



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

Case Reference : CHI/00HX/LSC/2017/0110

Property : Flat 15 and other Flats, 71 Bath Road,
Swindon, SN1 4AU

Applicant : Eva Fletcher, and 12 other leaseholders

Representative : Mrs Elaine Fletcher

Respondent : StoneWater Homes

Representative : Danielle Sodhi
Shakespeare Martineau, Solicitors

Type of Application : Liability to pay service charges

Tribunal Member(s) : Judge Tildesley OBE

Date and venue of hearing : Havant Justice Centre
Telephone Conference
8 May 2018

Date of Decision : 8 May 2018

DECISION

Background

1. Mrs Fletcher and the leaseholders of Flats 1, 2, 3, 7, 8, 9, 10, 12, 16, 17, 18 and 21 seek a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable.
2. The Applicants also seek an order for the limitation of the landlord's costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985, and an order limiting payment of landlord's costs under paragraph 5A of schedule 11 of the Commonhold and Leasehold Act 2002.
3. The Tribunal identified the following issues to be determined:
 - Whether the charge for Grounds maintenance of £9,673.80 for 2016/17 is reasonable?
 - Whether the charge for General and Window Cleaning of £2,865.59 for 2016/17 is reasonable?
 - Whether the landlord has complied with the consultation requirements under Section 20 of the 1985 Act?
 - Whether orders under Section 20C of the 1985 Act and paragraph 5A of Schedule 11 should be made?
 - Whether an order for reimbursement of the application fees should be made?
4. The Old Vicarage at 71 Bath Road Swindon is retirement housing and comprises 20 self contained dwellings together with gardens. The dwellings are subject to a long lease of 99 years in which the leaseholders have 75 per cent equity. Under the terms of the lease the leaseholders are required to pay a charge for the services provided by the freeholder, which is a social landlord.
5. On 4 January 2018 the Tribunal directed the parties to exchange their evidence and for the application to be determined on the papers. On receipt of the hearing bundle the Tribunal reviewed the papers and requested clarification of the Respondent's case. In addition the Tribunal fixed a final hearing by means of a conference call on 8 May 2018.
6. Following the Tribunal's review of the case the Respondent conceded the following matters:
 - i. A reduction in the charge of grounds maintenance from £9,673.80 to £1,359.60 (£67.98 per leaseholder).
 - ii. A reduction in the charge of general and window cleaning from £9,018.12 to £2,000 (£100 per leaseholder).

- iii. To reimburse Mrs Fletcher with the application fee of £100 within 28 days.
 - iv. Not to recover its costs (including legal costs) incurred in connection with these proceedings.
7. Mrs Elaine Fletcher agreed to these concessions on behalf of the Applicants but wished to pursue a claim for costs and compensation for the residents on the grounds of the Respondent's unreasonable behaviour. Mrs Fletcher's reasons are as follows:
- i. The Respondent disregarded Judge Tildesley's determination to cap the costs of cleaning and window cleaning at £2,000.
 - ii. The Respondent failed to provide documents requested by the Tribunal on several occasions
 - iii. The Respondent missed the deadline of 13 April to provide documents which they have already failed to include in the document bundle.
 - iv. The Respondent have contacted Mrs Eva Fletcher to ask her not to obtain quotes for garden maintenance and window cleaning
 - v. The Respondent misrepresented the telephone conversation of 23 April when an agreement was not ever discussed, never mind agreed.
8. A conference call was held on 8 May 2018 at which Mrs Elaine Fletcher appeared for the Applicants, and Ms Sodhi for the Respondents.

Decision

9. At the hearing the parties indicated their agreement to the matters identified in paragraph 6 above.
10. Mrs Elaine Fletcher sought clarification on the position regarding the costs for garden maintenance and general and window cleaning for 2017/18. In this regard Miss Sodhi referred to a letter from the Respondent dated 23 April 2018 in which it had agreed to cap the estimated and actual costs for garden maintenance and general and window cleaning at £1,359.60 and £2,000 respectively. Miss consented to the Tribunal including the Respondent's concession for 2017/18 in the determination.
11. Miss Sodhi stated that following the Tribunal's determination the Respondent would reimburse the tenants with overpayments made in respect of the charges for garden maintenance and general and window cleaning. The amount of the reimbursement would depend upon the payments made by each tenant. Miss Sodhi also stated

that the Tribunal's determination would apply to all 20 leaseholders, and not restricted to the Applicants. Miss Sodhi agreed for these matters to be included in the determination.

12. Mrs Elaine Fletcher explained that she had taken the morning off work to attend the telephone conference and had spent about 15 hours on the application for her mother and the other residents at the Old Vicarage. Mrs Elaine Fletcher estimated that she had suffered a financial loss of £350 in acting as a representative for her mother and the other residents.
13. Mrs Elaine Fletcher also explained that her mother and the other residents had tried to resolve this issue direct with the Respondent, and their Member of Parliament had held a meeting with the Respondent before bringing Tribunal proceedings. Mrs Elaine Fletcher said that her mother and the other residents had suffered anxiety and distress from the prolonged nature of the dispute. Mrs Elaine Fletcher stated that four residents had been unable to sell their flats because of the ongoing dispute. Mrs Fletcher requested the Tribunal to consider ordering compensation to her mother and the other residents.
14. The Tribunal advised Mrs Elaine Fletcher that it had no power to order compensation to her mother and the other residents. The Tribunal said that this may be an issue which can be dealt under the Respondent's complaint procedures or by the Courts. The Tribunal advised Mrs Elaine Fletcher to seek independent advice if she pursued the Court route.
15. The Tribunal informed Mrs Elaine Fletcher that it operated a no costs regime and would only order one party to pay the other party's costs if the party had acted unreasonably in connection with the proceedings before the Tribunal. The Tribunal points out that "unreasonably" has a high threshold and is restricted to the party's conduct during the Tribunal proceedings. The Tribunal did not consider that the Respondent's conduct crossed this threshold of unreasonableness in respect of the proceedings themselves. The Respondent may have acted unreasonably before the proceedings commenced but that is not the criterion. The Tribunal on the whole consider that the Respondent and Miss Sodhi had done their best to settle the matter following the Tribunal's directions on 16 March 2018.
16. The Tribunal, however, asks the Respondent to consider reimbursing Mrs Elaine Fletcher with £150 of her costs as an ex gratia payment. The Tribunal considers Mrs Elaine Fletcher's involvement on behalf of her mother and the residents has been constructive and has enabled an earlier resolution of the dispute. The Tribunal also observes that Mrs Eva Fletcher and the residents at the Old Vicarage have achieved through the efforts of Mrs Elaine's Fletcher a resolution of the dispute which extends beyond

2016/17. The Tribunal hopes that their dispute can now be brought to an end.

17. The Tribunal determines as follows:
- i. A reduction in the charge of grounds maintenance for 2016/17 from £9,673.80 to £1,359.60 (£67.98 per leaseholder).
 - ii. A reduction in the charge of general and window cleaning for 2016/17 from £9,018.12 to £2,000 (£100 per leaseholder).
 - iii. The Respondent to reimburse Mrs Eva Fletcher with the application fee of £100 within 28 days from the date of this determination.
 - iv. The Respondent will not to recover its costs (including legal costs) incurred in connection with these proceedings from the Applicants.
 - v. The 2017/18 Estimates and Actuals for grounds maintenance and general and window cleaning will be capped at £1,359.60 and £2,000 respectively.
 - vi. Within 56 days from the date of this determination the Respondent will reimburse the overpayments made by the leaseholders in respect of the 2016/17 Actuals and the 2017/18 Estimates.
 - vii. The determination shall apply to the 20 leaseholders at the property.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking