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

Case Reference : LON/00AD/LSC/2014/0229

Property : 2 Penton House, Hartslock Drive,
Thamesmead, London SE2 9UZ

Applicant : Gallions Housing Association
Limited

Representative : Mr. L Page (counsel)
Ms. L Greene (solicitor), The
Peabody Trust

Respondent : Mrs. Patricia Crosby

Representative : None

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

Tribunal Members : Mr. L Rahman (Barrister)
Mr. F Coffey FRICS
Mr. P Clabburn

**Date and venue of
Hearing** : 27th October 2014 at 10 Alfred
Place, London WC1E 7LR

Date of Decision : 4th January 2015

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sums claimed by the applicant in respect of the service charges for the years 2008-2009 to 2013-2014 are payable by the respondent subject to the minor amendments that need to be made to reflect the actual cost of some of the disputed items, as compared to the estimated costs, which the applicant confirmed were nil (see in particular paragraphs 53 and 54 below).
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (4) The tribunal determines that the respondent shall reimburse any tribunal fees paid by the applicant.
- (5) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court sitting at Dartford.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the respondent in respect of the service charge years 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 and the estimated service charge for 2013-2014.
2. Proceedings were originally issued at the County Court in Northampton on 29.5.13 under claim no. 3QT69793. The claim was eventually transferred to the County Court sitting at Dartford, where Deputy District Judge Edgington, by an order dated 15.4.14, ordered the claim be transferred to this tribunal to determine whether the claim for service charges is reasonable and payable. The balance of the claim and counterclaim were to be stayed in the meantime.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The applicant was represented by Mr. L Page (counsel) and Ms. L Greene (solicitor). Mr Stephen McVeigh, employed as a Home Ownership Manager by the applicant, gave evidence on behalf of the

- applicant. The respondent appeared in person and was accompanied by her husband (with whom she is separated), for moral support.
5. Immediately prior to the hearing the parties handed in further documents, namely, a "Note" prepared by Mr Page and a typed letter dated 26.10.14 from the respondent. The tribunal received an additional statement from Mr McVeigh on 22.10.14. The tribunal also had 2 lever arch files of evidence prepared and submitted by the applicant as directed by the tribunal. The respondent did not bring the 2 lever arch files she had been served with because she claimed she would have found it difficult to carry on public transport. Ms Greene was able to provide her copy for the respondent to use during the hearing.
 6. The tribunal gave permission for the applicant to adduce further evidence after the hearing in relation to the "estate" and in particular evidence of whether there were any parks and playgrounds within the estate, which the tribunal found would assist in dealing with one of the issues before the tribunal. The applicant provided its evidence by email on 28.10.14 and further evidence with a letter dated 6.11.14, together with enclosures. The respondent provided a response in a letter dated 16.11.14 together with enclosures, received by the tribunal on 18.11.14.
 7. The respondent had also provided, after the conclusion of the hearing and without the tribunals permission, two letters dated 30.10.14. The first letter deals with the issue of asbestos and the request by the respondent to present photographs. The second letter deals with the respondents costs and attendance in connection with the hearing, which she stated that she would leave to the discretion of the tribunal. Given the clear directions provided by the tribunal for the parties to provide all relevant evidence prior to the hearing and the opportunity given to the respondent at the hearing to put forward her case, the tribunal declined to take these two additional letters into consideration in dealing with this case. The tribunal noted the respondent had stated at the end of the hearing that the tribunal had covered all the relevant points she had raised in her statement on page 138 of the bundle and the other points she had raised in her statement were things that she would have liked the applicant to have done but were not done and for which she had not been charged. The other points raised in her statement were only relevant to her counterclaim.

The background

8. The flat which is the subject of this application is one of 48 in a purpose built 13 storey block situated within Thamesmead Town in an area known as Thamesmead South and East.
9. The respondent purchased her flat in 2006 and lived there for 6 months only in 2008. The property is currently tenanted and has been so since

2008. The respondent checks the property at the start and end of each tenancy and visits the area every two months or so each year. The respondent relies on the rental income after retiring from her work as a computer operator and an independent businesswoman (running a retail shop selling cards and cosmetics for 14 years).

10. Photographs of the building and the area were provided by Mr McVeigh with his supplementary statement. The applicant did not consider an inspection was needed as the respondent now accepted there were CCTV cameras and the parties agreed there was internal lighting, which was previously in dispute. Whatever state the block and estate may be in now would not be of relevance as to how things were during the disputed service charge years. The tribunal already had the benefit of the photographs and would not gain much more by an inspection. The respondent stated the tribunal should have an inspection to get a true picture of the area, which had now deteriorated, and so that the other residents may see that the tribunal was inspecting the area. Having considered the representations made by both the parties the tribunal did not consider that an inspection was necessary or proportionate to the issues in dispute. The tribunal agreed with the cogent reasons put forward by the applicant. If the area had deteriorated, as suggested by the respondent, this was not relevant to how things were during the relevant period under consideration. Furthermore, it was not a reasonable use of the tribunals resources to carry out an inspection of the area simply for other tenants to see that the tribunal was inspecting the area.
11. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

12. The applicant confirmed at the hearing that the total service charge for the disputed years totalled £10,648.08. The respondent had paid £545.15 on 14.11.08 and £10.00 on 4.4.14. Therefore, the total amount due for the disputed service charge years was £10,092.93 (actuals for 2008-2009 to 2012-2013 and estimate for 2013-2014). The applicant clarified that whilst the claim for the service charges and ground rent at the County Court was in the sum of £11,468.05, the respondent had been credited with £2,418.09 on 30.8.13, as the applicant realised in August 2013 that the respondent had mistakenly been charged with a balance owed by a previous lessee.
13. The respondent had failed to clearly set out in her statement (page 138 of the bundle) a detailed explanation of her defence, including a statement as to which service charge items in each year she disputed and a clear explanation of the reasons why, despite the tribunals

directions dated 17.6.14. When referred to the service charge statement for the year 2008-2009 (page 30 of the bundle), the respondent stated at the hearing that she disputed all the service charge items for each of the disputed years. The respondent confirmed during the course of the hearing that she relied upon the same arguments for each of the disputed items for each of the disputed service charge years.

14. It was not in dispute that the respondent was liable to pay 1/48th of the landlords costs.
15. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Lift Maintenance; 2008-2009=£58.76, 2009-2010=£51.75, 2010-2011=£61.27, 2011-2012=£68.05, 2012-2013=£62.47, 2013-2014=£64.16

16. The applicant states the building has two lifts dating from the 1970's. The applicant states it has a maintenance contract with Precision Lift. It awarded the contract after a tendering process and it is satisfied with the service provided. Contemporaneous evidence of the repairs to the lifts are set out on pages 440-442 of the bundle. Even if no works were carried out a charge would still be made as there is a maintenance contract and Precision Lift is obliged to carry out maintenance as it arises, as well as providing insurance visits and carrying out planned maintenance works. The respondent is liable to pay 1/48th of the maintenance contract. The total cost for 2008-2009 was £2,820.26 (page 451). The applicant has no record of the respondent making any complaints concerning the lifts.
17. The respondent accepts the lifts are very old and require attention. The respondent accepts the need for an annual maintenance contract. The respondent accepts that she has never complained about the lifts to the applicants. However, she states the service should cost less and she should only pay £10 for each year. She does not believe that much work has been done. The respondent did not have any alternative quotes for the maintenance contract.
18. The tribunal found the charge for each of the relevant service charge years is reasonable and payable. The respondent accepts the lifts are very old, require attention, and agrees there is a need for an annual maintenance contract. The tribunal is satisfied that relevant works have been carried out as set out on pages 440-442. The respondent has never complained about the lift service. Even if no additional works were carried out, a charge was payable under the annual maintenance contract. The applicant states it awarded the contract to Precision Lift after a tendering process. Whilst the respondent states the cost is too

high, the respondent has not provided any alternative quotes suggesting that to be the case.

Communal Lighting; 2008-2009=£51.29, 2009-2010=£86.34, 2010-2011=minus £41.61, 2011-2012=£62.45, 2012-2013=£66.07, 2013-2014=£71.81

19. The respondent stated that she accepts there is communal lighting. Her complaint however is that some of the lights do not work, although she is not sure how many are not working. The respondent stated that one light outside her flat was not working and two others were dim, when she checked last Friday. She was not sure how long they had been like that and she did not ask her tenant either. She did not complain to the applicant and mentioned it only at the hearing for the first time. The respondent stated that she should pay £6.00 for each relevant year. The respondent stated that she did not have any alternative quotes to show that the amount charged by the electricity supplier was high. The respondent stated that she had never asked the applicant to provide a copy of the electricity bill because they are not forthcoming. However, the respondent stated that she did not have any evidence to show that the applicant had refused to provide information when requested by her.
20. The applicant stated that this charge related solely to the cost of the electricity supplied by British Gas and did not relate to any repair costs. It covered the cost of providing power for the internal and external lighting to the building and the power for the lifts.
21. The tribunal found the charge for each of the relevant service charge years is reasonable and payable. The tribunal accepts that this charge related solely to the cost of the electricity supply and did not relate to any repair costs. There is no evidence to the contrary. It covered the cost of providing power for the internal and external lighting to the building and the power for the lifts. The respondent did not have any alternative quotes to show that the amount charged by the electricity supplier was unreasonable. The respondent had never even asked the applicant to provide a copy of the electricity bill.

Janitorial Costs; 2008-2009=£662.92, 2009-2010=£588.11, 2010-2011=-£515.79, 2011-2012=£557.47, 2012-2013=£485.62, 2013-2014=£494.04

22. The respondent stated that her block did not have a full time janitor, which she thought was necessary for her block. She did not know how many full time janitors the applicant employed. Overall, the respondent believed that more workers should be employed to manage the estate. She believed that her share for the janitors cost should be £50 for the whole year. This was based on her understanding of the janitor being paid the minimum wage and working from 8am to 4pm, seven days of

the week. The respondent stated that she did not have any quotes concerning the cost of employing a full time janitor. The respondent claimed there was no daily cleaning. The respondent stated that she had never complained to the applicant about the general cleanliness of the block or the estate.

23. The applicant stated that a full time janitor and two cleaners covered 2-3 blocks. There were other external staff covering other jobs. The janitor supervised the workers. The janitorial costs and duties concerning the relevant block and for each of the disputed service charge years are set out on pages 415-437, which includes regular and frequent cleaning, sweeping, and mopping of the stairs, lobby, bin rooms, and the lifts, as well as removal of bulk rubbish and putting out and returning the bins. The total staffing cost for 2008 was £21.80 per hour, which included sick leave and insurance and a further £4.21 covered overheads such as equipments and vans (page 433 of the bundle). The applicant stated that the respondents suggested janitorial cost was not realistic. Mr McVeigh stated that he had visited the block in September and October 2014 and on each occasion he found the block to be in a clean state.
24. The tribunal found the charge for each of the relevant service charge years is reasonable and payable. The tribunal is satisfied the level of cleanliness was to a reasonable standard. The applicant has provided evidence of the type and frequency of the cleaning works. Furthermore, the tribunal noted that the respondent had never complained to the applicant about the general cleanliness of the block or the estate. The respondent has failed to provide any supporting evidence to show that the cost is unreasonable. The respondent has failed to provide any quotes and simply stated, when asked why she thought her contribution should be £50 for the whole year, that it was what she thought it should be. The tribunal agrees with the applicant that the figure put forward by the respondent, which equates to £2,400 (48 multiplied by £50), to pay for a full time janitor to work exclusively on the respondents block from 8am to 4pm seven days a week, is unrealistic.

Estate Charges as per LVT decision; 2008-2009=£304.58, 2009-2010=£255.82, 2010-2011=-£413.09, 2011-2012=£461.58, 2012-2013=£426.89, 2013-2014=£389.63

25. The applicant stated that the respondents contribution towards the estate charge used to be 1/886th under the original lease, as there were 886 properties within the estate. In November 2006 the applicant successfully applied to the Leasehold Valuation Tribunal to vary the lease, which resulted in the size of the estate being altered and divided into three areas, namely, Thamesmead South and East, Thamesmead West, and Thamesmead Central and North. The respondents property is within the area now called Thamesmead South and East. As per the Leasehold Valuation Tribunal decision, the respondent is required to

pay 1/4105th of the cost as there are 4105 council tax registered properties within the area.

26. The applicant stated that pages 153-405 of the bundle set out all the itemised estate charges for this estate for each of the disputed service charge years. Page 66 of the bundle sets out the service that is provided, which includes amongst other things; cutting grass on verges and parks, clearing autumn leaves, removing litter, pruning and maintaining trees, attending to shrubs and roses and hedges, maintaining and inspecting and cleaning playgrounds and play areas; with respect to the lakes and canals and open spaces to clean rubbish, carry out water quality tests, to carry out any necessary water maintenance, provide a weekly mobile patrol service, and to maintain park furniture and fences and bins, and to carry out other general cleaning; including removal of fly tipping, jet wash public areas as needed, remove racist and offensive graffiti, clear snow and grit main entrances to the block, empty bins and dog waste bins, etc.
27. The respondent stated that she should only pay £30 for the whole year as there are no parks to patrol, there was no jet-washing, there are no playgrounds to attend to or any grass that needed to be cut. The respondent stated that she accepts the other services as listed on page 66.
28. The applicant provided further evidence by email (letter dated 28.10.14 together with ordinance survey map of Thamesmead South and East) and letter dated 6.11.14 together with maps of each of the three new areas and a satellite image of the Thamesmead South and East area.
29. In her response dated 16.11.14, the respondent stated that her property is not in Thamesmead, but in Abbey Wood, which is about three miles from Thamesmead. Her block sits on approximately two acres of land and is paved with concrete and the surrounding open areas and lake belong to the council. There are no parks or playgrounds to patrol. Hartslock Drive is not on the map produced by the applicant.
30. The tribunal found the ordinance survey map, the map of Thamesmead South and East, and the satellite image of the Thamesmead South and East area, provided by the applicant, match the map of the "estate" in the lease (page 593 of the bundle). Regardless of the name given to the area by the applicant, the tribunal is satisfied the information provided by the applicant relates to the respondents block and surrounding areas. Contrary to what is stated by the respondent, it is clear to the tribunal that the "estate" and the new area called Thamesmead South and East contains a lake and open lands. The ordinance survey map of the Thamesmead South and East area clearly refers to large areas of recreational grounds and a park. This is also consistent with the lease, which refers to "gardens" (The First Schedule, page 590) and "recreational landscaped areas" (The Eighth Schedule, page 603), the

satellite image of the Thamesmead South and East area, and the evidence from Mr McVeigh.

31. The respondent has not provided any evidence to show that the charge for the service that is provided is too high or unreasonable. The tribunal determines that the charge for each of the relevant service charge years is reasonable and payable.

Block Management Charge; 2008-2009=£130.00, 2009-2010=£130.00, 2010-2011=-£150.00, 2011-2012=£150.00, 2012-2013=£150.00, 2013-2014=£150.00

32. The applicant stated that this relates to its fees for managing the block services, such as CCTV maintenance, communal lighting, door entry system maintenance, general maintenance, fire risk assessment and water testing, janitorial costs, and lift maintenance (as set out on page 71 of the bundle). This includes liaising with and instructing service providers, inspecting the works, and paying the service providers.
33. The respondent stated that a reasonable charge was £20 per year. When asked to explain why she thought that was a reasonable amount, the respondent stated "because I think so".
34. The tribunal determines that the charge for each of the relevant service charge years is reasonable and payable. The respondent has not provided any persuasive evidence, other than simply stating that she thought £20 was a reasonable charge for the whole year, to show that the charge is unreasonable in amount.

Estate Management Charge; 2008-2009=£30.00, 2009-2010=£30.00, 2010-2011=-£45.00, 2011-2012=£45.00, 2012-2013=£45.00, 2013-2014=£45.00

35. The respondent stated that she should not have to pay an estate charge as the block charge should cover this cost. The respondent also stated at the hearing that the management was poor, but was unable to give any examples of poor management when asked by the tribunal.
36. The applicant stated that this relates to its fees for managing the estate services. The applicant stated that it chose to have a separate block and estate charge so that lessees did not have to pay towards the management of other blocks, which would be unfair, but all would contribute towards the common estate charges. The charge covered for the work involved in liaising with and instructing service providers, inspecting the works, and paying the service providers. Examples of the service providers the applicant deals with are Axis (road and footpath maintenance and health & safety), Frankham (asbestos remedial works), various organisations providing drain refurbishment works,

Vertical Axis (bridge links), Alphatrack System Ltd (CCTV), and Thames Water. This charge also covered the management of Team Gallions. The applicant stated that there was no element of double counting.

37. The tribunal found the charge for each of the relevant service charge years is reasonable and payable. The applicant has provided a reasonable explanation for separating the block and estate charges. The applicant is providing an additional service for which it is reasonable to expect an additional charge. There is no evidence of double counting. The respondent claimed that the management service was poor but was unable to give any examples of poor management.

Insurance Charge; 2008-2009=£61.43, 2009-2010=£64.42, 2010-2011=£78.62, 2011-2012=£38.49, 2012-2013=£53.89, 2013-2014=nil

38. The respondent stated that she wanted to know what cover was provided and whether it provided cover for windows and contents. The respondent stated that she had never asked the applicant to provide details of this before. The respondent stated her contribution should only be £10 per year. The respondent stated that she had not looked at any alternative insurance quotes.
39. The applicant stated it was a standard buildings insurance, excluding contents cover. It did not include cover for the windows. It covered the rebuild cost of the flat and communal areas.
40. The tribunal found the charge for each of the relevant service charge years is reasonable and payable. The respondent has failed to provide any supporting evidence, such as an alternative insurance quote, to show that the level of the charge is unreasonable.

Door Entry System Maintenance; 2008-2009=£58.34, 2009-2010=£90.02, 2010-2011=£44.70, 2011-2012=£46.32, 2012-2013=£19.59, 2013-2014=£9.00

41. The respondent stated that the door at present was in a terrible state and the intercom was very blurry, therefore, the applicant was not providing a good service. The respondent was happy to pay £5 per year for the service. The respondent stated that she had never complained to the applicant about the door entry system. The respondent claimed that others had complained, but she did not have any evidence of this.
42. The applicant stated external service providers provided a maintenance only service. The cost varied each year depending on the level of maintenance required each year. The highest charge was £90 in 2009-2010 and the lowest charge was £21 for 2013-2014. Pages 408-410

provided some examples of the works that had been carried out between 2008 and 2010.

43. The tribunal found the charge for each of the relevant service charge years is reasonable and payable. The examples on pages 408-410 show the works that have been carried out on the door entry system. This included, for example, attendance when the door was not closing properly and the intercom was not working. The respondent claimed the service provided was poor yet she had never complained to the applicant about the door entry system. The respondent claimed that others had complained, but she did not have any evidence of this either. The tribunal is satisfied a reasonable service had been provided.

General Maintenance; 2009-2010=£198.57, 2010-2011=£110.56, 2011-2012=£156.05, 2012-2013=£65.53, 2013-2014=£148.80

44. The applicant stated that since the service charge year 2009-2010, the general maintenance charge was separated from the janitorial costs.
45. The respondent did not put forward any arguments that this was not payable other than stating that she challenged the service charge for the year 2009-2010 for the same reasons she had put forward concerning service charge year 2008-2009.
46. Given the tribunals findings concerning service charge year 2008-2009 and the failure by the respondent to put forward any reasons for challenging this particular service charge item, the tribunal found the charge for each of the relevant service charge years is reasonable and payable.

CCTV Maintenance; 2010-2011=nil, 2011-2012=nil, 2012-2013=£11.96, 2013-2014=£18.67

47. This charge appears from service charge year 2010-2011 onwards. The applicant stated that five CCTV cameras were installed on the block for security and deterrence as it was a high crime area. The CCTV footage was frequently used with the police to detect crime. As far as the applicant was aware the CCTV was and is working.
48. The respondent stated that she accepts the need for CCTV and the associated CCTV maintenance costs. However, she stated that other tenants on the block have told her that the CCTV was not working. The respondent stated she did not know how long they had not been working, she did not have any statements / letters from the other tenants, she had never asked to see the CCTV, and had never complained to the applicant about the CCTV.

49. The tribunal found the charge for each of the relevant service charge years is reasonable and payable. The tribunal is satisfied the CCTV cameras were and are working. The applicant stated that it is used with the police to detect crime and as far as it is aware the CCTV is working. The respondent states the CCTV is not working yet she was unable to say how long they were inoperative, she did not have any statements / letters from the other tenants that the CCTV was not working, she had never asked to see the CCTV, and had never complained to the applicant about the CCTV.

Health & Safety; 2012-2013=£32.28, 2013-2014=£11.07

50. This charge appears from service charge year 2012-2013 onwards. The applicant stated that this particular item was not previously listed separately on the service charge invoice as it was done internally and charged under general maintenance costs. It was now done by outside specialist contractors, for example, a water hygiene test carried out by Axis Europe Plc on 7.3.13 (invoice accepted on 11.4.13) and the testing of access ladders and handrails by Axis Europe Plc on 6.3.13 (invoice accepted on 11.4.13)(page 412 of the bundle).
51. The respondent stated she should not pay anything as the applicants had just made up the figure.
52. The tribunal found the charge for each of the relevant service charge years is reasonable and payable. The applicant is required to carry out such testing and the applicant referred the tribunal to supporting documentary evidence (page 412 of the bundle). The respondent made such a serious allegation only at the hearing, thereby depriving the applicant the opportunity to provide any relevant invoice / proof of payment. On balance, the tribunal is satisfied the applicant had incurred these costs.

Drainage

53. This charge appears from service charge year 2012-2013 onwards. The applicant stated the actual charge for this item was nil for 2012-2013 and for 2013-2014, therefore, the tribunal did not need to determine whether this was reasonable or payable.

TV Aerial Maintenance

54. This charge appears for service charge year 2013-2014. The applicant stated the estimated charge was £12.34 but the actual charge was zero, therefore, the tribunal did not need to determine whether this was reasonable or payable.

Application under s.20C and refund of fees and costs

55. At the end of the hearing, the applicant made an application for a refund of the tribunal fees that had been paid in respect of the hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the respondent to refund any fees paid by the applicant within 28 days of the date of this decision.
56. At the hearing, the respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines the applicant acted reasonably in connection with the proceedings and was successful on all the disputed issues, therefore the tribunal decline to make an order under section 20C.
57. Given the above conclusion, the tribunal makes no findings concerning the amount claimed by the applicant. If the applicant seeks to recover any such costs as a service charge, the respondent may, if the reasonableness of the sum claimed is challenged, make an application under s.27A of the 1985 Act.

The next steps

58. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court sitting at Dartford.

Name: Mr L Rahman

Date: 4.01.15