



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

Case Reference : **CHI/43UD/LSC/2014/0011**

Property : **111 Printing House Square
The Bars, Guildford GU1 4BU**

Applicant : **Mr Angus Robertson**

Respondent : **Thames Valley Charitable Housing
Association Limited**

Representatives : **Mr H Dawson Deputy Housing Director
Ms. Carole Rew
Ms. Lavinia Steele all employed by the
Respondent**

Type of Application : **Section 27A of the Landlord and Tenant Act
1987**

Tribunal Members : **Judge D. R. Whitney
Mr. D. Lintott FRICS**

**Date and venue of
Hearing** : **15th July 2014
Guildford LawCourts**

Date of Decision : **30th July 2014**

DECISION

BACKGROUND

1. The application was made by Mr Robertson who occupies Flat 11 Printing House Square, the bars, Guildford ("the Property") under a tenancy which commenced on 21 May 2008 granted to him by the Respondent. The application was to challenge various service charges levied from the Applicant under that agreement.
2. The Respondents own the long residential lease of the Property occupied by the Applicant. The respondent is a social housing provider.
3. An oral case management hearing was held on 10th March 2014 when directions were given although the directions were subsequently varied. Following variation there appears to the tribunal to have been substantial compliance with the same including preparation of a paginated bundle by the Applicant. Reference to page numbers within this decision refer to that bundle.
4. The years in question are all years from 2008 to 2014 inclusive.

DECISION

5. The tribunal determines that the sums claimed by the Respondent in the schedule annexed hereto are reasonable and properly payable by the Applicant.
6. Whilst the respondent indicated they would not look to recover the costs of this matter by way of a service charge for good order the tribunal makes an order that none of the costs of this application are recoverable from the Applicant by way of service charge payments.

THE LAW

7. The relevant sections for this application are sections 19 and 27A of the Landlord and Tenant Act 1987 which are annexed hereto.

INSPECTION

8. The tribunal inspected the Property immediately prior to the hearing. All parties who attended the hearing were present. The on site caretaker (employed by the managers of the development as a whole) Mr Andy Morgan was also present and helpfully showed the tribunal around including accessing all meter rooms.
9. The development consists of 6 modern blocks constructed in or about 2008 with an underground car parking area. Block 6 contains the Applicants flat. This block is made up of 22 flats.

10. We were advised that the heating and hot water is a gas system. The tribunal inspected the heating room containing all boilers and equipment. There was no sign of any meters within this area. Subsequently the tribunal inspected the meters for gas, electricity and water. There was one meter for each. The tribunal was advised by Mr Morgan that there were no other meters and as far as he was aware no meters for the consumption of hot water and heating to each flat.
11. The tribunal did not inspect the internal common parts or the Applicants flat as this was not considered necessary by the parties present.

HEARING

12. The Respondents at the outset of the hearing confirmed they agreed that the service charge was variable. The relevant tenancy agreement for the Applicant was at pages 39-52 inclusive and at page 56 & 57 of the bundle. The Applicant confirmed he had received these documents when he entered into the tenancy agreement.
13. Mr Dawson for the Respondents explained that they owned the flat as a long residential leaseholder. A copy of the lease was included at pages 187 to 217 of the bundle. The percentages payable by the Respondent to the development managers (who were entirely separate of the Respondent) were set out at page 190 of the bundle. The Respondent was responsible for paying a determined percentage of various service charge heads including a percentage for "Combined Heating & Power Costs" and "Domestic Cold Water & Sewerage Costs". Copies of the demands the respondents had received were within the bundle. The development as a whole was now run by an RTM Company of which the Respondent was not a member.
14. Utilising the budget for the year 2013 to 2014 Mr Dawson explained that in simple terms the Respondent looked to recover from the Applicant part of the charges levied to them. These included Part of Schedule 1 (Estate costs), part of Schedule 3 (Affordable Housing costs), and all of Schedules 7 & 8 (Combined Power/Heat and Domestic Cold Water). They did not charge for costs relating to the underground parking. The names of the schedules is as they appear on the budget within the bundle.
15. It was explained that the Respondent looks at the demands and strips out elements which the Respondent does not charge on to its tenants to calculate the figure they will seek to recover. This exercise is undertaken on the basis of the budget figures supplied to the Respondent from the development managers who have changed various times since 2008.
16. On top of the service charge the respondent then charges 15% as a management charge. In setting this figure Mr Dawson said consideration had been given to what charges were made on the open market but this also covers the cost of providing a housing officer for the development and for managing the tenancy as a whole.

17. For each of the years disputed the methodology has been the same. The sums are split down in the demands to the tenants to assist those who are in receipt of Housing Benefit as certain sums are recoverable by tenants in receipt of this benefit.
18. The accounts were based on the budgeted figures. No reconciliation accounts as such had been prepared but throughout credits had been given when the accounts were received from the block manager as appropriate.
19. Mr Dawson explained that the Respondent always calculated the estimates in the tenants favour. They had not reconciled as if it was discovered that there was a shortfall this would cause difficulties for those tenants in receipt of benefits as this may not be recoverable.
20. It was confirmed that a summary of rights and obligations was sent and the Applicant acknowledged this was the case.
21. Mr Robertson contends he is entitled to actual receipts for all expenditure. The accounts should be properly audited and a reconciliation of the accounts.
22. Mr Robertson disputed that the percentages in the lease were correct for his property. In his submission there should be a calculation in accordance with his actual use and consumption of services.
23. Mr Robertson said that he believed that the system for heating and water could be individually metered and he relied upon certain marketing materials for the system in place. He submitted these meters should be fitted.
24. Mr Robertson sought an Order under Section 20C.
25. Mr Dawson confirmed that the Respondent was content for an order to be made as they would not be looking to charge any costs of this application to the service charge.
26. Mr Dawson further confirmed he could produce a schedule of what sums were charged for each year and what credits had been applied. The tribunal did grant a short adjournment for this to be prepared utilising the information contained within the bundle.

DECISION

27. The tribunal considered all the documents within the bundle provided.
28. The tribunal finds that there were not any individual meters for the flats within the development. Further the tribunal accepts that the respondent is bound to pay a determined percentage within the terms of the lease by which it owns the Property.

29. The tribunal is satisfied that pages 56 and 57 of the bundle form part of the tenancy and set out matters payable by way of service charge from the Applicant. Further the tribunal is satisfied that all heads of charge which the Respondent seeks to recover from the Applicant are properly payable under the tenancy agreement.
30. Whilst there has been no overall reconciliation the tribunal is satisfied that relying upon Schedule 1 of the tenancy agreement and particularly paragraph (c) of the same estimated costs may form the basis of the charges made to the Applicant.
31. The tribunal notes the methodology applied by the Respondent in calculating the amounts due and is satisfied in the circumstances that this is reasonable relying upon their professional expertise.
32. As to the sums claimed overall in the tribunals opinion these are reasonable having regard to the type of Property. The tribunal considers the costs to be modest.
33. Whilst the tribunal accepts the heating and water systems could be metered they are not. There is a fixed percentage payable for the Property and in this tribunals opinion it is reasonable to look to recover 100% of this cost from the Applicant. The charges levied are reasonable for a flat in this area and the costs of individually monitoring and billing the same would be considerable meaning the method adopted is reasonable.
34. With regard to the management fee again the tribunal has considered the evidence given of the service provided. It is clear that this includes general tenancy support. The tribunal is satisfied that a charge of 15% is reasonable.
35. The charges were based on estimates with credits given by the Respondent. The tribunal was satisfied that they were entitled to manage the service charges in this way under their agreements.
36. In summary the tribunal was satisfied on the evidence presented in this case that the charges levied were reasonable and payable.

Judge D. R. Whitney

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX

Sections 27A and 19 of the Landlord and Tenant Act 1985

Section 27A Liability to pay service charges: jurisdiction

- (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.

(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 of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

19 Limitation of service charges: reasonableness. .

(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.

(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.

III PRINTING HOUSE DEBIT - SERVICE CHARGES

PAGE 1

15JUN2014

2008-09	1 WEEK @ 11.71	11.71
	45 WEEKS @ 27.32	1274.40
	28NOV08 CREDIT	<u>- 142.08</u>
	TOTAL CHARGED 2008/9	1144.03 //
2009-10	7 WEEKS @ 27.32	191.24
	45 WEEKS @ 17.17	772.65
	22MAY09 CREDIT 8/9	- 576.83
	22MAY09 CREDIT 09/10	- 71.05
	5FEB10 CREDIT 09/10	<u>- 51.48</u>
	TOTAL CHARGED 2009/10	264.53 //
2010-11	SC. 17 WEEKS @ 13.04	221.68
	HEATING: 17 WEEKS @ 7.00	119.00
	WATER: 17 WEEKS @ 4.05	68.85
	SC. 35 WEEKS @ 13.82	483.70
	HEATING 35 WEEKS @ 6.13	214.55
	WATER 35 WEEKS @ 3.19	111.65
	4AUG10 CREDIT 10/11	- 16.15
	22FEB11 CREDIT 9/10	- 1.02
	23 MAR11 CREDIT 9/10	<u>- 19.55</u>
	TOTAL CHARGED 2010/11	1182.71 //
2011-12	SC 52 WEEKS @ 12.42	645.84
	HEATING 52 WEEKS @ 7.05	366.60
	WATER 52 WEEKS @ 3.67	190.84
	TOTAL CHARGED 11/12.	<u>1203.28</u>
2012-13	SC 52 WEEKS @ 14.57	757.64
	HEATING 52 WEEKS @ 6.47	336.41
	WATER 52 WEEKS @ 3.36	174.72
	TOTAL CHARGED 12/13	<u>1268.80</u>

2013-14

SC 52 WEEKS @ 18.27

£ 950.04

HEATING 52 WEEKS @ 8.32

432.64

WATER 52 WEEKS @ 5.77

300.04

CREDIT.

-125.00

TOTAL CHARGED 13/14

£ 1557.72 //