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

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| **Case Reference** | : | **LON/00AY/LSC/2014/0378** |
| **Property** | : | **Flat 5, 1b Montrell Road, London SW2 4QD** |
| **Applicant** | : | **Ellenwell Properties Limited** |
| **Representatives** | : | **Mr Brown of Counsel** |
| **Respondent** | : | **Joan Riley (formerly known as Tyica Riley)** |
| **Representative** | : | **Mr Owusu of Counsel** |
| **Type of Application** | : | **For the determination of the liability to pay a service charge** |
| **Tribunal Members** | : | **Judge W Hansen (chairman)**<br>**Mr A Lewicki FRICS**<br>**Mrs J Hawkins** |
| **Date and venue of Hearing** | : | **23rd October 2014 at 10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **29th October 2014** |

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**DECISION**

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## Decisions of the tribunal

(1) The tribunal determines that the sum of £673.64 is payable by the Respondent in respect of service charges for the year 2009/10, £599.04 for the service charge year 2010/11, £550.95 for 2011/12 and £366.66 for the half year to 24/3/13, i.e. a total of £2,190.29.

(2) The tribunal determines that the sum of £60.00 is payable by the Respondent as an administration fee.

(3) For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the county court in relation to county court interest or fees.

## The application

1. The Applicant seeks, and following a transfer from the county court dated 15th July 2014, the tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of certain service charges charged to the Respondent.

2. The county court claim is for £4,649.33 (page 3) by way of allegedly unpaid service charge, ground rent and an administration fee. This Tribunal is concerned only with the service charge and administration fee element of the claim.

3. The service charge element of the claim comprises the following: £1,580.26 for 2009/10, 2 x £768.50 for 2010/11, 2 x £545.00 for 2011/12 and £259.00 for the period from 29/9/12 to 24/3/12.

4. The relevant statutory provisions are set out in the Appendix to this decision. The Respondent's lease ("**the Lease**") in respect of Flat 5 was completed on 28th November 2008 (page 6) and was for a term of 125 years from 29th September 2008. The Lease is to be found in the bundle at pages 89-122. Flat 5 is one of 5 flats in the building. It is not necessary to recite its detailed terms and nothing turns on any particular provision in the Lease.

## Procedural Issues

5. This is an unfortunate piece of litigation. There has already been a very recent decision of another constitution of this Tribunal determining essentially the same issues as are before this Tribunal. This is because the Respondent also owns Flat 2 at 1b Montrell Road ("Flat 2") and there has been very recent litigation (under Case Reference LON/00AY/LSC/2013/0458) between these parties in relation to the

service charges payable in relation to Flat 2 in respect of the same period covered by this claim save for the period 2012/13.

6. The details of that litigation are as follows. On 28th November 2013 another constitution of this Tribunal determined that the Respondent was liable to pay £673.64 in respect of service charges for 2009/10, £599.04 for 2010/11, and £550.95 for 2011/12. It also determined that the Respondent was liable to pay an administration fee of £60.00 levied in December 2012.

7. Thus one might have thought that the parties would have been in a position to reach some kind of agreement in relation to the service charges payable for Flat 5. This is particularly so given that when case management directions were made in relation to the present claim Mr Andrew noted the previous litigation and commented that: "*The reasonableness of the service charge costs incurred during the years 2009/2010, 2010/2011 and 2012/2013 was determined by the decision of 28 November 2013. Although that decision related to a different flat the service charge costs were generic to 1b Montrell Road. The issue has already been litigated between the parties. I cannot see that the tribunal can have jurisdiction to reconsider it although that will be a matter for the tribunal at the hearing...*"

8. Notwithstanding that indication, the parties continued to be at loggerheads and the matter came before this Tribunal in a most unsatisfactory state.

9. On 12th August 2014 Mr Andrew gave detailed case management directions which envisaged that the service of statements of case and witness statements would have been completed without incident by 26th September 2014. As it was, this did not happen and it appeared that both sides had entirely lost sight of the need to conduct this type of litigation proportionately and in accordance with the overriding objective. However, we say no more about the unfortunate procedural history because there was, in the end, an outbreak of common sense at the hearing which means it is unnecessary to say more than this: the Tribunal admitted the Respondent's statement of case dated 22nd October 2014 and her witness statement of the same date (with paragraphs 12-16 thereof excised in any event) upon the Respondent agreeing by her Counsel that she was only pursuing three issues: (i) she was alleging that she had not been served with the service charge demands in respect of Flat 5 and was not therefore liable to pay anything ("Issue 1"); (ii) she was resisting any claim in respect of the period after 9th April 2013 which is when she contends that the right to manage the building passed to a right to manage company ("Issue 2") and (iii) she was inviting this Tribunal to follow the previous determination made on 28th November 2013 ("(Issue 3") which had already dealt with the same issues covered by this claim but was challenging the reasonableness of the service charges for 2012/13, i.e.

the period up to 24/3/13, which were included in the county court claim relating to Flat 5 and had not been before the previous Tribunal.

10. Mr Andrew also noted that: "*... the Respondent's counterclaim appears to be outwith the tribunal's jurisdiction. Even if it had a concurrent jurisdiction I am satisfied that the county court is a more appropriate forum...*"

11. For the avoidance of doubt, we should also record the fact although Mr Andrew had already determined that the Respondent's counterclaim in the county court proceedings was out with the jurisdiction of this Tribunal, the question of whether it is or is not, is academic because Mr Owusu confirmed that he was not pursuing the counterclaim in this Tribunal, save insofar as it covers the points raised by Issues 1-3 above.

Issue 1

12. Clause 10 of the Lease (page 109) provides for the service of documents by ordinary post "*at the last known place of abode ... of the Tenant ... or the Demised Premises*". Mr Darkwah of Salter Rex, the Applicant's managing agents, gave evidence to the effect that the service charge demands for Flat 5 were served by post at the Demised Premises' address. The Tribunal found this evidence unsurprising as the demands for 2009/10 and 2010/11 (pages 216 & 223) were addressed to the Respondent at the Demised Premises' address. However, the later demands (pages 203-208) are addressed to the Respondent at what she says was her place of abode at all material times, namely 47 Holderness Way. Mr Darkwah explained that this was because the demands in the bundle were essentially computer generated file copies which had been produced after the Respondent's address had been changed on the computer which had happened at about the time of the previous LVT hearing in 2013. They had not been served at the 47 Holderness Way address. They had been served only at the Demised Premises' address. Mr Darkwah also told the Tribunal that the Respondent had never requested that service charge demands be served at the 47 Holderness way address or any other alternative address.

13. The Respondent contended that the demands should have been served on her at the 47 Holderness Way address because this was noted as her address in the Lease and the office copy of the leasehold title. Her Counsel did not contend that the demands had not been served at the Demised Premises although in evidence the Respondent appeared to suggest as much because she said that her tenants or managing agents would have passed them on to her if they had been served.

14. The Tribunal noted that the issue of service was also an issue in the previous proceedings. In those proceedings the Respondent's lettings agent gave evidence that he went to the building 2-3 times a week, sorted through the mail and forwarded correspondence to the

Respondent once or twice a month. In relation to the demands for Flat 2, these had obviously been received because his evidence was that he had discussed them with the Respondent (see paragraph 30 of previous Decision).

15. Having considered the evidence, the Tribunal accepts Mr Darkwah's evidence that the demands for Flat 5 were served at the Demised Premises' address and that the Respondent never requested that they be served anywhere else. This is consistent with what happened for Flat 2 on the Respondent's own case in the previous proceedings. We consider it unlikely that the Applicant would have served the demands for Flat 2 but not the demands for Flat 5. We are satisfied that the demands for Flat 5 were sent by post to the Respondent at the Demised Premises' address. We are also satisfied that the service charge demands were thereby sufficiently served for the same reasons as the previous Tribunal held in its decision on the same issue (see paragraphs 33-37 of the previous Decision).

Issue 2

16. This issue did not arise in the end because the Applicant's Counsel confirmed, and it is in point of fact the case, that the county court claim only covers the period up to 24/3/13 (i.e. before the alleged acquisition of the right to manage) and that there was no claim in those proceedings for service charge accrued due after that date. The Tribunal notes that although the Respondent suggested in her witness statement that this right had been acquired on 5th January 2013, her Counsel on instructions put the date as being 9th April 2013. We emphasise that we have made no finding in relation to the right to manage but have proceeded as invited by the parties.

Issue 3

17. This is largely straightforward because neither party invited the Tribunal to depart from the previous Tribunal's determination, even if we were in a position to do so which is highly doubtful.

18. We therefore find, in accordance with the previous determination that the Respondent was liable to pay £673.64 in respect of service charges for 2009/10, £599.04 for 2010/11, and £550.95 for 2011/12. We also find and it was ultimately accepted by Mr Owusu that the Respondent is liable to pay the administration fee of £60.00 claimed.

19. All that remains is the interim service charge for the period up to 24/3/13. This was made up of insurance in the sum of £1,396.70 (pages 256 and 298), accountancy fees in the sum of £200.00 and an amended claim for management fees of £250.00 (6 months) less a credit of £13.41 in respect of electricity charges, i.e. a total of £1,833.29 ÷ 5 =

£366.66. This is higher than the sum claimed in the schedule annexed to the Particulars of Claim but this is because we now know the actual figures and Mr Owusu sensibly took point in this regard.

20. He did however take issue with the insurance charges for 2012/13 but we were entirely unpersuaded that there was any merit in the challenge. The insurance was made up of a basic premium of £458.93 (page 297) and what we were told was an additional premium of £977.77 for terrorism cover (page 298). We found it slightly unusual that the additional premium for terrorism cover was larger than the basic premium but the Respondent adduced no evidence on the point and we therefore accepted the Applicant's figures and its explanation as to what these sums related to. There was no real challenge to the remaining items. We therefore determined that the service charge payable for the half year to 24/3/13 was £366.66 as per paragraph 19 above.

21. There were no other applications and in particular no costs applications by either side.

**Name:** Judge W Hansen **Date:** 29th October 2014

## 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.