9274

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	LON/OOBG/LSC/2013/0066
Property	:	13 SWINBURNE HOUSE ROMAN ROAD LONDON E2 0HJ
Applicant	:	LONDON BOROUGH OF TOWER HAMLETS
Representative	:	Ms I Akhigbe – leasehold solicitor and Ms N Williams- leasehold officer
Respondent	:	MS MARIE CLAIRE CHATELET
Representative	:	None
Type of Application	:	SECTION 27A LANDLORD AND TENANT ACT 1985 ("1985 Act")
Tribunal Members	:	MRS T RABIN MR M CARTWRIGHT MS R EMBLIN
Date and venue of Hearing	:	1st August 2013 10 Alfred Place, London WC1E 7LR
Date of Decision	:	

DECISION

The application

1. The Tribunal was dealing with an seeking a determination pursuant to s.27A of the 1985 Act as to whether the service charge demanded during service charge years 2005/6 -2011-12 were reasonable and payable by the Respondent. The application relates to 13 Swinburne House Roman Road E2 0HJ ("the Flat"). The Applicant is the freeholder of the Rogers Estate of which Swinburne House ("the Building") forms part known as ("the Estate") and the Respondent is the long leaseholder of the Flat The issues before the Tribunal were whether:

2. Proceedings were originally issued in the Northampton County Court under claim no 2YM17701. The claim was transferred to the Tribunal by order of District Judge Manners on 25th January 2013. .]

3. The relevant legal provisions are set out in the Appendix to this decision.

4. In view of the nature of the claim it was determined that an inspection was necessary.

The Hearing and Evidence

5. The application was heard on 1st August 2013. The Applicant was represented by Ms I Akhigbe and Ms N Williams and the Respondent appeared in person. The Applicant produced a trial bundle.

6. At the outset of the hearing the Respondent requested an adjournment as there had been a gas leak at the Flat in March 2013 during the cold weather. She said that the Applicant was not helpful and the stress led to a two day asthma attack during. This in turn caused her stress and she was unable to give attention to the claim.

7. The Tribunal considered her application carefully but noted that there had been time allowed for mediation until 31st May 2013 at the suggestion of both parties but the Respondent made no attempt to mediate. The Respondent has known of this matter since September 2002 and she has been aware of the Tribunal's requirements since she attended the pre trial review on 26th February 2013. The Tribunal could not see any justification for an adjournment. The Tribunal were aware that the Respondent is mildly dyslexic and offered to give her any assistance required. The Chair assisted her in explaining and navigating documents.

8. The Applicant relied upon the statement of Ms Williams in which she addressed the issues raised by the Respondent in her defence filed at the County Court. The Tribunal referred to the statement of outstanding service charges at page 96 of the trial bundle a copy of which is attached and will deal with each of the issues raised separately as follows:

Housing Management charges

9. Ms Williams said that these costs related to the administration charges for running the Estate as a whole. The Respondent said that the costs were too high and in two tranches indicating that they were duplicated. These were higher than costs incurred by someone she knows who lives in a converted house.

Block cleaning and Estate cleaning

10. Ms Williams said this was based on 12 hours allocated to the Building and 20 hours to the Estate. The Estate costs were based upon an exercise undertaken by environmental services in which the length of time taken by the caretaker at each block and the estate. The Building has 2 cleaners doing 6 hours a week each but Ms Williams did not know how many times a week they attended.

11. The Respondent sent an e-mail complaining about the cleaning in 2007 to which she had no response. She said that the cleaning had been satisfactory the last three years and she was currently satisfied but prior to 2010 there was no cleaning.

Communal energy

12. Ms Williams said that the electricity was for lights to the common parts and the operation of the door entry system. The Respondent said the costs were too high

Bulk waste and graffiti removal

13. The Respondent did not object to these items

Administration charges

14. Ms Williams said that these were the administration charges relating only to the long leaseholds of which there were 16 out of the 30 flats in the Building. She explained that the heading of "Leasehold Management Charges" related to the same expenditure. The Respondent repeated that there could be duplication and in any event the costs were unreasonably high

Bin Hire

15. The Respondent did not dispute this charge

Miscellaneous management charges

16. The Respondent accepted these with the exception of horticulture and estate repair, as there was no provision of either of these.

Block repair and maintenance

17. Ms Williams said the costs related to minor items of repair undertaken in the Building. The Respondent said that there was no evidence of any maintenance to the Building.

Horticulture

18. The Respondent complained that she received no benefit from the cost of horticulture, which related to grassed areas within the Estate and that, in any event, the cost was extremely high when all that took place was spraying. She believed that gardens were the responsibility of those leaseholders whose flats benefitted from the gardens adjoining their properties.

19. Ms Williams said that she was not aware that any of the leaseholders had responsibility for the gardens abutting their flats but would check and let the Tribunal and the Respondent know the result of her enquiries within seven days. If the Applicant did not maintain the grassed areas, that item of expenditure would be removed from the Respondent's account.

20. Ms Akhigbe sent a letter to the Tribunal and the Respondent dated 6th August 2013 in which she stated that the grassed areas in front of Moore and Milton Houses as shown on the map at page 110 of the bundle were maintained by the Applicant as part of their obligations under the terms of the lease. Therefore there would be no adjustment.

TV Aerial

21. Ms Williams said that the cost of the TV aerial was incurred when the service transferred from analogue to digital. The Applicant had not undertaken the full consultation procedure and the occupants were charged only the limited amount of £100 per flat as they had failed to follow Section 20 procedure.

Estate Repair and Maintenance

22. Ms Williams said that costs incurred had been for minor items including bollards. The Respondent said she had never seen any evidence of works to the Estate in the 15 years she had lived there.

Door entry

23. Ms Williams said that there had not been complaints front any other occupant of the Building. There had been 10 call outs in the last two years which she did not consider excessive since there were four doors and four entry systems. She had no record of the door entry system not working for two years.

24. The Respondent said that the entryphone had not been working for up to 6 months at a tie for two years. She sent an e-mail in 2007 saying that the entry system had not been working properly for six months. It is still unreliable.

THE TRIBUNAL'S DECISION

25. The Tribunal listened carefully to the Respondent's evidence and in particular to her dissatisfaction with the quality of the services provided. The Tribunal also had regard to the evidence of Ms Williams. The Respondent provided no alternative quotes and her objections were unsupported by evidence. Ms Akhigbe made enquiries about the cost of the horticulture and the Tribunal is satisfied that these costs are properly included in the service charge account.

26. The Tribunal used its knowledge and experience and determined the costs were not unreasonable under any of the headings and these are allowed in full in the sum of **£3728.17** and are payable now.

27. The question of interest in the sum of £517.89 was transferred to the Tribunal by the County Court. However, since there is no provision for recovery of interest under the lease, the interest payments must be referred back to the County Court.

28. The Tribunal is aware of the fact that the Respondent has limited financial means but she must make arrangement to pay this sum. The Applicants said they would discuss a payment plan with the Respondent, although no assurances were given that such a plan would be offered. The Tribunal is mindful of the Respondent's appalling payment record and this must be taken into consideration when agreeing a payment plan.

29. The Tribunal can appreciate that the Respondent could be confused as there was a lack of clarity in the service charge statement. Some charges are based upon borough wide apportionments rather than actual costs attributable to the Building. This makes it more difficult for tenants to understand how the figures are arrived at. The Applicant had in 2011/12 produced an explanation of service charges which is a 38 page document with 16 headings explaining what the service charge items comprise and how they are calculated. It provides contact details for leaseholders that want further explanation. In addition the service charge demands themselves have a notice to the following effect:

"If you have any difficulty in paying this sum please contact us on 0207 364 5015 press option 3, then 1"

30. The Applicant has therefore demonstrated that efforts are being made to assist the leaseholders in understanding how the service charge is arrived at. Ms Williams also stated that she would be prepared to visit leaseholders if they had queries. The Tribunal is satisfied that the Applicant has acted reasonably in offering explanations to the long leaseholders of the manner in which the service charge has been calculated.

SECTION 20C

31. The Respondent made an application under Section 20C of the 1985 Act requesting that the costs of these proceedings should not be considered relevant costs for the purpose of calculating the service charge. The Applicant did not oppose the application and the Tribunal therefore made an order under Section 20C.

CONCLUSION

32. The Tribunal noted that the Respondent had a long history of failure to pay her service charges and there is scant evidence of any effort on her part to resolve her differences with the Applicant and this has led to the current proceedings. The Tribunal has found that all the costs are payable by the Respondent and that they are payable by the Respondent and well overdue.

33. Ms Williams has made it clear that the she is prepared to meet the Respondent to discuss any legitimate concerns and the Tribunal would urge the Respondent to accept this offer. She is bound by the terms of her lease and the Applicant has followed the correct procedures in incurring costs. If there is a failure on the part of the Respondent to pay monies properly due, this will lead to repeated legal proceedings and incurring costs and increasing the ultimate liability of the Respondent by the addition of costs and interest.

Tamara Rabin – Chair

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 a leasehold valuation 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 a leasehold valuation 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.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).