



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

Case Reference : **LON/00AE/LSC/2014/0250**

Property : **5 Linford Court, Elmwood
Crescent, Kingsbury, London NW9
0NP**

Applicant : **Home Group Limited**

Representatives : **Mr C Green, Ms E Longman**

Respondent : **Mr Michael Jackman**

Representative : **In person**

Type of Application : **For the determination of the
liability to pay a service charge**

Tribunal Members : **Judge W Hansen (chairman)
Mr H Geddes RIBA
Mr J Francis**

**Date and venue of
Hearing** : **28th August 2014 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **8th September 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the service charge for grounds maintenance for 2011/12 should be reduced from £1,350.00 to £675.00 with the result that the amount payable by the Respondent in respect of service charge for that year is correspondingly reduced by his share (16.66%) of the difference between £1,350.00 and £675.00.
- (2) The tribunal determines that the remainder of the service charges for the period covered by the county court claim are fully payable.
- (3) The tribunal declines to make a section 20C cost order.
- (4) For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the county court in relation to county court interest or fees.

The application

1. On 10th July 2013 the Applicant commenced proceedings against the Respondent in the County Court seeking arrears of service charge in the sum of £1,133.05 plus interest and court fees.
2. On or about 12th July 2013 the Respondent acknowledged service of the proceedings and filed a form of Defence to the balance of the claim.
3. On 30th November 2013 the claim was allocated to the small claims track.
4. On 9th April 2014 District Judge Kumrai transferred the claim to this Tribunal for determination pursuant to section 176A of the Commonhold and Leasehold Reform Act 2002.
5. Accordingly, the tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness and payability of certain service charges charged to the Respondent and claimed in the County Court proceedings.
6. The relevant statutory provisions are set out in the Appendix to this decision.
7. The Respondent's lease ("the Lease") is dated 4th October 1988 and was made between (1) Warden Housing Developments Limited and (2) Robin Brent Watson and Naree Watson. The Applicant is the current landlord of the Property. The Respondent is the current leaseholder of the Property.

Procedural Issues

8. On 3rd June 2014 Judge Hewitt issued careful case management directions to enable this dispute to be tried fairly and expeditiously in a manner that was proportionate. At paragraph 13 of those directions he ordered the Applicant to serve a statement of case setting out clearly how the arrears claimed have been arrived at. The statement of case was to have the final accounts for the years ended 31 March 2012 and 31 March 2013 attached to it and was to be served by 20th June 2014. The Applicant complied with this order. By paragraph 14 the Respondent was to serve a statement of case in answer "*setting out clearly what items of service charge expenditure are disputed and the reasons why*". The statement of case was to have attached to it "*copies of all documents which the Respondent wishes to rely upon at the hearing*". This was to be done by 4th July 2014. The Respondent did not comply with this order. He accepted that he had received the order but could offer no proper explanation for his non-compliance. Instead he arrived at the Tribunal and, so the Tribunal were told by the Applicant's representative Mr Green, passed a bundle of photographs to him as the parties were coming into the courtroom. The Respondent then invited the Tribunal to permit him to rely on this bundle at the hearing. Mr Green opposed the application. The bundle consisted principally of photographs (Items 1-20) together with an email (Item 21) from another tenant which had apparently been sent to the Applicant at some stage outlining that tenant's complaints in relation to the service charge.

9. The Tribunal considered the application by the Respondent in the light of the overriding objection in Rule 3 of the 2013 Tribunal Procedure Rules 2013 and ruled that he could rely on the photographs at items 1-5 and 10 but none of the other material. We did so for the following reasons. The directions given by Judge Hewitt could not have been any clearer. The Respondent had received them. He had made no attempt to comply with them. He was unable to offer any or any proper explanation for this. The directions contain very clear warnings as to the possible sanctions for non-compliance under the heading "Important Note" which is italicised and in bold on the first page of the directions order. Much of the material in the bundle consisted of photographs designed to illustrate and/or evidence allegations of disrepair which the Applicant had had no chance to consider or deal with. The Tribunal admitted items 1-2 because these were photographs relating to a wall that had been knocked down and rebuilt and in respect of which the Respondent had made complaint in his form of Defence in the County Court (pages 7-8 in the Hearing Bundle). Likewise the Tribunal admitted items 3-5 because they related to an issue (the charges for grounds maintenance) that had also been raised in the Defence. Finally, we admitted item 10 because again it related to an issue that had been raised in the Defence. Accordingly, the only document which contains any indication of the Respondent's challenge to the claim is the form of Defence filed in the County Court

proceedings. However, that is a difficulty entirely of the Respondent's own making.

10. The hearing then commenced but as it progressed the Respondent sought to raise other issues, such as the management fee, which had not been raised in his Defence and which had not been raised in a statement of case because the Respondent had ignored the Tribunal's direction that he serve a statement of case "*setting out clearly what items of service charge expenditure are disputed and the reasons why*". The Tribunal declined to allow the Respondent to raise any new issues whereupon he applied for an adjournment. The Tribunal considered the application for an adjournment in the light of the overriding objective in Rule 3 of the Tribunal Procedure Rules 2013 but refused it. It would be costly and disproportionate to adjourn, and would cause delay and unfairness to the Applicant who had prepared its case properly and come to the Tribunal expecting an effective hearing. The Respondent had no good reason for not complying with the Tribunal's case management directions.

Disputed points

11. Therefore the only items that were disputed and which the Tribunal were prepared to consider were the three matters raised in the original form of Defence, namely:-
 - Charges arising out of repairs to the brick wall at the front of the Property
 - Grounds maintenance charges
 - Charges relating to the replacement of the glass panel shown in item 10 within the Respondent's photographs
12. The complaint in relation to the brick wall is set out in the Defence as follows: "*The brick wall ... was built 3 times and was not [the] responsibility of Home Group; we paid for this out of the sinking fund*".
13. The complaint in relation to grounds maintenance relates to the cost of grounds maintenance, in particular the grass cutting which the Respondent says is done too often and costs too much. He also makes the point that there are no trees or shrubs and very little to maintain.
14. The complaint in relation to the glass panel relates to the fact that when initially replaced, it was replaced with clear glass and then the work had to be done again and the panel was replaced with wired glass, the suggestion being that the tenants have been charged twice for this item.

Tribunal's analysis and determination

The Brick Wall

15. The Property let to the Respondent is a second floor flat within Linford Court ("the Building"). The brick wall is a dwarf wall either side of the entrance from Elmwood Crescent to the car park which serves the Building (see lease plan at page 44 of Hearing Bundle). The wall is shown in the photographs at items 1-2 of the Applicant's bundle. It is common ground that the wall has been knocked down on more than one occasion by vehicles entering and leaving the car park. It was knocked down in 2008 and rebuilt. It was then knocked down again in or about 2010 or 2011 and rebuilt in 2012. The Respondent says that the wall is not the Applicant's responsibility. The wall is Brent Council's responsibility. The Applicant accepts that and accepts that it has no right to charge the tenants of the Building for rebuilding the wall. However, there is no evidence that it has done so and the Applicant says that it has not charged the tenants for rebuilding the wall. The Respondent said it was paid for out of the sinking fund but an analysis of the reserve fund shows that it has not been paid for out of this fund (see pages 62 and 64 of the Hearing Bundle). The Tribunal considers that there is no merit in this complaint.

Grounds Maintenance Charges

16. The allegation here is that the grass is cut too often and the cost is unreasonably high. We are concerned here only with the years 2011-12 and 2012-13. In the year 2011-12 the charge for grounds maintenance was £1,350. Ms Longman told us that this relates to grass cutting, litter picking and leaf clearance. The Respondent produced no evidence of what he said would have been a reasonable charge. He said that a figure amounting to half the sum claimed would be reasonable. Ms Longman frankly admitted to the Tribunal that the charges for this item had subsequently come down by about 50% following the reletting of the contract to a larger company which could benefit from economies of scale, unlike the previous private contractor which was much smaller. This is borne out by the charge for ground maintenance for 2012-13 which is £795.00. In the light of this, and bearing in mind the really quite limited extent of the work involved, the Tribunal has concluded that a reasonable sum for this item for 2011-2012 would in fact be 50% of what was charged, i.e. £675.00. The Tribunal considers the charge for 2012-13 of £795.00 to be reasonable.

The Glass Panel

17. This is apparent in the photograph at item 10 of the Respondent's photographs. It has now been replaced with wired glass. According to the Respondent's evidence he assumed that the tenants had been charged twice for this work but there is no evidence that this is the case.

Ms Longman's evidence was to the effect that she did the auditing and that the tenants had certainly not been charged twice. The Tribunal accepts her evidence. There is no merit in this allegation.

Cost Applications

18. The Respondent applied for an order under section 20C of the 1985 Act that the Applicant should not be entitled to add its costs incurred in connection with these proceedings to the service charge. The Applicant has succeeded on nearly every issue and in the tribunal's view has acted reasonably in making the application. In the circumstances, the tribunal declines to make a section 20C order. Therefore the Applicant can add its reasonable costs incurred in connection with these proceedings to the service charge to the extent (if at all) that the Lease allows for these costs to be recovered. The Applicant sought reimbursement of the hearing fee under Rule 13(2) of the 2013 Tribunal Procedure Rules and an order under Rule 13(1)(b) on the basis of the Respondent's alleged unreasonable conduct of the proceedings. Whilst the Tribunal has been critical of the Respondent for his non-compliance with the Tribunal's case management directions, having considered all the circumstances it is not minded to make any costs order against the Respondent.

Name: Judge W Hansen

Date: 8th September 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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
 - (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 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) An application may also be made to the appropriate 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.