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

Case Reference : **MAN/30UK/LSC/2014/0030**

Property : **55, Porter Street, Preston, PR1 6QN**

Applicant : **Community Gateway Association**

Respondent : **Mr A Babaei**

Type of Application : **Landlord & Tenant Act 1985, section 27A**

Tribunal Members : **Judge P W J Millward
Regional Judge L Bennett**

**Date and venue of
Hearing** : **16 June 2014, Manchester**

Date of Decision : **18 July 2014**

DECISION

The Application

1. By the Application dated 6 March 2014 the Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985, as to the payability of a service charge in respect of the Property. The Applicant is the freeholder of the Property under a lease for 99 years (less 5 days)(the Lease) dated 1 July 2007 and made between the Applicant (1) and the Respondent (2). The Application relates to demands in respect of the periods 1 April 2012 to 31 March 2013 and 1 April 2013 to 31 March 2014 in the total sum of £604.27 being the Respondent's share of the total cost for the maintenance of the block of flats and maisonettes in which the Property is located.
2. Pursuant to the Application directions were issued to the parties on 27 March 2014 requiring (inter alia) the Applicant to file and serve its Statement of Case in support of the Application and the Respondent to file and serve its Statement of Case in reply thereafter and confirmed that the matter would be determined without a hearing unless either party requests a hearing within 21 days thereof.
3. The Applicant complied with the directions but the Respondent did not file a Statement of Case or any other form of evidence. Neither party requested a hearing and the matter was then set down for determination on 16 June 2013.

The lease

4. Clause 6(1) of the Leases contains a covenant by the lessee to pay to the landlord the ground rent reserved by the Lease and the service charge. By clause 5 of the Lease the freeholder covenants to carry out certain work in relation to the maintenance in relation to the said block of flats and maisonettes in relation to which the service charge is to be levied. Clause 2 of the Lease sets out the manner of payment of the ground rent and service charge.
5. The copy of the Lease provided to the Tribunal did not have a copy of page 11 thereof. This page included clauses 4.2 and 4.3 of the Lease which related to payment of the service charge. The Tribunal was therefore unaware of all terms relating to payment of the service charge.

The Law

6. Section 18 of the Landlord and Tenant Act 1985 (the Act) provides:
 - (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.

7. Section 19 provides that

- (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.

8. Section 27A provides that

- (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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3)
- (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The submissions of the parties

9. The Applicant's Statement of Case includes (inter alia) the following submissions:-

- 9.1 Details of the Lease
- 9.2 That following the Respondent's purchase of the Property under the Right to Buy scheme, the Property entered a 5 year reference period at the commencement of which the service charges are to enable the lessee to budget for future repair costs as detailed in the Offer Notice (copy supplied).
- 9.3 that at the end of the reference period the amount charged to the Respondent amounted to £1,132.79, whereas the actual amount spent

on repairs/improvement to the Property was only £149.48. The excess sum of £983.31 was credited to the Respondent's service charge account on 12 July 2013, as set out in the Applicant's letter to the Respondent of the same date.

- 9.4 Details of the clauses in the Lease by which the lessee covenanted to pay the service charge and a full statement of the service charges for the relevant periods.
- 9.5 Budgets are not prepared and the service charge for each period is equivalent to the expenditure during the previous period.
- 9.6 Copies of various correspondence and other documentation was provided.
- 9.3 A statement was provided which showed that the Respondent owed a total of £402.18 as at 25 March 2014.

10. As stated previously, the Respondent did not file a Statement of Case.

The Tribunal's determination

11. The Tribunal considered very carefully the written submissions of the Applicant and the terms of the Lease. The Respondent has not disputed that the Applicant was entitled to submit the demand for the service charge, whether or not the demands were reasonable or their liability towards all or only part of it.
12. The issues to be determined therefore are (a) is the demand for the service charge valid and if so (b) to what extent the demand is reasonable and (c) to what extent if any the Respondent should pay towards the same.
13. The Tribunal first determined that the Ground rent payable in relation to the Property does not form part of the service charge and that it could therefore make no order in relation thereto. This does not mean that the ground rent is not payable, only that no order can be made in these proceedings in relation thereto, and the sum of £10.00 will therefore be deducted from the demand in respect of each period – a total of £20.00.
14. The Tribunal then determined that the request for the service charge (other than in respect of the said ground rent) is reasonable and in accordance with the terms of the Lease and the items of expenditure referred to therein are all payable by the Respondents under the terms of the Lease. The charges are within the range of expectations for a property of this nature. The total amount payable by the Respondents under this order is £382.18.