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FIRST –TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CH/00HY/LSC/2014/0110
Property:	29 & 30 Bitham Mill Courtyard, Alfred Street, Westbury, Wilts. BA13 3DB
Applicant:	John & Sally-Ann Clark (29) and Helen Lewis (30)
Representative:	None
Respondent:	R.G. Securities Limited
Representative:	Sophie Archer of Countrywide Estate Manangement
Type of Application:	Service charges: section 27A of the Landlord and Tenant Act 1985
Tribunal Members:	Judge David Hebblethwaite (Chairman) Mr Simon Hodges (valuer) Mr Martyn Cook (lay member)
Date and venue of Hearing:	3 June 2015 at Salisbury Law Courts
Date of Decision	30 June 2015

DECISION

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DECISION

1. On 24 October 2014 the Tribunal received applications from the Applicants in relation to the Property under section 27A of the Landlord and Tenant Act 1985 for a determination as to the payability by the Applicants of service charges for the year 2014-15.

2. The law relevant to these applications is as follows:

Service Charge (1985 Act)

Section 18 defines "service charge" as *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.* The "relevant costs" are defined as *the costs or estimated costs incurred or to be incurred by or on behalf of the landlord in connection with the matters for which the service charge is payable.*

Section 19 provides that 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.*

Inspection

3. The Tribunal inspected the Property on the morning of 3 June 2015; the Applicants were present, as was Ms Archer for the Respondent. The Property comprises a pair of compact maisonettes situated within the development of a former mill building which was converted into residential use approximately eight years ago. The mill is of three story construction with brickwork and rendered elevations under a tile clad roof. The Property is situated at the northern end of the development flanking Bitham Mill Road. Number 29 Bitham Mill Courtyard is situated at ground and first floor levels with access from the front of the building over Bitham Mill Courtyard. Number 30 Bitham Mill Courtyard is at first and second floor levels with access via a metal staircase to the rear of the building. The plan attached to the freehold title No: 292900 shows the freehold to include a small paved area to the rear of the building (upon which the metal staircase providing access to number 30 stands – the staircase itself is within the

demise of the maisonette) and also a small paved strip immediately to the front of the building which forms part of the larger courtyard area. During the site inspection the applicants showed the Tribunal two nearby car parking spaces that are occupied with the Property. However it is apparent that the two car spaces are not included in the freehold title.

3. The Tribunal was able to read, before the Hearing, a bundle of documents. The principal documents are the Leases. As they are identical, only one was in the bundle, namely that for 29, dated 9 August 2006. The maisonettes, which are fully described in the respective First Schedules, are demised to the tenant for a term of 125 years from 1 January 2005. Clause 4(1) deals with service charges and 4(2) with insurance contributions.

The Hearing

4. At the Hearing the Applicants appeared in person and the Respondent was represented by Mr Sinclair (counsel) who was accompanied by Ms Archer. As had been apparent from the bundle, this was the first year of ownership of the freehold by the Respondent and, therefore, the Tribunal was dealing with the first set of service charges levied by the Respondent in respect of the Property.

5. The issue of the insurance premium was taken first. The Applicants' objection arose from a huge increase on what they had previously paid. As directed at the CMC, the Applicants had provided evidence of this and had obtained alternative quotes. Details were in the bundle. The Respondent relied on the case of Havenbridge Limited v. Boston Dyers Limited (1994) as authority for the proposition that the landlord did not have to obtain the cheapest quote. However, Mr Sinclair seemed to advance two separate and competing statements as how the cover was obtained by his client; first, there is the situation set out in Mr Bland's statement para. 4, stating that the insurance is within a portfolio (or block) policy, not by individual property. In reply to questions by the Tribunal, Mr Sinclair said there was no evidence of competition for the block policy, he did not know if it included commercial property and there was no breakdown of the premium to show how much was for terrorism. In any event, Mr Sinclair put forward a different explanation, based on para. 6 of Mr Bland's statement, namely that the Respondent had taken the cover summary handed to it by its predecessor (appearing at pp. 14-16 in bundle) and asked its broker to obtain insurance for the same cover, and that the premium sought was similar to that in that cover summary. However, the Applicants stated that they had never been aware of insurance provided by Insolvency Risk Services and that the previous cover had been with NFU Mutual, evidence of which is at pp.

146-148 of the bundle. The Applicants further stated that they provided this information to the Respondent's agents before the Tribunal application was made. This anomaly in the documentation was not explained by the Respondent and the Tribunal was left without any evidence for the provenance of the cover summary at pp. 14-16. The Applicants proposed as a reasonable figure £200 per maisonette.

6. The Hearing continued to consider the remaining items in the service charges. The application covers two periods in respect of which, at the time of the application, the Applicants had received demands based on estimates, namely 1 October to 31 December 2014 and the calendar year 2015 (see p. 106 of bundle). By the time of the Hearing the actual figures for the first period had replaced those estimated. Of 7 categories in the estimate only 3 remained, namely accountancy fees, management fees and reserve fund. The other 4 categories had all been objected to by the Applicants, as set out in the application and statement of case, and were now no longer demanded. The Applicants told the Tribunal that they accepted the accountancy fees of £96 as reasonable and that they did not object to the Respondents establishing a reserve fund and to £50 being charged to that. As regards the management fees, the Applicants said that they knew they would have to pay management fees to the new freeholder but they must be reasonable; the size of the Property was relevant to this, no work was planned and they weren't aware of any routine visits by the Respondent's agents. Ms Archer stated that she visited 6 times a year and that the Applicants wouldn't necessarily realize when she had been; the charge was on a fixed fee basis per unit.

7. As submissions moved on to the 2015 estimated charges, the Tribunal sought to clarify the freehold area, by reference to the title plan. From this exercise the situation was clarified and is as stated in para. 3 above. The Applicants stated that they had maintained the small outside areas within the freehold and that no work was planned by the Respondent. Ms Archer agreed with the latter point. As regards general maintenance she similarly agreed that no work was planned; it was established that the roof and gutters would be covered by this landlord's obligation; the roof was 8 years old. Ms Archer told the Tribunal that she had instructed chartered surveyors to carry out a health and safety check and that the estimate of £120 was based on their quote. It was a "one off this year", she said at first, then that it would be no more than every other year. In respect of accountancy fees and management fees the Applicants submitted that both were too high. Ms Archer said the accountants charge a "standard fee" and that the same point as she made in relation to the earlier period applied to the management fees in a full year.

Section 20C (1985 Act)

8. The Applicants having applied for an order to the effect that the Respondent's costs in connection with these proceedings are not to be treated as relevant costs for future service charges, the Tribunal invited submissions. The Applicants referred to the way matters had been dealt with by the Respondent. The main point, they said, was the insurance. They had tried to mediate before coming to Tribunal. They had sent the Respondent quotes but had just been told "You must pay". They referred to letters from the Respondent's agents (both agents) dated 7 November 2014 which they felt were bullying. Mr Sinclair submitted that the Respondent was forced to respond to the application and at no point had the Respondent acted unreasonably. He accepted that the estimates may have been too high and floated the possibility of part of the costs being disallowed.

Consideration

9. After the Hearing the Tribunal members proceeded to consider the application, starting with the insurance premium. It was felt that there were many difficulties with the premium demanded by the Respondent, as follows:

(a) There was clear evidence of what the premium had been immediately before 1 October under the NFU Mutual cover, namely £380.

(b) Conversely, the apparent premium of £1,944 plus IPT set out in the cover summary from Insolvency Risk Services was unreliable. It had not been the premium charged to the Applicants.

(c) The Applicants had, as directed, obtained much lower quotes, which the Respondent had dismissed.

(d) If it was the case that it made a significant difference to the amount of the premium, the Tribunal's view is that cover for terrorism is unnecessary at the Property.

(e) As an expert Tribunal, its experience for this type and size of property leads it to the conclusion that a reasonable premium would be £300 to £400 pounds per annum.

In all the circumstances, the Tribunal agrees with the Applicants' submission that **£400 (2 x £200)** is reasonable.

10. As regards the balance of the service charges, for the period 1 October to 31 December 2014 matters have sorted themselves out by the actual charges replacing the estimates. 4 categories have been removed and the Applicants accept the reserve fund contribution and the accountancy fees. The Tribunal is left to adjudicate on the management

fees and feels that **£175 per unit** as a flat rate, having regard to 6 visits a year, is reasonable.

11. For 2015, consideration by categories was given, as follows:

    (a) Health and safety inspection – the figure proposed of **£120** is reasonable on the basis of an inspection no more often than every other year.
    (b) Garden and grounds maintenance – there is no garden and the "grounds" require no maintenance. Should there be a repair needed it can come under general repairs. **Nil** allowed.
    (c) General repairs – on the evidence there are no planned repairs, even half way through the year (as at Hearing). It would appear that the Respondent is only thinking in terms of "reactive" repairs, but there is no evidence that any are likely this year. **Nil** allowed.
    (d) Accountancy fees – it is felt that if this figure **(£270)** has been quoted and is paid, then it is reasonable, albeit the accounts will be very straightforward for the Property.
    (e) Management fees – these are approved on the same basis as for 2014, namely **£175 per unit** to include 6 visits per year.
    (f) Reserve fund - **£50** accepted by Applicants.

12. The Tribunal had no hesitation in allowing the section 20C application. First, the Applicants had been substantially successful. Secondly, the Tribunal found that they had tried to deal with the matter before making an application but had been rebuffed. The letters of 7 November 2014 clearly demonstrate an entirely inappropriate attitude on the part of the Respondent. Accordingly, the Respondent's costs in connection with this application may not be included in future service charges.

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RIGHTS OF APPEAL

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