



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

Case Reference : **BIR/41UB/LIS/2016/0028**

Property : **Flat 2, 26 Horse Fair
Rugeley WS15 2EL**

Applicant : **Ms L Ferneyhough**

Representative : **Mr A Ferneyhough**

Respondent : **Goodwyn Reality Ltd**

Representative : **Blue Property Management UK Ltd**

Type of Application : **Service Charges s27A and
Limitation of Costs s20C LTA 1985**

Tribunal Members : **Mr I P Taylor FRICS (Valuer Chair)
Mr P Hawkesworth
Mr J Arain**

**Date and venue of
Hearing** : **14th December 2016 – Stafford Magistrates Court
The Court House Stafford ST16 3DW**

Date of Decision : **24th February 2017**

DECISION

Decisions of The Tribunal

1. The Tribunal makes the determination as set out under the various headings in this Decision and as set out in the attached Scotts Schedule (Appendix A) and Para 132. below. The Tribunal directs that within 28 days of this Decision the Respondent recalculates the service payable by each Applicant and submits accordingly. If, after the 28 day period has expired, the recalculation is not agreed, then the either party may apply to the Tribunal to determine the correctness of the recalculation only.
2. The Tribunal makes an order under Section 20c of the Landlord and Tenant Act 1985 even though the Respondent confirmed that they would not be seeking reimbursement in this instance.

The Application

3. On the 5th August 2016 the Applicant Lucie Ferneyhough applied to the First Tier Tribunal ("the Tribunal") for a determination under Section 27A of the Landlord and Tenant Act 1985 ("the Act") for liability to pay and for reasonableness of service charge levied 2011, 2012, 2013, 2014 and future budgeted charges 2015 & 2016. The Application showed additional Applicants being Emily Brunt (Flat 1) and John Scott (Flat 3).
4. An application under 20C The Landlord and Tenant Act 1985 was also submitted .
5. By way of letter on 24th August 2016 a Procedural Judge, under Rule 10, substituted the Freeholders, Goodwyn Realty Ltd as Respondents and Blue Property Management UK Ltd as Landlords Agent/Representative.
6. Directions, which were issued on the 29th September 2016 by The Regional Judge, directed that the matter be dealt with by oral hearing and listed for a one day hearing.
7. On 16th November 2016 a hearing was set for 14th December 2016.
8. During the hearing further directions were issued for information requested in relation to the Emergency lighting system and the replacement door.
9. Subsequent to the hearing further directions were issued on 20th December 2016 relating to further information necessary relating to Section 20B Landlord and Tenant Act 1985.

The Background

10. The Applicant, Lucie Ferneyhough is the lessee of Flat 2, 26 Horse Fair, Rugeley Staffordshire, WS15 2EL on a lease for a term of 99 years from 11th December 2007.
11. The 2 further Applicants listed on the application are;
12. Flat 1 -Emily Brunt & Flat 3 -John Scott
13. The service charge percentages are as follows;

Flat 1 – 20.80%
Flat 2 – 20.80%
Flat 3 – 25.00%
14. The Freeholder is Goodwyn Realty Ltd who was represented by Blue Property Management UK Ltd as both managing agent and advocate throughout the Tribunal process.
15. 26 Horse Fair is a Victorian property which has been converted to a 5 flat development with service charge liabilities.

The Inspection

16. The Tribunal inspected the property, prior to the hearing on 14th December 2016 and all parties were present. Anthony Howard, who is the area manager for Blue Property Management UK, was present but confirmed that due to family issues he could not attend the hearing but Mr Peter Evans (Director) would attend in his place.

The Issues

At the start of the hearing the issues were identified as follows;

17. The payability and/or reasonableness of service charges for the years 2011, 2012, 2013 & 2014 as set out in schedules provided.
18. The payability and/ or reasonableness of budgets for the periods 2015 & 2016.
19. Issues involving the applicability or otherwise of Section 20B Landlord and Tenant Act 1985 in relation to “repairs” for the years 2011, 2012, 2013 & 2014.
20. Whether the Tribunal should make an order under Section 20c Landlord and Tenant Act 1985.

The Main Headings 2011,2012,2013 & 2014

Repairs

21. The Applicants submitted oral statements at the hearing and written submissions following further Directions. They submitted that the effect of Section 20B Landlord and Tenant Act 1985 was that the Tribunal should disallow all service charge items claimed more than 18 months following the date that the actual work relating to the item concerned was carried out and not 18 months after the invoice date. The Applicants, in following written submission, provided a list of invoices that they considered should be disallowed. Notwithstanding that the submissions were not signed the Tribunal is prepared to accept them for consideration as the name of Mr Ferneyhough appears at the foot of them.
22. On this point the Tribunal found the Applicants submission to be unhelpful as it did not specifically assist with a cohesive assessment for conclusion as to what discounts should be applied and the amounts involved even though this had been requested.
23. The Respondents at the hearing disagreed with the Applicants submission and referred to *OM Property v Burr 2013* (EWCA Civ 479) and further submitted that, based upon this case, costs are only incurred when the invoice applicable to those works is submitted.
24. The Tribunal found that the Applicant did not fully understand Section 20B. The Tribunal considered the case of "*Burr*" and noted that The Master of the Rolls concluded;
25. *"on the conclusion that I have reached the tenant enjoys the protection that, subject to Section 20B(2), he is not liable to pay so much of a service charge as reflects costs incurred more than 18 months after an invoice is presented or payment is made by the landlord/management company. It is true that this provides less protection than if the tenant is not liable to pay so much of a service charge as reflects costs incurred more than 18 months after the service is provided or supply made"*
26. Additionally, guidance can be obtained from the reference to "*Burr*" in the later case of *Ground Rents (Regisport) Limited v Dowlen and others (2014) UKUT 0144 (LC)* where it was stated (in relation to "*Burr*") in paragraph 25 of Dowlen that:

"The Court of Appeal (upholding the decision of the Tribunal (His Honour Judge Mole QC) held that as a matter of ordinary language a liability had to crystallise before it became a cost: that distinction between a liability and a cost was reflected in section 20B. The relevant costs were not "incurred" within the meaning of section 20B of the 1985 Act simply on the provision of services or supplies to the landlord or its management company, but only on the presentation of an invoice or other demand for payment or on payment being made".

27. The Respondents further written submission was equally considered unhelpful and vague in assisting the Tribunal to determine the Section 20B issue. It was clear that the Respondents believed that when considering the Section 20B (18 month rule), the entire budget was to be considered against the entire expenditure, whereas, the Applicants were of the opinion that only the relevant headings should be considered, as stand alone considerations, thus the item headed "repairs" in any budget year should be mirrored against expenditure under this heading in the final accounts. The Respondents also suggested, in their written submission that all requests were made within the 18 month rule but the Tribunal found this not the case from the documentation provided.
28. The Tribunal noted that the Accounts submitted by the Respondents have not been dated and therefore had to rely on submissions from both parties to try and ascertain on what basis the 18 month rule should be applied.
29. Section 20B has no application where (a) interim payments on account of service charge are made by a tenant during the year (b) the actual expenditure for the year turns out not to be more than the total of the interim payments and (c) no demand for a balancing payment is made by the landlord.
30. Section 20B only applies where a demand for payment of a service charge is made where the cost or costs underlying that demand were incurred more than 18 months earlier than the date of the demand (see above when a cost is incurred) Where a demand made **after** the service charge year-end is for a balancing charge, however, it clearly does relate to costs already incurred. The balancing charges represent the amount by which the estimated expenditure fell short of the actual expenditure for the year concerned, that is to say, those costs incurred after the advance service charge payments had been spent. Thus, a tenant is not liable to pay any balancing charge (or part of the same) which represent costs which have been incurred more than 18 months prior to the demand. But, any service charges paid in advance (on account) are unaffected. Thus, in considering balancing payments it is necessary to ascertain when the advance payments were fully utilised and, as a result, when the costs underpinning the balancing payment began to be incurred.
31. Year 2011 – The Tribunal noted that the disputed amount arising from the Applicant's Section 20B claim equates to £2094.90. According to the Respondent all the expenditure in relation to 2011 was covered by the budgeted amount the Tribunal finds, however, that the difference between the actual budget and certified budget less the amount disallowed by the Tribunal (£4,820.00-£4,080.00-£543.80) equates to £196.20 and therefore the Tribunal determines that this amount should be disallowed.
32. Year 2012 – The Tribunal noted that the disputed amount arising from the Applicant's Section 20B claim equates to £3,164.68. The date of the balancing charge demand was 30th June 2014 and the date of the disputed invoices which are part of the sum which comprises the balancing charge was 31st December 2012 i.e. just within 18 months. The Tribunal therefore determines there is no disallowance.
33. Year 2013 – The Tribunal noted that the disputed amount arising from the Applicant's Section 20B claim equates to £1,653.05 according to the Respondent.

However, the Tribunal calculates the figure at £1,652.65 disregarding invoices 17485 20490 and 20492. The date of the balancing charge demand was 26th May 2015. As a result, applying the 18 month rule, anything prior to 26th November 2013 is out of time. The difference between the actual budget and certified budget less the amount disallowed by the Tribunal (£8,918.00-£4,080.00-£750.14) equates to £1,652.65 should be disallowed in full.

34. Year 2014 – The Tribunal noted that the disputed amount arising from the Applicant’s Section 20B claim equates to £2,767.09. The difference between the actual budget and certified budget less the amount disallowed by the Tribunal (£11,676.00-£5,673.00-£2,198.23) equates to ££3,804.77. The date of the demand for the balancing charge was 5th October 2015 and counting 18 months prior from that date means that any cost incurred prior to 5th April 2014 cannot be recovered. Thus invoices 18265 20005 20485 19355 19378 19356 19376 18708 19380 19357 and 19254 are all out of time and therefore the Tribunal determines that the amount requested by the Applicant of £2,767.09 should be disallowed in full.

35. Therefore, the Tribunal considered all submissions and evidence and determines that in addition to the other disallowed amounts in the Scotts Schedule (shown below) the following additional amounts are disallowed relating to the claim under Section 20B Landlord and Tenant Act 1985 (shown in Scotts Schedule);

Year 2011 - £196.20

Year 2012 - £0.00

Year 2013 - £1,652.65

Year 2014 - £2,767.09

Cleaning Budget
(years 2011/2012/2013/2014 only)

36. The Applicants submitted that the cost of the general cleaning provision was too high. The invoiced amount for cleaning equated to £1,872.00 per annum.

37. It was agreed, by both the Applicants and the Respondents, that cleaning should be carried out on a fortnightly basis (i.e. 26 times a year).

38. The Applicants submitted that they had made some basic enquires and provided a projected cost of £20.00 per visit but the Scott Schedule revealed that a higher oral quote of £38.00 per visit had been obtained. The Tribunal probed these costs in relation to VAT and indeed the level of service but because there was no written quotation it was difficult to produce a “like for like” position.

39. The Tribunal considered the evidence submitted and determines that the annual amount should equate to £45.00 + VAT per visit based upon the service level by

Blue Property Management UK. Therefore, for the years scheduled the annual cleaning invoice would be £1,404.00 (including VAT).

Fire Risk Assessment

(years 2011/2012/2013/2014 only)

40. At the commencement of the hearing the Applicants and the Respondents agreed all Fire Risk Assessment items and the Tribunal determines accordingly.

Building Insurance

(years 2011/2012/2013/2014 only)

41. At the commencement of the hearing the Applicants and the Respondents agreed all Building Insurance items and the Tribunal determines accordingly.

Fire Signs

(years 2011/2012/2013/2014 only)

42. The Applicants submitted that each fire sign that was placed in the building over a number of years had a base cost of £14.00 when the "retail cost" was less than £3.00 per sign. The Respondents submitted that the signs were a better quality and there was an additional cost for fitting due to Health & Safety requirements.

43. The Tribunal had no evidence submitted by the Applicants for the labour or the quality of the finished product and therefore confirms the Respondents invoiced amounts.

Replacement Lamps (bulbs)

(years 2011/2012/2013/2014 only)

44. The Applicants submitted that the average scheduled cost of a light bulb and labour for fitting equated to £17.98 (after complaints of higher costs). They further submitted that the cost of a bulb being £5.00 should be the total cost.

45. The Respondents submitted that whilst the cost of the bulb is in the order of £5.00 (incl. VAT) there must be additional charges for obtaining the bulbs, complying with Health & Safety requirements and fitting the bulb.

46. The Tribunal considered all submissions and determine the total cost should be £14.00 (£5.00 bulb and £7.50 + VAT labour) to reflect the cost of purchasing the bulb, fitting and health and safety requirements.

Gas Meter Cupboard

(years 2012 & 2013 only)

47. The Applicants submitted within the Scotts Schedule items relating to the installation of a gas meter cupboard with ref: 10656 (31.12.12)/ 11304 (28.3.12)/11664 (26.3.12)/14932 (11.2.13). The submission was based upon the fact that works were carried out and then further remedial/additional works around the same work, which was clearly due to substandard planning of the original work.
48. The Respondents submitted that the work was necessary and indeed that the original work was an "emergency request" and that it was all Health & Safety compliant.
49. The Tribunal considered the submissions and determines that items 10656 (the original work) and 11304 (painting) are reasonable but that items 11664 and 14932 are not considered reasonable and should be deleted, as not allowable, from the list of expenditure.

Snow Cleared
(year 2013 only)

50. At the commencement of the hearing the Applicants and the Respondents agreed all items relating to "Snow" and the Tribunal determines accordingly.

Fire Alarm System Install
(years 2013 & 2014 only)

51. The Applicants submitted, in the Scotts Schedule, items relating to the installation of the fire alarm system with ref: 20490 (31.12.13)/ 20485 (1.2.14).
52. The Applicants agreed at the hearing that invoice 20490, the original installation was necessary, but on the basis that the original specification was produced by Blue Property Management UK the second item should not have been necessary.
53. The Applicants also submitted that if both items were allowed there would be an issue with Section 20B relating to the cost.
54. The Respondent was unable to shed any light on the reasons for the additional work.
55. The Tribunal considered the submissions and determines that item 20490 is allowable but that item 20485 is not considered reasonable and should be deleted, as not allowable, from the list of expenditure.

Emergency Lighting Installation
(years 2013 & 2014 only)

56. The Applicants submitted on the Scotts Schedule items relating to the installation of the emergency lighting system with ref: 20492 (31.12.13)/20005 (1.2.14)/20488(22.5.14)/
57. The Applicants agreed at the hearing that invoice 20492, the original installation, was necessary but on the basis that the original specification was produced by Blue Property Management UK the other items should not have been necessary.
58. The Applicants also submitted that if both items were allowed there would be an issue with Section 20B relating to the cost.
59. The Respondent was unable to shed any light on the reasons for the additional work but requested more time to provide better particulars to the Tribunal. The Tribunal agreed and made an order for further directions. The Tribunal received further submissions in written form but these did not relate to this issue and were therefore discounted as they shed no further light on the issue and thus the Tribunal relied upon the information submitted at the hearing.
60. The Tribunal considered the submissions and determines that item 20492 is allowable but that item 20005 and 20488 are not considered reasonable and should be deleted, as not allowable, from the list of expenditure.

Year January 2011 – December 2011

Sharp Missing Edges/Missing Coping Stones

61. The Applicants submitted invoice 9276 (1.11.11) as being unreasonable due to the standard and cost of work.
62. The Respondents agreed at the hearing that the submitted costings were incorrect.
63. The Tribunal considered the submissions and determine that the total cost of the work, including Labour, should not exceed £229.20.

Smoke Alarm

64. During the hearing the Applicants and the Respondents agreed this item (9294) as reasonable and the Tribunal determines accordingly.

Tree Stump/Trip hazard

65. The Applicants submitted invoice 9295 (2.11.11) relating to the removal of a tree stump and suggested that the remaining item is now a trip hazard.
66. The Tribunal inspected the area and determine that the hazard was removed correctly and further determines that the full cost is allowable.

Contractor/ Discuss work on rear door.

67. The Applicants submitted invoice 7990 (7.7.11) and submitted it unreasonable.
68. The Respondent suggested this was reasonable due to “complexities”.
69. The Tribunal considered the submissions and determines this item should be deleted, as not allowable, from the list of expenditure.

Building Report

70. The Applicants submitted invoice 7644 (16.5.11) as unreasonable.
71. The Respondent suggested this was reasonable but was unable to explain why the report was produced or indeed its purpose.
72. The Tribunal considered the submissions and determines this item should be deleted are not considered reasonable and should be deleted, as not allowable, from the list of expenditure.

Keys Cut

73. The Applicants produced invoice 5999 (19.1.11) and submitted it unreasonable due to the cost of each key cut. The Applicants further submitted that the shop attended charged £3.95 per key.
74. The Respondents submitted that a credit had been raised of £54.00 without explanation.
75. The Tribunal considered the submissions and determines that invoice should not exceed £37.00 in total.

Year January 2012– December 2012

External downpipe and hopper.

76. The Applicants submitted invoice 10655 (31.12.12) was unreasonable due to cost. They accepted the work had been carried out.
77. The Respondent had offered a £10.00 credit without explanation.

78. The Tribunal considered the submissions and determine the total cost should not exceed £108.00

Broken Guttering

79. The Applicants submitted that invoice 12205 (3.5.12) was unreasonable in terms of price.

80. The Respondents appeared to have suggested in their response that they "credited" the amount, however, at the hearing they submitted that was not the case and they had credited only £120.00.

81. After discussions both the Applicants and the Respondent agreed that the amount should be capped at £288.00 and the Tribunal determines accordingly.

Year January 2013– December 2013

Rendering

82. The Applicants submitted that invoice 16647 (6.6.13) was unreasonable due to cost. They submitted that work was of poor quality and that the operatives should not have waited hours for the render to dry and then paint but instead should have returned at a later date to paint once the render had dried.

83. The Respondent did not agree and felt it reasonable that 2 operatives should wait on site until the render had dried before painting.

84. The Applicants showed the Tribunal photographs of the completed work.

85. The Tribunal considered the submissions and determine the total cost should not exceed £101.41 (£75.00+ VAT labour/ £11.41 materials).

Replaced Skirting Board

86. The Applicants submitted that invoice 16652 (18.7.13) was unreasonable due to cost. They submitted that work was of poor quality. The work was carried out within Flat 1.

87. The Respondents confirmed that the work was carried out on the service charge account as a claim on Insurance would not have been cost effective.

88. The Applicants could not show the Tribunal any evidence that the work was not carried out to a suitable standard or that the cost was incorrect.

89. The Tribunal considered the submissions and determine the total cost should be allowed.

Year January 2014– December 2014

Back Door Lock (block inside lock)

90. The Applicants submitted that an invoice 19355 (14.2.14) was unreasonable due to cost. They submitted pictures showing the nature of the repair.
91. The Respondent considered the standard of work and cost reasonable.
92. The Tribunal considered the submissions and determine that the standard of work and finish was poor and that the total cost should not exceed £24.00 (£20.00 + VAT).

Unblock Main Drain

93. The Applicants submitted that an invoice 19378 (14.2.14) was not reasonable.
94. The Tribunal considered the submission and noted that the Applicants had no reasons for dispute and therefore determines that the full cost is allowable.

Drain Overflowing Call

95. The Applicants submitted an invoice 19376 (23.2.14) for the report of a call on a Sunday afternoon. The Applicants claim they left a message on voice mail and never received a returned call and that the operative only attended site on Monday morning.
96. The Respondent claimed that this was an emergency call and that they responded accordingly and that they charge for “out of hours” calls.
97. The Tribunal considered the submissions and considered the Royal Institution of Chartered Surveyors Code of Practice for Management and determine that the total cost is not allowable on the list of expenditure.

Drain Fix

98. The Applicants submitted an invoice 19380 (24.2.14) which they consider unreasonable. They submitted that an operative attended site but could not fix the issue and thus called a third- party operative to attend.

99. The Tribunal considered the submissions and determine that the full cost is reasonable and chargeable. It was clear that the operatives attended site and carried out the work applied for, even though they were not successful.

Fitted New Cover

100. The Applicants submitted that an invoice 19357 (25.2.14) was not reasonable.

101. The Respondent submitted that the work was carried out responding to a call from the Applicants.

102. The Tribunal considered the submission and noted that the Applicants had no reasons for dispute and therefore determines that the full cost is allowable.

Fitted Wooden Rail

103. The Applicants submitted an invoice 20332 (29.4.14) to be unreasonable.

104. At the hearing the parties agreed to limit the cost to £296.06 which the Tribunal determines accordingly.

Fire Alarm (replace fuse/2x batteries)

105. The Applicants submitted an invoice 20926 (8.5.14) as being unreasonable in cost.

106. At the hearing the parties agreed to limit the cost to £84.33 which the Tribunal determines accordingly.

Replaced Guttering

107. The Applicants submitted that an invoice 20799 (9.5.14) was not reasonable as the workers only attended site at 11.00 and left by 15.00 yet a full days cost has been charged.

108. The Respondents made comment that the workers commenced work prior to attending site and needed to purchase materials etc.

109. The Tribunal considered the submission and noted that the Applicants had no reasons for dispute and therefore determines that the full cost is allowable.

Fitted Alloy Bowl Grill

110. The Applicants submitted an invoice 21038 (22.5.14) which they consider unreasonable as replaced previous work carried out.

111. The Tribunal heard that this work was necessary to solve the problem "in situ" and indeed the Applicants confirmed that this secondary work solved the issues reported. The Tribunal considered the submissions and determines the full cost is allowable.

Gas Meter Access Panel

112. The Applicants submitted invoice 21040 (3.6.14) and submitted it unreasonable as already carried out under ref 10656.
113. The Tribunal considered the submissions and determines this item should be deleted as not allowable from the list of expenditure.

Patio Drainage Fitted

114. The Applicants submitted an invoice 22306 (25.7.14) as being unreasonable in cost.
115. At the hearing the parties agreed to limit the cost to £236.34 which the Tribunal determines accordingly.

Fire Alarm Test

116. The Applicants submitted that an invoice 25099 (3.12.14) was not reasonable.
117. At the hearing the parties agreed that this item should be paid in full and the Tribunal determines this accordingly.

Lighting (replaced 2x light fitting)

118. The Applicants submitted that an invoice 236764 (10.12.14) was not reasonable but clearly had misunderstood the basis of works in this instance.
119. The Tribunal considered the submission and noted that the Applicants had no reasons for dispute and therefore determines that the full cost is allowable.
120. The Applicants also submitted that invoice 23058 (7.10.14) was unreasonable as it was a replacement of light fittings recently installed. The Tribunal considered the representations from both parties and determine that there was no reason for the fitting to fail and thus the cost was not reasonable under Section 19 Landlord and Tenant Act 1985 and disallowed in full.

Window Cleaning

121. The Applicants submitted that an invoice 26072 (1.5.14) was not reasonable.
122. The Tribunal considered the submission and noted that the Applicants had no reasons for dispute and therefore determines that the full cost is allowable.

New Door

123. The Applicants submitted that invoice 20640 (6.7.14) was not reasonable due to the fact that this was incurred following mistaken Police action at the property and the excess should be reclaimed in full.
124. The Respondents submitted that the cost was reasonably incurred and that the Police Authority would not reimburse and that the buildings insurance would make payment and therefore the excess was reasonably incurred.
125. The Tribunal considered that, based upon the information submitted, the cost was reasonably incurred and that the full cost is allowable (Section 19 Landlord and Tenant Act 1985). However, the Tribunal felt it reasonable that the Respondents make every effort to claim the excess amount from the Police Authority and credit the service charge at that point.

On Account Year January 2015– December 2015

126. The Applicants submitted that the year of 2015 was over- budgeted but provided no further information to assist the Tribunal.
127. The Tribunal considered this matter at length and on the basis this was a budget and that the final year accounts, which must be provided by the terms of the Lease and/or The Landlord and Tenant Act 1985, will avail the Applicants of precise computations which may, once considered, allow the Applicants to make a further Application, under Section 27 Landlord and Tenant Act 1985 to the First Tier Tribunal based upon actual expenditure.
128. Therefore, The Tribunal determines that the budgeted cost for 2015, as a whole, remains as reasonable and chargeable accordingly.

On Account Year January 2016– December 2016

129. The Applicants submitted that the year of 2016 was over budgeted but provided no further information to assist the Tribunal.
130. The Tribunal considered this matter at length and on the basis this was a budget and that the final year accounts, which must be provided by the terms of the Lease and/or The Landlord and Tenant Act 1985, will avail the Applicants of precise computations which may, once considered, allow the Applicants to make a

further Application, under Section 27 Landlord and Tenant Act 1985 to the First Tier Tribunal based upon actual expenditure.

131. Therefore, The Tribunal determines that the budgeted cost for 2016, as a whole, remains as reasonable and chargeable accordingly.

Conclusion

132. FINAL DETERMINATION OF TOTAL ITEMS DISALLOWED BY TRIBUNAL

Scotts Schedule Disallowed	FLAT 1 20.80%	FLAT 2 20.80%	FLAT 3 25%
£ 11,433.15	£ 2,378.10	£ 2,378.10	£ 2,858.29

Application under Section 20c

133. The Applicants also applied for an order under Section 20C of the Landlord and Tenant Act 1985. The Respondents submitted that it was not their intention to request costs through the service charge. However, for the sake of good order, following submissions from the parties and taking into account the final determinations, the Tribunal makes an order that all of the costs incurred by the Landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicants.

Appeal

134. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Name: Ivan P Taylor BSc FRICS
Valuer Chair

Date: 24th February 2017

THE LAW

Landlord and Tenant Act 1985

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 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.

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.]

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from)

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount,
or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations,
and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection 5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection 2) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

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 First-tier 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.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Agreed Yes/No	Blank for Tribunal	Disallowed
Repairs fund (2011)		At commencement of contract there was £1093.72 in the repair fund from a previous landlord. There is no recognition of this money in any of the annual accounts. Repairs are covered by separate Appendix C Page 1.	The balance handed over by Goodwyn Realty Estates in 2010 was £293.72. Please see letter Page 555-556. The whole amount was accounted for as repairs and maintenance. Please see 2011 accounts, Page 146.	We accept that Blue Property received the amount £293.72 however our letter dated 10/11/11 does not state that we can explain the discrepancy?	No	This item was agreed between the parties at the hearing and is chargeable in full	
Cleaning budget (2011)	£ 1,872.00	Original budget was given as £60m, actually cost £692 at the end of the year. This represents a contract which is for the provision of services for more than 12 months, and which is not a fixed price contract. The contract was amended and the required contribution (of which there was none) was reduced. In addition, this is for a 2.4 square metre communal area with one hallway and a flight of stairs, which a local contractor has been performing every 2 weeks, so we would expect to pay £200 maximum.	Understandably, the cleaning was not scheduled however, the annual expenditure is reflected in the year end accounts. The cleaning was carried out as required, to ensure the communal areas were kept clean and safe for the tenants. The AHT 1 can confirm the cleaning was carried out for that bi-monthly.	The quote given is not competitive, and we do not understand how the cost can be reduced. The quote is for 2 blocks of 4 flats - we have one block of 5 which is significantly less work, also if this is a 2.4 square metre communal area, the comparable quote - based on two hours work is £38.86, or £293.72 (See email, dated 10/11/11). We dispute the frequency and believe we should have been consulted - at least on the extra cost. Invoice #6121 states that the cleaning was carried out for the excess at the beginning of the year but did not inform the tenants.	No	This item was agreed between the parties at the hearing and is chargeable in full	£468.00
Firm Risk Assessment (2011)	£ 240.00	This can be arranged free-of-charge by the local fire service. We will pay for the administration for arranging this service.	These are no longer available free of charge from the fire service. Please see comparable quotes to show the cost is reasonable.	This is partly true - they are required, however not annual (although we accept this is standard practice), and the quote is reasonable. The tenants responsible persons have been shown the results of the report?	Yes	This item was agreed between the parties at the hearing and is chargeable in full	£0.00
Building Insurance (2011)	£240	Blue Property originally arranged to include this as a service charge, and only removed it when we informed them that this was arranged separately by the freeholder. So they had not done.	This was included in the original budget in error as it was not included in the year end accounts, which means the freeholders weren't charged.	Included as evidence of the total spend for the year suspiciously close to the same amount as the budget for the year. This error of £240 not reported to AHT.	Yes		£0.00
Roofers (2011)		We were not informed of these repairs until October 2014. See email dated October 2014, Appendix C Page 5.	The email refers to a copy of the invoice. The invoice was served on time and in accordance with the contract.	Invoices have never been provided to any tenant (except when requested via the process).	No	Tribunal determines that cost of Coping No. 1 & 2 plus labour £275 + VAT = £299.20	£196.20
Repair (01/11/11) - VAT (2011)	£300.00	Agrees to be charging £240 for materials, there were more than 4 stones missing, and total is £497 per stone. Therefore we would expect to pay £240 for materials (following VAT) and £257 for labour. Also charged a call out charge of £100. Total £697. VAT is £104.56. Total £801.56. Please see Appendix C, Page 7 (Invoice), Page 8 (Photo of small wall on wall, Page 9 (Goods sheet for similar item).	AH - The comments made seem to be correct. I have checked the invoice and it shows that the labour has been charged, and the quote same was only £216.	Which is the cost for the job, for charging a day's labour of the job, at the above £240 hours? This is unacceptable.	No		£330.80
Repair (01/11/11) - VAT (2011)	£153.75	The same contractor did this job on the same day as the VAT. We would not expect to pay anything for this labour as we believe it was double-accounted. Please see Appendix C, Page 10 (Invoice), Page 1 (Photo of materials), Page 2 (Photo of materials), Page 3 (Photo of communal area).	This has not been charged twice. Also, £60 plus VAT is the amount charged in the current period, as it is a resource of food.	We would like further explanation of the job done for this and previous job to make clear how the labour was charged. Please see Appendix C, Page 9 for photo of the job done.	No	This item was agreed between the parties at the hearing and is chargeable in full	£0.00

Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Agreed Yes/No	Blank for Tribunal	Disallowed
Repair (06/09/14) - materials, labour not VAT	£17.21	We feel that the amount of labour required for this job is excessive, as there was only one operative working on the roof for 20 minutes. Please see Appendix C, Page 124 (Invoice).	The cost is reasonable. The roof is reasonable.	What is the breakdown/explanation for the labour charge?	No	The Tribunal determines that this item should be paid in full.	£0.00
Repair (06/09/14) - materials, labour not VAT	£997.00	We have a similar complaint to the above repair #2000; as the roof is not waterproofed, it is causing damage to the second floor and should be either re-waterproofed or replaced due to poor design/implementation by the company's own employees. How much "remedial" work could there be to the roof? Please see Appendix C, Page 124 (Invoice). Add the tanks in the lighting system continue to blow (disregard).	Please see comment above in respect of invoice #2000. The Tribunal determines that this item should be paid in full.	The response does not adequately explain the cost.	No	The Tribunal determines that this item should be paid in full.	£967.13
Repair (06/09/14) - materials, labour not VAT	£17.21	We have been charged twice nearly £200 to take one lift off and replace it with a new one which seems excessive. More important the work done has no means exposed to new materials. Please see Appendix C, Page 102 (Photo of lift).	Work completed included the fitting of the frame, the cementing of the area around the grill and the fitting of the grill as well.	Our complaint Why was this not done instead of job #19397?	No	The Tribunal determines that this item should be paid in full.	£0.00
Repair (06/09/14) - materials, labour not VAT	£17.21	Why was this job not part of #10646? This is either another example of work being half (or poorly) done, or fabricated, as there has not been an additional gas meter installed in that area. Please see Appendix C, Page 124 (Invoice).	This was work done in addition to 10665 and the cost is reasonable.	Why was this job required, unless the gas meter was not installed properly?	No	The Tribunal determines that this item should be paid in full.	£17.40
Repair (07/06/14) - materials, labour not VAT	£239.34	The tenants are confident that this has never been done. Also the fact that it is not a full size unit means that this is listed as something which could not have been done, if we were to believe that the bin area itself had been washed, the labour charge is 1.5 hours. The work was completed, job sheets support this and evidence was begun to support this, it is not acceptable to just suggest it is not done. Please see Appendix C, Page 102 (Invoice), Page 70 (Description of Remedial Work).	The Tribunal determines that this item should be paid in full.	We do not accept the "nature of goodwill" as an alternative response.	No	The Tribunal determines that this item should be paid in full.	£53.00
Repair (08/09/14) - materials, labour not VAT	£17.99	The materials for this work have been changed over £14, the cost is reasonable. The Tribunal determines that this item should be paid in full.	The cost is reasonable, including labour time, materials, travel to property site.	See response to #1966, and please note the concern over the frequency of bulb replacement.	No	The Tribunal determines a price of £5 (incl vat) and £9 (incl vat) labour per bulb.	£3.98
Repair (08/09/14) - materials, labour not VAT	£17.99	The Tribunal determines that this item should be paid in full.	The cost is reasonable, including labour time, materials, travel to property site.	See response to #1963, and please note the concern over the frequency of bulb replacement.	No	The Tribunal determines that this item should be paid in full.	£3.98
Repair (08/09/14) - materials, labour not VAT	£17.99	The Tribunal determines that this item should be paid in full.	The cost is reasonable, including labour time, materials, travel to property site.	We would like to see the evidence that highlights the photographic evidence which clearly shows that the bin area (containing the bins themselves) does not appear to have been cleaned.	No	The Tribunal determines a price of £5 (incl vat) and £9 (incl vat) labour per bulb.	£0.00
Repair (08/09/14) - materials, labour not VAT	£17.99	The Tribunal determines that this item should be paid in full.	The cost is reasonable, including labour time, materials, travel to property site.	See response to #1963, and please note the concern over the frequency of bulb replacement.	No	The Tribunal determines that this item should be paid in full.	£3.98
Repair (07/09/14) - materials, labour not VAT	£123.00	Replace light fitting - how was this not identified as part of the remedial work for job #1965 and #1946? Please see Appendix C, Page 102 (Invoice).	AM - Light fitting failed after the original install.	Our issue here is with the fact that this amount is a poor quality installation.	No	The Tribunal considers that a new installation should not fall under the cover of S10 Landlord and Tenant Act 1985.	£122.51

Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Agreed Yes/No	Blank for tribunal.	Disallowed
Repair (28/11/14) - Ref: 23838 - Jet wash bins	£432 incl. VAT (£115 materials, £317 labour net of VAT)	The tenants are confident that this has never been done. Please see Appendix C, Page 115 (Invoice), Page 70 (Description of Cleaning Common Areas).	This work was completed, evidence will be given to support this.	We would like to see the evidence that this has been done, and would like to highlight the photographic evidence which clearly shows that the bin area (not to mention the bins themselves) does not appear to have been cleaned.	No	The Tribunal determines that this item should be paid in full	£0.00
Repair (02/12/14) - Ref: 25999 - Fire alarm test	£232.80 incl. VAT (£ materials, £190.80 labour net of VAT)	Why has this "biannual" test never been done before, and how can the fire alarm system have been maintained at a cost of £1,033.69 in the same year and these components not have been replaced? Also if the "service cost" is £120, what is the additional labour charge for?	Please see engineers reports all work was required.	The numbers do not seem to add up here, as the 2015 repairs list shows £120 for the test (as opposed to this £232 charge). Also the budget for the test is £300 where the monthly check costs £12.50, i.e. 350 per annum, therefore a biannual check should cost £250 per annum or £75 per check.	No	This item was agreed between the parties at the hearing and is chargeable in full	£0.00
Repair (10/12/14) - Ref: 22784 - Lightbulbs (replaced 2x light fitting)	£202.90 incl. VAT (£134.16 materials, £168.74 labour net of VAT)	The retail price is less than £5. We are still experiencing (allegedly) an alarming rate of bulbs blowing despite having spent nearly £3,000 on the lighting system. In addition to the £3,000 we have invested in designing, installing and doing "remedial install work" on the system, we have also been charged approx £840 for replacement bulbs and fittings over a 2 year period, which seems to be the very definition of excessive.	This invoice is for a light fitting and not just a light bulb, costs are reasonable.	Why is the labour the same for one and two light fittings? Again the number do not stack up here - a light fitting costs circa £70 (as charged on this invoice) and the bulbs are circa £20, and there are 8 lights, so these materials should cost approx £700. However the material costs for the installation and "remedial work" of the emergency lighting system comes to £1670. What additional materials for this lighting system cost over £900?	No	The Tribunal determines that this item should be paid in full	£0.00
Repair (01/05/14) - Ref: 20872 - Window Cleaning	£690 incl. VAT (£ materials, £75 labour net of VAT)	This is being charged individually despite it being a line item on the annual budget. So we are already being charged a planned amount and are being invoiced for extra "extras" window cleaning, which is unreasonable. Furthermore we do not believe that the windows have ever been cleaned.	Window cleaning is charged at £45 per visit, 6 visits per year. All cleans were carried out as per the schedule. There were no extra invoices for this item in the repairs category.			The Tribunal determines that this item should be paid in full	£0.00
Repair (06/07/14) - Ref: 20840 - New door	£1000 incl. VAT (£ materials, £83.33 labour net of VAT)	This is an excess charge as an insurance claim for a new front door, as the police mistakenly broke into the wrong address. The police should have paid this, as they broke in the wrong address. This should have been organised by Blue Property, not making an insurance claim at a cost to the residents.	The police will not pay for a repair to a door regardless of it being their mistake, also we had to take action at the time to secure the property, your insurance policy is in place for such matters and had to be used.			The Tribunal determines that this item should be paid in full	£0.00
							£11,433.15

Item	Cost	Tenant's Comments	Landlord's Comments	Tenant's Reply	Agreed Yes/No	Blank for tribunal.	Disallowed
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