



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

Case Reference	:	LON/00BB/LSC/2014/0078
Property	:	Flats 4, 5, 8, 12 Estelle Apartments, 20 Grove Crescent Road, Stratford, London E1 1AQ
Applicants	:	Celina Trevisan (Flat 4); Robert Davies and David Robson (Flat 5); Stephanie Wongsam (Flat 8); Nebojsa & Razumenka Krstic (Flat 12).
Representative	:	Robert Davies (Flat 5)
Respondent	:	London & Quadrant Housing Trust
Type of Application	:	Sonia Rai (Counsel) instructed by Clarke Willmott. Solicitors
Tribunal Members	:	Robert Latham Alan Manson FRICS
Date and venue of Hearing	:	28 May 2014 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	3 June 2014

DECISION

(1) The Tribunal records the agreement reached between the parties, namely that:

(a) the service charge for the communal electricity charge for the year 2012/3 be reduced from £378.70 to £188.73 per flat.

(b) the Tribunal should make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(iii) the Tribunal determines that the Respondent shall pay the Applicants £315 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

- (2) The Tribunal further record that they are not making any determination in respect of the communal electricity charge for year 2011/2. On 12 June 2013, the Respondent agreed to reduce this from £264.82 to £149.82 per flat.

The Application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of communal electricity charge which they are required to make for the years 2011/2 and 2012/3 in respect of the flats which they occupy at Estella Apartments, 20 Grove Crescent Road, London E15 1AQ. Directions were given on 4 March 2014.
2. All the Applicants occupy their flats under shared ownership leases. Their block was constructed in 2008 and consists of 17 flats. 3 of the flats are not connected to the communal electricity supply. We have been provided with a copy of the lease in respect of Flat 5 which is dated 24 May 2009.
3. There has been a long running dispute between the parties as to the level of charges levied for the communal electricity supply. There is communal lighting. However, this is on a time switch. During the day time, the communal parts are well lit with natural lighting. There is a lift to the 4th floor. We were told that there is also a sewerage pump. There was also heating but this was switched off in about April 2012. In these circumstances, one would normally expect the communal supply to be no more than some £25 to £100 per annum for each flat.
4. The problem has arisen because electricity and the associated heating and hot water are supplied by Energy Switch Solutions Ltd ("Energy Switch") pursuant to an agreement which the Respondent entered into dated 3 April 2008. There is a central heating plant providing energy to this block and two neighbouring blocks. The Applicants are separately metered for the supplies to their individual flats. These vary between £11 and £15 per month, per flat and seem eminently reasonable.
5. The dispute has rather related to the communal supply. The Applicants complain of the charges levied for the years 2011/2 (£264.82) and

2012/3 (£378.70). In 2010/11, the charge was £396.41. We were shown an e-mail, dated 12 June 2013, which records that a refund of £230 was paid to residents in "April/May 2012". In 2013, Mr Davies utilised the Respondent's Complaints Procedure. In response to the complaint, the Respondent reduced the charge for 2010/11 to £281.41 and for 2011/2 to £149.82. The basis upon which these reductions were made is not entirely clear.

6. When the Tribunal gave directions, the Respondent were required to provide a full response to the claim, including a report from Energy Switch, explaining the basis of the charges. The Respondent have not been able to obtain this information from Energy Switch and have now issued legal proceedings. The Respondent sought an adjournment so that this information could be obtained from Energy Switch. The Tribunal refused this application, on the ground that it was not proportionate to do so given the relatively modest sums in dispute.
7. As a result of the good sense of the parties, agreement has now been reached as to the communal charge which should be paid for 2012/3. The Respondent criticised the Applicants for raising the charge for 2011/2 in respect of which agreement has already been reached. However, there has been a lack of transparency as to the basis upon which these reductions have been made.
8. We are issuing this short decision because the Respondent have still to resolve what has gone wrong in computing the charge for the communal electricity supply which is to be paid by their tenants. We hope that the proceedings which the Respondent have now issued against Energy Switch, will provide the required answers. If not, it seems inevitable that further proceedings will arise and a Tribunal will be required to determine whether the sums demanded are reasonable, and if not, what a reasonable charge would be.
9. We finally record that we are satisfied, that the Respondent, as a registered provider of social housing, has not been seeking to profit at the expense of their tenants. However, it is they who entered into this contract with Energy Switch. It is they who must ensure that the service charges which they charge to their tenants are payable and reasonable.

Robert Latham
Tribunal Judge
3 June 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 – Meaning of “service charge” and “relevant costs”

- (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 – 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 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 – 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.

Section 20C – Limitation of Service Charges: cost of proceedings

- (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 leasehold valuation 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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 13 - Orders for costs, reimbursement of fees

- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.