



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

Case Reference : **MAN/OOBY/LSC/2017/0012**

Property : **377 Waterloo Quay, Waterloo Road,
Liverpool L3 0BU**

Applicant : **Anthony O’Leary**
Representative : **in person**

Respondent : **Regent Management Limited**
Representative : **Lawrence McDonnell. Counsel**

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 I James MRICS Expert Valuer Member

**Date and venue of
Hearing** : **17 November 2017**
**HMCTS Tribunals, Civil and Family Court,
Vernon Street, Liverpool L2 2BX**

Date of Decision : **12 December 2017**

DECISION

BACKGROUND

1. The Applicant (“Mr O’Leary”) seeks a determination under sections 27A and 19 of the Landlord and Tenant Act 1985 as to whether service charges for the years 2012 to 2016 inclusive are reasonable and payable.
2. The Respondent (“Regent”) is the managing agent of the property known as Waterloo Quay, Waterloo Road, Liverpool L3 0BU (“the Development”) of which the Property forms part and Mr O’Leary is one of two lessees of the Property by way of a long residential lease. The company entitled to the reversion to the Lease is now Peel Land and Property Ports Limited. It was not a party to this application and took no part in it.
3. The Lease is dated 6 February 2002 and is made between The Mersey Docks and Harbour Company of the first part Barrett Homes Limited of the second part the Respondent of the third part and John Joyce of the fourth part. It is not disputed that the Lease reserves a service charge payable to the Regent for the services referred to in the Lease including security for the Development.
4. In an effort to narrow the issues between the parties the Tribunal issued directions on 24 April 2017 following a hearing on that date. By agreement the application was struck out insofar as it related to the year 2011, because that period has already been the subject of a prior application (Case number **MAN/OOBY/LSC/2012/0044, 0045, and 0046**). It was not disputed that the Lease provides for the provision of security to the Development and that the application was therefore limited to the amount payable in respect of such security.

INSPECTION

5. The Tribunal inspected the Development on the morning of the hearing. It consists of a former grain warehouse converted into apartments from about 1990 to 1996 at East Waterloo Dock, Waterloo Road, Liverpool, L3 0BH. Further new build flats were subsequently erected in eight blocks on the northerly and westerly side of the dock. The Property is situated in a new-build block. In the final decade of the last century, the Mersey Docks and Harbour Company agreed with Barratt Special Projects Limited for its redevelopment for residential flats. Subsequently Mersey Docks and Harbour Company Limited and Barratt Special Projects Limited granted long leases of individual flats to owners in return for a ground rent. The Regent joined in such leases to covenant for the maintenance of the common parts of the Property in return for payment of service charges. The original former warehouse and part of the grounds are now managed by a Right to Manage Company (“RTM Company”).

6. Mr O'Leary pointed out three security cameras mounted on steel towers at various points overlooking the external car park and driveways within that part of the Development managed by the Regent. The Tribunal then inspected the Lodge at the entrance to the Development. This provides the only access to the Development from the public highway, both to the original warehouse managed by the RTM Company and that managed by the Regent. Within the Lodge they observed a closed circuit television system which served solely the part managed by the RTM Company and the entrance to Waterloo Warehouse. The Tribunal did not see any cctv system by which the pictures taken by the three cameras referred to above (assuming they were working) could be observed or recorded. It follows that the cctv system in operation covers all flat owners and visitors, with or without vehicles, to Waterloo Quay, whether to that part managed by the RTM Company or the part managed by the Regent.

THE APPLICANT'S CASE

7. It was not disputed that the cctv system to the Development was not working at the Tribunal's inspection and had not worked for some years, or that the service charge payable by Mr O'Leary included a sum for the provision of security at the entrance to Waterloo Quay.
8. Mr O'Leary argued that there was an obligation under the Lease to provide a security system and that it should include a cctv system. He submitted that if it had been provided, then a fatal accident at the Development might have been avoided, and vandalism to cars and other property could have been avoided by its use as a deterrent or to trace persons causing damage.
9. Mr O'Leary also suggested that the sums included in the service charge accounts for the respective periods included a provision for cctv. He accepted that the service charge includes a sum for the provision of a security guard at the entrance to Waterloo Warehouse.

THE RESPONDENT'S CASE

10. Regent's case may be summarised succinctly. No charges have been made in the service charge accounts for the provision of cctv for the Development. Any charges appearing under the heading "security" are the Regent's proportion of the costs of providing a security guard service at the Lodge at the entrance to Waterloo Quay, which serves the Development and the RTM Company. They allege that the cctv system installed in the Lodge by the RTM Company was paid for by the RTM Company entirely. They also allege that the proportion of 40% of the total cost for security payable by the Respondent is reasonable. Mr Darren Paul of Regent gave evidence on oath that no costs for cctv for the Development were included in the service charge accounts for the relevant periods. He also stated that the cameras were installed by the original Developer at its cost and that there was no maintenance contract in force covering the cameras.

THE LAW

11. The Law is set out in the Appendix to this Decision.

DISCUSSION

12. Dealing with the proportion of the costs of security first, the Tribunal noted that the proportion payable has been the subject of previous proceedings before the Tribunal, culminating in an appeal to the Upper Tribunal (Lands Chamber) in *Regent Management Limited v Mr Thomas Jones* [2010] UKUT 369 (LC); LT Case Number: LRX/14/2009. Mr O'Leary did not seriously argue to upset that decision, or to say that it was wrong. In any event the Tribunal consider they are bound by it.
13. The Tribunal also noted that there have been previous proceedings before it, involving Mr O'Leary and the provision of cctv, under Case Reference MAN/OOBY/LSC/2012/0044, 0045, and 0046 noted above. They noted the sympathy of the Tribunal at paragraph 23 of that decision in its comments relating to the security system. Nothing further appears to have been done in relation to upgrading or repairing the system, but it is not part of this Tribunal's jurisdiction to require the Regent to do this, as was pointed out to Mr O'Leary during the hearing.
14. The Tribunal found Mr Paul to be a credible witness and accept the evidence he gave to them.
15. For what it is worth, the Tribunal again expresses sympathy that no progress appears to have been made on the provision of an adequate cctv system which covers the car parks and the other common parts of the Development. However the provision of such a system is likely to be expensive, is likely to have to be the subject of a consultation exercise, and ultimately its cost will have to be borne by all flat owners within the Development resulting in an increase to the service charge for everyone.
16. Ultimately, the Tribunal found that no payments have been included in the service charge cost heading for security which include the cost of providing and maintaining the cctv system. What has been charged for, as Mr O'Leary acknowledged, was a proportion of the cost of provision of a security guard at the entrance to Waterloo Warehouse, which in the opinion of the Tribunal, was reasonable and properly incurred for the periods in question.

SECTION 20C APPLICATION

17. Some leases allow a landlord to recover costs incurred in connection with proceedings before the Tribunal as part of the service charge. Mr O'Leary made an application under s20C of the Act to disallow the costs incurred by Regent 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. In support of his application he stated that he had hoped that the matter would not have come before the Tribunal for a hearing but should have been settled before then.
18. The Tribunal determined that because a hearing was necessary in order to determine the application and that as Mr. O'Leary has not succeeded in his application, no order under section 20C should be made.

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 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.