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

Case Reference : **LON/00AR/LSC/2013/0502**

Property : **25 Maytree Close, Betterton Road,
Rainham, RM13 8EP**

Applicant : **Gordon Stewart Discretionary
Settlement Trust**

Representative : **Rayners Surveyors**

Respondent : **Mr Kevin Timothy Lane**

Representative : **None**

Type of Application : **Court referral and section 27A
Landlord and Tenant Act 1985 –
determination of service charges
and administration charges**

Tribunal Members : **Judge John Hewitt Chairman
Mr Frank Coffey FRICS**

**Date and venue of
Determination** : **16 December 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **20 December 2013**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that:

1.1 Of the sums claimed in the court proceedings:

	Payable	Not Payable
Service charges		
29.09.11 On account	£350.00 (and now paid)	
25.03.12 On account	£350.00	
Administration fee		
25.05.12		£90.00
Interest		
25.05.12		£24.90
17.08.12		£15.57

1.2 Of the sums claimed in the Applicant's section 27a application:

	Payable	Not Payable
Service charges		
29.09.12 On account	£350.00	
25.03.13 On account	£350.00	

1.3 The court file will now be returned to the court in case either party wishes to make any further applications in the court proceedings.

2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing. The prefix 'A' and 'R' refers to the Applicant's bundle and the Respondent's bundle respectively.

Procedural background

3. On or about 21 August 2012 the Applicant commenced court proceedings against the Respondent – Claim No. 2QZ06997 and claimed:

3.1 The sum of £830.47 made up as to:

Service charges	
29.09.11 On account	£350.00
25.03.12 On account	£350.00
Administration fee	
25.05.12	£ 90.00
Interest	
25.05.12	£ 24.90
17.08.12	£ 15.57

3.2 Interest pursuant to the County Courts Act 1984

3.3 Court fee £ 60.00

4. A defence and counterclaim was filed.
5. By order made 15 July and drawn 23 July 2013 [A12] District Judge Wright ordered that the case be transferred to the Leasehold Valuation Tribunal.
6. By virtue of the Transfer of Tribunal Functions Order 2013 SI 2013 No.1036 the functions of the Leasehold Valuation Tribunal for areas in England were transferred to the First-tier Tribunal (Property Chamber) with effect on 1 July 2013.
7. These proceedings are subject to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules).
8. On 22 August 2013 the Tribunal received an application from the Applicant [A24] pursuant to section 27A Landlord and Tenant Act 1985 seeking a determination that further service charges were payable by the Respondent, namely:

Service charges

29.09.12 On account	£350.00
25.03.13 On account	£350.00

9. Directions were given on 15 August 2013 [A13] and on 23 August 2013 [A19] the dates for compliance of which were subsequently extended.
10. In the first set of Directions at [A15] the Tribunal noted that the Respondent's defence in the county court was suggestive of a claim for set-off in relation to damage suffered as a result of a sewage flood. However such claim had not been properly pleaded or quantified. The Tribunal decided not to exercise its discretion to hear and determine such a claim because the sum claimed may be substantial and the best venue for the determination of that claim was the court.
11. Accordingly, the matters for this Tribunal to determine are the sums claimed by the Applicant in the court proceedings and the sums claimed by the Applicant in its section 27A application.
12. In due course the court file will be sent back to the court for the court to determine:
 - 12.1 Any counterclaim or claim to set-off which the Respondent may see fit to pursue;
 - 12.2 The Applicant's claim to interest pursuant to the County Courts Act 1984;

12.3 The Applicant's claim to a court fee of £60.00; and

12.4 Any claims to costs made in the court proceedings.

13. The Directions informed the parties that the reference and the application would be determined without an oral hearing pursuant to Rule 31 unless either party made a written request for a hearing. The Tribunal has not received any such request.

14. The Tribunal has received a bundle from each of the parties.

The lease

15. The lease of the premises is dated 13 May 1977 [A1]. It is relatively basic by modern standards. It provides for the payment of a ground rent and by clause 3 a covenant on the part of the tenant to pay a service charge. The detail is not in issue. In essence the service charge year is the period 29 September to 28 September following. The tenant is to pay two equal sums on account on 29 September and 25 March in each year. An account for the actual expenditure is to be taken and certified each year by the landlord's auditors. Any balancing debit is payable within 28 days of the certificate being given to the tenant. Any balancing credit is to be accumulated to be applied to the annual cost in future years.

16. To costs to which the tenant must contribute are set out in the Sixth Schedule [A7]. The tenant is obliged to pay 1/20th of those costs.

17. Clause 4(2) is a covenant on the part of the landlord to perform the obligations specified in the Sixth Schedule. Those obligations include an obligation to keep the external walls and the exterior of the building (including drains sewers gutters and external pipes in good and substantial repair and in clean and proper order and condition, and to adequately insure the building against all risks with such office as the landlord may from time to time determine or agree in writing.

The gist of the issue between the parties.

18. It appears that on 29 December 2010 sewage flooded into the flat and caused damage. Evidently this was due to an external drain which had become blocked with concrete. On 31 December 2010 a pipe burst in the flat above and in consequence water leaked into the ceiling of the kitchen of the Respondent's flat and further damage was sustained.

19. The issue with the drain was investigated and dealt with by Rayners, the Applicant's managing agents, who say that insurers were notified of a claim to be made by the Respondent. They further assert that the insurers have requested the Respondent to provide information and estimates to support his claim and that he has failed to do so. There is thus a dispute between the parties as to whether or not information has or has not been provided and passed on to the insurers.

and established by the court if challenged he must continue to pay his rent and service charges and other sums due under the lease.

The Applicant's claims

The court proceedings

27. In the court proceedings the Applicant claimed two payments of £350 each on account of service charges payable. The first claimed to be due on 25 September 2011 has since been paid by the Respondent. His cash account was credited with that sum on 8 April 2013. The Respondent has not challenged the quantum of the second claimed to be due on 25 March 2012. We find that sum was payable by the Respondent on that date. The lease provides that the two on account payments shall be equal in amount. He has paid the first and does not challenge the amount of the second. We also find that the sum is reasonable in amount in any event. The accounts for the year ended 28 September 2012 are at [A35]. They show certified expenditure of £16,301.11, which equates to a contribution of £815.05 payable by the Respondent. This supports the view that a budget which provided for the payment of £700 by way of two equal payments of £350 each was not excessive and was within the range that can properly be regarded as reasonable.
28. In the court proceedings the Applicant also claims an administration charge of £90. The Applicant does not say to what this relates or what provision in the lease is relied upon as imposing an obligation on the Respondent to pay such a charge. We cannot see that the lease imposes any such obligation. In these circumstances we find that it is not payable. A lessee under a lease is not obliged to pay administration charges to his landlord unless the lease imposes an obligation on him to do so. Even then the amount so payable is limited to that which is reasonable. The Applicant has not addressed either issue.
29. In the court proceedings the Applicant also claims two sums in respect of interest. Again the Applicant does not state what provision in the lease is relied upon as imposing an obligation to pay interest. We can see none. For the reasons previously explained we find that the sums claimed are not payable.

We note in this respect that in the court proceedings the Applicant also claims interest pursuant to the County Court Act 1984. If contractual interest was payable it would be surprising to see a claim to statutory interest which is in the discretion of the county court judge.

Whilst we have rejected the claim to interest as contractual interest payable pursuant to the terms of the lease, it is, of course, open to the Applicant to pursue its claim to statutory interest in the court proceedings.

The section 27A application

30. In this application the Applicant seeks a determination that two payments of £350 each are payable by the Respondent.

31. We find that they are. They are both on account for the service charge due. They are in the same amount as was sought in the previous year. In the previous year the actual service charge payable was certified at £815.05. Thus a budget seeking £700 on account is, on the face of it, reasonable and the quantum of the sums claimed has not been challenged by the Respondent.

Next steps

32. We have referred the court file back to the court together with a copy of this decision because we are required to do that in case either of the parties wish to take further steps in the court proceedings.

Judge John Hewitt