



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

Case Reference : **MAN/OOCG/LSC/2015/0052**

Property : **66 Birklands Avenue, Sheffield. S13
8JH**

Applicant : **Great Places Housing Group Limited**

Respondent : **Mr Mark Charlesworth**

Type of Application : **Landlord and Tenant Act 1985 section
27(A)(1)**

Tribunal Members : **Mr G. C. Freeman
Mrs A Franks FRICS**

Date of Decision : **25th August 2015**

DECISION

Decision

The following service charges claimed by the Applicant are reasonable and payable for the following years:-

2012 £4.21 per week

2013 £4.21 per week

2014 £6.26 per week

2015 £7.33 per week

Preliminary

1. The Applicant has applied to the Tribunal for a determination as to whether service charges in respect of the Property are reasonable and payable. The application concerns the service charge years 2012, 2013, 2014 and 2015.

The Lease

3. The Respondent occupies the Property under a Lease dated 6th August 2010 and made between The Sheffield City Council of the one part, and Kirk Crummins of the other part. The Lease demised the Property for the term of 125 years from the 27th March 2006.
4. It was not disputed that the Lease imposes an obligation on the owner of the Property to pay a Service Charge.
5. The reversion to the Lease is vested in the Applicant.

Paper Determination

6. The Tribunal considered it appropriate for the application to be determined on the papers provided by the parties without holding a hearing and so directed on 28th May 2015. Neither party requested a hearing. The Applicant submitted a witness statement of Julia Coulson-Smith dated 16th June 2015. This was copied to the Respondent. The Respondent submitted an undated letter he wrote to the Applicant which was received by the Tribunal on 21 July 2015.
7. The Tribunal considered the Respondent's letter. They noted that there was no express right to hang washing outside in the communal area as alleged by the Respondent. The lease refers to the use of a drying area and laundry room within the building, not outside.
8. No evidence, as opposed to allegations, was produced to the Tribunal as to the lack of maintenance of the fire alarm.

The Law

9. Service Charges

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 a First-Tier Tribunal (Property Chamber) 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].

Where a tenant disputes items, he need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant’s case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

The Tribunal’s Findings

10. The Tribunal found that the service charge expenditure incurred by the Applicant is reasonable and is payable by the Respondent.