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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/OOCG/LSC/2012/0169**
Property	:	**26 Flockton Court, Rockingham Street, Sheffield, S1 4EB**
Applicant	:	**Mr Ahmed Osman Bakri**
Representative	:	**None**
Respondent	:	**Yorkshire Housing Ltd**
Representative	:	**Paul Richmond, Home Ownership Manager**
Type of Application	:	**Determination of liability to pay and reasonableness of service charges**
Tribunal Members	:	**Prof. Caroline Hunter** **Mrs Sally Kendall** **Mrs Barbara Mangles**
Date and venue of Hearing	:	**July 1, 2013, Sheffield Magistrates' Court**
Date of Decision	:	**July 4, 2013**

DECISION

Summary Decision

1. In relation to the service charges for the years 2007/08 to 2013/14 the Tribunal finds that the sums were reasonably incurred except for the following:

(a) For the years 2007/08 to 2012/13 the sums charged for gardening and grounds were unreasonable and should be limited to £18.36 in each year;
(b) For the years 2007/08 to 2010/2011 the sums charged for the future costs of replacing the entry system were unreasonable and should be limited to £15.76 in each year;
(c) That the management charge for the years 2007/2008 to 2012/13 was unreasonably incurred and is not payable.

Application

2. On November 29, 2012 the applicant, Mr Bakri, issued an application pursuant to sections 27A and 19 of the Landlord and Tenant Act 1985 (which are set out in full in the appendix to this decision), challenging the reasonableness of the service charges for flat at 26 Flockton Court, Rockingham Street, Sheffield, S1 4EB. He stated in that application that he sought a determination for the years 1997-2011 and also for the future year 2012. Mr Bakri bought the flat under the right to buy in June 27, 1997 and his claim therefore related to all the years that he has been in occupation.

3. At a pre-trial review on March 19, 2013, the applicant was directed to produce a Scott schedule which set out all the elements in relation to the service charges demanded which were in dispute. The applicant produced such a Schedule for the year 2013-14 (a demand for which had been served on him after he started the proceedings) but not for any previous years.

4. In response to the Schedule the respondent landlord, Yorkshire Housing, denied that any of the sums demanded were unreasonable.

The inspection

5. The Tribunal members inspected the property in advance of the hearing. They found that Flockton Court is a large development of primarily social housing in the centre of Sheffield. Flockton Court, together with another development Flockton House, also owned by Yorkshire Housing make up three sides of a quadrangle. Flockton Court makes up two sides, both on relatively busy roads. The ground floor of one side, fronting Division Street, is let as shops. There are 78 properties in Flockton Court, and a further 32 in Flockton House.

6. The development, which was built sometime in the 1970s, was found on inspection to be well maintained. There is access into the quadrangle via automatic gates, and much is laid out for parking. There are also some trees and grass areas. Internally the common parts were refurbished in about 2010. In addition to the main entrance, which has controlled access, and internal corridors, a communal lounge and kitchen area are

provided, and a laundry area with three washing machines and driers and a spinner, all of which are of commercial rather than domestic quality. There is also a communal toilet which is generally kept locked for use of the caretaker and contractors on site. We found these common parts to be in generally good condition and clean.

The matters in dispute

7. Prior to 2007/08 Yorkshire Housing had plans to demolish Flockton Court. To that end they bought out all the existing leaseholders save Mr Bakri, with whom they were unable to reach agreement. Following this the plans for demolition were abandoned, and a large-scale refurbishment was undertaken. Mr Bakri's concerns about his service charges largely stemmed from the increases in these charges which have happened since then. At the hearing he agreed that the dispute should be limited to service charges arising since 2007/08. It may be noted that the annual service charge year runs under the lease from 1 April to March 31.

8. A large part of the service charges for all those years relate to sums for the sinking/reserve fund. The Tribunal noted that the lease specifically makes provision for such sums to be included in the service charges in clause 3(3)(f) which defines the "expenses and outgoings" for which a service charge may be levied by the landlord. This expressly includes "such reasonable part of all such outgoings and other expenditure.....including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Landlord or its accountants or auditors (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances." In relation to these sums Yorkshire Housing had provided to Mr Bakri, and had put before the Tribunal, a Schedule which set out the capital cost for each item, and the period of years over which it was being recovered. So e.g. the capital cost of the lift was £39,358.00 this sum was divided between the 78 flats over a period of 20 years. This information had been provided for the years from 2009/10 onwards, but not for previous years.

9. The remainder of the sums relate to on-going annual expenditure, all of which fell within the expenditure allowed by the Second Schedule to the lease. We had very little information before us as to how these costs were made up. For the years 2009/10 onwards Mr Bakri was provided with a sum showing the total annual cost for the scheme for the particular expenditure. In previous years, it was only his share that was set out in the service charge statement sent at the beginning of the year.

10. At the hearing we were usefully provided with a statement by the respondents which set out the charges for each item (whether reserve fund or on-going) for each of the years in question. We shall deal with each of these to which Mr Bakri objected in his Scott schedule in turn in our findings. His objections in each case were that in accordance with s.19 of the Landlord and Tenant Act 1985 the sums were not reasonably incurred.

Findings

11. *Gardens and grounds.* In 2007/08 the annual charge to Mr Bakri was £34.47. This slightly varied over the subsequent years, and in 2012/13 was £37.26. However in 2013/14 it has almost halved to £18.36. Mr Richmond for the respondent explained that the contract for gardening services provides for approximately 20 visits a year, with two a month in the summer and one a month during the winter. This in our view is a reasonable standard of service. He went on to explain that the reduction has arisen out of a new way of calculating the actual costs of the contract for the scheme (within a larger contract for gardens and grounds maintenance). The attribution to a particular scheme is now being done by area of garden maintained. Given this admission, we are of the view that the earlier charges cannot have been reasonably incurred – or indeed incurred at all for the gardens to Flockton Court as opposed to other schemes owned by Yorkshire Housing. We conclude that Mr Bakri was in fact overpaying for the gardening and the service charge should be limited to £18.36 for each of the years 2007/08 to 2012/13.

12. *Caretaking and cleaning.* Prior to 2006/07 a residential caretaker was provided to Flockton Court. This service was replaced probably sometime during £2007/08 by a non-residential caretaker. This has meant that the caretaking costs have in fact reduced. In 2007/08 Mr Bakri's share was £258.34. The following year they dropped to £202.80 and the budgeted cost in 2013/14 is £150.63. The costs for the caretaker are made up of his salary costs plus sundry other costs such as cleaning materials. Although the costs have reduced and are lower in 2013/14 than previous years, we do not think that this is indicative that the earlier costs were unreasonable. While the move to a non-resident care-taker is understandable, it does not make the earlier costs unreasonable. We consider that a good standard of service is being provided through the caretaking and the costs in none of the previous years were unreasonable.

13. *Window cleaning.* Window cleaning is provided to the windows to the common parts on a monthly basis. Mr Bakri, was not charged for this in 2007/08 or 2008/09, but in 2009/10 the charge was £8.26. It has since risen to a budgeted charge of £11.54 in 2013/14 – the total charge for the service being £900. Mr Bakri's complaint is that there are few common parts windows to clean and that this is an unreasonable amount. However the Tribunal noted that the windows extend over three floors and include the glass around the common entrance. In our view this was not an unreasonable sum for the windows that had to be cleaned.

14. *Heating and lighting.* The charges for heating and lighting cover the lighting to the common parts internally, external lighting and heating to the caretaker's office, the communal lounge and the laundry. In addition it funds the electricity costs for the equipment in the laundry in so far as these are not recovered by charges for use, which Mr Richmond explained do not cover the full costs. The sums charged have fluctuated over the years in question, no doubt in part reflecting differential use in particular years and fluctuating prices. Mr Richmond explained that Yorkshire Housing use a contractor to find the best deals and then seek to fix for the price for a fixed term. Although the costs have been high, e.g. the highest year in question is 2009/10, for which Mr Bakri had to contribute £84.30 and the total for the scheme was £8756.20, given the nature of

the scheme with internal corridors needing permanent lighting we do not consider this unreasonable.

15. *Reserve fund items:* TV Aerial, Entry system, fire alarm system, lift, laundry equipment, floor covering, internal decoration, lighting provision. We have explained in paragraph 8, above, the basis on which provision for these items has been made. Given the expense of replacements in such a large block we think it is sensible for provision to be made in this way and the sums being set aside and their method of calculation are in our view reasonable. There is one exception to this: the charge for the entry system. Since the upgrade in 2010 the charge has come down to reflect the actual costs of replacement - £15.76 per annum for Mr Bakri. Mr Richmond stated at the hearing that the previous sums in 2007/08 – 20010/11 had been too high. We therefore find that this sum should be reduced to £15.75 per annum.

16. *General Repairs.* The sums for general repairs have fluctuated in different years. We were provided with a breakdown for 2011/12 when the total cost was £17276.20 and Mr Bakri's contribution £221.49. Mr Bakri suggested repairs should be covered by insurance. Mr Richmond replied that there was an excess of £5000 on the insurance and that in any event many of the items were not covered by insurance. We agree and do not find that the sums are unreasonable.

17. *Management fee.* The respondent charge an administration fee as part of the service charge, which is calculated as 10% of on-going costs. This has generally been at or around £45 - £70 per annum. The maximum was £69.56 for any of the years in question. In 2007/08 they additionally added a £100 flat fee management charge. In a letter dated January 15, 2007 the introduction of the management fee was said to ensure that "matters relating to leaseholders were fully borne by them" rather than by the social element of the group. However, such a flat fee does not differentiate between leaseholders in relation to the management received. In fact Mr Bakri has been paying for the management of his scheme through the charges for the caretaker and the administration fee. Yorkshire Housing have in part recognised this by removing the management fee for 2013/14. Given this recognition on their part we consider that the imposition of the management fee in earlier years was also unreasonable.

18. In total the sums which we determine in accordance with Landlord and Tenant Act 1985 are not payable are as follows:

(a) Gardening charges: 2007/08: £16.11; 2008/09: £17.11; 2009/2010: £16.90; 2010/10: £15.75; 2011/12: £17.86; 1012/13: £18.90. Total: £102.63
(b) Entry system charges: 2007/08: £7.90; 2008/09: £9.07; 2009/10: £9.07; 2010/11: £1.93. Total: £27.97.
(c) Service charge of £100 for 6 years: £600.

Section 20C

19. Mr Bakri sought an order under s.20C of the Landlord and Tenant Act 1985 that the landlord's costs of the proceedings should not be taken into account in calculating his

service charges. Mr Richmond indicated that Yorkshire Housing would not in any event be seeking to recover those costs, and on this basis we felt it was not necessary to make such an order.

Appendix – relevant legislation

Landlord and Tenant Act 1985

Section 18
(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
(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 13
(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 or subsequent charges or otherwise.

Section 27A
(1) An application 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 application 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 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.

(4) No application 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 to have agreed or admitted any matter by reason only of having made any payment.

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, residential property tribunal or leasehold valuation 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 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 a county court;
(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.