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

Case Reference : BIR/OOAG/LSC/2014/0020

Property : Flat 2, 39 Swinton Street, London, WC1X 9NT

Applicant : 39 Swinton Street Limited

Representative : Bowen Egles LLP, Solicitors

Respondent : Stephen Alan Ridout

Representative : ODT Solicitors LLP

Type of Application : An application under section 27A of the Landlord & Tenant Act 1985 ('the Act') for determination of reasonable service charges and s.20C of the Act to exclude the costs of this application from the service charge

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS (Chairman)
Judge D.R. Salter

Date and Venue of Hearing : Determined by written submissions

Date of Decision : 31st March 2015

DECISION

Introduction

- 1 This is an application by the management company of a building known as No.39 Swinton Street, London, for the assessment of the reasonable service charges payable by the lessee of Flat 2, Mr Ridout.
- 2 The Management Company brought proceedings in Northampton County Court by claim No. A26YJ487 served on 31st January 2014, for arrears of ground rent and service charges set out in the Particulars of Claim. There were no copy accounts in the Claim, but page 11 of the Particulars referred to Ground Rent due on 29th September 2011, 29th September 2012 and 29th September 2013; '*Service Charge Due on January 31 2013*' in the sum of £2,000, '*Service Charge Due on July 1, 2013*' in the sum of £1,000 and interest on overdue charges of £117.47.
- 3 The Claim was transferred to the London Panel of the First-tier Tribunal (Property Chamber) by Order of Brighton County Court dated 29th September 2014, and due to potential conflict of interest was re-transferred to the Midland Office of the Tribunal on 15th October 2014. Directions were issued on 17th October 2014. The parties made written Submissions. The Tribunal inspected the property on 16th January 2015.
- 4 Under sections 19 and 27A of the Act the Tribunal can only determine the liability to pay and reasonableness of service charges. It has no jurisdiction in respect of outstanding ground rent or interest. Accordingly, this Decision relates only to the respective estimated service charge claims of £2,000 and £1,000.

Relevant Law

- 5 The relevant law is contained in the Act.
- 6 Section 18 defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 7 Section 19 provides that relevant costs shall be taken into account in determining the 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 carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.
- 8 Section 27A(1) provides that an application may be made to a Leasehold Valuation Tribunal (LVT), now the First-tier Tribunal in the Property Chamber (Residential Property), for determination of whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.
- 9 These are the statutory criteria that govern the Tribunal's jurisdiction. It must also take into account precedents of the Courts relating to the interpretation of those statutory criteria.

The Lease

- 10 The service charge provisions are contained in the Lease which is dated 30th November 1987 and made between Aubrey Alexander Associates Limited (Lessor), 39 Swinton Street Limited (the Management Company) and Sheila Dance (Lessee, whose interest has since been assigned to the Respondent).
- 11 Clause 3 of the Lease requires the Respondent to pay a service charge.
- 12 The provisions relating to the service charge are contained in the Fourth Schedule. In particular, Part III, paragraph 3 provides:
- (a) *At the commencement of each financial year the Management Company shall be entitled to estimate the operating costs for that financial year and shall be entitled to revise that estimate from time to time throughout the relevant financial year*
 - (b) *The certificate of the Management Company from time to time shall (so far as permitted by law) be conclusive evidence both as to the amount of the estimated operating costs and the amount of each quarterly payment due*
 - (c) *The Lessee shall pay the relevant proportion of the said operating costs by equal quarterly instalments in advance on the four usual quarter days in each year*
- 13 Part III, paragraph 4 of the Fourth Schedule requires the Management Company to issue a final account at the end of each service charge year, certified by a qualified accountant, requiring the Lessee to pay any balance due or crediting any over-payments to the account for the following year.

Facts Found

- 14 The Tribunal inspected the front elevation of the property, the basement flat occupied by Mr Peter Storfer and ground floor flat owned by the Respondent on 16th January 2015 with Mr Storfer and the Respondent's sub-tenant.
- 15 The property comprises a four storey mid-terraced regency house in the Bloomsbury Conservation Area of London. It is of brick and slate construction with wrought iron railings to the pavement, an external staircase to the basement flat and ground floor hall leading to three other flats.
- 16 There are four flats in the building and each lessee owns one share in the Management Company. The leases to three of the flats are owned by Mr Storfer who, consequently, has a majority shareholding in that Company. The lease to the remaining unit, Flat 2 on the ground floor, is owned by the Respondent.
- 17 Having examined the papers submitted by the parties, the Tribunal finds that the claim relates to estimated service charges.

Submissions

- 18 For the Applicant

Messrs Bowen Egles submitted a skeleton argument in which, *inter alia*, it was stated:

' 3 *It has always been the case that service charges have been collected on an ad hoc 'as and when' basis and service charge accounts have never been prepared. This helps in keeping the expenditure down by not having to pay accountants to prepare accounts.*

5 *The amounts claimed are estimated to cover building insurance (and) general day to day expenditure.'*

19 The submission included a typed schedule of expenditure incurred from 8th January 2013 to 9th September 2014 supported by a bundle of copy invoices, but this schedule was not presented as an account certified by an Accountant and its relevance was not clear as the Applicant's Solicitors had already indicated in the skeleton argument that the claim related to 'estimated charges', not the final costs incurred.

20 For the Respondent

21 Messrs ODT Solicitors submitted that the estimated service charges were not payable as they had not been demanded in accordance with the terms of the Lease and were not reasonable for the purposes of section 19 of the Act.

22 More particularly:

1 no certificate of estimated service charge expenditure had been provided by the Management Company;

2 the interim charges had not been demanded by equal quarterly instalments; and

3 payment had been demanded by 31st January 2013 and 1st July 2013 instead of on the usual quarter days as required by the Lease.

23 Messrs ODT Solicitors referred the Tribunal to *Leonora Investment Company Limited v Mott Macdonald Limited* [2008] EWCA Civ 857 (*Leonora*) where the Court of Appeal had determined a similar case relating to a service charge and held that as the claimant in that case had not complied with the terms of the lease it was not payable.

24 It was also contended that the failure to provide any information to justify the level of the estimated service charges must lead to the conclusion that such service charges are unreasonable.

25 Finally, an order under section 20C of the Act was sought.

Tribunal Determination

26 It is clear from the evidence that the demands for the payment of service charge had not been made in accordance with the terms of the Fourth Schedule to the Lease.

27 In this respect, the Tribunal draws upon the following words of Tuckey LJ in *Leonora*:

'23 *So I conclude that the judge was right to decide that the landlord was not entitled to payment of the invoice because it had not followed the paragraph 3 procedure and its requirement for provision of the statement of service charge which triggered the obligation to pay. I should make it clear that Mr Seitler said that he did not and could not contend that the invoice taken together with the statements which were sent 16 days later were sufficient to comply with paragraph 3.*

24 *The conclusion I have reached may seem harsh or over technical, but if so it results from what I consider to be a proper construction of the leases. No one has challenged the judge's conclusion that it was open to the landlord to issue a revised statement. Nor would I. Provisions of this kind should not be seen as procedural obstacle courses. Businessmen dealing with one another often make mistakes and there is no scope for saying that the provisions in this clause only gave the landlord one opportunity to get it right...'*

- 28 It finds that the principles enunciated in these paragraphs are applicable to this case. Consequently, the Tribunal determines that the Applicant had not made its claims for payment of the service charge in accordance with the terms of the Lease and that the respective estimated service charges are not payable. It follows that the question of reasonableness may not, at this stage, be determined.

Section 20C Application

- 29 The Respondent made an application under section 20C of the Act to exclude any costs arising from this Application from the service charge payable by the Respondent.
- 30 In view of its determination in this case, the Tribunal finds this application is well founded. Accordingly, the Order is granted.

Appeal Procedure

- 31 If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property), whose address is 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London, WC4A 1NL. Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties.

I.D. Humphries B.Sc.(Est.Man.) FRICS