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

Case Reference : **LON/00AF/LCS/2013/0474**

Property : **FLAT 4, CORK HOUSE, 77
LEESONS HILL, ORPINGTON,
KENT BR5 2LF**

Applicant : **CORK HOUSE (77 LEESONS HILL)
MANAGEMNT LIMITED**

Representative : **PRPERT SERVICES PLUS LIMITED
(Mrs Linda Reynolds)**

Respondent : **ALISTAIRE ALLAN COUTTS-LOVIE**

Representative : **NONE**

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

Tribunal Members : **JUDGE SHAW
MR W. R. SHAW FRICS**

**Date and venue of
Hearing** : **23rd October 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **28th October 2013**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of **£639.60** is payable by the Respondent in respect of the service charges for the year ending 30th September 2012 , and that a further **£1200** is payable in respect of interim charges for the year ending 30th September 2013.
- (2) The Tribunal determines that the Respondent shall pay the Applicant **£315** within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant, and a further **£250** in costs pursuant to the provisions of the Tribunal Procedure (First-tier Tribunal) Property Chamber Rules 2013.
- (3) Since the Tribunal has no jurisdiction over County Court costs and fees, any further application for costs in this regard should be referred to the County Court.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the service charges payable by the Applicant in respect of the service charge years ending 30th September 2012 and 2013 .
2. Proceedings were originally issued in the Northampton County Court under claim no. 3QT76566 , but those proceedings have been stayed pending the determination of this Application before the Tribunal.
3. The relevant legal provisions are set out in the Appendix to this Decision.

The Hearing

4. The Applicant was represented by Mrs Linda Reynolds at the Hearing. The Respondent failed to appear. He had also failed to serve a Statement of Case setting out clearly which sums were disputed and why, in breach of the Directions issued by the Tribunal dated 22nd August 2013.

The Background

5. The property is one of 12 in a purpose built block of flats. A previous determination has been made by the Tribunal (Case No: LON/OOAF/LSC/2011/0582) to the effect that an interim payment for the year ending 30th September 2012 in the sum of £570 was payable, and that a further identical sum would be payable on 25th March 2012. Since that Decision, the accounts for 2012 have been finalised and a budget prepared (and demands sent out) for the 2013 service charges.
6. Neither party requested an inspection and the Tribunal did not consider that one was necessary on the material before it.
7. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge (see Clause 7 of the lease).

The Issues

8. As identified at the case management Conference, the relevant issues for determination were as follows:
 - (i) The payability and/or reasonableness of service charges for the year 2012 in the sum of £570 together with a further balancing debit of £69.60.
 - (ii) The payability and/or reasonableness of interim service charges for the year 2013 in the sum of 2 payments of £600 on 29th September 2012 and 25th March 2013, thus totalling £1200.
9. Having heard evidence and submissions from the Applicant and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Service Charge Items & Amounts Claimed – together with reasons for the Tribunal’s findings.

10. The Applicant prepared a useful Bundle of Documents containing the Service Charge Accounts for 2012, now duly certified by accountants (see page 71). In respect of each of the items of expenditure listed in the accounts, the Applicant produced copy invoices and documents as contained within the bundle, which the Tribunal duly scrutinised. The finalised accountants were largely in line with the budget (as previously approved by the Tribunal) and the Tribunal was satisfied that the demands made in accordance with these accounts (also in the bundle) were and are due and payable and reasonable within the provisions of the Act. There was a small balancing debit of £69.60 payable, which excess had principally come about because the supply and installation of CCTV equipment had gone marginally over budget. The Tribunal was told that when originally quoted for, this cost had been below the threshold requiring section 20 consultation. After the works had started some further cameras were installed, raising the tenants’ individual contributions to £284.80 – thus £34.80 above the statutory threshold.
11. The Tribunal was informed that no leaseholders had objected to the installation of these further cameras and the marginal extra cost (nor indeed had the Respondent). The Applicant asked for an order retrospectively dispensing with the need for such consultation – pursuant of section 20ZA of the Act. The Tribunal is satisfied that it is reasonable given the above circumstances to grant such dispensation, and does so.
12. In respect of the service charge year ending 30th September 2013, the budget has been set out within the demand sent to the Respondent and appearing at page 129 of the Bundle. Again the Tribunal scrutinised these figures, which are broadly on line with the previous year’s expenditure, in some cases involving a slight uplift, in others an adjustment downwards or an omission altogether where “one-off” items are no longer necessary. Again the Tribunal was satisfied that the budget is reasonable, and that the two interim payments of £600 which have been demanded, have fallen due and are properly payable, both within the terms of the lease and the Act.

The Tribunal’s Decision

13. For the reasons set out above, the Tribunal determines that the amount payable in respect of service charges are **£639.60** in respect of 2012

and **£1200** in respect of 2013, as referred to under the heading Decisions of the Tribunal above.

14. **Application for refund of fees and further costs.**

At the end of the Hearing, the Applicant made an application for a refund of the fees that it had paid in respect of the application hearing. The Respondent failed to comply with the Tribunal's Directions, failed to explain which charges he was challenging and why, obtained a stay of the County Court claim, made assertions of "illegal charges" but failed to identify them. He the failed to attend the Hearing before the Tribunal, having put the Applicant to the trouble and expense of making the Application. The Tribunal was satisfied in the circumstances that the Respondent should be ordered to refund to the Applicant the Application and Hearing fees paid (totalling £315) and the Tribunal so orders. The Tribunal was also satisfied that the same conduct and omissions were unreasonable and justified under the above Rules a further order for costs incurred by the Applicant in bringing the application – in the sum of £250 as requested at paragraph 5 of the Applicant's Statement of Case. Any further application in respect of County Court or other costs should be made to the County Court.

Judge Shaw
28th October 2013

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.
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]