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

Case Reference : **MAN/00BL/LSC/2013/0049**

Property : **1, Brook Building, Deakins Park, Egerton,
Bolton BL7 9YU**

Applicant : **Deakins Park Management Company Ltd**

Respondent : **Miss K Ingham**

Type of Application : **Landlord & Tenant Act 1985 – Section 27A(1)
Commonhold & Leasehold Reform Act 2002 –
Schedule 11, Paragraph 5**

Tribunal Members : **Mr J R Rimmer
Mr W T D Roberts
Mr L Bottomley**

Date of Decision : **19th August 2013**

Order : **The service charges which are the subject of
this application are reasonably incurred at
reasonable cost with the exception of the
electricity charges comprised in the service
charge and the estate charge for the year to
31st December 2011 and the 15 month period
to 31st March 2012. The Tribunal determines
that the amounts payable by the Respondent
are as follows:
Estate charge to 31 December 2011 - £90.55
Estate charge to 31 December 2012 - £89.47
Service charge to 31 December 2010 - £107.80
Service charge to 31 March 2012 - £134.75**

A. Application and background

1. The Applicant is the management company responsible for the provision of services to the development known as Deakins Park, Egerton, near Bolton. Those services are currently provided under contract by Complete Property Provision although they have replaced the previous contractors very recently. The Respondent is the leasehold owner of the subject flat under a lease dated 31st August 2006 granted at a premium and a rent of £200 for 999 years from 1st January 2005. Miss Ingham is the original lessee.
2. The Applicant commenced proceedings in the County Court to recover arrears of service charge, allegedly unpaid by the Respondent, for the period from 1st July 2011 to 31st December 2012 and the issue of the reasonableness of those service charges has now been referred to what is now this Tribunal for a determination of that matter. The Order is dated 12th March 2013.
3. The Respondent's lease contains provisions relating to the service charges at several points in the leases:
 - Clause 3 is the reddendum to the lease and refers to payment of the appropriate proportion of the service charge.
 - Schedule 3 sets out the services to be provided and how they are to be accounted for.
 - Schedule 4, at Paragraph 2, contains the covenant by the leaseholder to pay the service charge as calculated.
4. The services are essentially those that would be expected in the service provision for modern, new-build, residential accommodation and there is nothing of an unusual nature about the obligations or how the payment is calculated. The services do however divide into those services provided peculiarly to the residential blocks only and those provided to the estate in general. The Respondent's proportion of the former is 1.1947% of the former and 0.5911% of the latter, being calculated on the basis of the proportion of the total floor area occupied relative to the total for all occupied dwellings.
5. The Applicant provided a Statement of Case dated 25th April 2013. This set out the Applicant's basic premise that the service charges were reasonable and the Respondent had not suggested otherwise. She had merely alleged in general terms that services were reduced, but providing no evidence as to such a reduction in either quality or quantity, nor over what period. The Respondent re-iterated the statement as to reduced services in the response dated 7th May 2013.

6. This provided some outline detail of problems with security lighting and surveillance camera failings. Reference was also made to the structural problems that were alleged to be present and continuing involvement with the NHBC following the insolvency of the developer.
7. The Respondent had also made a point in her defence to the county Court proceedings that she had moved out of the flat for a considerable period of time whilst remedial work was carried out and was of the view that service charges should not be payable during her period of absence. The Respondent did not provide any direct evidence, expert or otherwise, either to further explain the extent of the damp problem alleged, or how the services thereby ceased to be payable.
8. On the morning of 12th June 2013 the Tribunal inspected the Deakins Park development in general and the Brook Building in particular, together with the common parts appurtenant thereto. The largest structure on the development is the old Deakins Mill itself now let as commercial premises (the occupants of which contribute an appropriate amount to the "estate charge" element of the services. There have then been constructed on adjacent land three modern, multi -storey blocks constructed of brick with cladded fascias under a flat roof. There are a further 40 modern houses set in blocks that would lead them to be described as terraced. Extensive parking is provided and there are landscaped grounds in addition. The development is approached a long a roadway which passes that part of the former mill grounds which are commercial in nature. Individual flats are accessed from common corridors on each floor accessed from lifts or stairwells. Decorations to the common parts consist predominantly of washable emulsions. The entire development appears to be in reasonably good repair, commensurate with its recent construction. The Tribunal was not able to ascertain during the course of the inspection, what, if any, structural problems remain, or the extent thereof, nor was there evidence to be seen of those matters outlined by the Respondent and referred to above.
9. Thereafter the Tribunal reconvened at its Manchester Office for a hearing attended by Mr McGann, solicitor, agent for the Applicant's solicitors, SLC Solicitors and the current director of Complete Property Provision. There was no attendance by or on behalf of the Respondent.
10. On behalf of the Applicant Mr McGann made a number of brief observations which he believed would assist the Tribunal:
 - An outline of the County Court proceedings and the amounts involved up to the point of the Tribunal's involvement.
 - There should be a clear distinction between the as yet unresolved disputes as to the structure of the building and any remedial work

required, as against the provision of services to either the whole development in general, or the Brook Building which were not related to that dispute

- The Respondent had provided only generalisations as to the service charge issues, not substantiated by any evidence and which had not been challenged in any significant way in the County Court proceedings.
 - It was proper for the Tribunal to conclude, in the absence of such evidence that the charges were reasonable.
 - It was accepted that nevertheless the Tribunal had an overriding responsibility to make objective enquiry as to the reasonableness of such charges and the standard of work provided.
11. The current service providers, Complete Property Provision, had only recently taken over responsibility for the provision of services and had a limited knowledge of the development and its history but a number of matters could be addressed that gave the Tribunal cause to make further enquiry
- Management charges were likely to reduce under the new regime compared with the former agents, P & R Gibbs & Co, but it was submitted that those fees within the service charge under consideration were not unreasonable.
 - The accountancy fees might appear high but it was submitted that they were not unreasonable for the size of the charges to be audited.
 - Although some service charge accounts had been provided the Tribunal asked that it be provided with those for the year ending 31st December 2010 and possibly 31st March 2013 to give an overall picture of the whole period over which the alleged arrears accrued. (There had been a change in the accounting period resulting in one 15 month accounting period from 1st January 2011 to 31st March 2012)
 - Further information was required as to the extremely large electricity charges for the grounds and common parts, given the nature of the electricity usage of which the Tribunal was aware and greater explanation was certainly required. Although two further tranches of information were forthcoming in response to the further directions of the Tribunal they provided no clear indication of what charges were being made, on what basis they were being made and how they related to the amounts charged within either the estate charge accounts or the service charge accounts.
 - It was noted that the legal costs being sought within the proceedings, including disbursements, were left to the Tribunal so far as the issue of reasonableness is concerned and the Applicant's solicitor made no direct observation thereon.

12. At the conclusion of the hearing the Tribunal issued further directions to address those matters upon which it considered further information was required and also to consider the reasonableness of the costs being added to the debt. Such was the concern of the Tribunal as to the electricity charges yet further information was required after the Tribunal considered what had been provided to it.
13. Ultimately such further information as to the electricity charges for the development that came to light informed the tribunal that...

Tribunal's Conclusions and Reasons

14. The law relating to jurisdiction in relation to service charges falling within Section 18 is found in Section 19 Landlord and Tenant Act 1985 which provides:
 - (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
15. Further section 27A Landlord and Tenant Act 1985 provides:
 - (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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services(subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.
16. In the absence of any real evidence from the Respondent as to the service charges being anything other than reasonable and in the light of the enquiries that the Tribunal made on its own account into certain elements of the charge the Tribunal considered that the charges, subject to the observations set out below, were reasonably incurred and the work carried out was of a reasonable standard.

17. The Tribunal did however have extreme concerns as to the charges levied within both the estate charge and the service charge for the electricity used at Deakins Park and attributable to the Brook Building.
18. It is clear that the electricity account for the common parts of the Brook Building has the account number 0123 5829 3350. Within the large bundle of invoices provided by the Applicant's solicitor is an amended bill dated 14th November 2012 showing all chargeable amounts for the period from 27th July 2009 to 8th November 2012 for an amount of £11774.09 (VAT at 5% would take this to £12362.80).
19. If this amount was to be apportioned on a straight line basis over each year it would amount to an annual charge of approximately £3,800.00 for electricity to the common parts of the building.
20. A similar amended bill is provided on account 0123 5832 3950 (that being for the Cotton building) for a period from 24th January 2009 to 30th October 2012 for an amount of £8359.96 (£7777.96 with VAT at 5%). This amounts to an annual charge for that building of approximately £2340.00.
21. For the Mill Building an account, numbered 0123 5831 6740, shows charges of £4576.16 (£4804.97 with VAT) for the period 8th February 2011 to 30th October 2012: approximately £2883.00 annually.
22. These amounts reflect an overall electricity charge for the three buildings of £9023.00 per annum for which the Respondent bears a responsibility to pay 1.1947%, or £107.80.
23. The Estate charge electricity liability is based upon paying one half of the electricity account for the whole of the Deakins Park development, paid initially by the managing agents for the commercial buildings and then passed on. As this appears to be assessed on a commercial basis it appears to incur VAT at the usual prevailing rate, currently 20%.
24. For the calendar year 2010 the amount charged appears to be approximately £15317.26 (there appears to be an estimated account for December 2010). For the 15 months from 01 January 2011 to 31 March 2012 the amount is likely to be about £15136.72 (the Tribunal being able to locate 14 of 15 monthly invoices and averaging them for the period). There are other invoices apparently provided on occasions for various other amounts. In the absence of any explanation of their purpose or how they may interrelate with the monthly invoices they have been discounted by the Tribunal.

25. The Respondent's liability is to pay 0.5911% of these amounts. For 2010 this would amount to £90.55 and for the 15 months to 31/03/2012 the amount would be £89.47.
26. The Tribunal considered the management fees, accountancy fees and legal costs forming elements of the service charges in addition to the electricity charges considered above and was of the view that in its professional experience those charges were not, in the absence of contrary evidence, to be considered unreasonably incurred at unreasonable cost.