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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AW/LSC/2014/0565**
Property	:	**Flats 1 and 2, 9 Elsham Road, London W14 8HA**
Applicant	:	**1. Mohamed Fahmy (Flat 1)** **2. Titus O'Hara (Flat 2)**
Representative	:	**Mr B. Abdo**
Respondent	:	**9 Elsham Road Management Ltd**
Representative	:	**Mr Padraig Hood**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Ruth Wayte (Tribunal Judge)** **Frank Coffey FRICS** **Rosemary Turner JP**
Date and venue of hearing	:	**26 March 2015** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**28 April 2015**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £ 829.05 is payable by the First Applicant in respect of the service charge for the second half of 2013.

(2) The tribunal determines that the sum of £ 1,807.43 is payable by the Second Applicant in respect of the service charge for 2012 and £1,658.10 is payable by the Second Applicant in respect of the service charge for 2013.

(3) The tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by them in respect of the service charge years 2012 and 2013. The first Applicant is only liable for service charges since 1 June 2013 following his purchase of Flat 1, the second Applicant has been the leaseholder of Flat 2 throughout the period in question.

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

The hearing

3. The Applicants were represented by Mr Abdo at the hearing and the Respondent was represented by Mr Hood, supported by Mrs Pickering. Mr O'Hara, the Second Applicant and Mrs Hood were also in attendance.

4. Each party had an issue as to the compliance with the directions by the other side but after discussion with the tribunal accepted they were able to proceed with the hearing on the basis of the bundle before the tribunal.

The background

5. The property which is the subject of this application is a terraced house converted into four flats over five floors. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

6. The Applicants hold 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. The specific provisions of the lease will be referred to below, where appropriate.

7. All leaseholders have a 25% share in the freehold of the property and are members of the Respondent company. The Directors are Mr Hood and Gillian Livesey, the leaseholder of Flat 3, who now lives abroad. Mr Hood confirmed that service charges were discussed at each AGM, attended by Jim Thornton of the managing agents, who is also the Respondent company secretary. Unfortunately Mr O'Hara had not attended the AGM held in 2012 and therefore any concerns he may have had were not raised at that meeting. Formal service charge accounts have been prepared and certified in relation to both 2012 and 2013 and payment made by all leaseholders, although the amounts are now being challenged as set out below.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for 2012 and 2013, as set out in the schedule of items completed by the parties;

   (ii) Whether an order under section 20C of the 1985 Act should be made;

   (iii) Whether an order for reimbursement of application/hearing fees should be made.

9. This was not the first dispute between the second Applicant and the Respondent, our attention was drawn to the previous LVT decision in case reference LON/00AW/LSC/2011/0172, dated 1 September 2011, covering disputes in relation to the service charge from 2009 to 2011.

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Cleaning - £504 in 2012, £516.60 in 2013

11. The challenge here was to the reasonableness of the cost, Mr Abdo and Mr O'Hara both claimed the cleaning was not in fact carried out monthly as indicated by the invoices and in any event Mr Abdo asserted he had a quotation for £20 per month, as opposed to over £30 charged

by the Respondent. Unfortunately the quote was not in the bundle, although the tribunal's attention was drawn to an email chain with an A.Hosier dated 16 February 2015 which indicated "the cost would be £30+" and a draft service charge budget prepared by Johnson Burke & Co Ltd which suggested an annual charge of £360. Mr Abdo submitted that this was a more reasonable amount.

12. Mr Hood, who lives and works at the property, gave evidence that the cleaning did indeed take place monthly and that no objections had been raised at the AGM where service charges were discussed and agreed by the members or in correspondence.

The tribunal's decision

13. The tribunal determines that the amount payable in respect of the cleaning for 2012 and 2013 is as set out in the accounts, namely £504 and £516.60 respectively. There was a conflict of evidence in terms of the work done, although no evidence of any complaints made about the cleaning in the bundle. In the circumstances the tribunal determines that the invoices stand as evidence of the cleaning having been carried out, leaving cost as the only issue. On this point, there was in fact little between the parties - £5 per visit given that the cleaning company used by the Respondent is registered for VAT. In the tribunal's experience £35 per visit is not unreasonable for a professional cleaning company and in the circumstances the amount in the accounts is due from the applicants.

Electricity - £112.80 in 2012 and £156.65 in 2013

14. The Applicants withdrew their objection to both items and the tribunal therefore determines that they are payable in full.

D & O Cover/Director's Insurance - £128.78 in 2012, £115.36 in 2013

15. This item, although small, was disputed on the basis that as a charge arising out of running the company, the Respondent could not recover the cost as a service charge item. In response, Mr Hood pointed to a note of the AGM in 2008 where Mr O'Hara agreed that the insurance could be recovered in this way. The tribunal also notes he previously agreed not to dispute company costs in the 2011 proceedings. The first applicant has only been a leaseholder since June 2013 and was not party to any agreement, although both applicants are of course members of the Respondent company and therefore liable for its expenses, subject to the articles of association.

The tribunal's decision

16. With some regret, the tribunal agrees that these charges cannot form part of the service charge under the terms of the lease. Given the small amounts in issue and the fact that at least morally the Applicants should cover the costs of their company, the tribunal hopes agreement can be reached as to payment. However, its determination is that neither amount is recoverable as part of the service charge.

Fire report - £203.15 each year

16. Again, the objection is as to the cost, particularly since there is a separate charge for fire testing, as set out below. Mr Abdo submitted a more reasonable charge would be £140 for a combined health and safety and fire risk assessment report and produced a quote from Butler Haydon Associates in support.

17. Mr Hood submitted that he understood it was a legal requirement to have an annual assessment and that the Respondent had taken steps to reduce the cost in line with the 2011 LVT decision.

The tribunal's decision

18. The tribunal notes that the previous LVT considered that this and the health and safety report should be done together and decided that £349.43 was a reasonable charge for both. The Respondent has interpreted this decision as a suggestion that the inspections are done at the same time, although two different reports are produced. While the tribunal acknowledges such assessments are good practice and should be carried out reasonably regularly, no evidence was provided to the tribunal to support the assertion that it is a legal requirement to have reports undertaken each year. The tribunal also considers the charge for both reports excessive, given the limited extent of the property. That said, there was evidence that the leaseholders had agreed to undertake annual checks in 2012 and 2013 and no objections had been raised at the time. In the circumstances, the tribunal will uphold the charges for the fire risk reports for these years, however the leaseholders may want to challenge their managing agents' suggestion that annual reports are necessary, in the absence of any requirement from insurers or risk raised following routine inspection of the property.

Fire testing - £733.20 in 2012 and £618 in 2013

19. The main objection raised by Mr Abdo was that given the annual fire assessment, additional testing was excessive and unnecessary. Mr Hood replied that quarterly testing had been agreed at the AGM. This item had also been considered by the previous tribunal which decided that £125 +VAT was a more reasonable annual charge, to allow for 6 monthly checks instead of the quarterly checks currently undertaken.

The tribunal's decision

20. Given the annual fire assessment carried out by the managing agents and the relatively recent system, the tribunal determines that one additional visit per annum is all that is reasonable and allows £154.50, the charge made in those years for a single visit, including VAT for each service charge year.

Gardening - £274.50 in 2012

21. The dispute in relation to 2013 had been withdrawn prior to the hearing. Mr Abdo accepted £24.50 of the claim for 2012 for sundry items but maintained a more reasonable charge for the gardening was £100 per year, based on the estimate provided by his alternative agents of £50 per visit and two visits per year. This compared to an invoice from City Gardens for two visits at £100 per visit and £50 for works to the gate. The tribunal were shown photographs of the garden in question, which leads up to the front door and includes a hedge on two sides.

The tribunal's decision

22. Given that the fees for City Gardens had been agreed by the majority of the leaseholders in 2012 and no objections had been raised at the time or alternative gardeners suggested, the tribunal determines that the charge of £247.50 for 2012 is within the bounds of reasonableness, if a little high for what is a modest front terraced garden.

Health and safety - £225.72 for each year

23. As mentioned at paragraphs 16-18 above, this is the companion piece to the fire report, carried out by the managing agents each year at the same time. The previous LVT determined that a combined cost of £349.43 was reasonable for 2011. The combined cost claimed for 2012 and 2013 is £428.87.

24. Mr Abdo's objection was that it was unnecessary for a small house to have an annual inspection. He also complained that the report for 2013 was defective as it failed to notice a problem with the retaining wall to the basement, although on examination agreed that the problem became apparent after the inspection had occurred. Again, Mr Hood relied on the agreement at the AGM and his understanding that annual inspections were a legal obligation.

The tribunal's decision

25. As mentioned in paragraph 18 above, the tribunal does not accept that it is a legal requirement to have annual fire and health and safety risk assessments in the form provided by the managing agents, who are paid a fee to manage the property which must include some element of inspection. Given the fee allowed for the fire report and in the light of the quote for a combined report of £140 provided by Mr Abdo, the tribunal do not consider that an additional charge is reasonable and disallow the additional costs of these reports for each year in dispute.

Insurance - £2,207.08 in 2012, £2,322.95 in 2013

26. Mr Abdo gave evidence that as soon as he bought the property he suggested monies could be saved on insurance. The respondent had now used Mr Abdo's broker to arrange insurance at a cost £1,100 which he maintained was a more reasonable sum.

27. Mr Hood pointed again to the AGM as evidence of the leaseholders' agreement to using the agent's block policy and the saving on the cost of the previous insurance policy. He also pointed out that the current insurance cover was not as comprehensive as the previous policy and that during the period in dispute the cost of insurance would have been affected by claims made under the policy.

The tribunal's decision

28. There was clear evidence that in 2012 and 2013 the respondent had been concerned to achieve a competitive price for insurance and that the agent's policy had produced a saving. Given the fact that the claims history would have affected the cost of insurance and the differences in the policies, the tribunal determine that the charge for insurance is reasonable and uphold £2,207.08 for 2012 and £2,322.95 for 2013.

Legal fees - £1090 in 2012

29. These fees related to the previous LVT proceedings against the second applicant. When questioned about his reason for objecting to the item, Mr O'Hara stated that he thought they were too high and that he'd paid the charge. Mr Hood pointed to item 2.5 on the minutes for the AGM in 2011 as evidence that the members agreed to contribute to the costs, although he conceded that it may not have been appropriate to include them as part of the service charge.

The tribunal's decision

30. The issue here is whether the lease makes sufficient provision for the recovery of legal expenses, with a clear and unambiguous provision required. In the 2011 proceedings, the managing agents had submitted there was no provision in the lease to allow for the recovery of legal

costs. The main provisions for the service charge are found in the Third Schedule of the lease and do not make reference to the recovery of legal costs, as opposed to the fees of the managing agents. In the circumstances, the tribunal determines that the costs are not recoverable as a service charge and this item is disallowed. Again, the Respondent may have other recourse against the Second Applicant as set out in the AGM note or in the tenant's covenants in the lease but that is not a matter for us in these proceedings.

Management fees - £1,652.28 in 2012, £1,718.28 in 2013

31. Mr Abdo submitted that these were unreasonable for a property with four flats and pointed to his estimate from Johnson Burke & Co of £250 per flat. In response, Mr Hood gave evidence that he had discovered a range of fees from £150 to over £400 per flat per year. In comparison Hurford Salvi Carr charged £344 in 2012 and £358 in 2013. Given the range of services provided and the difficulties with payment of service charge, particularly in respect of flat 2, he submitted the costs were within a range of reasonableness.

The tribunal's decision

32. The tribunal agrees with Mr Hood that the fees of Hurford Salvi Carr are within a reasonable range for managing agents. Although the property is relatively small, recovery of service charges has not been without difficulty as described in this decision. In the circumstances the tribunal finds that £1,652.28 is payable in respect of 2012 and £1,718.28 in 2013.

Man Co Expenses - £141.60 in 2012, £315 in 2013

33. This item is the cost of providing company secretarial services for the freehold company, including the preparation of the annual return and documents for Companies House. Mr Abdo's objection was again based on the lease – this might be a charge for the members, of which he is one but should not be recovered by way of the service charge. Mr Hood conceded that if the lease made no provision for the recovery of the costs, they might need to be recovered in another way but wondered whether the general management provisions in the Third Schedule would be sufficient.

The tribunal's decision

34. Again, the tribunal agrees with Mr Abdo that the lease does not provide for the recovery of these costs by way of the service charge. That said, both Applicants as members of the company may well be liable for these costs under the terms of the articles of association or otherwise,

although that issue is beyond the scope of this application. In the circumstances, these fees must be disallowed.

Repair and maintenance - £1707.40 in 2012, £2152.05 in 2013

35. Mr Abdo's objection in 2012 (on behalf of Mr O'Hara) related to concerns that the works were for individual flats rather than lessor's obligations under the lease. He pointed in particular to an invoice for £264 which related to cabling, following a complaint of a lack of signal from one of the flats. Mr Hood submitted that all of the works were covered by the lease and pointed to invoices as evidence of the cost which he submitted was reasonable.

36. The costs in 2013 were for a variety of small works. Again, Mr Abdo queried the costs, in particular for the bi-monthly maintenance visits, charged at £57.60 on four occasions. He also challenged the claim for costs of investigating a smell from Flat 2 (£118.80) and decorations to the hallway since it had been refurbished in 2011 (£473.45). Finally, he objected to the cost of the CAD drawing obtained by the Respondent at £540 following his request to purchase part of the garden to extend the basement flat. He had provided his own drawing at a cost of £180 and maintained that was a reasonable amount and a second drawing was unnecessary.

37. In reply, Mr Hood submitted the costs were reasonable and covered under the lease. In relation to the CAD drawing, he submitted it was a reasonable expense as the request was a serious matter and the implications for the freeholders and the building needed to be carefully considered.

The tribunal's decision

38. In relation to 2012, the tribunal allows the claim in full. All the costs claimed were within the service charge provisions in the lease. In respect of cabling, the Third Schedule provides for the recovery of the expense incurred by the landlord as described in clause 5(1). Clause 5(1)(b) refers to "the...electric cables and wires and supply lines in under and upon the said building". In the circumstances the tribunal determines that the item for cabling is covered and the charges are reasonable in amount.

39. In relation to 2013, the tribunal considered that the bi-monthly maintenance visits were unnecessary. Mr Hood had identified that the AGM had agreed they should end in January 2013 and in those circumstances the tribunal will allow one visit only, meaning a reduction of £172.80. The tribunal allows the items in respect of the investigation and redecoration works in full as reasonable and in accordance with the lease. In terms of the CAD drawing, again, the

tribunal determines this is not for the service charge. The usual proviso is that the leaseholder seeking the benefit pays the landlord's reasonable costs, meaning that Mr Abdo should be liable personally. A further £540 is therefore deducted from this service charge item for 2013, making the amount allowed for repairs etc for 2013 £1,439.25.

Application under s.20C and refund of fees

40. Mr Abdo did not pursue an application under section 20C at the hearing, although he did apply for a refund of the fees that he had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account all the circumstances of the case – particularly as set out below, the tribunal does not order the Respondent to refund any fees paid by the Applicant.

41. Given that both applicants are members of the freehold company and the payment history of the second applicant, this was an unattractive application. The tribunal considered that the directors had done their best and tried to proceed on the basis of agreement. Many of the items deducted may well fall to be paid by the applicants either personally or as members of the freehold company. The tribunal hopes that there will be greater co-operation in future and similar applications can be avoided.

Summary of determinations (excluding reserve fund contributions)

Year	£ claimed	£ deducted	Total	¼ share
2012	9,394.50	2,164.80	7,229.70	1,807.43
2013	8,464.76	1,832.38	6,632.38	1,658.10

Name: Ruth Wayte **Date:** 28 April 2015

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.