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

Case Reference : CAM/26UJ/LSC/2014/0126

Property : 78 Longcroft Road, Maple Cross,
Hertfordshire, WD3 9TR

Applicant : Thomas McAteer
Unrepresented

Respondent : Thrive Homes
Unrepresented

Date of Application : 15th December 2014

Type of Application : To determine the reasonableness
of service charges, pursuant to
section 27A of the Landlord and
Tenant Act 1985 ("the 1985 Act")

Tribunal : Judge J. Oxlade
M. Krisko BSc (EST MAN) FRICS

**Date of
Paper Decision** : 1st May 2015

DECISION

For the following reasons, the Tribunal finds that:

- (i) the service charges incurred in 2013/14 were reasonably incurred, save in respect of cleaning and lighting, as set out in paragraphs 19 and 24 herein; the Tribunal further finds that the sum reasonably incurred is £420 (+vat) for cleaning and £110 for lighting,
- (ii) the estimated service charges for 2014/15 and 2015/16 are a reasonable estimate, save in respect of cleaning and lighting, as set out in paragraphs 20,21, and 24 herein; the Tribunal further finds that a reasonable estimate of costs for cleaning in both years is £430 (+vat) and £110 for lighting.

REASONS FOR THE DECISION

Background

1. The Applicant is the lessee of the property, pursuant to a lease granted on 18th February 1988 by Three Rivers District Council, which interest was subsequently transferred to the Respondent as part of a large-scale transfer of stock.
2. The lease provides that the lessor shall use its best endeavours to keep adequately lighted all such part of the building as are normally lit and keep clean and tidy the common hall, staircase, landings, etc. (Ninth Schedule, clause 3). The corresponding obligation on the lessee is to pay a contribution to the costs notified as a reasonable estimate of what is to be expended by the lessor in carrying out its various obligations (clause 4(1)); there are balancing provisions in the event of an over or under-estimate.

Application

3. The Applicant issued an application, concerned with three aspects of the service charges for the 2013/14, and future years in respect of cleaning, communal lighting, and repairs to the secure entry system.
4. More particularly, in the application the Appellant referred to a decision made by the Leasehold Valuation Tribunal ("LVT") on 13th January 2013 where it was held that (i) cleaning costs of £400 per annum were reasonably incurred, but that the Respondent now sought to recover £617.78 for the year 2013/14; the Respondent had changed contractor, although the work was done by the same person; the Applicant's view was that as soon as the years subject to the decision had passed, the costs charged to him had increased.
5. In respect of the secure entry system he said that for the past 18 months the system had not worked, despite his correspondence about it.

Directions

6. Directions were made on 5th January 2015, for the filing of evidence, and the issues were summarised in the preamble to the decision, in which it was also explained to the Applicant that the Tribunal had no power to direct the Respondent to repair the secure entry system, but were limited to considering what costs would be recoverable by the Respondent in respect of it.

7. The Applicant's request for a hearing on the papers was noted, and both parties were advised of the right to elect for an oral hearing until such time as a decision was made and communicated to the parties. In the event, neither party elected an oral hearing.

Evidence

8. Pursuant to directions the Respondent filed a bundle of documents, which was indexed and paginated.

Parties respective positions

9. The Respondent filed a statement by its Home Ownership Manager, James Sutherland-Young, dated 13th February 2015, which was unsigned. In it the Respondent said that following the decision of the LVT, service charges were demanded of the Application in accordance with the decision, albeit that the Respondent was not recovering all of its costs by so doing. Since then the actual costs incurred in 2013/14 for cleaning were £514.82 (+vat) and were estimated in 2014/15 at £521.87 (+vat). However, in line with the LVT's decision that £400 was reasonably incurred in 2012/13 it would limit the sums demanded to £450 (+vat) in 2013/14 and £500 (+vat) in 2014/15.
10. As to the security of the block, whilst the Respondent had incurred costs in being called out to repair locks, these costs had not been and would not be added to the service charge account. He explained that what had been added to the service charge account was an annual charge for the costs of remotely programming fobs/timers etc.
11. The Respondent included copies of the actual service charges accounts demanded for 2012/13, 2013/14, and estimated costs for 2014/15 and 2015/16. The bundle also contained screenshots of the works of repair to the communal doors, but the absence of the costs being included within the service charge accounts.
12. The Applicant filed a brief note in reply, making 4 points, referring to paragraphs 31-33 of the LVT's decision, said that the cleaning contract had been taken away from one contractor and given to a more expensive one, and included a copy of a letter dated 18th June 2014 written following a meeting between the Applicant and Mr. Sutherland-Young, which amongst other things raised the problem of the communal lighting coming on at 3pm rather than 9pm, leading to 168 hours of unnecessary lighting per month.

Relevant Law

13. The Tribunal has jurisdiction by virtue of section 27A of the 1985 Act to consider the reasonableness of costs incurred and to be incurred by way of service charges, and which provides as follows:

s27A(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.

(1) 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 it costs were incurred for service, repairs, maintenance, improvements, insurance, or management of any specified description, a service charges would be payable for the costs and if it would 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
- the manner in which it is payable”.

Discussion

Absence of Inspection

14. This Tribunal is made up of two of the three members who heard the application in late 2012 and which resulted in the decision issued on 17th January 2013; as we have a good recollection of the premises and in the absence of any complaint about the quality of the work done, we do not consider that there is any need to conduct an inspection of the common parts in order to assess what costs would be reasonably incurred in cleaning the common parts. Neither party requested that we do so.

Cleaning Costs

15. Neither party has suggested that the cleaner’s role or standards have changed since 2012, and whilst the Applicant says that the contractor has changed (though the cleaner has not), the Respondent has neither confirmed nor denied this to be the case.
16. The contract between the Respondent and contractor has not been adduced in evidence, and there is no evidence produced as to any tendering process undertaken by the Respondent, nor what the market would charge for such work. Both parties approach to this has been to say that the logical starting point for the Tribunal is to use the earlier determination to calculate what is reasonably incurred or a reasonable estimate. In the determination of 2013 in respect of cleaning we said as follows:

“31. There is no dispute that the cleaner does a reasonable job; the issue is that the costs have escalated.

32. In light of the size of the hallway, the surfaces which require cleaning, and the functions which the contract requires the cleaner to undertake, the Tribunal finds that each visit would take approximately 30 minutes, including the time spent in unloading materials and giving some travel time. The Tribunal considers £20 per hour to be a reasonable rate in 2008/9 and has provided for an annual uplift.

33. As the cleaner attends fortnightly, the Tribunal finds the following costs to be reasonable: £138.60 (+ £67 for window cleaning) in 2008/9, £260 (including window cleaning in 2009/10, £300 in 2010/11, £350 in 2011/12 and an estimated figure of £400 in 2012/13”.

17. Both parties approach to the Tribunal’s estimated figure in 2012/13 of £400 (+vat) has been to adopt it as the actual figure. The Respondent argues that this should be increased by £50 per annum, which would no doubt act as some sort of gradual “catch up”.
18. However, the question for us is what costs were reasonably incurred in 2013/14 and what is a reasonable estimate for 2014/15 and 2015/16.
19. According to the service charge accounts, the actual costs for cleaning in 2012/13 and 2013/14 were respectively £592.26 and £617.78, which suggests an increase in actual costs of between 4 % and 5% between those two years. In light of the limited evidence adduced by both parties we find that this is a helpful basis on which to assess what costs were reasonably incurred in 2013/14, and using the Tribunal’s general knowledge and experience as an expert Tribunal find that this reflects the market generally. We find the costs reasonably incurred in 2013/14 to be £400 x 5% = £420 p.a. (+ vat).
20. Applying the same approach, the Respondent anticipates a 1.5% increase in costs between 2013/14 and 2014/15 (from £617.78 to £626.24) and so we apply an estimated increase of 2.5% on £420, to £430 (+vat) for 2014/15.
21. Applying the same approach to estimating the costs in 2015/16, as the Respondent anticipates no increase at all, we find that the estimated costs to be reasonably incurred in 2015/16 are £430 (+vat).

Lighting

22. In the LVT’s earlier determination, we found that the lights had been left on 24 hours a day, 7 days a week, which was not necessary and so the costs incurred were not reasonable. At paragraph 29 the Tribunal found that the costs reasonably incurred for electricity were £110 p.a. in 2012/13. The accounts filed in these proceedings record that the actual costs for communal lighting were £281.31 in that year.

23. The Tribunal notes that the actual costs in 2013/14 were £275.65, and the estimated costs for 2014/15 and 2015/16 were very close to this. The Tribunal as an expert Tribunal notes that electricity prices in the period 2012 to date have not altered to any great degree.
24. The Applicant has continued to take up this issue in person with Mr. Sutherland-Young and in correspondence, and we find that the communal parts continue to be over lit; accordingly, not all lighting costs have been reasonably incurred. In light of the consistency of actual costs and future anticipated costs as estimated by the Respondent, it does not appear that the Respondent anticipates that electricity inflation will alter the costs. Accordingly, adopting the earlier decision on communal electricity costs as the starting point, the Tribunal finds that the costs reasonably incurred in 2013/14 were £110 p.a., and that the estimated costs in 2014/15 and 2015/16 are also £110 p.a.

Security Doors

25. The Tribunal has no jurisdiction to compel the Respondent to provide secure communal doors. We are satisfied that costs of repairs have not been added to the service charge account, and so the Tribunal finds that the costs incurred in respect of security to the front doors to have been reasonably incurred.

Costs

26. In the 2012 proceedings the Respondent conceded that the lease provides no power for the Respondent to add to the service charge account the costs it incurs in bringing or defending proceedings; no contrary argument has been advanced in these proceedings to change that concession. Accordingly, no order needs to be made pursuant to section 20C of the 1985 Act.

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Judge. J. Oxlade

5th May 2015