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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/22UH/LSC/2015/0030**
Property	:	**1 Brook Lodge,** **Ongar,** **Essex CM5 9JX**
Applicant **Represented by**	:	**Beech Management (Brook Lodge) Ltd.** **Barry Penman - director**
Respondent	:	**Mavis Selena Boore (wrongly sued as Mrs. M.S. Boor)**
Date of transfer from the county court at Basildon	:	**17th March 2015**
Type of Application	:	**To determine reasonableness and payability of service charges**
The Tribunal	:	**Bruce Edgington (lawyer chair)** **Evelyn Flint DMS FRICS IRRV** **Cheryl St Clair MBE BA**
Date and venue of hearing	:	**12th June 2015, Zinc Arts Centre, Great Stony, High Street, Chipping Ongar, Essex CM5 0AD**

DECISION

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1. In respect of the amount claimed from the Respondent in service charges for the years set out in the claim, the amount which the Tribunal considers to be payable is £461.11.

2. This matter is now transferred back to the county court sitting at Basildon under claim number A07YQ865 so that any matters not dealt with in this decision such as interest, costs and enforcement can be dealt with.

Reasons

Introduction

3. This is a case where there is no real dispute about reasonableness or the overall amount of service charges claimed from the Respondent. The issue is a legal one i.e. whether this Applicant can claim these amounts from this Respondent.

4. The order from the court says that "*this case*" is transferred to this Tribunal. The only thing a court can transfer is so much of a case which enables the Tribunal to determine a 'question' within its jurisdiction. Payability is within its jurisdiction but this generally only relates to the reasonableness of the service charges and whether the lease allows them to be claimed i.e. matters which an expert Tribunal is equipped to deal with. For the avoidance of doubt such matters as the recovery of contractual or statutory interest or enforcement are matters which remain in the court's jurisdiction.

5. The defence filed is not easy to follow. It is signed by Ian Leith who claims to be the litigation friend of the Respondent. The Applicant takes a point about this and it is probably correct in saying that Mr. Leith cannot be a litigation friend without signing the necessary undertaking at the court with regards to costs etc. However, this Tribunal has much more informal procedures than a court and it has considered the 'defence' at face value.

6. It states that the Respondent took an assignment of the lease on the 23rd June 2011. Again, the Applicant takes a point about this and claims that she is the tenant appointed by the lease itself. The copy lease produced to the Tribunal is dated 24th June 2011 and the Respondent is stated to be the tenant. However, the term is for 125 years commencing on the 1st October 2003.

7. The main thrust of the defence appears to be (a) the period covered by the 2011 claim was before the Respondent became tenant and (b) the other 2 years' claims should be dealt with by Brook Lodge Ongar RTM Co. Ltd. which, it is said, took over management on the 25th January 2015 following a determination by this Tribunal on the 30th September 2014. In fact the respective dates were 28th January 2015 and 28th September 2014.

The Inspection

8. As the defence contained no allegation that the amount of the service charges was unreasonable or that they were unreasonably incurred, no inspection of the property was considered necessary by the Tribunal and none was requested by the parties.

The Lease

9. As has been said, the lease is dated 24th June 2011 and is for a term of 125 years commencing on the 1st October 2003. It is in modern tri-partite form with a landlord, a tenant and a management company. The Applicant is named as the management company. A copy of the lease, apart from page 9, is in the bundle provided for the Tribunal.

10. There are the usual covenants on the part of the management company to maintain the common parts and structure of the property and to insure it. As no issue is raised in the defence about any particular item of service charge, these reasons will not repeat the relevant provisions in the lease.

11. The service charge arrangements are set out in Schedule 8. They provide that the management company can seek 'fair and reasonable' monies on account of service charges and it seems clear from the evidence that payments on account

for the years in question have been demanded, admitted and paid, save for the payment requested on the 6th May 2013.

12. Then the management company's auditor or accountant shall sign a certificate setting out the amount of the service charge "*so soon after the end of the Manager's financial year as may be practicable*" and this is served on the tenant for payment. There appears to be a dispute about what is meant by the Manager's financial year. It is defined as:-

> "*....such annual period as the Manager may in its absolute discretion from time to time determine as being that in which the accounts of the Manager either generally or relating to the Buildings and the Estate shall be made up*"

13. It seems to this Tribunal that such words are so vague as to make the clause void for uncertainty. However, this does not matter at the moment as both sides seem to agree that the service charge year ends on the 31st August.

The Law

14. Section 18 of the **Landlord and Tenant Act 1985** ("1985 Act") defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

15. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

16. Section 27A of the 1985 Act says that no application can be made to the Tribunal in respect of service charges which have been agreed or admitted by the tenant which appears, in this case, to mean the payments on account referred to earlier. In other words, the Tribunal has no jurisdiction to re-open any issue relating to those payments save for the year ending 31st August 2011. For that period, the amounts do not seem to be challenged but the period they cover, do.

The Hearing

17. The hearing was attended by Barry Penman from the Applicant and his son Darren Penman. Neither the Respondent nor Mr. Leith attended. Mrs. Boore was, unfortunately, in hospital and there had been an indication that no-one else would be attending on behalf of the Respondent. Significantly, several other tenants from this development attended the hearing but they did not ask to say anything and no-one either before or at the hearing requested an adjournment.

18. The members of the Tribunal gave some thought as to whether they should adjourn the case anyway but decided that as the answer to the problem raised in the defence was a matter of law combined with simple arithmetic, it would not be in anyone's interest to put matters off.

19. The Tribunal questioned Mr. Penman about the maths because there was clearly an error in the demand letter of the 27th February 2013 at page 49 in the bundle.

The reference to an advance payment of £1,615.28 in the year up to the 31st August 2011 was wrong as there had been no such advance payment made by the Respondent. Mr. Penman was then asked no less than 3 times how he explained that the sum due was £77.72 for that year. He referred to the relevant page in the lease when he realised that he had failed to include the relevant page (9) in the bundle.

20. He sought to blame the 'lawyers' for the way in which the lease was written as the payments on account did not coincide with the end of the service charge accounting year. In the end, he was simply unable to come up with an answer. However, he did confirm the figures in the 2 important pages in the bundle i.e. page 71 which was a handwritten record of what had been demanded and what had been paid, and page 101. These, together with the other documents did give the Tribunal the ability to make appropriate calculations.

21. At the end of the hearing everyone was asked whether they wanted to say anything else. Mr. Penman said 'no' and no-one else said anything.

Discussion

22. As has been said in the decision relating to the right to manage company, the legal set up of this estate leaves a lot to be desired and it is clear that some or all of the tenants fell out with the Applicant and/or Mr. Penman some years ago. However, if one takes into account, as the Tribunal does, that there is no apparent argument about the level of the service charges or their reasonableness, matters become much more straightforward.

23. The Applicant has produced total service charge amounts certified by accountants. The certificates come just about within the 18 month limitation period set out in section 20B of the 1985 Act. As no point is being taken about that issue, the Tribunal will not take that matter any further.

Conclusions

24. It may be convenient to deal with the years ending 31st August 2012 and 2013 as a starting point. At that stage the Applicant was the management company and the contractual terms in the lease apply i.e. the Respondent was and remains liable to the management company i.e. the Applicant, for those years. The letters of claim set out at pages 50-54 in the bundle correctly set out the certified service charges for those years.

25. As far as the year up to 31st August 2011 is concerned, the letter of claim is at pages 48 and 49 in the bundle. The certified total of service charges is said, rightly, to be £47,690.25 and the amount due from a one bedroom flat, as this is, is £1,693.00. It is said that a payment in advance was made for £1,615.28 "*in that period*" i.e. before 31st August 2011, leaving a balance due of £77.72.

26. However, the Respondent was only the tenant for 68 days in that year. At page 101 in the bundle the Applicant sets out a calculation of the service charges and the amount of £1,693.00 is reduced by £1,372.95 which are said to be 'voids' which is very close to the proportionate amount which would be due for 297 days out of 365 days in that service charge year. It is then said that the Respondent paid £807.63 on the 24th June 2011 and that is the only payment made "*in that*

period". The figures set out in the letter of demand were not understood by the Tribunal members, let alone the Respondent, who is understood to be a lady of over 80.

27. What is clear is that the proportionate part of the service charges due from the Respondent for the service charge year ending 31st August 2011 is £1,693.00 - £1,372.95 = £320.05 worked out on a daily rate. What is also clear is that Mrs. Boore paid £807.63 in that year. Accordingly, all her service charge liability had been met for that year and any surplus should have been carried over. As the overall maths for that year seemed to be beyond Mr. Penman, the Tribunal decided to start from the beginning.

28. For the years which are the subject of the claim i.e. the years ending 31st August 2011, 2012 and 2013, the correct figures, according to the certificates and the calculation of the proportionate part for 2011 are as follows:-

	£
31st August 2011	320.05
31st August 2012	1,761.37
31st August 2013	1,852.58
	3,934.00

29. The payments on account made and set out on page 71 in the bundle come to £3,230.52 which leaves a balance due from the Respondent of £703.55. The Applicant only claims £461.11 which presumably means that either (a) some of the payments on account are attributable to periods outside the 3 years claimed for or (b) the previous tenant of this flat had paid monies on account of the year 2010/2011.

30. Accordingly the Tribunal determines that the service charges payable from the Respondent to the Applicant for the 3 years up to 31st August 2013 are £461.11. Any claim for interest and costs and expenses is a matter for the court.

The Future

31. The Tribunal is conscious of the animosity between the tenants and the Applicant. The tenants must realise that service charges due for the period up to the 28th January 2015 are contractually payable to the Applicant and not to the right to manage company. The Applicant must, in turn, understand that service charge demands must be made in a prescribed form and within 18 months of a service charge being incurred. As an example, an expense incurred on the 12th June 2015 would have to be demanded by the 11th December 2016.

32. It is also normal practice for service charge accounts to be prepared and sent to tenants so that they can see how their money has been spent. This tends to avoid confusion and tenants exercising their right to examine the accounting documents used to support any claim pursuant to section 22 of the 1985 Act. The Tribunal was extremely surprised to have such a large bundle of documents for such a relatively small issue of dispute with no indication as to how the service charges had been made up. It does, perhaps, tend to show how some of the bad feeling has arisen because Mr. Penman does seem to be able to over-complicate things but, at the same time, omit relevant and important information.

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Bruce Edgington
Regional Judge
16th June 2015