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

Case References : **LON/00AJ/LSC/2015/0460**

Property : **Flat 4 Poets Corner, 52 Churchfield Road, London W3 6DA**

Applicant : **Bexwell Homes Limited (“the landlord”)**

Representative : **Royds LLP, solicitors**

Respondent : **Mr Oliver Redtke (“the tenant”)**

Representative : **N/A**

Type of Application : **For the determination of the reasonableness of and the liability to pay service charge**

Tribunal Members : **(1) Judge Amran Vance
(2) Mr R Shaw FRICS**

Date of Decision : **4 April 2016**

DECISION

Decisions of the tribunal

1. The tribunal determines that the following amounts are payable by the Respondent, by way of service charge:

2010/11 Service Charge Year: £1,528.52

2011/12 Service Charge Year: £1,098.09

2012/13 Service Charge Year: £1,435.94

2013/14 Service Charge Year: £1,577.32

2014/15 Service Charge Year: £1,561.74

Background

2. 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 charge payable by the Respondent in respect of Flat 4 Poets Corner, 52 Churchfield Road, London W3 6DA ("the Flat") for the actual service charge costs incurred for the five service charge years referred to in the previous paragraph.
3. It appears that the Flat is a two-bedroom first floor flat in a purpose built block of flats ("the Building") situated in the wider Poets Court Estate ("the Estate").
4. The relevant legal provisions are set out in the Appendix to this decision.
5. The Respondent has the benefit of the remaining term of a lease of the Flat dated 9 May 2006 entered into between (1) Bexwell Homes Limited and (2) Mr Dean Freeman ("the Lease") for a term of 125 years from 9 May 2006. The Lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge in a 9.70% proportionate share.
6. The Applicant's application was received by the tribunal on 22 October 2015. On 29 October 2015 a copy of the application was sent to the Respondent at the address of the Flat together with a copy of the tribunal's guidance information. On the same date the tribunal also wrote to him notifying him that a case management conference ("CMC") was to take place on 12 November 2015.

7. Counsel for the Applicant attended the CMC on 12 November. The Respondent was absent. Directions were issued by the tribunal to both parties on the same date ("the Directions") which provided for the landlord to send to the Respondent, by 8 January 2016, a statement of case identifying the relevant provisions of the Lease that gave rise to the tenant's service charge liability, identifying the service charge years to which the application related, setting out evidence regarding the service charge accounts and details of payments made together with any legal submissions.
8. It appears that the Applicant complied with that direction. A copy of the landlord's statement of case appears in the bundle before us which also includes copies of: service charge demands sent to the Respondent; the annual service charge certificates for each of the service charge years in issue giving a breakdown of the costs incurred and the amount payable by the Respondent; and the relevant invoices for the costs incurred for each of the years in issue.
9. The Directions required the Respondent to reply to the Applicant's statement of case by 5 February 2016 addressing, amongst other matters, if he disputed that he was liable to pay the service charges in issue and which sums, if any, he disputed and why.
10. The Directions provided for the application to be determined on the basis of written representations unless either party requested an oral hearing. As neither party requested a hearing the application has been determined on the papers.
11. On 16 March 2016 solicitors for the applicant lodged copies of the hearing bundles with the tribunal and notified the tribunal that a copy had been sent to the Respondent. They also confirmed that they had not received a Statement of Case in Reply from the Respondent nor any other correspondence.

The tribunal's decision and reasons

12. The tribunal determines that the sums referred to in the first paragraph of this decision are payable by the Respondent.
13. The Respondent has not played any part in these proceedings. He did not attend the CMC or comply with the terms of the Directions. Nor has he responded to any of the correspondence sent to him by the tribunal on 29 October 2015 and 12 November 2015. None of the letters sent to him by the tribunal have been returned marked undelivered by the Post Office.

14. Furthermore, the Respondent appears not to have responded to letters sent to him by the Applicant's managing agents dated 7 August 2012 and 28 February 2013 chasing payment of overdue service charges. Nor does he appear to have responded to correspondence from the Applicant's solicitors dated 10 May 2013, 4 July 2013, 17 February 2015, 19 May 2013, and 17 February 2015 chasing arrears of service charge and ground rent. Copies of these letters are included in the hearing bundle before us together with copies of correspondence between the Applicant's solicitors and the Respondent's mortgagee seeking that it pays arrears of ground rent and service charge payable by the Respondent.
15. Given the Respondent's failure to engage with this application and the lack of any objections raised by him to the service charge costs included within the application the tribunal concludes that the costs in question are payable by him in full.
16. The tribunal has considered the annual service charge accounts and the invoices for each service charge year as provided in the bundle and is of the view that none of these costs appear to be outside of a range of costs that it was reasonable for the landlord to incur. Nor would it be appropriate for us to reach that conclusion without the tenant asserting the same.
17. The Respondent has not made an application for an order under s.20C of the 1985 Act that the costs incurred by the Applicant in these proceedings should not be passed on to lessees via the service charge and as such we make no such order. We would not have made an order in any event given the Applicant's success in its application and the Respondent's lack of engagement.

Name: Amran Vance

Date: 4 April 2016

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2 - APPENDIX OF RELEVANT LEGISLATION

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.