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BIR/31UD/LIS/2013/0002



H M COURTS & TRIBUNAL SERVICE

MIDLAND LEASEHOLD VALUATION TRIBUNAL

In the matter of the Application to the Leasehold Valuation Tribunal ("LVT") for determination of the liability to pay and reasonableness of service charges under sections 19, 27A and 20C of the Landlord and Tenant Act 1985 ("the Application")

Applicant	Louis Rowe
Respondent	Seven Locks Housing Limited
Property	12 Glebe Close Billesdon Leicestershire LE7 9AH
Date of Application	26 April 2012
Members of the Tribunal	V Ward BSc Hons FRICS S McClure LLB
Date of Hearing	15 May 2013
Date of determination	18 June 2013

1. This is an Application under sections 19 and 27A of the Landlord and Tenant Act 1985 ("the Act") which requires the Tribunal to determine as to whether the service charges demanded by the Respondent are payable and the amounts which are reasonably payable, in respect of 12 Glebe Close, Billesdon, Leicestershire LE7 9AH ("the Property").
2. The Application made under section 20C of the Act seek from the Tribunal a determination that all or any of the costs incurred by the Respondent in connection with these proceedings are not to be taken into account in determining the amount of any service charges payable by the Applicant.
3. By directions issued by a procedural Chairman on 25 February 2013, the Tribunal directed that the Application be dealt with on the basis of written submissions as neither party requested an oral hearing. Written representations were received from both parties and these were copied to either side.

Background

4. The Applicant is the lessee of the Property and holds the residue of a 125 year term from 26 November 2001 originally made between the District Council of Harborough as lessor and Paul Thurston as lessee. The initial rent under the lease is £10 per annum, and this remains the rent to date. The Respondent, Seven Locks Housing Limited, have confirmed that they are now the lessors of the Property.
5. In his Application, the Applicant seeks a determination from the Tribunal of the liability to pay, and reasonableness of, service charges for the following years:
 - a) 2010 – 2011
 - b) 2011 - 2012

Inspection

6. On 15 May 2013 the Tribunal inspected the Property. Present at the inspection were the Applicant and Kate Marshall ("Ms Marshall"), Property Services Team Leader for Seven Locks Housing Limited, the Respondent.

The Property comprises one of six flats situated within the development and is located at first floor level. The development benefits from one communal entrance way which serves three flats on each floor.

The accommodation of the property itself is as follows:

Hall
Kitchen
Lounge
Bedroom
Bathroom

The Law

7. The Act provides:

Section 19 Limitation of service charges: reasonableness

- 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 provisions 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 adjustment shall be made by repayment, reduction of subsequent charges or otherwise.

8. Section 27A Liability to pay service charges: Jurisdiction

- 1) An Applications may be made to a leasehold valuation 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 Applications may also be made to a leasehold valuation 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 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.
- 4) No Applications under subsection (1) or (3) may be made in respect of a matter which –
 - a) has been agreed or admitted by the tenant;
 - b) has been, or is to be referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party;
 - c) has been the subject of determination by a court, or
 - d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- 5) But the tenant is not to be taken as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to these Applications.

9. Section 20c Limitation of service charges: costs of proceedings

- 1) A tenant may make an Applications for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before...a leasehold valuation tribunal...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 person specified in the Applications.

10. Representations of the Parties

In the Application and subsequently in his representations the following were of concern to the Applicant:

2010 – 2011

- a) Roof repair. The Applicant contends that a charge of £141.07 for the leaking roof being fixed which then had to be repaired a further three more times the following year, is unreasonable.
- b) New closer on communal door. The Applicant considers the cost of £231.04 for one door closer is excessive.
- c) Maintenance of shrub and bedding areas. The Applicant contends that he is being charged for maintenance of shrubs and bedding areas which have not been attended to, since he acquired the property seven years ago.
- d) Litter picking and sweeping hard surfaces. In this regard the Applicant made similar contentions to c) above.
- e) Rubbish outside the building. The Applicant does not see why he should contribute towards the removal of rubbish as it had no relevance to him.
- f) Ground maintenance area codes. The Applicant queries the why invoices relating to these items are under several cost code headings.

2011 – 2012

- a) Building Insurance. The Applicant's contention is that he should not pay for building insurance.
- b) Management Fee. As with a) above the Applicant contends that he should not pay management fees.
- c) Repair Light. The Applicant considers the charge in this regard of £198.75 to be excessive.
- d) Repair to lights on staircase. Again the Applicant contends that the charge in this regard of £129.81 is excessive.
- e) Lock on outside cupboard. The Applicant considers it unreasonable that he is being charged for replacing a lock on an outside store that he has no access to.
- f) Locked shed. The Applicant considers this charge unreasonable as there is no shed.
- g) Renewing fascia. The Applicant considers the charge of £181.3 excessive for a repair that was actually filling a hole with a small bit of timber.
- h) Roof repair. The Applicant's comments in this regard are the same are effectively those relating to the roof repair in 2010-2011; why was he being charged several times for the same repair.
- i) Repair of fence panels. The Applicant contends that he was being charged twice for the fence panels due to the fact that the repair was not carried out correctly the first time.

- j) Adjustment of communal window. The Applicant considers it unreasonable that there are three charges for the window to be adjusted.
- k) Maintenance of shrubs and bedding areas. Again the Applicant contends that he is being charged for maintenance of shrubs and bedding areas which have not been attended to since he acquired the property.
- l) Litter picking. The Applicant's comments in this regard are the same as k) above.
- m) Sweeping hard surfaces. The Applicant's comments in this regard are the same as k) above.
- n) Communal lights. The Applicant considers it poor management that the communal lights are on throughout the day due to the fact that contractors instructed by the Respondent cut through a photo sensitive sensor cable when the porch was being reroofed.

The Applicant states that annual service charges for the last three years are as follows:

2009 – 2010	£260.63
2010 – 2011	£522.88
2011 – 2012	£1,117.10

He considers that the pattern of increases in the charges is unreasonable.

11. In reply, the Respondent, in their statement and submissions and also during the on-site inspection, made the following comments with direct reference to the points raised by the Applicant:

2010 – 2011

- a) Roof repair. The Respondents indicated that the repair in this regard was around the point at where the soil stack goes through the roof.
- b) New closer on communal door. This point was not addressed by the Respondents.
- c) Maintenance of shrub and bedding areas. The Respondent asserts that this work was carried out.
- d) Litter picking and sweeping hard surfaces. The Respondent asserts that this work was carried out.
- e) Rubbish outside the building. The Respondent states that the rubbish was removed due to the fact that it had been reported and its removal from site was necessary to prevent possible vermin infestation and in the interest of reasonable site management.
- f) Ground maintenance area codes. The Respondent's response in this regard is that one code indicates the without VAT price and the other with VAT.

2011 – 2012

- a) Building Insurance. The Respondent has confirmed that the charge for building insurance will be refunded for the years in question and will not be charged in future years.

- b) Management Fee. The Respondent has confirmed that the management charge will be refunded for the years in question and will not be charged in future years.
- c) Repair Light. This point was not addressed by the Respondent.
- d) Repair to lights on staircase. During the inspection Ms Marshall indicated that this repair related to the communal lights.
- e) Lock on outside cupboards. Ms Marshall at the inspection stated that this lock related to an external store where the lock had been changed. Ms Marshall confirmed that they have not provided the key to the Applicant.
- f) Locked shed. During the inspection it became apparent that this was the lock that was changed to an internal cupboard which related purely to Flat 9.
- g) Renewing fascia. This point was not specifically addressed by the Respondent.
- h) Roof repair. The Respondent confirms that two of the invoices relate to one repair which was a leaking roof, an initial visit to make the area safe and completion of the repair the following day. The third invoice was for the replacement of eight tiles several months later.
- i) Repair of fence panels. The Respondent states that this was initially to make the fence safe and then carry out the full repair.
- j) Adjustment of communal window. The Respondent states that this was not for three identical repairs. The initial repair involved replacing a handle, a subsequent repair to re-hang and a banister repair and finally a complete re-hanging of the window.
- k) Maintenance of shrubs and bedding areas. The Respondent asserts that these works have been carried out.
- l) Litter picking. The Respondent asserts that these works have been carried out.
- m) Sweeping hard surfaces. The Respondent states that this has been done.
- n) Communal lights. The Respondent states that the issue with the lights was not due to the porch roof repair, however it was accepted that it was inappropriate that the lights be on all day and have agreed to credit the Applicant £9.74 for the electricity for the lights being on during the daytime. The matter has been remedied and the lights are no longer on all day.

The Respondent makes the general comment that the service charges are due and reasonable.

Determination

12. Having considered the provisions of the lease, the Tribunal notes that the obligation for the tenant to pay a service charge is effectively contained within Clause (4).

This states as follows:

(4) "To pay to the landlord at the same time as the said rent of £10 and by way of further rent a sum equal to a reasonable part of the amounts of costs which the landlord may have incurred during the previous twelve months in discharging the obligations

imposed by the Covenants implied by virtue of Paragraph 14 (2) and Paragraph 14 (3) of Schedule 6 to the Housing Act 1985."

13. Section 14 of the Housing Act 1985 referred to above states as follows:

"14.

- (1) *This paragraph applies where the dwelling-house is a flat.*
- (2) *There are implied covenants by the landlord –*
 - (a) *to keep in repair the structure and exterior of the dwelling-house and of the building in which it is situated (including drains, gutters and external pipes) and to make good any defect affecting that structure;*
 - (b) *to keep in repair any other property over or in respect of which the tenant has rights by virtue of this Schedule;*
 - (c) *to ensure, so far as practicable, that services which are to be provided by the landlord and to which the tenant is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services;*
- (3) *[There is an implied covenant] that the landlord shall rebuild or reinstate the dwelling-house and the building in which it is situated in the case of destruction or damage by fire, tempest, flood or any other cause against the risk of which it is normal practice to insure."*

14. In respect of Section 14 (3) the Tribunal considers that this provision obliges the landlord to rebuild or reinstate the Property after damage by various perils, however it does not appear to give the landlord the ability to recover the cost of insurance.

15. Considering therefore the points raised by the Applicant on the basis of the interpretation above the Tribunal determines as follows

2010 – 2011

- a) **Roof repair.** At the time of the inspection Ms Marshall stated that they had a report prepared in respect of the roof by Messrs Savills who indicated that the roof would have a further life span of six years assuming normal maintenance was carried out. The Tribunal considers it reasonable that the Respondent would attempt to repair the roof and that ongoing charges will be incurred in respect of repairs to the original roof.
- b) **New closer on communal door.** The submission provided by the Respondent indicates that this was for more than simply replacing the door closer, and included adjustments and overhaul to the door and a replacement handle. The Tribunal considers this charge reasonable.
- c) **Maintenance of shrubs and bedding areas, litter picking and sweeping hard surfaces.** At the inspection, the Tribunal noted that the areas

relating to these services appeared to have been maintained in a satisfactory manner and considers the charges relating to these items reasonable.

- d) Rubbish outside the building. The Tribunal considers that rubbish removal is a service that can be provided under the terms of the lease and would expect a responsible site manager to clear debris from site.
- e) Ground maintenance area codes. The Tribunal accepts the explanation in this regard.

2011 – 2012

- a) Building Insurance. The Respondent has confirmed that charges will be re-credited to the Applicant and no charge made in the future.
- b) Management Fee. The Respondent has confirmed that charges will be re-credited to the Applicant and no charge made in the future.
- c) Repair Light. The submission provided by the Respondent indicates that this was for more than simply replacing one light fitting and included testing circuitry, overhauling light fittings and some replacement parts. The Tribunal considers this reasonable.
- d) Repair to lights on staircase. Again noting the information supplied by the Respondent indicates this was for testing circuitry and replacing one light fitting. The Tribunal therefore considers it reasonable particularly in view of fire safety regulations that electrical light repairs are undertaken and the costs indicated here do not appear to be unreasonable.
- e) Lock on outside cupboards. At the inspection Ms Marshall indicated that the lock had been changed, however for some reason a key had not been provided to the Applicant. In view of the fact that the Applicant has been denied use of the cupboard to date the Tribunal disallows this charge.
- f) Locked shed. As has been noted above, the lock was actually changed on a cupboard relating to Flat 9 exclusively which is not a communal facility and hence this cost is disallowed.
- g) Renewing fascia. The Tribunal inspected the roof when on site and noted that there are areas of fascia where repair was required and hence feel that the Respondent is justified in making a charge to attempt to repair in respect of the same. This item is therefore allowed.
- h) Roof repair. The Tribunal accepts the Respondent's statement in respect of the roof repair as there were several visits to site and further the Tribunal noted the replacement tiles at the time of their inspection. The cost is therefore considered reasonable.
- i) Repair of fence panels. The Tribunal accepts that the Respondent has to secure the site and also the fact that two visits may be required in order to inspect the same and then carry out the repair.
- j) Adjustment of communal window. The Applicant's contention that this all related to simply re-hanging the window is not correct as it also involved a banister repair and, although the window did require adjustment on more than one occasion, on balance the Tribunal considered that the cost is reasonable and allows it.
- k) Maintenance of shrubs and bedding areas, litter picking and sweeping hard surfaces. At the inspection, the Tribunal noted that the areas

relating to these services appeared to have been maintained in a satisfactory manner and considers the charges relating to these items reasonable. Communal lights. The Respondent has acknowledged that the lights should not have been on all day and has credited the Applicant £9.74.

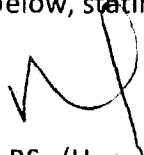
17. The Tribunal has therefore adjusted the service charge for each of the years in question as per the attached schedule.

This can be summarised as follows:

2010 – 2011	£424.19
2011 – 2012	£918.21

Section 20C Application

18. The Applicant has made an Application for a determination under section 20C of the Act. Section 20C is concerned with the limitation of a service charge by reference to the cost of Leasehold Valuation Tribunal proceedings. The purpose of an Application under section 20C is to prevent a landlord from recovering his costs in Tribunal proceedings through the service charge. The guidance given in previous cases is to the effect that an order under section 20C is to deprive the landlord of a property right and it should be exercised sparingly see *Veena SA v Cheong Lands Tribunal [2003] 1 EGLR 175*. However, in this case the Applicant has enjoyed some success in his challenge to items in dispute and it would not be just and equitable to allow the landlord to recover the costs of proceedings via the service charge.
19. Accordingly, the Applicant's section 20C Application succeeds and the Respondent may not recover the costs of these proceedings from the Applicant via the service charge.
18. In reaching their determination The Tribunal has had regard to the evidence of the submissions of the Parties, the relevant Law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.
19. Any appeal against this decision may be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal you must apply, in writing, to this Tribunal for permission to appeal within twenty-one days at the date of issue of this decision which is given below, stating the grounds upon which you intend to rely on in the Appeal.



Vernon Ward BSc (Hons) FRICS

RELEASE DATE: 20 JUN 2013

12 Glebe Close Billesdon - Service Charge Calculation

Year	Item Disallowed/Credited	£	Amount
2010 - 2011			
Opening Charge		£	522.88
	Buildings Insurance	£	30.49
	Management Fee	£	68.20
Adjusted Charge		£	424.19
2011 - 2012			
Opening Charge		£	1,117.10
	Buildings Insurance	£	28.58
	Management Fee	£	145.71
	Lock on outside store	£	10.54
	Locked Shed	£	14.06
Adjusted Charge		£	918.21