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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00DA/LSC/2017/0067**
Property	:	**Apartment 2, Elliott Court, 250 Coal Hill Lane, Rodley, Leeds LS13 1ED**
Applicant	:	**Angela Thompson**
Respondent	:	**Elliott Court (Rodley) Management Co Ltd**
Representative	:	**Phoenix Leasehold and Block Management Ltd**
Type of Application	:	**Landlord & Tenant Act 1985 – s.27A**
Tribunal Members	:	**Phillip Barber (Tribunal Judge)** **Jenny Jacobs (Surveyor Member)**
Date of Decision	:	**12 June 2018**

DECISION AND REASONS

DECISION

1. The service charge for the years in issue, 2014, 2015, 2016 and 2017 are not payable in accordance with section 27A of the Landlord and Tenant Act 1985.

REASONS

2. This is an application under section 27A of the Landlord and Tenant Act 1985 in relation to the reasonableness and payability of a service charge for the above address.

3. We inspected the property on the 2 March 2018 in the presence of the Applicant and the Respondent's representative and we viewed the common parts of the whole block.

4. For reasons which are set out below, the application is successful on the basis of technical grounds. If we were making a decision on the substantive issue of reasonableness, the application would not have been successful as, if the demands were sent in the correct form we would have found the service charge payable and reasonable.

The Technical Arguments

5. Section 21B of the Landlord and Tenant Act 1985 provides as follows:

21B Notice to accompany demands for service charges
(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

6. The Secretary of State has made Regulations made under subsection 2, the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007/1257 and regulation 3 of those regulations provides as follows:

   3. Form and content of summary of rights and obligations

   Where these Regulations apply the summary of rights and obligations which must accompany a demand for the payment of a service charge must be legible in a typewritten or printed form of at least 10 point, and must contain—

   (a) the title "Service Charges — Summary of tenants' rights and obligations";

7. The Respondent to this application, acting through their representative (hereafter I will just use the term "Respondent"), and during the course of the proceedings has provided a copy of what they contend has been served on the applicant by email. The document was sent as a Word document and whilst it has the correct heading, it is, in fact in point 7.5 font. Accordingly, the notice is defective. We acknowledge that this is a purely technical point which has not been raised by the Applicant, but given the fact that there are other reasons why a service charge is not payable in relation to this Application we thought it ought to be included.

8. The notice also purports to comply with section 48(1) of the Landlord and Tenant Act 1987 in the following terms (set out accurately):

   > We hereby give notice pursuant to Section 48(1) of the Landlord & Tenant Act 1987 that the Address for the service of notices upon the Landlord Representative, (including notices in proceedings) is: C/O Mr S Malloy. Walker Singleton. Lister Lane. Halifax. Yorkshire HX1 5AS

9. That may be well and good. The Respondent, has, however overlooked the requirement in section 47(1) of the same Act to provide in such a demand, the name and address of the landlord. This is a point raised by the Applicant and therefore it is not simply a technical matter. The fact that the Respondent has given the name and address of the "Landlord Representative" (sic) means that the effect of section 47(2) will bite and that "any part of the amount demanded which consists of a service charge...("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant".

10. The point is also important because of the effect of section 20B of the Landlord and Tenant Act 1985 in limiting the period from which a service charge can be recovered.

11. The Applicant has raised the fact that between January 2015 and July 2017, demands for the service charge were addressed to the wrong person at the wrong address.

12. The undisputed evidence of both parties is that from 2015, all invoices for the period in dispute were delivered to Apartment 2 in March 2017. The Applicant states that her tenant collected them from his mailbox on the 25 March 2017 and the Respondent states that they were hand delivered to this mailbox on the 22 March 2017.

13. The Respondent also acknowledges that those invoices were sent to Apartment 2. In their letter to the Tribunal of the 4 January 2018 (and in evidence at the hearing) the Respondent acknowledges that in 2015 when they changed their computer system, the Applicant's address "did not transport to the new system". Instead they started to send the demands for service charge to the Apartment. The bundle of copy invoices sent to the Tribunal under cover of a letter dated 25 October 2017 are either addressed simply to "Apartment 2" with no named recipient or to someone called "Chris Thompson". A person who does not exist.

14. The Applicant, quite rightly, relies on the decision in *Rita Akorita v 36 Gensing Road Limited* LRX/16/2008 to argue that as the demands have not been served in accordance with the lease then until they were, there was no satisfactory demand.

15. Clause 8.5 of the lease provides that "....any notice or demand requiring to be served under this Lease shall be validly served in accordance with Section 196 of the Law of Property Act 1925...or in the case of the Tenant if left addressed to him on the Demised Premises". This is a rather oddly worded clause, but what we think it means is that service is generally to be effected in accordance with section 196 and not by the alternative method of leaving the demand at apartment.

16. The relevant provisions of section 196 provide as follows:

> (3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served...

17. Accordingly, and notwithstanding our findings in relation to the form and content of the service charge demands, they were not otherwise properly served in accordance with the terms of the lease until July 2017 when sent to the Applicant at her home address. We think that the Respondent acknowledges this.

18. Finally, there remains the question whether the Respondent actually served anything in the period between 2015 and 2017. We heard from the Applicant's tenant (incidentally her former partner) during the course of the hearing who gave evidence that he received no invoices during the time he lived at the apartment (01 October 2014 through to 24 March 2017. We note that the Respondent changed computer system and that details of the Applicant's address did not migrate to the new system. We accept that this was the reason why no demands were received by her. We can make no judgment as to whether or not demands, in any form, were sent. However, it is clear that the demands were not made in the correct form, and not addressed to the Applicant at her address.

19. The conclusion to all of the above is that the service charge for all of the years put in issue is not payable under section 27A of the Landlord and Tenant Act 1985.

The Substantive Issue as to the Reasonableness of the Service Charge

20. Section 19(1) of the Landlord and Tenant Act 1985 provides as follows:

19.— Limitation of service charges: reasonableness.

(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; and the amount payable shall be limited accordingly.

21. As mentioned above, the Tribunal inspected the premises on the 2 March 2018 in attendance was the Applicant and the Respondent. We had sight of all of the common areas.

The Development

22. Elliott Court is a development of 13 apartments constructed in 2008 by Christopher Duckworth and Andrew Thompson who became the original landlord. The lease set up a management company for the purpose of maintenance, Elliott Court (Rodley) Management Company Limited. The management company is responsible for collecting the service charge. Phoenix Leasehold and Block Management Limited, are the managing agents. Over the years in dispute, it is the managing agents who have organised works to be carried out at the property and have sought to collect the service charge. We were told, and we entirely accept that historically they have been unable to collect the service charge. We were told that whilst 7 of the 13 leaseholders had been regular and reliable payers, the other 6 have not. As a result, they have

been generally without funds to comply with the maintenance provisions in the lease.

23. Generally, clause 6 of the lease sets out the Management Companies repair and maintenance covenants and schedule 5 to the lease provides the basis for calculation of each of the tenant's proportion of the maintenance expenses, by reference to a "fair proportion".

24. The service charge is £150 per quarter and has been since the start of the lease. A more detailed breakdown as to how the relevant costs are calculated is set out by the Respondent at the back of their bundle of documents provided under cover of letter dated 25 January 2018 as sent to the Applicant.

25. We do not think that those amounts are in any sense unreasonable.

26. There is provision in the lease for the Management Company to build a reserve fund (clause 14 of schedule 5) and so we would have thought that any amounts not put to the costs of providing the service might otherwise have been included in a reserve fund (although we note that no reserve fund has been set up).

27. In relation to all of the relevant years (2014 – 2017) we found the gardening costs to be reasonable. The amount was £60 - £62 per month and having had sight of the garden space at the property we thought this to be a reasonable sum. There is a dispute over whether the garden works were actually carried out, but we accept the evidence from the Respondent that they instructed a gardener and that garden works were done. The Applicant's dispute is really about the frequency of the visits and that weeds are allowed to grow in between visits, but obviously increasing visits by a gardener would incur more costs and given that the Respondent was not recovering a sufficient amount by way of the service charge to cover the existing costs, it would hardly be reasonable for them to spend more money.

28. Likewise, we were satisfied that maintenance costs were reasonable. In 2014 these appear to be £228.61 and in 2015 they were £455. These were perfectly reasonable amounts for the works necessary at the premises.

29. Electricity charges - we thought that the cost of providing electricity to the common parts were not excessive. So, for example, the cost was £198.43 for 2014 up to February; in August 2015, a payment of £400 was made to British Gas for electricity and we note that for the years 2016 through to 2017, a payment of £900 was made out of the managing agent's funds to prevent disconnection. Given the use of electricity in the common parts – lighting, alarm and communal sockets, we thought that the cost of electricity was reasonable and accurately reflected the usage.

30. Cleaning – the cost of cleaning the common parts has been £45 per month. This is again not unreasonable for a cleaner to clean a property such as Elliott Court.

31. Management fee – the managing agents have charged the leaseholders £15 per flat per month for the purpose of managing the block. This is entirely reasonable and to some extent below market levels for the management of a block of apartments such as Elliott Court. Given the fact that all lessees are absent and subletting the apartments to assured tenants, we thought that the requirement to manage is probably quite high. This was borne out by the evidence we heard from the representatives of the Management Company that tenant damage was a problem. We were satisfied, therefore that £15 per apartment was a reasonable fee.

Conclusion

32. For the reasons set out in paragraphs 2 to 16 above, none of the service charges for the property from 2015 onwards are payable.

33. However, were we to be dealing with a substantive issue of reasonableness then we would have found that all relevant costs are reasonable and that they would otherwise be payable.

Judge P Barber

12 June 2018