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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BT/LSC/2013/0110**
Property	:	**111, Penrith Avenue, Ashton Under Lyne OL7 9JN**
Applicant	:	**Ms. S. Crawford**
Respondent	:	**New Charter Housing**
Type of Application	:	**Sections 27A and 20c of the Landlord & Tenant Act 1985**
Tribunal Members	:	**Mrs.C.Wood** **Mr.D.Bailey**
Date of Decision	:	**25 February 2014**

DECISION

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Decision

1. The Tribunal determines as follows:

1.1 that the service charges which are the subject of this application are variable service charges within the meaning of section 18(1) of the 1985 Act;

1.2 that the amounts regarded as reasonable/having been reasonably incurred and properly chargeable as annual service charge in the service charge years 2007/08 to 2012/13 (inclusive) are as follows:

(i)	External caretaking:	£
	2007/08:	64.14
	2008/09:	66.91
	2009/10:	70.72
(ii)	External/internal caretaking:	
	2010/11:	91.45
	2011/12:	135.24
	2012/13:	147.46
(iii)	Window cleaning:	Nil
(iv)	Grounds maintenance:	
	2007/08:	17.16
	2008/09:	17.94
	2009/10:	18.98
	2010/11:	17.16
	2011/12:	17.94
	2012/13:	17.94

1.3 that, in the circumstances, it is just and equitable for the Tribunal to make an order under section 20C that none of the Respondent's costs are to be regarded as relevant costs in determining the amount payable by the Aplicant as service charge.

The Application

2. By an application dated 5 June 2013 the Applicant sought a determination as to the reasonableness and/or payability of the service charges for the Property for the service charge years 2007/08 to 2012/13 (inclusive) and onwards.

3. Directions dated 23 October 2013 were issued by the Tribunal in pursuance of which:

3.1 the Respondent submitted its Statement of Case, with supporting documentation, under cover of its letter dated 13 November 2013 together with supporting documentation ("the Respondent's Bundle");

3.2 the Applicant submitted her response in an undated Bundle ("the Applicant's Statement");

3.3 a hearing was scheduled for Friday 31 January 2014 at 11.30am, preceded by an inspection of the Property at 10.00am on the same day.

The Tenancy Agreement

4. A copy of the tenancy agreement for the Property, ("the Tenancy Agreement"), appeared in the Respondent's Bundle. The tenancy was initially granted as a weekly assured shorthold tenancy which commenced on 17 December 2001, and automatically converted to an assured tenancy on 17 December 2002. The relevant provisions of the Tenancy Agreement are as follows:

4.1 Section 1.6 states that "The payment for the Property ("the Rent") is:-
Weekly Rent: £53.50
PLUS
Service Charge Items (*delete if not applicable)....
Total Weekly Payment £53.50".

4.3 Section 3.2 which is headed "SERVICES" states as follows:
" We will provide the services indicated in Section 1.6 of this Agreement in connection with the Property. We may increase, add to, remove, reduce or vary the services provided....Any change may affect the amount of any service charge you pay...

4.4 Section 4 states: " We will identify the charges for any services provided. We will tell you how much of your Rent payment each week goes towards providing the specific services such as caretaking, cleaning and security...(...If you have the Rent Guarantee any increase in your total Rent and service charge will be no more than inflation plus one per cent during this period)
We will notify you in writing giving you one calendar month' s notice of any increase in service charges.
We will comply with the appropriate provisions of the Landlord and Tenant Act 1985 with regard to service charges."

4.5 Under Section 8, the Respondent is obliged to keep in good repair:
(i) the outside of the Property and its structure including principal pathways, steps and means of access;
(ii) the installations in the Property that provide water, gas, electricity etc; and
(iii) the common facilities including hallways, staircases, landings, passageways, doors, lights etc.

The Law

5.1 Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(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.

5.2 Section 19 provides that –

(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.

5.3 Section 27A provides that -

(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 date at or by which it is payable, and

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) .....

(4) No application under subsection (1)...may be made in respect of a matter which -

(a) has been agreed by the tenant......

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

5.4. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word "reasonableness" should be read in its general sense and given a broad common sense meaning [letter K].

Inspection

6. The Tribunal inspected the Property at 10.00am on 31 January 2014. The Applicant attended the inspection.

6.1 The Property is a first floor flat within a block of flats. The Tribunal inspected the internal and external communal areas;

6.2 the internal communal areas comprise hallway and landings with connecting stairway; there are external doors to the front and rear of the block;

6.2 the external communal areas comprise lawned areas to the rear, drying area and a bin store. Access to the rear communal areas is through the ground floor of the block or by a side gate which the Applicant explained had been padlocked until relatively recently;

6.3 the Applicant mentioned that the caretakers had visited the block on the previous day and had cleaned the internal communal areas. They had also removed some rubbish which the Applicant had collected from the external areas, particularly in the drying area, and placed in the bin store. She also mentioned that window cleaners had visited that week.

Hearing

7. A hearing took place at 11.30 am on 31 January 2014 at 5, New York Street, Manchester M1 4JB attended by Ms.Crawford, the Applicant, and Mr. Paul Wilson and Ms.J.Vickers for the Respondent.

Evidence

8. Mr.Wilson first addressed the Tribunal on the question of whether the service charges were fixed or variable as follows:

8.1 Mr.Wilson contended that they were fixed and could not, therefore, be the subject of an application pursuant to section27(A) of the 1985 Act. He explained that these tenancies had originally been granted at an all inclusive rent. He submitted that Section 3.2 of the Tenancy Agreement had to be read by reference to Section 1.6 in which none of the listed Service Charge Items had been completed. Whilst accepting that there had been increases in the charges over the period of the tenancy, since 2005, these increases had been limited to the increase in RPI plus ½%;

8.2 Ms. Vickers drew a distinction between the services to be provided under the terms of the Tenancy Agreement and those which, following subsequent consultation with all tenants, it had been agreed should be provided eg caretaking services. In both cases, the charge to the tenant originated in the cost or estimated cost to the Respondent of providing the service but, in the case of existing tenants such as the Applicant, the application of the formula referred to by Mr.Wilson meant that the amount of the charge payable by the tenant was "capped".

9. Ms. Crawford made the following submissions:

9.1 her tenancy had started in 2001. The Tenancy Agreement referred to the provision of internal caretaking but this was not provided; in 2005, she complained to the Respondent about the lack of internal caretaking services. This was first introduced in November 2010 but problems continued. On 23 March 2011, Ms.Crawford met with Julie Devereux of the Respondent who recognised that there were still problems with both the internal and external caretaking.

Ms.Crawford accepted that since March 2011 the provision of internal caretaking services was more consistent (although it was not done every week) and that, when it was done, it was done to a satisfactory standard; Ms.Crawford said that she accepted that she was liable to pay for this service from 23 March 2011 onwards; in her view, the charge for internal caretaking accounted for about 50% of the composite charge for internal/external caretaking

9.2 problems had continued with the external caretaking services; this had also been the subject of a formal complaint to the Respondent. External caretaking services were supposed to include maintaining the bin and drying areas, brushing paths, and removal of bulky waste items. Ms.Crawford stated that this had been done twice since 6 July 2012 (the date of the hearing of her Stage 3 complaint, ("the Stage 3 Hearing")): the first time was in the week following the Stage 3 Hearing and the second time was on 30 January 2014;

9.3 external window cleaning: Ms.Crawford said that this was supposed to have started in 2010 but, to her knowledge, had been done twice in that time, the first time in the week following the Stage 3 Hearing and the second time on 30 January 2014. In the past, another tenant had arranged for her window cleaner to also clean the communal windows but this had been stopped by the Respondent in 2012;

9.4 grounds maintenance: grass cutting took place about 3 times a year; weeding of the drying area and the paths had taken place once during the week following the Stage 3 Hearing; the shrubs and ivy which had originally been planted by a tenant had not been removed despite assurances at the Stage 3 Hearing that this would be done; Ms.Crawford stated that she considered the amounts for grounds maintenance listed on page 7 of her Statement of Case were reasonable;

9.5 Ms.Crawford also queried how contractors could have gained access to the communal areas to the rear of the block to provide services as until very recently the side gate had been padlocked and she was not aware of who had keys: the padlock had been removed in December 2013/January 2014 but for the previous 7/8 months it was not possible in any event to open it as the mechanism had seized up;

10. Mr.Wilson commented that many of the issues raised by the Applicant had been dealt with by the Respondent's formal complaints procedure which had culminated in the Stage 3 Hearing. It had been acknowledged that some services had not been provided to the standard which the Applicant could reasonably have expected. He referred to the letter dated 20 July 2012 headed "Stage 3 Complaint Panel Outcome" which appeared at pages 52-53 of the Applicant's Statement of Case, and to the following specific services:

10.1 following further review, the provision of window cleaning had been cancelled in October 2013 and a refund had been made to tenants accordingly;

10.2 with regard to external caretaking, the Respondent refuted the Applicant's claim that no service had been provided in the period from 2007 - 2010 and confirmed that this included litter pick, sweeping of paths and dealing with the removal of any fly-tipped items; he acknowledged that there had been some individual problems eg the failure to remove the headboard which had been left for some considerable time in the drying area but explained that the removal of the rose bushes/ivy were not within their remit, although they were prepared to deal with

12.2 the external caretaking services had not been carried out to a reasonable standard in the service charge years 2007/08 – 2012/13 and the amounts payable by the Applicant should be reduced by one-third accordingly as detailed in paragraph 1 of this document;

12.3 the earliest date when the internal caretaking service was provided was October 2010 and the amounts charged for this service for the period April – September 2010 are not payable;

12.4 that, in view of the Respondent's acknowledgement of ongoing concerns as to the provision and/or satisfactory provision of the window cleaning service, no charge is payable;

12.5 the grass cutting had been carried out and the Applicant was liable to pay for the provision of this service; however, it was apparent on inspection and from the Applicant's evidence that other grounds maintenance services had not been provided at all or to a reasonable standard and the amounts payable by the Applicant should be reduced by one-half accordingly as detailed in paragraph 1 of this document.

13. The Tribunal therefore decided to make the Order set out in paragraph 1 of this document.

this as a concession to the Applicant. The external caretaking service was provided weekly on a Thursday morning. Mr.Wilson said that it was relevant that they had not received any other complaints from tenants about the provision or standard of these services;

10.3 Mr.Wilson confirmed that internal caretaking commenced in October 2010;

10.4 with regard to the grounds maintenance, this was a service that was provided to the estate as a whole and included grass cutting between March and October in each year on a 2 week rotational basis. Originally this had been carried out by an external contractor but this had been taken in-house by the Respondent since April 2012. Again, Mr.Wilson commented that no other complaints had been received from other tenants; he also reiterated that the removal of tenant's plantings from the communal areas was not within the remit of the grounds maintenance service. It was acknowledged that there had been failures to weed the drying and bin store areas and to treat the moss on paths, although there was some question as to whether removal was the safest practice;

11. in response, Ms.Crawford commented as follows:

11.1 she referred to the photograph on page 27 of her Statement of Case: other than the removal of the headboard, the drying area is in much the same condition today as in 2008, and the shrubs remain. The rubbish which had been removed from the drying area on 30 January 2014 had been there for several months;

11.2 she refuted Mr.Wilson's assertion that there had been no other complaints from tenants saying that Ms.Devereux had acknowledged that this was the case;

11.3 she disputed that the grassed areas were cut every 2 weeks between March and October; whilst accepting that the removal of tenant's plantings may not be the Respondent's responsibility, she said that the Respondent had promised to deal with this and had failed to do so;

11.4 she reiterated that the internal caretaking service did not happen every week;

11.5 she confirmed that she wanted to pursue the section 20C application. In response to this, Mr.Wilson stated that the Respondent would not seek to charge any costs incurred in connection with the proceedings as service charge in any event.

Tribunal's Determinations

12. In making its determinations, the Tribunal considered that:

12.1 the service charges were "variable" service charges within the definition set out in section 18 of the 1985 Act because:

(i) the wording of section 18(1) makes it clear that it covers circumstances where the service charge is included in the rent: "..."service charge" means an amount payable...as part of...the rent";

(ii) it was apparent that the charges levied related to services provided by the Respondent: section 18(1)(a);

(iii) it was clear from the evidence that the amounts payable by the Applicant for services varied, (section 18(1)(b)) and that, in calculating the charges payable by tenants, the Respondent took into account the actual or estimated costs to it of providing the services, (section 18(2)). The effect of the application of the formula referred to in the Respondent's evidence (see paragraph 8.1 above) was merely to limit the rate of increase;