonably incurred:
 - (1) management fees: £50.00;
 - (2) gardening: £50.00;
 - (3) accountancy fees: £7.35;
 - (4) buildings insurance: £93.54;and the Applicant is liable to pay each of these costs as service charge;
 - 1.6 in the absence of evidence that the electricity bills for the period 2005-2007 submitted to the Tribunal relate to the Property, and further in the absence of any evidence of the basis of the calculation of electricity charges for the period from 2007-February 2013, the charges were not reasonable and the Applicant is not liable to pay them accordingly;

- 1.7 in the service charge year 1 July 2010 – 30 June 2011, the costs payable by the Applicant relating to the replacement of the soffits and fascias are limited to £250.00;
- 1.8 that the copies of the service charge demands made available to the Tribunal are not in the form required under section 47 of the Landlord and Tenant Act 1987 entitling the Applicant to withhold payment unless and until compliance has been made;
- 1.9 in the absence of evidence that a Summary Statement of Rights and Obligations has accompanied service charge demands/invoices as required under section 21B of the Landlord and Tenant Act 1985 (“the Act”), the Applicant is entitled to withhold payment of the service charges demanded/invoiced unless and until compliance has been made;
- 1.10 that, in the absence of any evidence of consultation in accordance with section 20 of the Act and of any application for leave to dispense with consultation under section 20ZA of the Act in relation to the works to replace the flat roofs with pitched roofs, the amount recoverable as service charge would be limited to £250. However, the Applicant has chosen not to have the works done and has not been charged accordingly;
- 1.11 in view of the Tribunal’s determinations in paragraphs 1.1 – 1.8 above, that it is just and equitable to grant the Applicant’s application under section 20C of the Act and the Respondent is therefore not entitled to charge any of the costs incurred in connection with the proceedings before the Tribunal as service charge;
- 1.12 pursuant to Rule 13(2) of The Tribunal Procedure First-tier Tribunal)(Property Chamber) Rules 2013 (“the Rules”) the Tribunal requires the Respondent to reimburse to the Applicant the cost of the application and hearing fees totalling £260;
- 1.13 that, having regard to all the circumstances, the Tribunal did not consider that the Respondent had acted unreasonably in defending the Application and did not therefore make an order in respect of costs against the Respondent pursuant to Rule 13(1) of the Rules;
- 1.14 in respect of the service charge year 1 July 2013 – 30 June 2014, and assuming compliance with the terms of the underlease dated 27 October 1976 made between A. & J. Mucklow (Lancashire) Limited(1) and Mr. & Mrs. A. Cronshaw(2)(“the Underlease”) and all applicable statutory requirements in respect of the demanding of service charges, the Tribunal would consider the following estimated costs to be reasonably incurred:

- (1) management fees: £50.00;
- (2) grass cutting: £50.00;
- (3) accountancy fees: £7.35;
- (4) buildings insurance: £93.54;
- (5) routine maintenance: £50.00.

Actual expenditure supported by relevant invoices or other supporting documentation may permit the Respondent to charge other amounts as service charge for the service charge year 2013/14.

2. By an application dated 10 May 2013, (“the Application”), the Applicant sought a determination as to the reasonableness of, and their liability to pay, service charges for the service charge years 2004/5, 2005/6, 2006/7, 2007/8, 2008/9, 2009/10 – 2011/12 “insofar as include alleged “arrears” b/f”, 2012/13 and 2013/14.
3. Following a Pre-trial Review (“PTR”) held on 24 June 2013, Directions dated 25 June 2013 were issued in pursuance of which the following evidence was submitted to the Tribunal:
 - 3.1 the Applicant’s Statement of Case (Appendix 7) together with the Bundle of evidence from the Applicant comprised in Appendices 1-74 (“the Applicant’s Bundle”);
 - 3.2 Bundle of evidence from the Respondent comprised in Appendices 1-52 (“the Respondent’s Bundle”).
4. At the PTR, it appeared to the Tribunal that the Applicant confirmed that there were no ongoing issues in respect of any service charge following the service charge year ended 30 June 2009 save in respect of the charges made for the installation of UPVC soffits/fascias in 2011. The Applicant subsequently confirmed that they were disputing all items included in the service charges levied in the service charge years 2009/10 and 2010/11, and this was reiterated at the hearing on 18 November 2013.
5. The Tribunal inspected the Property on 18 November 2013 at 10.15am. The inspection was attended by the Applicant and Mrs. D. May of DEM Management and Mr. B. Bowen and Mr. H. Merrick, directors of TARA Limited for the Respondent; a Mrs. H. Leddy, the owner of No.26, Tintern Avenue was also in attendance.
6. The Property is a ground floor flat in one of 3 blocks which comprise the entire development known as New Hall Estate, Tyldesley, Lancashire (“the Development”). The block in which the Property is located comprises 12 flats (“the Block”); there are 28 flats in total at the Development. There are no internal communal areas. The external communal areas comprise lawned areas to the front and rear of the blocks, and car parking areas. There are gates to the car park to the rear of the Block but the Applicant pointed out that the lack of any gates at the other end of the car parking area meant that this offered limited

security. A number of garages had been erected in the car parking area and many of the spaces were overgrown making it difficult to distinguish individually allocated spaces. At the inspection, the Applicant pointed out several properties at the Development which had replaced the flat roof to the entrance porch with a pitched roof; this work has not been undertaken at the Property at the Applicant's request.

7. Under the terms of the Underlease:
 - 7.1 the Property is defined in the Second Schedule as the ground floor flat coloured brown and situated in the block of flats edged red (defined as "the Building") together with the garage coloured blue on the plan attached to the Underlease. A coloured plan was provided to the Tribunal from which it is clear that the Building comprises the Property and the first floor flat immediately above it and not the entirety of the Block;
 - 7.2 "the Mansion" is defined in the First Schedule as the area edged green on the Plan and includes all of the buildings, flats, garages, driveways, pathways, gardens and grounds within the Development;
 - 7.3 under paragraph 2 of Part II of the Third Schedule, the Underlessee agrees to contribute:
 - (1) one-half of the costs etc detailed in Part I of the Eighth Schedule (entitled "Expenses of the Building") as follows:
 - (i) maintaining, repairing, redecorating and renewing:
 - (A) the main structure, roof, gutters and rain water pipes of the Building and garage (if any);
 - (B) the communal entrances, staircases etc;
 - (C) the water pipes, drains and electric cables and wires in or under the Building and used in common with the owners of the other flats in the Building;
 - (D) the TV aerial serving the Building;
 - (ii) keeping internal communal areas reasonably lighted;
 - (iii) decorating the exterior of the Building;
 - (iv) insuring the Building and the garage (if any);
 - (v) accountant's costs;
 - (2) one twenty-eighth of the costs etc detailed in Part II of the Eighth Schedule (entitled "Expenses of the Mansion") as follows:
 - (i) all rates, taxes etc payable in respect of the Mansion;

- (ii) trimming and cutting of lawns, borders, hedges and general horticultural matters relating to the garden plants and trees growing therein;
- (iii) maintaining and repairing the paths, driveways and garage forecourt;
- (iv) the charges and expenses of abating a nuisance and of executing any works necessary to comply with any notice served by the Local Authority in connection with the Mansion which is not wholly attributable to the fault of any single underlessee;
- (v) the costs etc of the Underlessor or its agents;

7.4 Part II of the Third Schedule provides that:

- (1) the service charge year shall be the period of 12 months ending on 30 June in each year (paragraph 2(iii));
- (2) the Underlessee shall pay the estimated service charge for any year in 2 instalments on 1 July and 1 December, having been notified of the estimated amount by no later than 30 June in the immediately preceding year (paragraph 2(iii));
- (3) there shall be a reconciliation of actual as against estimated costs every third year as set out in a Certificate of the Accountant and a balancing charge shall be paid by, or credited to, the Underlessee (paragraph 2(iv));

8. A hearing took place on 18 November 2013 at 11.30 am at which both Mr. & Mrs. Owen as the Applicant and Mrs. May, Mr. Bowen and Mr. Merrick for the Respondent attended.

9. It was suggested by the Tribunal that an appropriate starting point for the parties' submissions was the Statement of Service Charges to 30 June 2009 (Appendix 14 in the Applicant's Bundle).

10. Mrs. Owen for the Applicant made the following submissions:

10.1 as at December 2004, there should have been a nil balance rather than the debit balance of £90.96;

10.2 management fees 1 January – 30 June 2005: the Respondent confirmed that they had withdrawn this charge;

10.3 management fees 1 July 2005 – 30 June 2006 of £164.50 (£140 plus VAT): the invoice dated 20 May 2008 (Appendix 12) includes two charges of £75 each for the half-yearly service charge 1 July – 31 December 2005 and 1 January – 30 June 2006. The Statement was incorrect therefore as it should have referred to a charge of £150;

10.4 management fees 1 July 2006 – 30 June 2007 of £188: there is no invoice or other information supporting this charge;

- 10.5 management fees 1 July 2007 – 30 June 2008 of £188: again there is no invoice or other information supporting this charge. The Applicant referred to the invoice dated 22 December 2008 (Appendix 13) which refers to an end of year balancing charge of £49.58 but could find no other evidence relating to this service charge year;
- 10.6 management fees of 1 July 2008 – 30 June 2009: again there is no invoice or other information supporting this charge;
- 10.7 gardening charges re hedge: £275 divided by 28 = £9.82: again there is a lack of information about this charge.

The Respondent referred to the letter dated 24 July 2005 from Hebdens Landscapes (Appendix 22 at Tab 9 of the Respondent's Bundle) which refers to this charge. Mrs. Owen commented that this pre-dated the Applicant's ownership of the Property;

- 10.8 gardening charges re grass full season 08 + half season 09: again there is no invoice and Mrs. Owen maintained that their grass had not been cut;
- 10.9 common electricity: again there have been no bills, no communication and no information provided by the Respondent to support these charges.

The Respondent referred to the 6 bills from e-on (Appendix 28 at Tab 10 of the Respondent's Bundle) 4 of which relate to 2005 and 2 of which relate to 2007. The Respondent accepted that there were no invoices after 31 March 2007.

Mrs. Owen stated that:

- (i) there is no indication that these electricity bills relate to the Property;
 - (ii) they have never had a working TV aerial and have installed their own;
 - (iii) the costs also include electricity for the street lamp in the other garage forecourt;
- 10.10 referring to the Service Charge Statements at Appendices 15 – 19 for the service charge periods 1 July – 31 December 2009 (Appendices 15-16), 1 July 2009 – 30 June 2010 (Appendix 17), 1 July – 31 December 2010 (Appendix 18), and 1 January – 30 June 2011 (Appendix 19), Mrs. Owen commented that they are not in the requisite statutory form as they do not include the name and address of the Landlord;
- 10.11 the Applicant has not received any invoice or demand for the service charges in dispute but merely the Statements referred to in paragraph 10.10 above. Mrs. Owen acknowledged that they had received a Summary Statement of Rights and Obligations with the Statements at Appendices 14-16 but this had not always been the case with other Statements which had been sent;

- 10.12 the Applicant referred to the Statement of Service Charges to 30 June 2009 for 88, Abbey Road which is Mr. Merrick's property at the Development (Appendix 31 at Tab 9 of the Respondent's Bundle) where there are different charges for the same items eg management fees of £50 per annum for 4 years; accountancy fees of £2.84 per annum for 4 years; gardening charge of £100 divided by 28; common electricity for period 1 January 2005 – 4 June 2009 of £36.22;
- 10.13 Mrs. Owen referred to:
- (i) the Service Charge Statement for Anticipated Charges 1 July – 31 December 2010 (Appendix 18) and the Service Charge Statement for Anticipated Charges 1 January – 30 June 2011 (Appendix 19) which include the 2 payments for the Routine Maintenance - UPVC of £200 and £185;
 - (ii) the letter dated 29 July 2010 from Mrs. May (Appendix 30) in which reference is made to these works and the estimated costs of £400 per Underlessee;
 - (iii) the letter dated 12 March 2011 from the Applicant (Appendix 32) in which reference is made in the last paragraph to a reduction in the estimated costs from £800 to £770;
 - (iv) the letter dated 16 March 2011 from Mrs. May (Appendix 33) in which reference is made to the subsequent appointment by the Respondent of a contractor for these works at a fixed price of £385 per property. The Applicant maintains that there was a lack of statutory consultation in respect of these works where the amount payable by the Applicant was in excess of £250;
- 10.14 the Applicant referred to the letter dated 16 March 2011 from Mrs. May (Appendix 33) in which reference is made to the cost for replacement of the flat roof to the entrance porch with a pitched roof as follows: "The cost per 2 flat entrance roof is £780 ie each owner contributing £390". Mrs. May acknowledged that they have not chosen to have these works done and have not been charged accordingly;
- 10.15 the Applicant questioned whether the Respondent was obtaining quotations for works at the Development in accordance with the Underlease: specifically that as the Building is mid-terrace, the costs of certain works may be less for the Underlessees of these two flats than others in the Block as less work may be involved eg because there is no gable end. The Applicant questioned whether this differential had been fully taken into account in obtaining quotations.
11. The hearing was adjourned and, on resumption, the Respondent made the following submissions:
- 11.1 in support of the balancing charge DGA, reference was made to the statement of account dated 2 March 2005 addressed to Mr. Paul Smith

which shows a debit balance as at 30 June 2004 of £90.96, (Appendix 16 at Tab 5 of the Respondent's Bundle).

The Respondent acknowledged that there is no evidence as to how the £90.96 was calculated or to what it related;

- 11.2 with regard to the LVT refund of £376.97, the Respondent referred to the Schedule of Adjustments at Appendix 17 (Tab 5), and also to the LVT's decision at Appendix 39 (Tab 13);
- 11.3 with regard to the management fees for the period 1 January – 30 June 2005, reference was made to paragraph 6 of the Respondent's Statement of Case (Appendix 20 at Tab 7) in which it was confirmed that the management fees for the year ended June 2005 were £125 per unit per annum and to the Statement of Service Cost for the year ended 30 June 2007 (Appendix 21 "E" at Tab 8) in which the charging of VAT on management fees is recorded;
- 11.4 the Respondent confirmed that the management fees charged in the Statement of Service Charges to 30 June 2009 (Appendix 14 of the Applicant's Bundle) were based on the information in the Statement of Case at Appendix 20 at Tab 7 of the Respondent's Bundle. The Respondent acknowledged that they did not have access to the original invoices/demands;
- 11.5 with regard to the gardening charge of £275, the Respondent again referred to the letter dated 24 July 2005 from Hebdens Landscapes (Appendix 22 at Tab 9) in support of the charge;
- 11.6 the Respondent acknowledged that there is no invoice for the grass cutting charges but that details of these costs were set out in the Respondent's letter dated 1 August 2013 at Tab 1 of the Respondent's Bundle;
- 11.7 the Respondent said that there is a communal aerial in the roofspace of the Block; there is one streetlight in the parking area;
- 11.8 the Respondent accepted that they had not undertaken a s20 consultation process with regard to the replacement of the soffits and fascias at the Development. They had dismissed the lower quote for these works which had been referred to in the Applicant's submissions as it involved replacing the existing wooden soffits/fascias with wood whereas the quotation which was accepted involved replacement with UPVC undertrays which, although more expensive, would be more long-lasting.
12. Mrs. Owen made the following further submissions:
 - 12.1 she requested confirmation by the Respondent that they were not seeking payment of the management fees for the period 1 January – 30 June 2005. This was reiterated by the Respondent;

- 12.2 reference was made to the second Tribunal decision which did relate to service charges during the period 1 July 2005 – 30 June 2009;
- 12.3 in respect of this Application, the only Underlease which is relevant is that which relates to the Property;
- 12.4 she maintained that they had been paying for electricity until very recently. Mrs. May for the Respondent confirmed that the electricity was disconnected in February 2013;
- 12.5 in support of the s20C application, Mrs. Owen said that she had sought to reach a compromise with the Respondent but without success and therefore had little alternative but to make the Application; she believed that they will be found to have been right on all counts raised by the Application; the Respondent had failed to provide any original invoices supporting some of the historic costs (with the result that some of these may now be irrecoverable); some of the demands/statements issued in more recent times were not in the prescribed form and/or were not accompanied by requisite information; and that there had been a failure of consultation in respect of certain works ;
- 12.6 the Applicant is also seeking reimbursement of application and hearing fees paid by them in respect of the proceedings which total £260; and also an application for costs for disbursements of £431.19;
- 12.7 by letter dated 28 November 2013, in support of the application for a costs order, the Applicant submitted a schedule also detailing 42.5 work hours spent by them on the Application, complying with Directions and attending the hearing.