10729

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LSC/2014/0632**
Property	:	**Flat 1 Morris House Warwick Grove London E5 9HY**
Applicant	:	**Mr Cemil Sus**
Representatives	:	**In person**
Respondent	:	**The London Borough of Hackney**
Representative	:	**Ms Sherry Ziaie-Fard – Hackney Legal Services**
Type of Application	:	**For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985)**
Tribunal Members	:	**Prof Robert M. Abbey (Solicitor)** **Mr Neil Martindale FRICS** **Mrs Rosemary Turner (Lay Member) JP**
Date and venue of Hearing	:	**27th March 2015 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**8th April 2015**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the calculation method adopted by the respondent in respect of service charges is fair and reasonable as more particularly set out in this decision.

(2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, i.e. preventing the landlord from adding the legal costs of these Tribunal proceedings to subsequent service charge accounts.

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 charge payable by the applicant in respect of service charges payable for services provided at Flat 1 Morris House Warwick Grove London E5 9HY, (the property) and his liability to pay such service charge.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant appeared in person and the respondent was represented by a paralegal from their civil litigation team.

4. The tribunal had before it an agreed bundle of documents prepared by the respondent.

The background

5. The property which is the subject of this application comprises a two bedroom purpose built ex-local authority flat on the ground floor. It is one of 23 flats in a four storey block.

6. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The applicant 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.

8. The issues the applicant raised covered the method by which the respondent calculated service charges, lift works, the door entry system and lighting works.

9. Prior to the hearing the applicant and the respondent entered into fruitful negotiations that meant that several issues that were highlighted at the hearing for directions on 13 January 2015 were resolved to the satisfaction of the parties. The respondent informed the tribunal that because the property was on the ground floor with its own door entry the respondent would refund monies charged and paid for lift maintenance, lift electricity and door entry system maintenance. The refunds for the periods under review (2008-2009 through to 2013-2014) amounted to £825-72 for lift maintenance, £350-37 for lift electricity and £96-29 for the door entry maintenance. The dispute regarding lighting works had been settled between the parties. Finally the dispute regarding grounds maintenance had been settled by an agreed refund of £626-58 for the years set out above. Therefore a total refund was agreed between the parties of £1898-96 and the respondent confirmed this refund would be paid within 21 days of the date of the hearing. The applicant then confirmed his acceptance of this arrangement.

10. This left two remaining issues, first a claim in regard to the communal gardens and secondly the method of calculating the service charges that the applicant still disputed.

The remaining issues

11. Dealing with the matter of the communal gardens, the applicant asserted that he had been maintaining the garden adjacent to the property since he purchased the property in 2006. He has sought to claim ownership of the garden by the property. He now understands that the grounds and gardens are in fact communal gardens under the terms of the lease of the property. The respondent confirmed that the grounds maintenance of the communal garden in question had only commenced in January 2015 and this had therefore given rise to the refund set out in paragraph 9 above. The Tribunal had to inform the applicant that it did not have jurisdiction to deal with his claim for ownership and that he should seek legal advice elsewhere in this regard.

12. The second and final remaining issue relates to the method of calculation of service charges by the respondent. Clause 3 (A) of the lease of the property requires the applicant to pay annual sums for service charges (described in the lease as management charges) as representing the due and proper proportion of the amount required to cover the costs and expenses incurred by the respondent in carrying out its obligations for services under the terms of the lease.

13. The respondent uses a method called the "living space factor" to calculate and apportion service charges. The Respondent bases the charge on the size of the property. This is a common method used by other local authority landlords. The living space factor is dependent on its size and the number of bedrooms in each property. So for a one bedroom property the living space factor is 1.5, in a two bedroom property it is 3 and for a two bedroom property it is 4 and so on. To determine the apportioned service charge for an individual property the living space factors for all properties in the block are added together to calculate a "block factor".

14. The applicant asserted that this method of calculation was flawed and that he would prefer reference to be made to area or square footage . He considers the method adopted by the respondent to be unfair and inaccurate. He says the respondent should use the area of his flat against the total area of the building. Based on his rough calculations he believes that the correct percentage should therefore be in the region of 5% instead of the 6.7796% he pays under the 'living space factor'.

15. The respondent drew to the attention of the Tribunal that there had been several previous cases where lessees had disputed the calculation method and that the Tribunal had considered the method to be reasonable. In **LON/OOAM/LSC/2007/ 84 Ms Margaret Beckett v The London Borough of Hackney** "the Tribunal stated that " *We accept the landlords method of using the living space factor as a proper and fair way of calculating the due proportion under this lease...*" As similar conclusion was reached in **LON/OOAM/LSC/2007/0132 Mrs June Silver v The London Borough of Hackney,** and in **LON/OOAM/LSC/2010/0285/0368 The London Borough of Hackney v Mr T E Osodlor.** Finally in the most recent case, **LON/OOAM/LSC/2013/0601 The London Borough of Hackney v Mr and Mrs Fayodeka** the Tribunal stated that

> *"The living space factor is, in the experience of the Tribunal, a common method adopted by local authorities. Such a method is fair and reasonable as it takes into account the likely number of occupiers".*

16. In all the circumstances and having heard both parties regarding the method of calculation, the Tribunal saw no reason to depart from the above decisions and therefore decided that the calculation method used by the Respondent to apportion service charges was fair and reasonable.

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

17. The applicant did make an application for a refund of the fees that had been paid in respect of the application/ hearing. Having heard the

submissions from the parties and taking into account the determinations set out above and the fact that the applicant did not approach the local authority to discuss the matters in dispute before issuing the application, the Tribunal does not order a refund of fees.

18. At the case management conference the tribunal directed that costs under section 20C would be considered by the tribunal, i.e. preventing the landlord from adding the legal costs of these proceedings to subsequent service charge accounts. Having heard the submissions from the parties and taking into account the determinations set out above the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act and therefore the Tribunal makes an order under section 20C. The circumstances include the conduct and circumstances of all the parties as well as the outcome of the proceedings in which they arise.

Name: Judge Professor Robert M. Abbey **Date:** 8.April.2015

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.

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 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 that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.