

12398



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

Case Reference : **MAN/00EM/LSC/2017/0017**

Property : **30 Lesbury Avenue, Choppington,
Northumberland NE62 5YD**

Applicant : **Mr Ali Sivany Zadeh**

Representative : **(unrepresented)**

Respondent : **Shenstone Properties Limited**

Representative : **Hadrian Property Management Company Ltd**

Type of Application : **Section 27A and Section 20C Landlord and
Tenant Act 1985**

Tribunal Members : **Judge S Moorhouse LLB
Mr I.D. Jefferson FRICS**

**Date of Paper
Determination** : **31 August 2017**

Date of Decision : **14 September 2017**

DECISION

DECISION

The following adjustments to the amount of service charge payable by the Applicant are made by the Tribunal pursuant to Section 27A of the Landlord and Tenant Act 1985 (the 'service charge years in issue' being those ending 31 August 2015, 2016, 2017 and 2018):

- (i) the Applicant's liability to contribute to fees totalling £780 in relation to the Block attributable to the hammer testing by Corinthia and assessment and report by RNJ Partnership shall be limited to the Applicant's one sixth share of a total fee of £390 in whichever of the service charge years in issue the Managing Agent seeks to recover these;
- (ii) the Applicant is not liable to contribute towards any charges relating to 24 hour emergency cover (identified by the Managing Agent as costing £31.20 per annum for the Block) in any of the service charge years in issue;
- (iii) the Applicant is not liable to contribute towards any charges relating to an annual 'asbestos only' inspection of the Block (identified by the Managing Agent as costing £66) in any of the service charge years in issue; and
- (iv) the Applicant's liability to contribute to the cost of ground maintenance at the Block shall be limited to the Applicant's one sixth share of a total cost per annum of £420 in each of the service charge years in issue.

In relation to each of the other service charge amounts identified and challenged by the Respondent, the charges have been determined by the Tribunal to be reasonable and payable.

Pursuant to Section 158 and Schedule 11 to The Commonhold and Leasehold Reform Act 2002 the Tribunal determines that the debt recovery charge of £90 referred to within the parties' statements of case is not payable.

The Tribunal makes an Order under Section 20C of the Landlord and Tenant Act 1985 that any costs incurred by the Respondent in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant in any service charge year.

REASONS

The Application

1. The application ('the Application') is made under Section 27A of the Landlord and Tenant Act 1985 ('the Act') for a determination of liability to pay and reasonableness of service charges. The Applicant has also indicated his intention to make an application under Section 20C of the Act with regard to the recovery of costs.
2. The Applicant is the leaseholder of 30 Lesbury Avenue, Choppington, Northumberland NE62 5YD ('the Property'), a first floor flat within a purpose built block of 6 flats, numbered 20-30 (even numbers only) Lesbury Avenue ('the Block'). The Property is held under a lease dated 3 October 1962 ('the Lease') granted for a term of 99 years calculated from 1 March 1960.

3. The Respondent is the current freeholder of the Block and Hadrian Property Management Company Ltd are the appointed managing agent ('the Managing Agent').
4. Directions were issued on 5 May 2017, pursuant to which a bundle of relevant documents was supplied on behalf of the Respondent, statements of case were submitted by the Applicant and the Respondent and a reply to the Respondent's statement submitted by the Applicant.
5. An external inspection was carried out by the Tribunal on 17 August 2017, accompanied by Mr David McDaid of the Managing Agent. Neither party requested a hearing therefore the Tribunal went on to make a paper determination commencing on the day of inspection and reconvening on 31 August 2017.
6. The Application is stated to relate to the service charge years commencing 2014 and ending with the year 2017/18. The Applicant states that he purchased the Property in September 2014. The Tribunal's determination applies therefore to the service charge years ending 31 August 2015, 2016, 2017 and 2018.
7. The Applicant's statement of case challenges certain charges made on behalf of the Respondent. The areas at issue are taken in turn in the sections that follow. In each case the relevant submissions are summarised and the Tribunal's findings and determination given. The areas of law applied by the Tribunal in reaching its findings are set out within the Appendix.

External Balcony

Submissions

8. The Applicant challenges his liability to contribute to costs incurred by the Managing Agent in commissioning a company named Corinthia to conduct 'hammer testing' on the concrete balcony to the Block and in commissioning building surveyors RNJ Partnership LLP to prepare a report on the condition of the balcony.
9. The Applicant contends that the hammer testing was unnecessary and was prescribed by an unqualified person with no qualification in engineering. Whilst the Managing Agent states that the hammer testing was carried out as a necessary initial stage to remove loose or spalling concrete and expose the full extent of the damage, the Applicant submits that there has been no deterioration, loose or spalling concrete and has supplied photographs to support this contention.
10. The Applicant challenges also the value of the report by RNJ Partnerships on the basis that RNJ are not a structural engineering firm and that, in the Applicant's view, the content of the report reflects this. The Managing Agent contends that the report is fit for purpose and produced to a high professional standard. The cost of the RNJ report is stated by the Managing Agent to be £120 (inc. VAT).
11. A copy of an e-mail (supplied by the Managing Agent) dated 17 May 2016 from the director of Corinthia to the Managing Agent identifies that the cost of the 'hammer testing' is £550 + VAT per block and states also that Corinthia would look at all of the blocks and if some appear to be in better condition and don't necessarily need to be surveyed at that stage they would leave them for now. The Managing Agent wrote to

leaseholders on 26 August 2016 informing them that hammer testing would be undertaken at the Block, with no reference to any prior assessment of whether this would be necessary.

12. The RNJ report includes at Appendix C a single page results summary by Corinthia relating to the Block.
13. The Applicant additionally takes issue with a reference in the RNJ report to the potential replacement of the balustrade.

Findings & Determination

14. The only costs in issue in relation to the balcony and its balustrade are those already incurred relating to hammer testing and the RNJ report. There is no indication within the documents submitted by the parties that the Managing Agent plans to consult upon or proceed with repairs to, or replacement of, the balcony or its balustrade in a timescale which would give rise to charges within the service charge years in issue.
15. One transverse crack to the concrete balcony was apparent to the Tribunal at inspection. In the Tribunal's view it was reasonable for the Managing Agent to assess the condition of the balcony and stairs and to commission the services of a building surveyor in this respect, but not necessarily hammer testing.
16. It is apparent from the copy email dated 17 May 2016 referred to above that it was not envisaged that hammer testing would be necessary in relation to all of the blocks in question. There is a lack of reliance within RNJ's report upon the hammer testing. There is only a passing reference to this as an appendix to the report and there is no written evaluation within the report of the information supplied by Corinthia. RNJ's recommendations, in particular the category 1 (i.e. urgent) remedial work, do not appear to be supported by an evaluation of RNJ's findings.
17. In view of its findings the Tribunal determines that service costs totalling £780 in relation to the Block attributable to the hammer testing by Corinthia and assessment and report by RNJ Partnership are in part unreasonable and that in whichever service charge year the Managing Agent seeks to recover these, the Applicant's liability shall be limited to his one sixth share of a total fee of £390, being 50% of the amount in issue.

Buildings Insurance

Submissions

18. The Applicant submits that the cost of buildings insurance recharged to the leaseholders is excessive, citing the lack of flooding and earthquake risk, absence of serious reported crime, increases in premium year on year and comparables relating to properties in London and Bradford.
19. The Managing Agent submits that the insurance is placed, at arms length, via a broker that regularly tests the market and that the average increase in premium between the service charge years ending 31 August 2013 and 31 August 2018 is 3%.

Findings & Determination

20. The Tribunal has reviewed the figures and finds that there are no obvious excessive costs and no ground for determining the amounts charged to the Applicant in the service charge years in question as being unreasonable. As an observation, the Lease imposes an obligation on the leaseholder to insure to a reinstatement value certified by the landlord and in some insurance office or with underwriters previously approved in writing by the landlord.

Sundry Expenditure

Submissions

21. The Applicant alleges a lack of transparency around sundry expenditure, pointing out that the Block has no internal corridors, no lifts, no fire escapes and no smoke, heat or carbon monoxide alarms.
22. The sundry expenses for the service charge years 2014/15 to 2016/17 are identified in an appendix to the Respondent's statement of case. These fall into the following categories:
- periodic health & safety and maintenance assessment (carried out in 2015/16 at a cost for the Block of £165);
 - 24 hour emergency call out cover (each year at a cost of £31.20 for the Block);
 - Annual asbestos monitoring and labelling (each year at a cost of £66 for the Block);
 - accountancy fees (2 years of fees totalling £36 arising in 2014/15); and
 - insurance cost reinstatement valuation (a cost of £165 for the Block arising in 2015/16).
23. The Applicant questions whether these costs have actually been incurred. In relation to the asbestos related costs, the Applicant queries whether asbestos is present at the Property. In relation to the emergency helpline, the Applicant questions why the leaseholders have not been made aware of it and states that he has no knowledge of the helpline number or the type of emergency help that is being paid for.
24. The Managing Agent at inspection stated that white asbestos (chrysotile) is present in the eaves of the building, sealed within the roof structure, and that Contractors undertaking work are advised of its presence.
25. In relation to the reinstatement valuation and the health & safety and maintenance assessment the Respondent states within its statement of case that the same surveyor was used to achieve a cost saving.

Findings & Determination

26. The Tribunal considers that the costs relating to the health and safety / maintenance assessment and the insurance revaluation are reasonable given that these have been undertaken only once during the service charge years 2014/15 to 2016/17.
27. It is also reasonable for the Managing Agent to incur the accountancy fee identified as sundry expenditure in relation to the certification of service charge accounts. In this respect the Lease makes provision for the recovery of expenses incurred by a managing agent in fulfilling its remit.
28. The Tribunal finds that the arrangements for emergency cover do not appear to have been communicated to the Applicant and that the sundry charges for such cover are unreasonable. The Applicant's one sixth share of all charges or estimated charges relating to 24 hour emergency cover in any of the service charge years in question (identified by the Managing Agent as being £31.20 per annum for the Block) is not therefore payable.
29. On the issue of asbestos inspection, given the relatively inaccessible location of the asbestos and the advice given to contractors, it would be reasonable to rely upon a regular more general maintenance inspection to ensure that the area remains undisturbed. In the Tribunal's view, an annual 'asbestos only' inspection (identified by the Managing Agent as costing £66 per annum for the Block) represents an unreasonable expense and the Applicant's one sixth share is not payable in any of the service charge years in question.

External Redecoration

Submissions

30. The Applicant contends that the cost of external redecoration of the Block (invoiced to the Managing Agent by K. Atkinson Ltd at £1000 on 11 May 2016) is unreasonable, the quality of work is defective and that he has been advised by the contractor that they neither quoted nor were paid the sum of £1000. The Managing Agent contends that the contractor returned to the Block to check and remedy any problems following a complaint from the Applicant. The Managing Agent has also supplied copies of the invoice and bank records to evidence both the cost of the work and payment in the sum of £1000.

Findings & Determination

31. The Tribunal noted at inspection that external redecoration encompassed the eaves timbers, various minor elevation panels, some minor areas of rendering, balcony railings, meter box and two of the window frames of the Property (the remaining window frames within the Block being upvc). The Tribunal noted the poor quality of the painting to the timber windows of the Property by the Respondent's contractor. Nevertheless, the Tribunal considers the cost of £1000 to be reasonable and accepts the documentation submitted by the Managing Agent to evidence invoicing and payment.

Management Fee

Submissions

32. The Applicant challenges the management fee levied by the Managing Agent (£576 for the service charge year ending 31 August 2016 and £593 within the budget for 2016/17) on the ground that there is no management fee for his flat in London and the management fee levied is disproportionate to the value of the flats.
33. The Managing Agent contends that at less than £100 per flat the fee is well below industry norms - it includes postage costs and the cost of internal preparation of accounts prior to independent certification which most agents, in their experience, would recover through additional charges.

Findings & Determination

34. The Tribunal finds that the level of management fee is reasonable.

Ground Maintenance

Submissions

35. The landscaping work at the Block is almost wholly restricted to grass cutting. The charge for the Block was £570 in the service charge year 2014/2015 and in the service charge year 2015/2016. The estimated charge for the service charge year 2016/17 was £567.
36. The Applicant contends that between October/November and March/April there should be no attendances for grass cutting on account of the temperature. He states that there are unnecessary and abortive attendances (for example whilst the grass is short and wet) and that the costs are therefore unreasonable.
37. The Managing Agent states within the statement of case that grass cutting is done on a fortnightly basis from March to October at a cost of £30 per visit. At inspection the Managing Agent stated that grass cutting was less frequent at the beginning and end of the growing season. The Managing Agent considers the frequency to be correct and the cost to be reasonable.

Findings & Determination

38. The Tribunal considers that fortnightly cuts March to October are excessive. Perhaps 14 cuts per annum (1 in each of March, April and October and 2 in May, June, July, August and September, allowing for 1 return visit) should be reasonable. A reasonable annual cost would be around £420. Applying this finding, the Tribunal determines that the Applicant's liability to contribute towards charges for ground maintenance in relation to the Block shall, in each of the service charge years in issue, be limited to his one sixth share of the sum of £420.

Electrical Charges

Submissions

39. The Applicant challenges both the cost of electrical inspection and repair and the cost of communal electricity usage. The Applicant states that he has not seen any repair since 2014. On the issue of usage, the Applicant challenges the consistency of charges.
40. The Managing Agent states that electrical checks (of general and emergency lighting) are conducted at three monthly intervals at a cost of £24.60 per visit which the Managing Agent considers to be reasonable. The electricity supply to communal lighting at the Block is unmetered and charged by the supplier Npower by reference to the number of communal lights and wattage. Whilst the Managing Agent pays the supplier for the supply to numerous blocks, the same formula (number of lights and wattage) is adopted to ascertain the charges attributable to the Block.

Findings & Determination

41. The Tribunal considers the costs of electrical checks and the charges related to the electrical supply for communal lighting to be reasonable.

Administration Charges

Submissions

42. The Applicant's statement of case goes on to state that he has previously been charged the sum of £48 for consent to rent out his flat. Additionally, within his statement concerning sundry expenditure, the Applicant challenges certain charges totalling £90. He states that these charges are being levied by the Managing Agent for responding to the Applicant's formal complaints.
43. The Respondent has clarified that the subletting fee of £48 has been reversed and the Applicant appears to have acknowledged that. In relation to the charges of £90 identified by the Applicant, the Respondent states that this represents a debt recovery fee of £75 + VAT levied by the Managing Agent as a consequence of non-payment of service charge.

Findings & Determination

44. The Tribunal finds that the charges of £48 and £90 in question fall within the definition of 'administration charge' within paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('CLARA'). The Tribunal is satisfied on the documents before it that the issue of the £48 subletting fee has been resolved. With regard to the charge of £90 the Tribunal considers that, since the issue has been addressed by both parties, it would be appropriate to amend the Application to enable the Tribunal to determine whether the charge is reasonable and payable pursuant to CLARA.
45. The Tribunal accepts the Managing Agent's statement that the charge is levied in connection with the recovery by the Managing Agent of unpaid service charge. The

Tribunal has reviewed the Lease and there is no provision that would enable the landlord or its managing agent to make a charge of this nature.

46. The Tribunal therefore determines that the debt recovery charge of £90 is not payable.

Section 20C

47. The Applicant indicated within his Application his desire to apply for an Order under Section 20C of the Act. There is no specific supporting statement, nor has the Respondent responded to this application.

48. The Tribunal considers that a Section 20C Order is appropriate in the present circumstances. The Applicant has sought to address the reasonableness of service charges directly with the Managing Agent, pursuing formal complaints, yet has only been able to secure adjustments to excessive charges through his application to tribunal.

49. Accordingly the Tribunal makes an Order under Section 20C of the Act that any costs incurred by the Respondent in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant in any service charge year.

Appendix

Extracts from Statute

Landlord and Tenant Act 1985

Section 19

- (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 adjustments shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20C

- (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 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 specified in the application.
- (3) The court or tribunal to which the application is made may make any such order on the application as it considers just and equitable in the circumstances.

Section 27A

(Subsections (1), (2) and (3))

- (1) An application may be made to a 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 a 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.

Commonhold and Leasehold Reform Act 2002

Section 158

Schedule 11 (which makes provision about administration charges payable by tenants of dwellings) has effect.

Schedule 11

(Subsections 1(1), 1(3), Section 2 and Subsection 5(1))

- 1(1) In this part of this Schedule "administration charge" means 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.

- (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither -
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.

- 2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

- 5(1) An application may be made to a tribunal for a determination of 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 manner in which it is payable.