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

Case Reference : **MAN/00FA/LSC/2016/0060**

Property : **17 Vauxhall Grove, Walker Street,
Hull HU3 2QY**

Applicant : **Mr. Raymond Parker**

Respondent : **Places for People homes Limited**

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

Tribunal Members : **M J Simpson.
C Evans**

Date of Decision : **31 January 2017**

DECISION

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1. This is an application by Mr Parker in respect of the service charges for 17 Vauxhall Grove. Hull. North Humberside.
2. The application is dated 9 July 2016 and was followed by a Directions hearing on 14 October 2016 at which Directions were given and the nature and extent of the dispute defined. This reasoned decision should be read in the light of those directions, which are attached hereto.
3. In summary the Directions identified that there were four years in issue: the service charge years commencing 2013, 2014, 2015 and 2016 (the budget). Six issues were identified: charges whilst the house was uninhabitable due to floods, the Piper system, health and safety report, landscaping fee, everyday maintenance fee and any limit upon the annual increase in service charges.
4. The Directions set out the representations and documentation that was to be provided by the parties, with which the parties have broadly complied. The Tribunal accordingly has considered the written representations of the applicant set out in his letters of 20 July, 16 October, the 5th and 11th of November, and the 16th, 17th, and 21st of December 2016, and the written representations of the respondent received by the tribunal on 7 November 2016 and the statement and accompanying documentation dated 14 December 2016.

The Lease

5. The contractual relationship between the applicant and respondent is governed by the lease dated 4 April 1996 made between the respondent (then the North British Housing Association Ltd) and Barbara Marlene Lappin, of which the applicant took an assignment subsequently. It is a shared ownership lease in respect of which the staircasing provisions have been exercised so that the applicant has a 75% share.
6. By clause 3 of the lease the applicant is required to pay the service charge in accordance with clause 6 of the lease. Clause 6 sets out the definitions of, and mechanism for, the payment of the service charge. In particular sub clause 5 sets out the relevant expenditure to be included in the service charge provision.
7. Most pertinent to this application are the provisions in the sub clauses to sub clause 5, defining the costs of and incidental to the performance of the landlord's covenants in clause 4 of the lease, together with all reasonable fees charges and expenses payable to the accountant any solicitor accountant surveyor valuer architect or other person whom the landlord may from time to time reasonably employ in connection with the management or maintenance of the property.

8. The relevant sub clauses in clause 4 provide for the landlord's obligation to insure the premises; to maintain repair decorate and renew the communal facilities, the roof foundations and main structure, and the pipes, sewers, drains, wires cisterns and tanks, and to keep the communal facilities adequately cleaned and lighted and maintained, and to provide a warden service or system for calling the warden.
9. By sub clause 6 of clause 5 of the lease the service charge or a fair proportion thereof shall be suspended in the event that the whole or any part of the premises is destroyed so as to render it unfit for use, until the premises are again fit for use. It is specified that the events rendering the property unfit for use are to be the risks covered by the landlord's insurance.

The Inspection

10. The Tribunal inspected the property on the morning of 31 January, prior to the hearing and in particular adverted their attention to the Piper system, landscaping, and maintenance and repairs.
11. Inspection was accompanied by the applicant, his wife, Mr Bird (an occupant of an adjacent bungalow on the development) and a representative of the landlord Housing Association.
12. The Tribunal noted the nature and extent of the landscape areas which comprised garden beds with low standing bushes and a short area of hedgerow. Note was taken of the areas adopted by the local authority

The hearing.

13. This was convened following the inspection and took place at Hull magistrates court at 11 am on 31 January 2017 there were present the applicant and Mrs Parker, Mr Bird and Mr Rose of the Residential Management group Ltd as managing agents for the respondent landlord.

The 2013 floods.

14. It was established, as a matter of fact, that an inundation occurred on 5 December 2013. From that date until late April 2016 the applicant and his wife were unable to live at the subject property because it was unfit for habitation.
15. Mr Parker contended the because of clause 5 (6) of the lease the whole of the service charge should have been suspended for that five-month period.
16. Mr Rose contended that the lease required only the temporary suspension of payments and that at the end of the financial year the overall position would be ascertained and the tenant will be required to make the appropriate payments for that financial year. He conceded that the landlords had not dealt with the matter strictly in accordance with the lease in that the payments from Mr Parker, made by standing order or direct debit, had continued to be taken into the landlord's account.

Decision.

17. The tribunal took the view that the lease clearly provided for there to be a suspension of the whole or part of the service charge during any period of time when the bungalow was uninhabitable. That was not to be a mere postponement of service charges in a way which enabled them to be recharged at the end of financial year. The lease is clearly expressed in terms of there being an exemption from service charges, or a fair proportion of them for the relevant period. The Tribunal of the opinion that not the whole of the service charges should be suspended. It was conceded by Mr Parker, in response to questioning from the Tribunal, that he would have expected the property to remain insured and it would not be unreasonable for him to expect to continue paying the premium. The tribunal were however of the view that there was no evidence to suggest that other services could effectively be provided during the five-month period that the renovation works were taking place. The Piper warden call is physically situated in the bungalow and was not accessible by the applicant or his wife during the period of five months. It may have been possible for the warden call system to be accessed via telephone, but, in the Tribunal's view that does not amount to a proper provision of the system for which a service charge should be paid.
18. The tribunal of the view that the sinking fund contribution should continue to be made because that is a charge not directly related to services which became frustrated or suspended by the flooding, but relate to long-term financial provision for repairs maintenance and renovation, in accordance with the lease.
19. Accordingly there falls to be deducted from the service charges paid for the five months of non-occupation a total of £19.95 p per month being the buildings insurance (£10.57 p) and the contribution to maintenance reserve (£24.88 p). For the five-month period Mr Parker is accordingly entitled to a credit or refund of £99.75 p.

The Piper warden call system.

20. Mr Parker contended that this system was obsolete. That was based on the comment that an engineer had made. There was no independent evidence of the obsolescence of the system but Mr Rose conceded that quotations were being obtained to install a more modern system.
21. Mr Parker contended the system was not reliable, although he had never had cause to use it in an emergency during the whole period of his occupancy. He had tested it recently and it took eight minutes for the call to be answered. He was concerned that the system was not compatible with call buttons that could be carried about the person and that if someone fell out of reach of the fixed call button, which was located in the hallway they would not be able to call for help.

Decision

22. The tribunal found as a matter of fact that whether or not the current system had been superseded by more modern systems, it was working in the way in which it was intended to work and in the way in which it has been working during the period of Mr Parker's occupancy. The rate of charge was not unreasonable and being consistent, in fact slightly reduced on occasions, during the previous decade. The tribunal's finding accordingly was the warden call system was reasonably incurred and payable.

Health and safety report.

23. Mr Parker contended that the health and safety report obtained by the landlord's agents at a cost of £250 in April 2016 was unnecessary, not chargeable as a separate service charge item and just a way of circumventing Mr Parker's exemption from management charges. He contended that almost the whole of the report, which was available for the Tribunal's inspection, related primarily to the landlord's workforce, which was a duty which the landlord, as employer should discharge in any event, without cost to the tenants.
24. He said that the report was limited in nature and of no great effect, because the majority of the common area was an adopted highway in any event.
25. Mr Rose said that it was good practice to have a health and safety review and that it was carried out on the specific instructions of the landlord client. Whilst it did indicate the risk to health and safety was trivial, it would not have been possible to make that assessment without carrying out the inspection and preparing the report. The cost of the report was modest and reasonable and had been carried out in-house.

Decision.

26. The tribunal accepted that it was not unreasonable for a health and safety inspection and report to have been carried out and prepared. It was the action of a prudent landlord. It was modest in cost. Having regard to what it revealed it would be difficult to justify any substantial future costs whether for the review of the report or any new report. So far as the claim for this report in April 2014 is concerned the tribunal were of the opinion the cost had been reasonably incurred. The employment of in-house specialists to carry out the inspection report is within the purview of the lease in clause 5 (5)(c).

Landscaping.

27. Mr Parker averred that the number of hours actually carried out by the gardeners was not consistent with the 50 hours per year for which payment was demanded. He objected to paying for travelling time. He was not able to be specific about the hours worked.

28. Mr Rose referred the committee to the schedule that had been prepared and submitted of the actual attendances. It indicated, he said, the landlord had not been unresponsive to requests by the tenants in general and Mr Parker in particular for additional visits to be carried out on specific work undertaken. It was not a monotonous one hour per week but averaged out at 50 man hours per year at a rate of about £16 per hour.

Decision.

29. Based on the documentary information available and the tribunal's own inspection of the soft landscaping areas it was not possible to say the landscaping charges had been unreasonably incurred and they are accordingly payable.

Maintenance costs.

30. Mr Parker did not specifically challenge these save to draw the tribunal's attention to the wording of the lease. The tribunal is satisfied that the wording of the lease provides for a sinking fund or provisions to be made for repairs and maintenance of the dwelling, bearing in mind that it has the rather unusual feature of being a shared ownership lease.

Overall Decision.

31. Accordingly, apart from the adjustment to be made for the period of time when Mr Parker's bungalow was uninhabitable, the service charges as claimed (net of any management charges, which it is well established are not payable by Mr Parker arising from an earlier separate side agreement) are reasonably incurred and payable by Mr Parker.
32. For the year 2013/14 £55.40 p per calendar month.
33. For the year 2014/15 £55.96 p per calendar month.
34. For the year 2015/16 £52.94 p per calendar month.
35. Budgeted for the year 2016/17 £79.77 p per calendar month less the appropriate allowance for non-payment of management charges which from the papers provided to us appears to be a deduction of £19.08p.

Costs.

36. Mr Rose asked the tribunal to consider an award of £170 costs to cover his travel and overnight expenses in connection with the tribunal hearing and indicated that the landlords' costs would be so limited.
37. Mr Parker indicated that he wished to pursue his section 20 C application so that no costs could be claimed either from him personally or as part of the service charge.

Decision.

38. The committee did not feel that the criteria had been met to award the costs of the landlord to be paid personally by Mr Parker. Most of his application had been a repeat of applications previously made but he had succeeded on the issue of suspension of service charges, or a fair proportion of them, during the five-month absence because of the flood. He had paid the tribunal fees to have the matter aired.
39. It was the tribunal's view that there should be an order under section 20 C preventing the landlord treating the costs of travel to, and attendance at, the hearing as relevant costs for service charge purposes, but that there should be no remission of the fees to Mr Parker paid by him.



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Applicant : **Mr. Raymond Parker**

Respondent : **Places for People homes Limited**

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

Tribunal Member : **Judge J Murray**

Date of Decision : **14 October 2016**

DIRECTIONS

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PRELIMINARY

The Tribunal received an application dated 9 July 2016 from the Applicant for an order under s27A Landlord and Tenant Act 1985 and under s20C.

The Applicant is the lessee of the Property along with his wife. His application was accompanied by a letter detailing his objections to service charges.

The Respondent's agent requested a Case Management Conference to narrow down the issues.

A Case Management Conference was convened and heard at the Hull Employment Tribunal Wilberforce Court Alfred Gelder Street Hull HU1 1YJ.

The Applicant appeared in person accompanied by his wife, and joint leaseholder Mrs. Parker.

The Respondent was represented by Mr. Andy Rose Technical Analyst, of RMG, and Ms Anne Dawson, Property Manager). RMG are managing agents for, as well as a subsidiary of, the Respondent.

The Case Management Conference was held to consider whether there were any prospect of the parties settling any of their disagreements, making any admissions, and to consider what steps would be needed to bring the case to a hearing.

As a preliminary issue I declared that I have had a professional relationship with the Respondent. This conflict had become apparently only days before the hearing and there had been no opportunity to re-list the hearing with an alternative Judge. I offered to recuse myself from the hearing, but the parties, and in particular the Applicant agreed that as it was a procedural hearing that it might proceed. I hereby recuse myself from any further hearings in relation to this matter.

THE ISSUES

The parties agree that the following service charge years fall to be reviewed:

2013 -2014

2014 - 2015

2015- 2016

2016- 2017 (service charge budget)

The Applicant made challenges in respect of the following service charges which will be the service charges for determination by the Tribunal:

1. Service charges levied between December 2013 and September 2014: In December 2013 following very serious flooding in the Hull area, the Applicant and his wife had to move out of their home and were unable to return until May of 2014. He stated that no services were carried out until September of that year, as other properties were still being renovated. The Applicant's case is that the lease provides that service charges are suspended when the Property is uninhabitable, and that in any event services were not carried out during this time.

2. The piper system: the emergency corded alarm system at the Property is understood by the Applicant to be obsolete, and he had been told by an engineer that it should have been changed in 2015.
3. Health and Safety report: charges had been added for Health and Safety whereas no reports had been prepared in previous years. The Applicant felt that these charges should have been borne by the Respondent. Mr. Rose said that services had altered since RMG had started management.
4. Landscaping fee: the Applicant indicated that a new charge had been introduced for landscaping, in addition to the grounds maintenance fee which had historically been charged (and continued to be charged).
5. Every day maintenance fee: Mr. Rose said that these fees were for unexpected, as opposed to cyclical repairs and maintenance charges.
6. Overall service charges: the Applicant stated that service charges were limited to increases no greater than RPI Plus 5% in the lease. He accepted Mr. Rose's reply that the limitation related only to management charges, and not overall service charges, which were linked to actual expenditure. Mr. Rose confirmed that the Applicant was not charged any management charge at all in relation to his lease.

DIRECTIONS

1. The Respondent shall within 21 days of the date of these directions send to the Applicant, and 3 copies to the Tribunal, a bundle of copy documents evidencing the service charges claimed above for the years 2013 - 2017 including:
 - Copies of any earlier Tribunal decision relied upon.
 - relevant correspondence
 - the original application
 - the lease for the Property
 - service charge demands, accounts and invoices relied
2. The Applicant shall submit to the Respondent, and 3 copies to the Tribunal, within 21 days of receipt of (1) above, a statement in response accompanied by any document to be relied on in support of such statement.
3. The Respondent shall submit to the Applicant, and 3 copies to the Tribunal, within 21 days of receipt of (2) above, a statement in response accompanied by any document to be relied on in support of such statement.
4. Further information or disclosures sought by any party and comments, if any, by the Applicant on the Respondent's case, shall be submitted within 7 days of receipt of 3 above (3 copies to the Tribunal & 1 copy to the other party).

5. The case will be listed for Hearing on a date and time to be notified. The Applicant must pay the hearing fee of £200 which is due within 14 days of the Applicants receiving notice of the hearing date under Rule 32 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
6. **SERVICE OF DOCUMENTS BY POST / HAND DELIVERY ONLY**, (documents sent by fax / email will NOT be accepted).
7. No documents or letters are to be sent to the Tribunal unless also sent to the other party to these proceedings and that this shall be clearly marked on each document or letter.

FAILURE TO COMPLY WITH THE TRIBUNAL'S DIRECTIONS MAY RESULT IN DETRIMENT TO A PARTY'S CASE. FOR EXAMPLE, IT MAY LEAD TO THE TRIBUNAL REFUSING TO HEAR LATE EVIDENCE; TO A PARTY'S CASE BEING STRUCK OUT; AND/OR TO AN ORDER FOR COSTS BEING MADE.