



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

Case Reference : **MAN/00BN/LSC/2014/0079**

Property : **55 Greetland Drive
Blackley
Manchester
M9 6DP**

Applicant : **Victoria Gardens (East
Blackley) Management
Company Limited**

Representative : **Fords Residential Management**

Respondent : **Mr Mark Smith**

Representative : **N/A**

Type of Application : **Landlord and Tenant Act 1985 – s27A
and s20C**

Tribunal Members : **Judge J Holbrook
Judge L Bennett**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **29 December 2014**

DECISION

DECISION

In respect of each of the service charge years identified in the first column of the following table, the Respondent is liable to pay service charges to the Applicant in the amount specified in the second column of the table.

Service charge year	Amount payable by Respondent
1 July 2010 – 30 June 2011	£759.91
1 July 2011 – 30 June 2012	£1,072.00
1 July 2012 – 30 June 2013	£1,125.36
1 July 2013 – 30 June 2014	(provisionally) £1,125.36

The Respondent's application for an order under section 20C of the Landlord and Tenant Act 1985 is refused.

REASONS

Background

1. By order of District Judge Kumrai sitting at Willesden County Court on 21 May 2014, the Tribunal is required to make a determination as to whether service charges in respect of 55 Greetland Drive, Blackley, Manchester M9 6DP (the Property) are payable and/or reasonable. The periods in respect of which a determination is required are the service charge years which commenced on 1 July in 2010, 2011, 2012 and 2013.
2. The Applicant in these proceedings is Victoria Gardens (East Blackley) Management Company Limited. The Respondent is Mr Mark Smith, who holds a long leasehold interest in the Property under a lease dated 8 December 2000 (the Lease) made between Harwood Homes (Northwest) Limited (1) the Applicant (2) and Mr & Mrs G Konopka (3). The Applicant is the management company for the development of 15 flats which includes the Property and is a party to the Lease for this reason.
3. Following a case management hearing held in Manchester on 21 October 2014 (which the Respondent did not attend) directions were issued for the conduct of the proceedings. The parties were informed that the application would be determined on the basis of written representations alone, without a further oral hearing, unless either party gave notice that they required an oral hearing to be held. No such notice was received. The Tribunal therefore proceeded to determine the matter without a hearing. The Applicant provided a statement of case together with a witness statement by the managing agent and a file of supporting documentary evidence. The Respondent provided a short statement of case in response. He also applied for an order under section 20C of the Landlord and Tenant Act 1985 preventing the

Applicant from recovering costs incurred in connection with the proceedings as part of the service charge.

4. The Tribunal did not inspect the Property.

Law

5. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

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.*

6. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

7. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

8. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.*

9. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

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.

Determination

10. The Tribunal inspected a copy of the Lease and noted that it contains provisions entitling the Applicant to demand contributions from the Respondent towards the costs of providing services to the development. Those contributions are defined in clause 1.7 of the Lease as being a sum equal to 6.67% of the Annual Maintenance Provision (calculated in accordance with part 2 of the fourth schedule to the Lease). Essentially, therefore, the Respondent is liable to contribute one fifteenth of the total costs reasonably incurred by the Applicant in providing services to the development.
11. Although the Applicant did not comply with the Tribunal's direction "to specify, in respect of each service charge year concerned, the total service charges the Applicant believes to be payable by the Respondent", it did produce copies of the service charge accounts for the 2010-11, 2011-12 and 2012-13 service charge years. Each set of accounts details the total service charge expenditure for the year and so, by applying the relevant percentage specified in the Lease, it can be seen that the Respondent's contribution appears to be as follows:

Year	Total Expenditure	Respondent's Contribution
2010-11	£11,393.00	£759.91
2011-12	£16,072.00	£1,072.00
2012-13	£16,872.00	£1,125.36

12. Accounts were not provided in respect of the 2013-14 service charge year.
13. In his statement of case, the Respondent states that he does not dispute his liability for service charges in principle. However, he disputes the reasonableness of the amounts included in the total costs in respect of management fees for 2011-12 onwards. As the Respondent makes no challenge to the costs included in the 2010-11 service charge year, the amount of the service charge payable by him for that year is the relevant figure shown in the above table.
14. The amounts incurred by the Applicant in respect of management fees are £2,165.00 for the 2010-11 service charge year (equivalent to £144.33 per flat), and £4,500.00 for each of the 2011-12 and 2012-13 service charge years (equivalent to £300.00 per flat). The cost of management for 2013-14 is unknown as service charge accounts have not been provided for that year. The Respondent notes the marked increase in management fees from 2011-12 onwards and argues that the amount of the increase was unreasonable, and also that management fees represent an unreasonably large proportion of the total service charge expenditure.
15. The Applicant employs a firm of managing agents, Fords Residential Management, to manage the development. Mr Daniel Ford of that firm

provided a witness statement in reply to the Respondent's challenge to the reasonableness of the management fees in question. In his statement, Mr Ford notes that Fords Residential Management were appointed as managing agents during the 2011-12 service charge year in substitution for a different agent whose services to the development had apparently been of an unacceptably poor standard. Mr Ford accepts that the previous agent had charged only £2,165.00 for 2010-11 but he asserts that additional fees were payable for other services, the cost of which is now included in the management fees payable to Fords. He asserts that Fords provides a high standard of management service to the development which has resulted in significant savings in costs (such as the cost of buildings insurance), and that the level of management fees is reasonable.

16. In our view, the reasonableness of a management fee cannot be determined simply by assessing the proportion of the overall service charge costs which is borne by the fee. That proportion is likely to be greater (and rightly so) in the case of a small development with relatively modest service charge costs compared with a larger development with far greater costs. Nor is the amount of any increase in the fee year on year of itself a determinative factor. The relevant question is whether the management fee charged in any particular period is reasonable given the service provided. Clearly, the complexity and extent of the management services concerned is a very relevant factor in this assessment.
17. In the present case, we are satisfied that the management fees payable to Fords Residential Management, whilst at the upper end of the range of fees which would be considered reasonable, are within that range for a development of 15 flats. If the Applicant were not permitted to incur management fees of this amount, then it may have difficulty in finding a competent managing agent who would be willing and able to provide an adequate management service. We therefore find that the service charges payable by the Respondent for the 2011-12 and 2012-13 service charge years are also as detailed in the above table.
18. As far as the 2013-14 service charge year is concerned, the Tribunal has been provided with insufficient information to enable a final determination to be made. However, we note that the service charge expenditure for the previous two years has been broadly similar, and we are aware of no reason why the pattern of expenditure should not continue. We therefore make a provisional determination that the amount of the Respondent's service charge liability for 2013-14 is the same as it was for 2012-13. Either party may re-apply to the Tribunal for this provisional determination to be made final once the relevant service charge accounts become available.
19. Finally, given that the Respondent's challenge to the reasonableness of the service charges has been unsuccessful, we do not consider it would be just and equitable to grant his request for an order under section 20C of the 1985 Act.