



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

**Case References** : **MAN/OOBY/LSC/2015/0096**

**Property** : **Flat 1, 267 Smithdown Road,  
Liverpool. L15 2HF**

**Applicants** : **Stephen Thompson**

**Representative** : **In person**

**Respondent** : **Sanctuary (North West) Housing  
Association Limited**

**Representative** : **Victoria Ostler, Counsel  
Wragge Laurence Graham & Co LLP**

**Type of Application** : **Application under section 27A (and  
19) of the Landlord and Tenant Act  
1985 and section 20C**

**Tribunal Members** : **Mr G. C. Freeman  
Mr J Faulkner FRICS Expert Valuer  
Member  
Mrs H Clayton Lay Member**

**Date and venue of  
Hearing** : **17 July 2015  
Liverpool Civil & Family Court, 35  
Vernon Street, Liverpool L2 2BX**

**Date of Decision** : **14 October 2015**

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**DECISION**

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## **DECISION**

**The sums charged by the Respondent for the periods covered by the Application are reasonable and properly payable by the Applicant.**

### **Background**

1. The Applicant has applied to the Tribunal for a determination of the liability to pay and the reasonableness of service charges for the Property for the periods 2012/13, 2013/14 and 2014/2015 inclusive. The Applicant also applied for an order preventing the costs incurred in connection with the proceedings from being recovered as part of the service charge.
2. The Tribunal issued Directions on 3<sup>rd</sup> September 2014, following which the parties provided written statements of case, responses and witness statements setting out the issues for consideration by the Tribunal. Helpfully, the parties narrowed down the issues by means of what is known as a Scott Schedule, which identified which items were in dispute, and provided for the respective comments on those items from each party. The Applicant provided an undated Statement headed “RE: SERVICE CHARGES APPEAL” (page 104 of the Bundle), numerous emails and letters and a Response dated 30<sup>th</sup> August 2015. The Respondent provided a Statement dated 8<sup>th</sup> April 2015 and a Witness statement of Stuart Withers of the same date. Ms Ostler also provided a skeleton argument.
3. The Property was inspected by the Tribunal on the morning of the hearing. No. 267 Smithdown Road is a three-storey mid-terrace house with a small garden to the front and a walled yard to the rear originally built around 1890 and since converted into four flats. The Property, Flat No. 1, is a self-contained one-bedroom flat on the ground floor. The other three flats are all self-contained, each with one-bedroom; Flat No. 2 is on the first floor and Flats Nos. 3 and 4 on the second floor. Flat No. 4 is above the ground and first floors of No. 265. There is a door entry system and fire and smoke alarm.

### **The Tenancy Agreement**

4. The Applicant occupies the Property on an Assured Tenancy Agreement (“the Agreement”) dated 2<sup>nd</sup> June 2003 made between Cosmopolitan Housing Association Limited (“Cosmopolitan”) of the one part and the Applicant of the other part. The Respondent is the successor in title to Cosmopolitan. The Agreement provides that the Cosmopolitan will provide the following services:-

Landscaping/Gardening  
Cleaning to Common Parts  
Lighting to Common Parts

Caretaker  
Window Cleaning  
T.V.Aerials  
Other

The terms of occupation of all the flats within the building are similar.

5. The Agreement provides that the Service Charge is variable. The cost of providing any services is to be compared against the income which has been received as part of the weekly rent. Any surplus or loss is to be taken into account when assessing the following year's service charge. The Agreement also provides that, having consulted with the tenant, the Landlord may stop providing existing services or introduce and charge for new services.
6. There has been a previous application under the Act before the Tribunal. In 2010, the Applicant requested a determination of service charge for the years 2009 to 2011. It appears that this case was settled by agreement ("the Compromise Agreement") made between the parties to that application, (Cosmopolitan and the Applicant). In any event, no determination of that application was made by the Tribunal. No copy of the Compromise Agreement was produced to the Tribunal.

### **The Applicant's Case**

7. The Applicant complains that the Respondent has not kept to the Compromise Agreement. In addition, the Applicant objects to six heads of charge, namely:-

Communal Cleaning  
Communal Window Cleaning  
Communal Electricity  
Management and Administration fees  
Fire Alarm and ancillary maintenance.  
The Cost of Rubbish Removal  
"Deficit" Charge

8. There are two heads of objection – first that the amounts actually charged under the heads above, although properly chargeable under the Lease, are unreasonably high and second – that the amounts for fire alarm, ancillary maintenance and management and administration charges are not recoverable because there is no provision for the same in the Lease.
8. In relation to cleaning the Applicant alleges he has been overcharged during the period by £147.64. He arrives at this figure by stating that the actual cost of cleaning was £621.96 – less than the sum of £769.60 which was included in the budgeted figure produced by the Respondent.

9. As part of his application, the Applicant alleges a breach of the Housing Charter principles of transparency, non-disclosure of evidence and lack of value for money. He also alleges that two heads of charge are not included in the tenancy agreement. (paragraph 2B of the Applicant's undated Statement). In support of the application the Applicant referred to paragraph 3.80 of the Housing Association Charter issued by the Housing Corporation:-  
*"3.80. We consider terms that bind tenants to unseen obligations unfair. It is a basic requirement of contractual fairness that consumers should always have an opportunity to read and understand terms before becoming bound by them"*
10. The Applicant further maintains that the Property has not been maintained to the "Decent Homes" standards

### **The Respondent's Case**

11. The Respondent states that most of the Application refers to the Compromise Agreement to which it was not a party and which is therefore not binding on it. The Compromise Agreement also refers to a period prior to that covered by the Application, so is irrelevant.
12. In relation to the communal electricity charges, Ms Ostler stated at the hearing that a rebate of £440 had been applied to each flat's rent account following receipt of a bill from the provider based on an actual meter reading. Accordingly this issue was no longer in dispute.
13. In relation to cleaning, Ms Ostler stated that the Applicant's case is based on a figure for the work for 2014/2015 of £621.96 whereas the Applicant alleges he has been charged £769.60. The sum is made up of £417.60 for cleaning and £328.75 for window cleaning to which an uplift of 3.2% was applied for budgeting purposes. At the hearing Ms Ostler explained that the actual figures were £597.22 and £380.44 respectively and that on this basis the Applicant had not been overcharged. The Respondent was entitled to include an uplift of 3.2% to the previous year's sum as a budget figure.
14. In relation to fire precautions the Respondent states it is entitled to introduce further heads of charge by virtue of the terms of the Agreement itself – see paragraphs 4 and 5 above. Furthermore the provision of fire precaution equipment is a statutory responsibility of the Respondent.
15. The Respondent contends that the administration charge is payable only to the extent that it is reasonable (Schedule 11, para 1(2) Commonhold and Leasehold Reform Act 2002)

### **The Law**

16. The law is stated in the Appendix to this decision.

### **The Tribunal's Decision**

17. The Tribunal considered the terms of the Agreement and noted it specifically stated that the landlord could introduce additional services. Furthermore the Agreement specifically provides for such services under the heading of "Other". (see paragraphs 4 and 5 above)

#### Communal Electricity

18. The Tribunal made no determination in respect of the communal electricity costs as these have been agreed.

#### Communal Cleaning

19. The Tribunal noted that no complaint is made in respect of the standard of cleaning. Having shown how the calculation of the budget figures were produced the Tribunal find that the Respondent's calculations were reasonable, subject to adjustments to the service charge for the relevant years when the final amounts are known.

#### Rubbish Disposal

20. The Tribunal made further directions at the hearing for the Respondent to supply copies of the invoices and photographs of the rubbish at the Property to the Applicant and the Tribunal. Having considered such matters and in the absence of evidence from the Applicant that such expense was excessive, the Tribunal find that the cost of rubbish removal was reasonable.

#### Fire Alarm and maintenance

21. The Tribunal noted the Applicant's arguments that there is no provision in the lease for a head of charge for this service. Nevertheless the Tribunal accepted the Respondent's arguments at paragraph 14 above. There was no evidence from the Applicant that the cost was unreasonable and the Tribunal therefore finds that the sums charged for this are reasonable.

#### Administration Charges

22. For the same reasons as stated in paragraph 21 above the Tribunal finds that the Management and Administration fees are reasonable.

#### Deficit Charge

23. This head of charge is not strictly an expense for which the Tribunal has jurisdiction. Quite correctly, the Agreement provides for an adjustment at the end of each service charge year so as to recover from the tenant any underpayment of service charge or to account to the

tenant for any overpayment. This is the “deficit charge” as referred to by the Applicant and in the Tribunal’s view is quite reasonable.

#### Other allegations

24. The Tribunal made no decision on the terms of the Compromise Agreement or the question of whether the Property complies with the “Decent Homes” standard. It has no jurisdiction to do so. For similar reasons, the Tribunal made no ruling on any possible breach of the Housing Corporation Charter.

#### **Section 20C Application**

25. Some leases allow a landlord to recover costs incurred in connection with proceedings before the First-tier Tribunal (Lands Chamber) as part of the service charge. The Applicants have made an application under s20C of the Act to disallow the costs incurred by the Respondent of the application in calculating service charge payable for the Property, subject, of course, to such costs being properly recoverable under the provisions of the Lease.
26. The Tribunal noted that there was no provision in the lease for the recovery of the Respondents costs of the application to the Tribunal. It was therefore unnecessary for the Tribunal to make an order under the section

### **Appendix**

#### **The Law**

Section 18 of the Landlord and Tenant Act 1985 (“the 1985 Act”) provides:

- (1) In the following provisions of this Act “service charge” means” an amount payable by a tenant of a dwelling as part of or in addition to the rent –
- (a) which is payable directly or indirectly , for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose-
- (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 provides that

- (1) relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provision of services or the carrying out of works only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly.

Section 27A provides that

- (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 date at or by which it is payable, and
  - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) ....
- (4) No application under subsection (1)...may be made in respect of a matter which -
  - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

No guidance is given in the 1985 Act as to the meaning of the words “reasonably incurred”. Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

### **Section 20C of the 1985 Act** provides that

- (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 or the First-tier Tribunal (Property Chamber) 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
  - (b) in the case of proceedings before a First-tier Tribunal (Property Chamber) to the Tribunal before which the

proceedings are taking place or, if the application is made after the proceedings are concluded to any First-tier Tribunal (Property Chamber)

(c) . . . .

(d) . . . .

(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.

(4)

### **Administration Charges**

An “administration charge” is defined in paragraph 1(1) of Schedule 11 to the 2002 Act as:

“an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly-

- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.”

Paragraph 2 states that “A variable administration charge is payable only to the extent that the amount of the charge is reasonable. A “variable administration charge” means “an administration charge payable by a tenant which is neither – (a) specified in his lease, nor (b) calculated by reference to a formula in his lease” (paragraph 1(3)).

Paragraph 5(1) provides that “An application may be made to a [First-tier Tribunal Property Chamber (Residential Property)] for a determination whether an administration 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 matter in which it is payable.”