



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

Case Reference : CAM/22UH/LSC/2014/0015

Properties : 5 & 9 Roding Hall, Ongar Road, Abridge
RM4 1BN

Applicants : Ms Maggie Anne Cooper Apt 5
Mr Omar Shahid Apt 9

Representatives : Ms M A Cooper and Ms T DaCosta

Respondent : Mrs Jacqueline Anne Hall

Representative : Mr John Pritchard of Homes and
Watson Partnership Limited – Managing
Agents

Type of Application : Section 27A Landlord and Tenant Act
1985 – determination of service charges
payable

Tribunal Members : Judge John Hewitt
Ms Marina Krisko BSc (EST MAN) FRICS
Mr David Cox JP

**Date and venue of
Hearing** : 10 April 2014
Namco Funscape, Romford

Date of Decision : 15 April

DECISION

Decisions of the Tribunal

1. The Tribunal determines that:

1.1 We record the parties agreed that the cost of electricity incurred was as follows:

Year ended 31 December 2012	£1,024.00
Year ended 31 December 2013	£1,047.00

1.2 The Applicants, if they so choose, are at liberty to issue a fresh application pursuant to section 27A Landlord and Tenant Act 1985 (the Act) in respect of any other expenditure set out in the service charge statements issued by the Respondent in respect of the years ended 31 December 2012 and 2013.

1.3 By consent an order shall be made, and is hereby made, pursuant to section 20C of the Act to the effect that none of the costs incurred by the Respondent in connection with these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by either of the Applicants.

1.4 By consent an order shall be made, and is hereby made, pursuant to Rule 13(2) that we require the Respondent shall by **5pm Friday 2 May 2014** reimburse the Applicants the sum of £440.00 being the amount of fees paid by the Applicants to the Tribunal in connection with these proceedings.

2. The reasons for our decisions are set out below.

Procedural background

3. On 29 January 2014 the Tribunal received an application pursuant to s27A of the Act. The Applicants have also made an application under s20C of the Act in respect of any costs that the Respondent may incur in connection with these proceedings.

4. The subject Properties are apartments within a development known as Roding Hall which is said to be a property converted to comprise 9 self-contained apartments together with parking spaces and amenity land.

5. The Applicants are the current tenants of their respective apartments and the Respondent is the original landlord of the Properties.

The Applicants have provided a sample lease in respect of Apt 9. It is dated 9 November 2001 and was made between:

- (1) Jacqueline Anne Hall as landlord, and
- (2) Andrew Patrick as tenant

The apartment was demised for a term of 125 years commencing on 1 January 2001 at a ground rent commencing at £200 per annum and on other terms and conditions therein set out.

6. The lease imposes an obligation on the landlord to insure the development containing the Properties, to carry out repairs and redecorations and to provide other services as set out in the lease.
7. The lease imposes an obligation on the tenant to contribute to the costs and expenses incurred by the landlord in carrying out its obligations. There is a provision for the tenant to pay sums on account of the liability which arises. The sums so payable appear to be service charges within the meaning of s18 of the Act.
8. The service charge is reserved as rent and the scheme is set out in the Fourth Schedule. In summary the service charge year is the period 1 January to 31 December. An interim service charge instalment is payable on 1 January and 1 July in each year payable on account of the service charge. The landlord is required to keep a detailed record of the expenditure on services and is to procure that a service charge statement is prepared for every year; such statement to be prepared by an independent member of the Institute of Chartered Accountants in England and Wales. The statement is to show the expenditure incurred. Any balancing debit is to be paid by the tenant to the landlord forthwith and any balancing credit is to be paid by the landlord to the tenant forthwith.

The items of expenditure comprising the service charge are set out in the Sixth Schedule.

9. The Tribunal identified the following issues to be determined:-
 - 9.1 The cost of electricity for the year 2012;
 - 9.2 The cost of electricity and the costs of building repairs and maintenance in the year 2013;
 - 9.3 The budget for 2014, particularly as regards electricity, building repairs and maintenance and general reserve;
 - 9.4 The application pursuant to s20C of the Act in relation to the Respondent's costs; and
 - 9.5 The question of reimbursement of fees.
10. Directions were given on 3 February 2014. The Respondent did not comply with the directions fully. For example the Respondent has not provided the supporting invoices as required in direction 10. Similarly the Applicants have not complied fully. For example direction 15 made provisions for the filing and service of a hearing file, each sheet of which was to be paged numbered in black ink in the bottom right hand corner. We have been provided with a hearing file but it is not page numbered.

Inspection and hearing

11. The development was formerly known as The White Hart, a public house. The Respondent (Mrs Hall) was first registered at Land Registry as proprietor on 24 February 1999. Subsequently the property was converted and adapted to comprise 9 self-contained apartments with parking spaces and amenity land. Long leases of apartments have been sold as follows:

20.08.2001 Apartment 8 (ground floor)
09.11.2001 Apartment 9 (first floor)
08.03.2002 Apartment 7 (second floor)
11.03.2003 Apartment 5 (first floor)
04.06.2004 Apartment 2 (ground floor)
15.08.2007 Apartment 3 (ground floor)

As regards Apartments 1, 4 and 6 we were told that these have been retained by Mrs Hall and are let out on monthly tenancies.

12. At 10:00 on the morning of 10 April 2014 we had the benefit of an external inspection of the development.

Present were: Ms Cooper of Apt 5 and Ms DaCosta representing her son, Mr Omar Shahid of Apt 9, and Mr John Pritchard of Watson and Homes Partnership Ltd, the Respondent's managing agents.

13. At the inspection our attention was drawn to:

External

Three flood lights to illuminate the car parking area.

The new build, containing two apartments, which was adjacent to and attached to the original public house but there was no internal connection or means of access;

The poor state of external decoration generally;

Some timber window frames are suffering from rot;

The mail boxes;

The entry phone system; and

The cupboard containing the electricity meters.

Internal common parts

The lift;

The eight ceiling lights operated by pushbutton timer switches; and

The stairway leading to the first floor landing.

14. The hearing commenced at 11:40

Present were: Ms Cooper, Ms DaCosta and Mr Pritchard.

15. A preliminary issue arose. Mr Pritchard on behalf of Mrs Hall wished to put in late two sets of 'Accounts for Maintenance Expenses':

15.1 1 January to 31 December 2012; and

15.2 1 January 2013 to 31 December 2013.

Both sets of accounts have been prepared by Ms A M Robertson, said to be a chartered accountant, and purport to be signed off on 19.04.2013 and 21.03.2014 respectively.

It was submitted By Mr Pritchard that these accounts constitute the 'service charge statement' defined and referred to in paragraph 1(iv) of The Fourth Schedule to the lease.

We were told that copies of the service charge statements had not been served in compliance with directions because Mr Pritchard had misread the directions and had been away on holiday for three weeks and had only returned recently.

We were also told by Mr Pritchard that the accounts for 2012 were first provided to the each lessee sent in an envelope, with no covering letter, which was mailed on 22 April 2013, and the accounts for 2013 were sent By Mr Pritchard to Ms DaCosta under cover of a letter dated 20 March 2014 which related to matters expressly concerned with these proceedings. In neither case had Mr Pritchard disclosed to the Applicants the underlying invoices from the various contractors/utilities supporting the expenditure claimed.

16. Initially the application was opposed. Ms Cooper and Ms DaCosta were both very clear and adamant that they had not received the 2012 accounts by post in April 2013 and maintained that both sets of accounts were sent to Ms DaCosta under cover of the 20 March 2014 letter. That letter certainly sent both sets of accounts because it said:

"B Copies of the service charge accounts (lease schedule 4) for 2012 and 2013 (just received) are attached."

17. Following a discussion on an appropriate way forward the objection was withdrawn. Accordingly we gave permission for Mrs Hall to put in evidence before us the two sets of accounts.
18. In so far as may be necessary we find as a fact that the 2012 accounts were not received by Ms Cooper and Ms DaCosta in April 2013 and that the first they saw of them was following receipt by Ms DaCosta of the 20 March 2014 letter.

Matters agreed

19. Mr Pritchard was able to provide some invoices in respect of the electricity costs incurred in 2011, 2012 and 2013. Following a review and discussion of these Mr Pritchard withdrew the claim to the 2011 costs which had been (erroneously) included in the 2012 accounts and the parties agreed that the reasonable amount for the costs of electricity was £1,024 for 2012 and £1,047 for 2013. We have therefore recorded this agreement in paragraph 1 above.
20. Mr Pritchard also felt able to consent to:

- 20.1 an order being made pursuant to section 20C of the Act; and
- 20.2 an order requiring Mrs Hall to reimburse the Applicants £440 in fees paid by them to the Tribunal in connection with these proceedings

and we have therefore made such orders.

Matters not agreed

- 21. Originally the application was made on the basis of budgets prepared on behalf of Mrs Hall and demands for interim service charge instalments on account. The Applicants had concerns about the amounts of several items in the budgets.
- 22. Mr Pritchard conceded that Mrs Hall had not prepared any service charge statements for any period prior to 1 January 2012. Evidently Mrs Hall had incurred some expenditure on the development but had not troubled to prepare accounts or to collect contributions from the long lessees.
- 23. Matters changed in 2012 when Mrs Hall appointed Mr Pritchard's firm. Evidently, at that time Mrs Hall decided (possibly prompted by some long lessees) that a more professional approach to the management of the development was required. Mr Pritchard has prepared budgets for 2012, 2013 and 2014 and demands for interim service charge instalments based on those budgets have been sent out.
- 24. We have found (paragraph 18 above) that the year-end accounts for 2012 and 2013 were not received by Ms DaCosta until shortly after 20 March 2014 and no supporting invoices had been submitted until those provided during the course of the hearing relating to electricity for 2012 and 2013 and for Building Repairs and Maintenance for 2013.
- 25. Following a short inspection of the documents handed over by Mr Pritchard, Ms Cooper and Ms DaCosta raised some questions with Mr Pritchard, some of which he was able to deal and some not. Ms Cooper and Ms DaCosta also wished to challenge the cost of buildings insurance in 2012 at £6,034 which compared unfavourably with £3,663 for 2013. Because the accounts for 2012 had only been received recently, and the Applicants had only learned of the cost said to have incurred recently, they were not able to include this item in their application form dated 13 January 2014.
- 26. Equally Mr Pritchard had not been given prior notice that buildings insurance was an item in challenge and he did not have the relevant paperwork with him. Even if he had been able to produce the paperwork at the hearing Ms Copper and Ms DaCosta would not have been in a position to consider it properly and such further advice, or make such further enquiries, as may be appropriate.

27. The parties had a discussion as to how they might try and resolve the outstanding matters between them. Ms Cooper and Ms DaCosta raised with Mr Pritchard a number of points concerning the Building Repairs and Maintenance included in the 2013 accounts. Mr Pritchard said he was keen to respond fully to any questions raised with him and to supply such further materials as was requested of him. He suggested that progress might be made at a meeting he was seeking to hold shortly.
28. In the circumstances, and at the parties request, we did not make any further determinations on 2012 or 2013 expenditure and we gave permission to the Applicants to make a further application under section 27A of the Act in the event it did not prove possible to resolve matters amicably with Mrs Hall and Mr Pritchard.

The 2014 budget

29. In many leases the amount payable by way of an interim payment on account of service charges will be informed or driven by the amount of the budget for the year in question. Ms Cooper and Ms DaCosta had a number of issues on the budget which they had been given for 2014 and the demands for interim service charge instalments made of them. Hence this issue was raised in the application form.
30. Where there are issues about the reasonableness of budget and the amount payable by a lessee, a lessee can pursue an application under section 27A(3) of the Act to seek a determination of the amount payable.
31. However, the subject lease does not provide for the position described above. It is quite clear from paragraph 1(iii) of The Fourth Schedule that an interim service charge instalment means: “...one half of the service charge shown on the service charge statement last served on the Lessee” Paragraph 1(iv) sets out what information the ‘service charge statement’ is to contain.
32. In regard to this development the budgets that have been prepared do not inform or set the amount of the interim service charge instalment payable.
33. We readily accept that the budget which has been prepared for 2014 may well serve a useful purpose as an agenda for a discussion between the landlord and the lessees as regards what needs to be done, to set a strategy and to identify priorities but the budget will not inform or drive the amount on the interim service charge instalments payable.
34. In these circumstances we found that it was not appropriate for us to make any determinations on the budget prepared for 2014.
35. For similar reasons we did not make any determinations on a consultation exercise carried out in relation to major roof repairs which are contemplated by Mrs Hall for the summer of 2014 and which had

been raised in recent correspondence sent to the Tribunal. We did however make some observations on that project which we hope may be of some assistance to the parties.

36. For avoidance of doubt we record that we made no findings as to whether or not the accounts produced for 2012 and 2013 and signed off by Ms Robinson constitute service charge statements within meaning of the provisions of the lease.

Relevant statutory provisions

37. We have set out in the Schedule below relevant statutory provisions we have taken into account.

Judge John Hewitt
15 April 2014

The Schedule

Relevant Statutory Provisions

Landlord and Tenant Act 1985

18.— Meaning of “service charge” and “relevant costs”.

(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.

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.

(2A)-(3) (4) ... [repealed]

(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.

20C.— Limitation of service charges: costs of proceedings.

(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 a 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 a 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.

27A Liability to pay service charges: jurisdiction

(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 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 the appropriate 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 the appropriate 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.

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Orders for costs, reimbursement of fees and interest on costs

13(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.