



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

Case Reference : **MAN/00BW/LSC/2014/0002**

Property : **8, Tower Grove, Higher Folds, Leigh,
WN7 2TZ**

Applicant : **Beech Housing Association**

Respondent : **Ms Raziel Cohen**

Type of Application : **Landlord & Tenant Act 1985 – section 27A(1)**

Tribunal Members : **Mr P W J Millward LL.B (Judge)
Mrs A Franks FRICS (Valuer Member)**

**Date and venue of
Hearing** : **10 April 2014 at The Tribunal Offices, 5,
New York Road, Manchester, M1 4JB**

Date of Decision : **10 April 2014**

DECISION

The Application

1. By an application (the Application) originally submitted to the Northampton County Court, but ultimately transferred to the Tribunal by an order of the Bury County Court on 20 December 2013 (the Transfer Order), the Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985, as to the payability of a service charge in respect of the Property. The application relates to a demand in respect of the year commencing 1 April 2013 and ending on 31 March 2014 for the sum of £1,198.88 (payable at £99.99 per calendar month) being the Applicant's share of the total estimated cost for the maintenance of the blocks of flats in which the subject property is located, including those matters set out in clause 5(3) of the Lease.
2. Pursuant to the said transfer of the Application a Tribunal Judge issued directions to the parties dated 13 February 2014 requiring the Applicant to file and serve a Statement of Case and for the Respondent to file and serve a Statement of Case in reply to the Application and confirming that the Applicant may make a further Statement in reply. Thereafter the Application was set down for inspection and hearing on 10 April 2014

The Lease

3. The Applicant is the freeholder of the property under a lease (the Lease) for 99 years dated 14 February 1992 and made between County Palatine Housing Society Limited (1) and David Bradburn (2). The said term of years is now vested in the Respondent.
4. Clause 3(2)(b) of the Lease contains a covenant by the lessee to pay the service charge in accordance with clause 7 of the Lease. Clause 7 of the Lease defines the service charge and sub-clause (2) states that the service charge is payable "by equal payments in advance at the times at which and in the manner in which rent is payable under the Lease".
5. Clause 7(4) of the Lease sets out how the service charge provision is to be calculated and clause 2 of the Lease stipulates that the rent is payable by equal monthly payments in advance on the first day of each month.
6. Clause 7(4)(b) provides for the service charge to include an appropriate amount as a reserve for or towards the expenditure specified in sub-clause (5) thereof that are likely to arise only once during the term of the Lease or at intervals greater than one year.

The Law

7. Section 18 of the Landlord and Tenant Act 1985 (the 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.
8. 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.
9. Section 27A provides that
- (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 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.

The inspection

10. The Tribunal inspected the Property in the presence of the Respondent's son Mr Cohen and the communal gardens and the surroundings in the presence of the Applicant's representatives, Ms Tina O'Malley (service Charge Accountant), Ms Elaine Ollerton (Arrears Recovery Officer), Andrea Ellison (Leasehold Manager) and Ms Lorna Taylor (observing) on the morning of 10 April 2014. The Applicant's representatives were refused admission to the Property at the same time as the Tribunal, although the Tribunal understood

that the representatives had been allowed into the Property beforehand. The property is a ground floor, one bedroom flat with a hallway, living room, kitchen and bathroom/wc. The block in which it is located comprises 4 apparently similar flats over 2 floors and is one of 6 similar blocks on the estate. Internally the Property was in poor condition.

The submissions of the parties

11. The Applicant's statement includes (inter alia) the following submissions.
That:-
 - 11.1 the dispute is in relation to the year commencing on 1 April 2013 and ending on 31 March 2014.
 - 11.2 a meeting was held with residents on 11 January 2011 to discuss replacing windows in all properties. Three options were presented to the residents, who by a majority, chose option 2 which entailed payment over a period of time to fund the cost thereof. A memorandum of the meeting was supplied to the Tribunal.
 - 11.3 as a result the service charge increased to £99.99 per month to enable the necessary expenditure to be made out of the sinking fund.
 - 11.4 the Respondent then failed to pay the increased service charge. No payment has been made in the year ending 31 March 2014, resulting in the commencement of proceedings for recovery. A copy of the service charge account for the Property was supplied to the Tribunal.

12. The Respondent's son made (inter alia) the following submissions. That:-
 - 12.1 the service charge requested is not justified for a one bedroom flat.
 - 12.2 the flat is very damp and tenants leave as a result. The dampness is structural and it is the responsibility of the Applicant to rectify this. After many requests the Applicant has not done so.
 - 12.3 there are many properties in the area with service charges of £50.00 per month or less.
 - 12.4 a few years ago the service charge was only £44.00 and costs have not gone up much over the years.
 - 12.5 the realisable rent is £300 per month. To pay a service charge of £100 is not proportionate.
 - 12.6 the Respondent provided copies of historic service charge demands for the Property and service charge demands for other properties in the area.

13. In reply to the Respondent's submissions the Applicant stated that:-
 - 13.1 the Applicant heard from the Respondent on a number of occasions between 15 January 2013 and 22 February 2013. A copy of the log of telephone calls was provided to the Tribunal. Several of the calls were from persons other than the Respondent. Those calls could not be acted upon. As a result of these calls an inspection appointment was made for 13 March 2013. This appointment was cancelled by the Respondent after she was made aware that she would be charged the cost of the inspection if it turned out to be that the problem was found to be her responsibility under the terms of the Lease.
 - 13.2 the Applicant was aware that the windows in Tower Grove properties were in poor condition. This had been identified in a survey in 2011. A

- copy of the survey was provided to the Tribunal. This led to the meeting with residents referred to earlier.
- 13.3 the Applicant was unaware that the Respondent had replaced the windows at the Property until she notified the Applicant's Arrears Recovery Officer in September 2013. This is in breach of the covenant in clause 3(6) of the Lease.
 - 13.4 a copy of the budget calculation for the service charge in 2013/2014 was supplied to the Respondent and included in the documents provided to the Tribunal. The Applicant is unable to comment on the service charges raised on nearby properties as copies of the demands had not previously been provided by the Respondent.
 - 13.5 during 2008/9 the service charge was £44.61. During that year the expenditure, excluding the sinking fund provision, was £12,228. The budget for 2013/4 is £13,033, again excluding the sinking fund provision, which is an increase of 6.6% over the period – far less than inflation. RPI increased by 17.3% over the same period.
 - 13.6 the Respondent's contribution to the service charge has increased significantly because of the increase in contributions to the sinking fund. In 2008/9 the contribution to the sinking fund was £3,117. In 2013/4 it increased to £17,500. As stated previously this was after consultation with the residents.

The Hearing

14. At the hearing the Applicant was again represented by the persons who had attended the inspection and the Respondent was again represented by her son.
15. The Applicant's representative confirmed that:-
 - 15.1 the Application related to the service charge for 2013/4. The service charge had increased due to a substantial increase in the contribution to the sinking fund required to fund the replacement windows.
 - 15.2 the section 20 consultation had now commenced and hopefully the sinking fund will meet the entire cost of the replacement windows.
 - 15.3 the Property already has replacement windows paid for by the Respondent. The Applicant had only recently found out that this had occurred. The Applicant would probably replace those windows in the Property to retain conformity.
 - 15.4 the Applicant has received reports of dampness but as access had not been provided it could not check.
 - 15.5 the Applicant was unaware that the Property had been sublet until it received reports from the Police of anti-social behaviour by the subtenant. The Applicant then requested access but this was refused.
 - 15.6 the sinking fund had been used to pay for external decoration in the last financial year and needed to be replenished to pay for the windows. It is unlikely that there will be any further large capital outlay until 2018/9. The sinking fund is authorized by clause 7(4)(b) of the Lease in which it is referred to as a reserve.
 - 15.7 clause 3(1) of the Lease also authorises charging interest on late payments. Interest to date amounts to £42.62, but this has not yet been

- added to the service charge demand.
- 15.8 external alteration to the Property is not allowed. This is set out in clause 3(6)(a) of the Lease. Clause 3(6)(b) forbids internal structural alterations.
- 15.9 subletting without consent is a breach of covenant. Furthermore the Property has now been empty for over 30 days which may void the insurance policy. This may affect the whole block. The Applicant only became aware that the Property was empty yesterday. The Applicant would usually charge £60 plus VAT for consent to sublet.
- 15.10 The interior of the Property is in poor condition
16. The Respondent's son confirmed that:-
- 16.1 The Respondent had bought the Property in 2006 at auction. It is part of a buy to let business.
- 16.2 The service charge was originally £44.61 per month. It then rose to £63.79, then £99.99 and in the year commencing 1 April 2014 has risen to £118.00.
- 16.3 the Respondent has been letting the Property out. She did not realize consent was required.
- 16.4 in 2012 the Respondent had notified the Applicant that the Property was very damp and that the windows were falling out. The Respondent asked for the windows to be replaced, but the Applicant refused. As a result the Respondent replaced the windows at her own expense. Originally only one window was replaced in March 2012, but then the rest were also replaced a year later.
- 16.5 it is difficult to find tenants for the Property. It has only one bedroom and even after replacing the windows the Property is still damp. The Respondent has also spent a lot of money redecorating the Property. The maximum rent achievable is only £325 per month. The Respondent cannot afford the service charge.
- 16.6 the Respondent's son then said he also managed the flat at number 6, although this is not owned by the Respondent. He received a bill for £1,000 to change the windows. The drains at number 6 blocked. The Applicant did nothing about this and the owner had to have the work carried out. Number 6 is not as damp as the Property.
- 16.7 the Respondent has never heard of such a large service charge. The current year is £118. This is excessive and unreasonable. How much further is it going to go up?
- 16.8 the carpets at the Property have to be changed after each sub-tenancy. A new boiler has recently been installed and the pipework needs to be covered up.
- 16.9 the Respondent's son confirmed that at the time of purchase he had checked the level of the service charge but had not read the Lease.
17. In reply the Applicant stated:-
- 17.1 the Applicant had been told by Mr Cohen that he lived at the Property. The Applicant has no contact details for Mr Cohen, only the Respondent's address in London.
- 17.2 the sinking fund amounted to £27,000 last year and will receive additional funds this year. The basic service charge, excluding the contribution to the sinking fund had risen by only £18 per month.

- 17.3 the Applicant is not responsible for advising the Respondent of the covenants in the Lease.
18. The Respondent then said that he hoped the Applicant was not going to take out the new windows that the Respondent had paid for.
19. Neither party made any additional applications to the Tribunal.

The Tribunal's determination

20. The Tribunal considered very carefully the written submissions of the parties and the evidence given at the hearing. It is not disputed that the Applicant was entitled to submit the request for the service charge – only whether or not the Respondent was able to challenge its reasonableness and her liability towards all or only part of it.
21. The issues to be determined therefore are (a) is the demand for the service charge valid and if so (b) to what extent is the demand reasonable and if so (c) to what extent if any the Respondent should pay towards the same.
22. The Applicant had discussed with the owners/tenants of the various flats the alternative method of funding the cost of replacement windows and had adhered to the decision of the owners/tenants in that regard. The Respondent did not bother to attend that meeting, nor did she send a representative. The decision was to spread the cost over 3 years and 2014/5 is the last year in which contributions will have to be made.
23. The Applicant stated that it was unaware that the Property was sublet until very recently, but the log of contact with the Respondent contradicts this statement as it is clear from that log that a tenant of the Respondent telephoned the Applicant to raise concerns over dampness as long ago as 15 January 2013. This does not have any bearing on the payability of the service charge, but does impinge on matters such as building insurance raised by the Applicant during the hearing.
24. The windows in the Property have been replaced by the Respondent and the Tribunal is therefore unable to determine the state of the windows prior to replacement and whether or not that replacement was a matter of great urgency. The replacement was a breach of the covenants contained in the Lease. It is not a matter for the Tribunal as to whether or not the Applicant replaces the new windows at the time when all other windows on the estate are replaced, but hopefully the parties will be able to discuss this at the appropriate time.
25. The reason for the high service charge is the contribution to the sinking fund. This is undisputed. All other services appear to be carried out in a satisfactory manner, including communal gardening, road and parking area re-surfacing, external repairs and insurance. The Respondent made no complaints in that regard.

26. The Respondent's obligation to pay the service charge arises under clauses 3(2)(b) and 7 of the Lease.
27. The Tribunal determined that the request for the service charge is fully in accordance with the terms of the Lease, and therefore valid, and that the items of expenditure referred to therein, including the contribution to the sinking fund, are all reasonable and payable by the Respondent under the terms of the Lease. The Respondent is therefore liable to pay the whole of the sum claimed in the Application originally submitted to the County Court, that is £599.95. The County Court will itself consider the application for costs in those Proceedings.
28. For the avoidance of doubt the Tribunal confirms that the Application relates to only part of the total service charge payable in the year ending 31 March 2014. The Tribunal is only empowered by the Transfer Order to make a determination in relation to the claim made to the County Court and this determination does not extend to service charge payments which have arisen later than the date of the Application but also remain unpaid.