5467

CAM/38UC/LSC/2010/0113

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**2 Albert Street Oxford OX2 6AY**
Applicant	:	**John J. Moore**
Respondent	:	**Oxford City Council**
Case number	:	**CAM/38UC/LSC/2010/0113**
Date of Application	:	**26th August 2010**
Type of Application	:	**Application for a determination of liability to pay a service charge, pursuant to section 27A of the Landlord and Tenant Act 1985**
Date of Hearing	:	**22nd November 2010**
Tribunal	:	

Mrs. Joanne Oxlade	**Lawyer Chairman**
Mrs Sarah Redmond BSc (Econ.) MRICS	**Valuer Member**
Mrs. Najiba Bhatti	**Non-Legal Member**

Attendees

Applicant	**Respondent**
John J. Moore	**Jerry King, Solicitor Mr. G. Corps Ms. S. Smart Mr. N. Archer Mr. A. Summers**

Venue	:	**The Best Western Linton Lodge Hotel Oxford OX2 6UJ**

DECISION

For the reasons given below we find that:

(i) the service charges charged to the Applicant's account in years 2007/8, 2008/9, 2009/10 were reasonable, except in respect of the sum of £17.38 charged in the year 2009/10 as "controlled entry system"

(ii) the Respondents costs of resisting the application shall not be added to the service charge account

---

REASONS

Background

1. The Applicant is the Lessee of flat 2 Albert Street, Oxford, OX2 6AY ("the premises"), which he occupies subject to a long lease. The lease makes provision for Oxford City Council ("the Lessor") to maintain and repair the premises, and to provide various services, all of which the Lessee shall contribute to through payment of service charges.

2. On 25th August 2010 the Lessee issued an application pursuant to section 27A of the 1985 Act (set out at Appendix B) for determination of the reasonableness of service charges for the years 2005/6, 2006/7, 2007/8, 2008/9, 2009/10, through to and including 20015/16. In this application the Lessee said as follows: that aside from increasing the service charges the Council had done nothing to the block; he was charged for the controlled entry system though he was not connected to it; there were charges for gardening/hedge trimming, lawn mowing, and cleaning, but in 25 years none of these things had been provided; glass was stained and cracked, as it had been for 31 years.

3. Pursuant to directions made on 1st September 2010 the Respondent filed a response to the application:

- the Council do not recover gardening through the service charge fund
- the windows are cleaned as and when required, and the stain mentioned in the glass above the front door is ingrained. The cracked glass presents no danger at the moment, and no costs have been incurred in respect of it
- following from the complaints made by the Lessee about cleaning, inspections have been undertaken and nothing untoward has been found

- charges for caretaking and cleaning were halved in 2006/7, and 2007/8 because standards in the block were questionable in that period, and since then standards have improved.
- the charges levied for the controlled entry system relate to the maintenance of the door itself, not the handsets, and the Applicant benefits from enhanced security. The Applicant does not have a handset and so is not charged for this.

4. The application was listed for hearing on 22nd November 2010, preceded by an inspection of the common parts of the building, the exterior and garden of the block of 6 flats which the Tribunal undertook in the presence of the above attendees.

Inspection

5. The subject flat is on the ground floor of a 3-storey block of 6 flats, built in the 1960's/70's, of brick construction under a tiled roof, located on a corner plot close to the centre of Oxford. There is a small enclosed rear garden. It was pointed out by the Applicant that the glass pane to which he had referred in this application had been replaced, and we observed the common parts to be in reasonable condition and reasonably clean.

Hearing

Items subject to challenge

6. At the outset of the hearing we asked the Applicant to clarify exactly which aspect of the service charges he challenged, and he identified the following: door entry system 2009/10; window cleaning and cleaning of common parts and care taking for all years; and the management fees from 2007/2008 onwards. In due course he added to that the block repairs charge.

Years "caught" by s27A(4)(c) 1985 Act

7. At our request the Respondent clarified exactly which service charge years had been the subject of previous proceedings, it being apparent from the bundle that there had been proceedings in Oxford County Court. Mr. King said that they related to the service years 2005/6, and 2006/7, with which the Applicant agreed. We therefore made a preliminary ruling that in accordance with section 27A (4)(c) of the 1985 Act (set out in the Appendix) we had no jurisdiction to consider these years and so we could only consider years 2007/8, 2008/9, 2009/10.

Prospective Years 2010-16

8. The Applicant had in his application form asked us to consider years 2010 to 2016 (none of which had yet been completed). However, as the sums will vary dependent on the costs actually incurred - and which were not forecast for us – we do not consider that it is possible to give

any definitive decision on reasonableness. In any event, most items challenged by the Applicant (with the exception of door entry phone costs and management costs) seek to test the reasonableness or quality of the services provided.

Evidence

Applicant

9. We heard oral evidence from the Applicant. He said that about 18 or 19 years ago the Council consulted about the fitting of an *entry phone system*, and that residents responded by replying on a tear-off slip. He voted against, and although the Council said that 4 votes were counted for the system and so brought it in, in fact following an informal residents' meeting it was 4 who had voted against. On the day they came to install he refused to have a handset. He now has a key fob system which acts as the key to gain entry through the main door. For 15 years or so they were not charged, but in 2005/06 it appeared on his bill. Sophie Gill came to his flat for a meeting, and said that she would delete it from the bill, and that he would never have to pay it. She was true to her word, but then it emerged on his bill again in 2007/2008. He does not think that he should have to pay for it as he does not use it and did not want it. The lease does not talk of maintaining a door entry phone system. Prior to the current arrangement there was a door which had a bar that you closed at night, and they never had issues with security. He could not understand why it was that after 20 years he had been charged for this now.

10. During the course of the hearing Mr King pointed out that on closer examination of the Applicant's service charge bill there was no charge for the entry phone system until the year 2009/10. Although in the earlier years there was an entry for the item, there was no figure against it.

11. In respect of *window cleaning and cleaning* of the common parts he had by chance seen the cleaner come in May and June 2010, he squirted some cleaning liquid 4 or 5 times, and then went off. He could not have been there for more than 30 seconds to a minute. He is not generally aware of people coming and going in and out of the common parts. Residents tended to clean their own areas. In the past 3 cleaners had been sacked and the bills had been reduced by 50%. He relied on page 248, a document headed "Leaseholder Panel", which in the last sentence refers to "non performance from caretakers is being dealt with, 3 officer are no longer in their posts", and pages 256 (undated) and p257 (21.12.00).

12. He did dispute that *block repairs* were done, and said that nothing had been done to the block.

13. In respect of *Management Fees* for the first 20 years the cost to the block was £62.50 per quarter, with which they were happy. Since 2007 a new system had been introduced, and the costs increased four-fold. He recognised that previously the charge was too low and thought that it should now be about £90 per year per flat. He had not done any research on what a managing agent would charge.

14. In cross-examination he accepted that as the cracked glass had been replaced in October it would not yet form part of any service charge bill. He repeated that he voted against the entry phone system, although up to a point it probably makes the building more secure, although it was secure before. It mainly benefits the top 2 flats, whose occupants are able to let people in without having to travel down several flights of stairs. Sometimes it is too secure, and people ring on everyone else's button to let them in. He agreed that the service charge account did not show that he had been charged for gardening in the years with which the Tribunal was concerned. He looked through the items at page 100 which were items of block repairs, and did not dispute that any particular items was attended to – but just that he was mainly unaware of these things being done. Initially he said that the flats do not have an internal porch with a fire door, and so would not have to have the mechanisms replaced, but when the Tribunal pointed out that this had been seen on inspection he said that he did not think that the work had been done. He was aware that the exterior boundary wall between themselves and number 7 had had works done, but this was caused by misuse by council tenants at number 7 and his building should not have to pay the entire cost. The management fees had increased substantially, it was too expensive and they had not been consulted. He had not paid his service charges because he was taking a stand.

15. On behalf of the Respondent Mr. Geoff Corps said that the City Council had decided about 7/8 years ago to improve security and safety by installing the new entry phone system. If it was not rolled out as a programme it would just move along the antisocial problem from one to another block of flats. They did consult with residents. Whether or not the individuals chose to subscribe to the buzzer system for their flats was a matter for them. The charge was for the upkeep of the doors and working mechanisms, and £17.38 was for the maintenance contract. The fee for caretaking and cleaning is a combined fee and a combined function, so cleaning is done and faults are reported. There is a visit each week and the functions are spread over 2 weeks. The caretaker puts a notice up each week to say that he has been and that any complaints can be reported on a particular number. Someone was asked to check on condition last Friday, and for the presence of the notice, but the notice had been taken down as (by this morning) had the replacement notice put up at that visit. Checking of the works is done on a 10% sample basis, and they aim to do 50 inspections per month, so that on average the premises are checked once a year, but there are also ad hoc visits too. More frequent checking will increase costs. The free phone number on the notice is to be used for making

complaints, at no cost to the residents. In 2007/8 there were problems across the City. Since then rounds were changed and standards have been maintained. They had not sacked a cleaner since 2000. The reference at page 248 to 3 officers not being in post is not reference to people being sacked. The document does not relate to Albert Street. In respect of the block repairs, he has no individual knowledge of each repair but they are typical of a block such as this, they all have job numbers and refer to how the request was made.

16. In cross-examination by the Applicant Mr. Corps said that he was sure that the door entry system was changed 7-8 years ago, not the 20 years ago which the Applicant believed. It is a standard fitting used at that time, and not earlier. It was part of a general policy to try to make things more secure. He is unable to comment on the details of the consultation process, but did follow the proper process. He was unable to say what sum the £17.38 represented. He did not dispute the evidence of the Applicant as to what he observed in respect of cleaning, but it was not the whole picture. They had not received any complaints about cleaning. In answer to the Tribunal's question the witness said that he could not say how the bill was made up.

17. Ms. Susan Smart gave oral evidence that she manages the team who make up the service charge bills. £17.38 was the tendered price for maintaining the door entry system, which includes overhaul of the system. The Applicant is not charged for the buzzer system but the maintenance of the door. In cross- examination she said that each resident's bill would be different and disputed that the Applicant was correct when he asserted that his neighbours (who have the buzzer system) were charged the same as him. The reason why he was now being charged was that historically if a Lessee telephoned and queried a charge, they would agree to drop or to reduce it without checking the background facts simply on the basis of what the Lessee said. However, now they check things before responding. She did not dispute that he had a conversation with Sophie Gill, but that she no longer works for the organisation. In re-examination she said that the Applicant could sign up to the entry system, but there would be extra costs which she could advise.

Closing Submissions

18. On behalf of the Respondent Mr King made the following points:

- the City Council was not charging for gardening
- in respect of cleaning he relied on the evidence of Mr Corps
- the City Council relied on Schedule 5 of the lease for recoverability of costs associated with the door entry system
- the objection to management costs was that they were too high, and it was not a challenge to methodology
- the Applicant now realises that the window cleaning costs are only £4 a year and has said that this is more than reasonable

- there have been no other complaints about cleaning
- repairs have been made and the Applicant simply says that he was not aware of them.

Section 20c costs

19. The respondent sought to recover costs of responding to this application. Mr King stated that Schedule 5 of the lease provided for recovery of costs for management, and in his view legal proceedings were part of management.

20. In reply the Applicant said that he considered that the Council had started the dispute, by installing an entry phone system, that they wrongly counted the votes, and he had not wanted it at all. It was not necessary. As to costs the Council had not needed to bring so many witnesses, and it could have been done on the papers.

21. At the end of the hearing we reserved our decision.

Decision

22. By the end of the hearing, it was apparent that the disputes for resolution by the Tribunal were limited to the amounts set out in Appendix A, and costs, to which we will now turn.

Management Fees

23. The Applicant's objection to the amounts charged was that they were too high, particularly having been charged in the region of £25-30 in 2006/2007 and for earlier years, which was calculated as 10% of the overall costs. He had not adduced comparable evidence from local managing agents, to establish what they would charge if they were managing the block. Neither had the Respondent done so but provided details of methodology used to calculate the cost of management.

24. The starting point is that Schedule 5 of the lease provides that the Lessor is entitled to recover reasonable costs incurred by the Council in respect of management of the block. The management of the block is not confined to what work they have actually done in the course of a year, but what as Lessors they could be called on to attend to. Whilst we can quite see that the Applicant would consider that a rise from £30 in 2006/7 to £150 in 2007/8 is a substantial increase, the reality is that £30 per annum was not a commercially realistic rate. Using our knowledge and experience of the sums charged by Managing Agents outside Central London, we consider the annual figures charged for the relevant years is reasonable.

25. It may be no comfort to the Applicant, but paying 10% of a large annual expenditure – in the event of i.e. re-roofing, damp proofing works,

replacement of windows – would be a method of calculation which the Lessees would find working against them.

26. We would like to highlight for the benefit of the Respondent that we have approved the sums charged for management – which is very distinct from approving the methodology, which we have not approved.

Caretaker/cleaning

27. The Applicant's objection to the cleaning and caretaking costs was that he has not noticed that things have been done, to his knowledge other Lessees keep the common parts clean, and he considers the costs too high.

28. The costs to each Lessee of caretaking and cleaning is less than £3.60 per week, which we find to be a reasonable sum for the service which is referred to at page 138 of the bundle (page 19 of the Oxford City Homes Service Standards leaflet). Whilst we find that the Applicant may well have seen a cleaner making a brief visit on two occasions, we are not satisfied that this is a general trend. The documents relied on by the Applicant relate to earlier years, or do not relate to Albert Street. We did not hear any evidence from the Applicant to demonstrate that he had made a complaint about the quality or the absence of the work being done. In the circumstances we are satisfied that the sums charged are reasonable.

Block repairs

29. The Applicant was shown a list of block repairs at page 100 of the bundle, many of which he said he was not aware of. Indeed it would be right that if something was not done in his sight, or his part of the block then he may well not be aware of it. He said that there were no firebreak doors in the building, but the Tribunal did notice that there were such doors, which were largely propped open.

30. The Applicant did take issue with the work done on a wall separating 1-6 from number 7. Whilst it may be that the Applicant's point about the fairness of costs being shared is a reasonable one, the starting point must always be to look at the lease. Clause 8 (3) of the lease provides that Council will at all times "maintain the boundary fences and walls therefore and adjoining the said building" and the Lessee will by clause 4(1) pay the costs of such maintenance.

31. Having considered all of the evidence we are satisfied that the block repairs were carried out and that the sums spent were reasonable.

Controlled Entry System

32. Despite it being apparent that the door entry system was an issue of concern to the Applicant, and that the directions required production of

supporting invoices, the Respondent failed to adduce any documentary evidence of what the sum £17.38 related to. In answer to clarification by the Tribunal Mr Corps said that he did not know, and Ms Smart said that it was the maintenance contract. However, the contract was not produced in evidence, nor was the supporting invoice. Having considered all of the evidence on the point, it is not clear to us whether £17.38 relates to maintenance of the door and its working parts, or the entry phone system which enables flats 1, 3-6 to admit entry on the buzzer system.

33. The starting point must be to establish what the charge relates to before then seeking to establish whether the lease provides for it. Whilst Mr King said that he relied on the 5th Schedule at points 3 and 8 to establish the recoverability of associated costs, consideration of the provisions is not entirely straightforward. In our view the addition of a controlled entry system was not clearly covered by the lease.

34. In the circumstances we are not satisfied that the sum of £17.38 is either reasonable or recoverable.

35. We would encourage the Respondent, to avoid a disputed arising in future years, to be very clear if making a demand for payment of service charges from the Applicant in respect of the controlled door entry to specify exactly what the charge is for, to provide the contract, the invoice, and refer to that part of the lease which they say entitles them to recover the sum.

Costs

36. The Respondent sought to recover the costs of the proceedings as service charges due under the lease. He relied on Schedule 5 which provides that "reasonable costs incurred by the Council in respect of the management of the building" can be recovered as service charges. We are not satisfied that legal costs fall within that definition, and so find that the costs of the proceedings cannot be so added.

.....

Joanne Oxlade

Chairman

23rd November 2010

Appendix A

	2007/2008	**2008/2009**	**2009/10**
Management fees	150.04	162.80	160.36
Caretaker/cleaning	143.83	180.96	186.09
Block repairs	11.47	19.40	346.06
Entry Phone	-	-	17.38

Appendix B

Section 27A of the Landlord and Tenant 1985 Act provides that:

"An application may be made to a leasehold valuation tribunal ("LVT") 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"

Section 27A(4) of the 1985 Act provides that:

"No application under section (1) or (3) may be made in respect of a matter which –

(c) has been the subject of determination by a Court".

Section 18(1) of the 1985 Act provides that:

"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 service, 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".

Section 19(1) of the *1985 Act* provides that "relevant cost shall be taken into account in determining the amount of the service charge payable for a period –

(a) only to the extent they are reasonably incurred, and

(b) where they occurred on the provision of services or the carrying out of works, only the services or works are reasonable standard; and

the amount payable shall be limited accordingly".