10744

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOBE/LSC/2014/0589**
Property	:	**Flat 31, Wade House, Dickens Estate, Parkers Row, London SE1 2DJ**
Applicant	:	**The London Borough of Southwark**
Representative	:	**Mr Peter Cremin – Enforcement Officer with the Home Ownership Services** **Mr Shaun Nicholson – Revenue Officer** **Mr Colin Palmer – Area Manager (Hygiene Services)** **Mr Gulam Dudhir – Accountant** **Ms Harsha Kara – Enforcement Officer**
Respondent	:	**Mrs Ilona Marsh**
Representative	:	**Mrs Marsh accompanied by Mr P Kokkinos**
Type of Application	:	**Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr M C Taylor FRICS** **Mr L G Packer**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 2nd April 2015**
Date of Decision	:	**15th April 2015**

DECISION

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1. For the reasons set out below the Tribunal determines that the amount payable by the Respondent, Mrs Marsh in respect of the service charges to the year ending 31st March 2014 is £1,111.
2. The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985 (the Act), it considering it just and equitable to do so.
3. Outstanding matters relating to interest and costs are to be referred back to the County Court sitting at Lambeth under case No 3YU13539 who by order of District Judge Worthington transferred this matter to this Tribunal on 3rd November 2014.

BACKGROUND

1. This matter came before us on 2nd April 2015 as a result of an order made by District Judge Worthington sitting at the County Court at Lambeth on 3rd November whereby the case between the parties under claim No 3Yu13539 was transferred to this Tribunal for "determination of the applicable and reasonable service charge."

2. The service charge in question related to an estimated charge for the year commencing 1st April 2013, ending 31st March 2014 in the sum of £1,254.45. It is not in dispute that the lease provides for the estimated charge to be payable by four quarterly payments and at the time that the proceedings were commenced, that is to say 11th November 2013, three of the four quarterly payments had not been made and the sum of £940.83 was claimed. In addition it appears that there was a shortfall for the year commencing 1st April 2011 in the sum of £14.79 making a total claim of £955.62 plus interest. The question of interest and costs is to be referred back to the County Court. Directions were issued on 11th December 2014 and it is recorded that the sum of £14.79 is no longer being claimed and the total therefore which was sought was £940.83. Those directions set out requirements as to disclosure and listed the matter to come before us on 2nd April 2015.

3. Prior to the Hearing we received a bundle of documents containing the directions, the parties' statement of case and exhibits and witness statements of Mr Peter Kokkinos for Mrs Marsh and Mr Shaun Nicholson and Mr Colin Palmer both for the local authority. We were also provided with the actual service charge breakdown for the year in question which showed that the estimated charge of £1,254.45 was slightly in excess of the actual cost which was £1,111. We invited the local authority to proceed on the basis of the actual charges as opposed to the estimated ones but for reasons that were not wholly clear, they declined to do so. Nonetheless, as we will indicate in the Findings section it seems appropriate to proceed to deal with the year in total, particularly as Mr Cremin said that they would only seek to enforce against Mrs Marsh the actual costs and not the estimated charges.

HEARING

4. The parties gave lengthy statements and it is not necessary for the purposes of these proceedings to recount in any detail that which was said therein. Mr Cremin opened the case confirming that we were not required to deal with interest and drawing our attention to the final accounts. He commented that references to earlier years made by Mrs Marsh in her statement were not relevant as the Tribunal was only dealing with the year 2013/14. He thought it would be easier if Mrs Marsh made her case and the Council then respond.

5. In response to this Mrs Marsh told us that she had only raised previous years because her understanding was that the estimates for 2013 and 2014 were based on earlier actual charges. She told us that she had been writing to the Council for some time now and that it was only in 2014 that some credits were given to her but that she believed most of the refunds due to her had now been made.

6. Much of Mrs Marsh's case centred not so much on the quantum of the service charges, either estimated or actual, but the method by which they were apportioned to her for payment. Briefly, it appears that the Council operates what is known as a bed weighting system. Essentially each flat has a basic four units allocated to it and an additional one for each bedroom. In Mrs Marsh's case this gave rise to six units or points. The total number of units calculated on this basis in her block was agreed at 254 and included commercial premises of which it appears there were three. These commercial premises were each allocated four units under the bed weighting system because of course they did not have bedrooms. It means, therefore, that a doctor's surgery and two other commercial units contributed twelve units to the block total. We were told that the doctor's surgery was in the process of being converted to create two residential units which would result in the 254 bed weighting total for the block being amended.

7. To assist in this explanation we heard from Mr Nicholson who had provided a witness statement and gave helpful oral evidence to us. Mr Nicholson is the Applicant's Revenue Service Charge Officer and has been with the Council since November 2009. In his statement he confirmed certain credits that had been given and explained the basis of the cleaning charges, how two towers, known as Casby and Lupin, sat in the overall estate unit arrangement, covered questions of the commercial units, lighting, overheads and a particular issue that Mrs Marsh had in respect of a contract for some works, to which we will return.

8. As we have indicated above, after the explanations given by Mr Nicholson we were able to record that Mrs Marsh agreed that for the year in question the bed weighting fraction applicable to the block was 6 over 254 upon which her block charges were calculated and that the bed weighting for the estate in this year was 5617 units or points.

9. It is worth recording some of Mr Nicholson's comments. He told us that the estate charges included ground maintenance, the cleaning of the estate and the lighting of same which also included external lighting to each block, the Council considering it fairer to deal with this as an estate charge rather than a block charge. Although reference was made in the papers to Dickens estate east and west, this had no bearing on the manner in which the Council calculated the

division of costs as they did not distinguish between those two headings, which were somewhat conjectural in any event. He told us that the Council can record in a year more than a million items and accepted that some could be wrongly allocated. To an extent they relied upon not only the conscientious work of Council employees to make sure they were correctly allocated but also on leaseholders and others who may raise queries which would be investigated. He accepted that this historical record keeping was as good as it is now. Reference had been made to the sale of some of the blocks on the estate. As Mr Nicholson said, this did not have an adverse impact on the remaining leaseholders as the Council had no involvement in managing or providing services to those blocks. Accordingly whilst the estate unit/points may reduce, so did the costs that were being incurred. We were told that two towers known as Casby and Lupin had been handed over to Housing Associations for management, although in some cases these blocks costs still remained within the total unit number, which was of benefit to the leaseholders.

10. Mr Nicholson also sought to assist us with regard to the 'overheads' issues which had caused Mrs Marsh concern. At page 99 of the bundle we saw that for the year in question there were two elements that made up the calculation of the overhead charge. The first figure was £9,311,281.44, which we were told was the figure that represented the costs incurred by the Council in staffing, liaison costs, human resources, office costs etc. A specific cost incurred by the Council in providing the services. The second figure for this year related to un-itemised repairs jobs and work orders raised, which totalled £33,803,177.89. To calculate the overheads the actual cost to the Council, the £9m, is multiplied by 100 and then divided by the total costs of the repair works, that is to say just under £34m. This gives a rounded down percentage of 27%. It means, therefore, as was explained to us, that for every pound spent on itemised repairs, it costs Southwark some 27p in administration and other costs to deal with same. This overhead, which is not fixed on an annual basis, is therefore applied to those costs to cover these "administration" liabilities. This 27% overhead is applied to both block and estate charges. Mr Nicholson was referred to the judgment of the Upper Tribunal in the case of the London Borough of Southwark v Gary Paul and others and Jurgen Benz under case [2013UKUT0375(LC)]. In the report is a table of the percentage overhead costs from the year 2003 to 2009/10 which shows overheads considerably below the 27% now being sought. Mr Nicholson explained this as evidencing the efficiency that the Council had now achieved in recording matters. He confirmed, however, that although these percentages had increased, it did not give rise to any profit to the Council.

11. He also explained to us the arrangements for the cleaning contract which we will return to when we consider the evidence given to us by Mr Palmer.

12. He was asked certain questions by Mrs Marsh which he was able to deal with but one thing that did arise from those questions which we believe Mrs Marsh found helpful was confirmation that the 5,617 units/points representing the bed weighting for the estate included tenanted properties. Accordingly provided that the estate charges were divided between 5,617 units, there was no difference to the costs allocated to tenants and leaseholders, the Council picking up any shortfall on the tenant side. The Council explained, and Mrs Marsh appeared to accept, that the cost of cleaning for tenants was part of their rent, and therefore

simply different from how leaseholders were charged, under the terms of their leases.

13. Following Mr Nicholson we heard from Mr Palmer who told us that the list of works shown at page 79 of the bundle were indeed what was expected. This was challenged by Mrs Marsh but Mr Palmer stuck to his guns and said that there was a mopping exercise carried out twice a week and that the floors were swept daily. There are four floors in the building. He told us that a supervisor checked the work on a daily basis. He accepted that there may have been some problems with some of the blocks while major works were undergoing and that the contract did not include external window cleaning to the common parts. Mrs Marsh conceded that the amount that was being paid by her for the cleaning costs was reasonable for the service that she was actually receiving.

14. Towards the end of the Hearing Mrs Marsh said that she accepted the estimated charge for which the Council commenced proceedings as being reasonable and said that it would be settled subject to any credits and confirmation that the difference between the estimated and actual costs would be credited to her. However, she also referred to some works carried out to her block in an earlier year for which she said there had been a duplication of charges. Apparently there were two items of work under the same job number shown at page 86 of the bundle, involving works to a soil and waste stack to clear debris. Mrs Marsh accepted that one would be correct but thought that there had been a duplicate. The impact to her was a sum of £15.72 and to the credit of the local authority they agreed that rather than investigate this in any further detail they would allow a credit of £15.72 notwithstanding that this related to works in 2009.

15. The final matter related to data protection. Mrs Marsh's concern was that she had asked for information which may well have answered some of her queries, but that much of it had been redacted. Mr Cremin told us that they had taken legal advice on this and were proceeding as so advised. However, it was clear from the Council's position that they accepted Mrs Marsh needed to be able to check that items were being properly allocated and that if she raised issues they would review matters and provide such information as they could without disclosing personal data relating to any tenant.

16. Finally, Mr Cremin of his own volition confirmed that the Council would not be seeking to recover the costs of these proceedings as a service charge and that he was content that an order under Section 20C should be made.

THE LAW

17. The law applicable to this case is as follows.

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,
(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.

FINDINGS

18. Mrs Marsh assisted by Mr Kokkinos had raised a number of issues in her statement of case. However, we were constrained by that which was transferred to us by the County Court which was the estimated charges for the years 2013/14 and indeed only three of those four quarterly payments. Although the Council were somewhat unhappy about us using the actual costs, it does seem to us that it is inappropriate to ignore the fact that the actual charges are now available and can be contrasted against the estimated costs which are the subject of the proceedings. Indeed, Mrs Marsh confirmed that she no longer had any dispute as to the estimated charges or indeed the actual costs provided that any credits that were due to her were made available and of course that the difference between the estimated and actual costs were built into any liability she had. This rather removes the need for our involvement. However, we think it is helpful if we record certain matters for posterity. We are pleased to say that there appears to be an acceptance that the bed weighting exercise is reasonable. For the year in question the allocation of service charges for the block is, as we have indicated above, on a six/254th basis. That 254 figure may well change when the doctor's surgery finally becomes residential units. Insofar as the estate is concerned, at the time of this application it was agreed that the figure of 5,617 was correct. We noted that the towers are to be removed from the estate totals in due course but that the commercial units were properly included within the bed weighting numbers. Accordingly arguments with regard to the allocation of costs under this bed weighting system seem to fall away. Insofar as the overheads were concerned, we heard all that was said by Mr Nicholson who we found a helpful and truthful witness. His explanation of the figures was not challenged by Mrs Marsh, although she would have liked to have seen some document which supported the £9m plus figure in respect of the actual costs that the Council incurs in staffing etc.

19. Mrs Marsh accepted that the cleaning costs provided value for money, although she would herself prefer a higher standard. Nonetheless, she accepted that she got what she paid for. She was also content that the relationship between tenants and leaseholders contributions were explained and no longer an issue.

20. On the question of the uplift of the maintenance contracts, we have been told that these related to five year agreements which had been the subject of consultation and in truth no real issue was raised by Mrs Marsh in this regard. The redacting issue was dealt with by the Council and hopefully she will now be able to see documentation if she so requests that gives her sufficient information to be satisfied that there has been a proper allocation of certain costs.

21. As we have indicated above, it seems to us that the actual costs for the year in question of £1,111 are reasonable and it is that sum that should be paid by Mrs Marsh rather than the amount claimed on the particulars of claim or indeed the total amount demanded for the estimated service charges, which of course would be too high. In those circumstances we consider it reasonable to make a finding that Mrs Marsh should pay the sum of £1,111 subject to her receiving those credits which were referred to in the proceedings. Perhaps the Council will be able to issue a fresh demand to her covering this period in which those credits are shown and she will then be able to ascertain exactly what sum is due and owing.

22. We hope that the discussions surrounding the service charge accounts will have helped Mrs Marsh and avoid any further proceedings being brought either in the County Court by the local authority or before us by either party.

Judge:

A A Dutton

Date: 15th April 2015