



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

Case Reference : LON/00AZ/LSC/2015/0236

Property : 134 Boundfield Road, London, SE6
1PD

Applicant : Phoenix Community Housing
Association

Representatives : Ms A Clayton, Property Manager
Ms K Ward, Business Support
Manager

Respondent : Mr A Coutts-Lovie

Representative : In person

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

Tribunal Members : Judge I Mohabir
Mr J Barlow JP FRICS
Mrs L Walter MA (Hons)

**Date and venue of
Hearing** : 5 October 2015
10 Alfred Place, London WC1E 7LR

Date of Decision : 18 November 2015

DECISION

2001/02 - £413.44 (actual)
2002/03 - £318.30 (actual)
2003/04 - £746.18 (actual)
2004/05 - £409.66 (actual)
2005/06 - £375.84 (actual)
2006/07 - £267.25 (actual)
2007/08 - £597.50 (actual)
2008/09 - £447.82 (actual)
2009/10 - £622.86 (actual)
2010/11 - £839.16 (actual)
2011/12 - £745.42 (actual)
2012/13 - £591.37 (actual)
2013/14 - £606.35 (actual)
2014/15 - £719.04 (estimated)

6. The heads of expenditure in respect of which the service charges were or to be incurred are set out in the Scott Schedule annexed to this Decision.

7. At the hearing, the Respondent, helpfully, said that the following heads of expenditure for all of the years concerned were agreed:
 - (a) Grounds maintenance.
 - (b) Communal electricity (save for the 2008/09 to 2011/12).
 - (c) Buildings insurance.

8. Although it was not strictly within the ambit of this determination, the Applicant also stated that the sums claimed by the Applicant in respect of ground rent of £10 per annum were also agreed.

9. The remaining heads of expenditure in issue are dealt with below.

Relevant Law

10. This is set out in the Appendix annexed to this decision.

15. At this point in the hearing, the Respondent then left the hearing complaining that he was doing so because he would not have a fair hearing. The Tribunal told the Respondent that the hearing would proceed in his absence in any event.

Caretaking

16. Evidence as to the caretaking duties carried out were set out in the witness statement of the Caretaking Services Manager, Mr Carl Lynch, found at page 40 of the hearing bundle. Ms Ward explained that the Applicant had “taken over the block” in December 2007 from the London Borough of Lewisham. The witness statement of Mr Lynch confirmed that cleaning was carried out. Apparently, a daily e-mail report is sent to the Applicant as to what cleaning duties have been carried out. Furthermore, the block is inspected every Thursday by Ms Lynch and others and they have been satisfied with the standard and cost of the cleaning. There had been no complaints by any of the other tenants in the block.

Repairs

17. The Respondent contended that this cost should have been met by an insurance claim on the buildings insurance policy. The Tribunal was told on behalf of the Applicant that the insurance policy is subject to an excess of £10,000 and the cost of this work fell within the excess limit and could not, therefore, be subject to a claim on the policy. This expenditure related to responsive repairs carried out by the Applicant.

Entryphone

18. The Tribunal was told that repairs had only been carried out when necessary by the Applicant. It had not been told or made aware that the entryphone system had not worked for long periods of time, as contended by the Respondent.

Loft Insulation - £79.92

23. Apparently, the insulation of the loft in the block was in very poor condition. This works was carried out with the financial assistance of Decent Homes funding.

Major Works Administration Fee - £7.99

24. The Tribunal was told that this expenditure was the administrative cost for invoicing the leaseholders for the major works carried out.
25. The Tribunal carefully considered the evidence adduced by the Applicant and it further interrogated that evidence at the hearing. The Respondent had not provided any evidence to support the limited challenges made by him. The Tribunal, therefore, had little difficulty in finding that the actual and estimated service charges in issue for each of the relevant years had been reasonably incurred and were reasonable in amount. As such, they are payable by the Respondent.

Section 20C & Fees

26. No application had been made by the Respondent under section 20 of the Landlord and Tenant Act 1985 (as amended).
27. The Tribunal granted the Applicant's application for an order that the Respondent reimburse it the fees of £190 it had paid to have this case heard. It did so on the basis that the Applicant had wholly succeeded on all of the issues that came before the Tribunal and in those circumstances it was just and equitable that the Respondent reimburse the Applicant this sum forthwith.

Other Matters

28. This case is now remitted back to the County court in Bromley so that any remaining claims in relation to statutory interest and costs can be dealt with there if pursued by the Applicant.

Scott Schedule

Element	2014/15 Estimate	2013/14 Actual	2012/13 Actual	2011/12 Actual	2010/11 Actual	2009/10 Actual	2008/09 Actual	Tenant's comments	Landlord's comments	Left blank for Tribunal
Caretaking	239.90	245.51	226.75	240.48	237.54	234.91	214.23		As noted at point 2.	
Grounds Maintenance	50.38	61.28	47.62	46.25	47.14	45.72	41.62		As noted at point 2.	
Tree works	66.67	0.00	0.00	1.92	4.82	36.46	0.00		As noted at point 2.	
Repairs	50.00	4.32	9.95	113.19	190.40	57.90	0.00		As noted at point 2.	
Health & Safety	0.00	0.00	94.60	0.00	0.00	0.00	0.00		As noted at point 2.	
Entry phones	17.50	0.00	0.00	12.61	17.44	0.00	0.00		As noted at point 2.	
Communal electricity	29.84	32.67	26.88	64.67	61.59	58.45	43.92		As noted at point 2.	
Buildings insurance	48.70	47.57	46.73	41.30	32.32	29.42	40.00		As noted at point 2.	
Management	206.05	215.00	215.00	215.00	150.00	150.00	83.94		As noted at point 2.	
Ground rent	10.00	10.00	10.00	10.00	10.00	10.00	10.00		As noted at point 2.	
Loft Insulation					79.92				As noted at point 2.	
Major works admin fee					7.99				As noted at point 2.	
Total charge due (£)	719.04	606.35	591.37	745.42	839.16	622.86	433.71		As noted at point 2.	

Appendix of 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
 - (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,

- (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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).