

12863



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

Case Reference : **MAN/OOBL/LSC/2017/0011**

Property : **Flat 5, Mortimer House,
181 Chorley New Road, Horwich BL6 5QE**

Applicant : **Christine Anne Wilkinson**

Respondents : **Places for People Homes Limited**
Representative : **Residential Management Group Limited**

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

Tribunal : **Mr LJ Bennett (Tribunal Judge)
Mr J Faulkner (Valuer)**

Date of hearing : **13 April 2018**

Date of determination : **20 July 2018**

Date of Decision : **6 August 2018**

DECISION

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Application

1. Places for People Homes Ltd applies under Section 27A of the Landlord & Tenant Act 1985 (the Act) for determination of service charges in respect of Flat 5, Mortimer House, 181 Chorley New Road, Horwich BL6 5QE (the Property).

Attendance

2. Mr Andrew Rose, Technical Analyst of Residential Management Group Limited (RMG) represented Places for People Homes Limited. He was accompanied by Mrs Elizabeth Adams, Property Manager RMG and Mr Paul Latham, Regional Manager RMG.
3. Ms Christine Wilkinson attended the hearing. She was accompanied by Miss Sheila Clifford, the Leaseholder of Flat 7 and Miss Patricia Jackson, the Leaseholder of Flat 17 at the Property.

Background

4. The Applicant issued County Court proceedings in respect of the service charges demanded for years 2014-2016 against the Respondent.
5. The Respondents defence to the County Court claim mentions specific maintenance issues and general dissatisfaction with the quality and costs of maintenance and services.
6. On 31 January 2018 District Judge Evans sitting in the County Court at Bolton ordered: "The question of what charges (if any) are payable by the Defendant(s) the Claimant(s) is hereby transferred to the Leasehold Valuation Tribunal."
7. On 29 March 2017 the Tribunal held a case management hearing at which directions were made.
8. In accordance with directions the parties have provided extensive and detailed submissions in the form of a Scott Schedule, categorised information and photographs in respect of identified issues.
9. A hearing was held on 13 April 2018.
10. Further directions were made on 20 April 2018 and on 12 June 2018 allowing the admission of further evidence and facilitating both parties' preparation of supplementary case statements and final submissions.
11. Prior to the hearing on 13 April 2018 the Tribunal attended at the Property and inspected the exterior and internal common parts of the development in which the Property is located.

The Property

12. The Property is situated on the fringe of Horwich town centre, adjacent to a crossroads. It is near retail and service premises.

13. The Property is formed by conversion and extension of a former hotel/public house and comprises 16 residential flats. It is understood this took place in 2006.
14. There are 16 car park spaces accessed by a remote controlled gate at the rear of the building. Flats 1-6 are on the ground floor, flats 7-12 on 1st floor and 14-17 on 2nd floor/attic (there is no number 13).
15. On 28 February 2018 the management of the development was transferred to a Right to Manage Company. Although the inspection took place after that date there is no evidence of significant work since. We found the exterior in reasonable condition. We noted some minimal plant growth in the car park and damage to the front door leading from the car park. All stairs and landings are painted walls and carpeted and the ground floor carpet is stained/soiled. There is some evidence in the 1st floor hall to historic water penetration. The internal decorative condition was considered reasonable.

The Lease

16. The Respondent is the successor to the lessee's interest in a lease dated 9 December 2002 made between North British Housing Limited (1) and Mr D Giles (2) (the Lease). The Lease provides for shared ownership. It is noted that the Respondent is the full owner of the Leasehold.
17. The Lease contains a covenant by the Lessee to pay rent, management charge, ground rent and service charge.
18. Paragraph 7 of the Lease specifies provision for the collection and calculation of service charge which includes recovery of expenditure reasonably incurred in connection with maintenance and provision of services and incidental costs of compliance.

Evidence at the hearing

19. Mr Rose and Mr Latham addressed issues within the Scott Schedule which included an explanation of maintenance of fire equipment and relevant inspections, maintenance of car park gate and internal cleanliness of carpets.
20. Ms Wilkinson, in addition to these issues raised points around the quality of internal cleaning and window cleaning and drew attention to quotations now received by the RTM. Ms Wilkinson drew attention to problems arising from a water leak and damage in 2015 and what she considered were needless reports and assessments.
21. The parties addressed specific invoices relating to electrical maintenance.
22. On Mr Rose's application, the Tribunal allowed further written evidence on new points that had arisen during the hearing. The resultant schedules and comments by both parties are detailed and extensive.
23. Evidence and submissions are referred to in our conclusions below.

The Law:

24. 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 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)
- (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.

Tribunal’s views on the evidence presented

25. RMG Ltd, the Managers appointed by the Applicant as represented by its officers at the hearing gave the overall impression of an experienced and professional approach to management of Mortimer House consistent with our expectations of a practice managing many similar developments. The individuals present were able to respond to questions with straightforward and cogent business reasons about actions taken.
26. We found from the evidence that when aware of difficulties appropriate priority was given, although not always that of the tenants affected and arranged for reasonable attention. Consequently, priorities were not necessarily equivalent to those of a dedicated individual carrying out self-organised repairs to their own property.

27. We find overall that the quality and responsiveness of management was reasonable and as expected for an organisation of that nature in respect of the development.
28. Ms Wilkinson is clearly an enthusiastic and committed flat owner who has high standards and expects others to share her commitment. She was concerned about what she considered were different standards and a more generalised commercial approach to issues affecting the development. She was clear that the services provided did not meet her expectations.
29. Ms Wilkinson's approach to detail is manifest with the Scott Schedules and evidence provided.

Tribunal's conclusions

30. We find it convenient to determine the issues by individual elements of service charge and not invoices as in the Scott Schedule as there are repetitive common themes across each of the service charge years under consideration.
Window cleaning:
31. Invoiced costs vary between £80-84 per clean. Ms Wilkinson considers these should have been around £65 per clean on the basis of quality of the service.
32. Noting the nature of the building, which is individual of architectural character non-standard and the number of windows, we find the costs within the service charge accounts are within the range expected. A Manager is not bound to seek the lowest possible quotation and we do not follow Ms Wilkinson's value judgement. We are satisfied it was reasonable for the Applicant to arrange window cleaning at the cost incurred. It is difficult at this juncture to ascertain whether the cleaning is of reasonable quality. Noting the willingness to make some payments, we conclude it was adequate.

General cleaning:
33. Ms Wilkinson suggests that cleaners could have been engaged at lower costs. As for window cleaning, we find the sum of £45 per visit within the range expected for the nature of the building.

Emergency lighting:
34. We have difficulty in understanding Ms Wilkinson's objection to the cost of testing emergency lighting as the sums are within the range we find reasonable. We accept that the service was required and necessary. Although not explicitly stated, this is likely to be a regulatory requirement.

Maintenance of fire equipment:
35. We have difficulty in understanding Ms Wilkinson's objection to the cost of maintenance of fire equipment as the sums are within the range we find reasonable. We find that the service was required and necessary. Although not explicitly stated, this is likely to be a regulatory requirement.

Smoke vent service:
36. Ms Wilkinson does not consider that smoke vents should have been checked monthly. We are satisfied that the Applicants took appropriate professional advice

and entered into a suitable maintenance contract. We find the costs incurred for work involved in required inspection within the range expected and reasonable.

Electricity:

37. Ms Wilkinson queries whether the Managers have monitored the energy market. We are satisfied from the Applicants' response that has been reviewed and consider the figure charged reasonable.

Gate maintenance:

38. It is clear that the gate has required work and has not been as reliable as hoped. Our experience indicates this is often the case and can be affected by the users. Ms Wilkinson considers that it should be maintained and repaired by a company who does not charge VAT. We consider this unreasonable and inappropriate bearing in mind the standard of management appropriate for maintenance of a multi-occupied block such as the Property. We accept that an individual directly engaging a workman for a repair to their own property may have different considerations.
39. We are satisfied with the explanations within the Scott Schedule in respect of each of the invoices identified. The item costs are consistent for the work specified. We do not find issues put forward by Ms Wilkinson for example, criminal damage assist when determining that reasonability. The work was required whatever the cause and frequency of disrepair.

General maintenance:

40. Ms Wilkinson highlighted certain invoices by way of her request for information. The Applicant has provided comments, for example, 7 August 2014 in relation to the boundary wall. We are satisfied the work has been done; she did not dispute this. We have no evidence casting doubt that it was completed to a reasonable standard.
41. There are numerous items queried and we have noted recurring themes such as lighting. We are satisfied with the explanation in respect of each charge and find the sums reasonable within our experience for the nature of the work.

Legal and professional:

42. Ms Wilkinson has questioned whether the charges of £160 on 28 October 2014 and £160 on 25 November 2014 should be separately charged as she considers the activity within the scope of the management fees payable. We agree. Noting the particular items, we find they should reasonably have been within the contemplation of a Manager engaged for the management of a building such as the Property and not the subject of a separate charge. For that reason, we find the sum of £320 within the 2014/15 service charge year is neither reasonable nor payable. For similar reasons we do not consider an invoice £160 dated 7 August 2015 is reasonable or payable.

Insurance:

43. Bearing in mind the importance that insurance should provide for adequate reinstatement and based on our general experience of the costs of such assessment, we are satisfied the sum charged on 12 February 2015 is reasonable. Ms Wilkinson's recent experience on behalf of the RTM does not cast doubt, to the contrary we are concerned that the individual she approached may not have the appropriate qualifications and indemnity insurance for this important task.

Communal decoration:

44. Noting our inspection was at a time when the building had not been redecorated since work carried out in 2016, we are satisfied the sums requested are reasonable.

Pump and tank maintenance:

45. Ms Wilkinson believes the Applicant should have relied on anecdotal information from the residents that this installation was redundant. The invoice is explained as the costs of a suitably qualified contractor establishing the position. The building is of some age and was not converted under the auspices of the Managers. We consider this an appropriate charge and reasonable for the work carried out.
46. We have noted the items within the Scott Schedule submitted by the Applicant on 4 May 2018. It is difficult to identify whether these comments are duplicated, however, having noted the items we accept that the work was reasonably required and the cost reasonably incurred for the safety and benefit of occupiers.

47. We have however identified and wish to comment on the following.

Car parking lines 30 April 2015:

48. On first sight the sum of £325 appears high bearing in mind the size of the car park. However, having noted the work carried out we are satisfied this was reasonably necessary and that the outcome was adequate. We cannot separate out the cost for painting numbers.

Work in respect of leak to the Applicant's flat:

49. It is clear that several solutions were investigated to check and treat the leak. Noting the details of work done and explanations, we are satisfied the sums incurred were reasonable.

Key fobs:

50. We are satisfied with the explanation provided. The sums are in line with those often given to the Tribunal in evidence.

Fire safety and assessment:

51. Ms Wilkinson has made a detailed analysis of the assessment reports. She considers that expenditure to obtain recommendations is excessive. She comments on the quality of the assessment. We have no doubt that it is of paramount importance that such risk assessments are carried out. Recent events underline the importance. We do not share reservations about the competence of the assessor and find many of Ms Wilkinson's comments aside from the point and purpose. We have noted actions following the assessment and conclude as stated above that the sums incurred were reasonable and the outcome reasonable.
52. In summary we have found that the service charges for the years in question were appropriate and payable save in respect of preparation of notices as identified above. Our conclusions will be referred to the County Court

Section 20C

53. Ms Wilkinson has raised a significant number of detailed queries requiring management activity. They go beyond those expected of day-to-day management and have required considerable resources to prepare a suitable response. Bearing in mind the outcome of this determination, we consider any charges incurred by the Management Company that arise above normal expenditure are recoverable to the extent of the service charge provisions within the Lease. We refuse an order under Section 20C. The issue of costs in respect of the proceedings however falls within the ambit of the County Court, no doubt consideration will be given.

Order

54. The Tribunal determines the service charges referred by order of the County Court are reasonable and payable by Ms Wilkinson in respect of the Property, save for the relevant proportion of the sum of £480 identified in paragraph 42.
55. Ms Wilkinson's application for an order under Section 20C is refused.

L J Bennett
Tribunal Judge
6 August 2018