

11980



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

Case Reference : **MAN/00DA/LSC/2015/0073**

Property : **Flats 1-13, 1 Chapel Lane, Headingley, Leeds LS6
3PP**

Applicant : **Blue Property Management Limited**

Respondent : **Various Leaseholders**

Type of Application : **Section 27A Landlord and Tenant Act 1985**

Tribunal Members : **Judge Phillip Barber;
Mr M C W Bennett, BSc FRICS**

Date of Hearing : **13 June 2016**

Date of Decision : **23 January 2017**

DECISION AND REASONS

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Introduction

1. By way of an application under section 27A of the Landlord and Tenant Act 1985, the Applicants, Blue Property Management Limited who were the former managing agents to the former landlord, made an application for a determination of the liability to pay and the reasonableness of the service charges for 13 flats at 1 Chapel Lane, Leeds LS6 3PP for the years 2010, 2011, 2012, 2013 and 2014. One flat had already been the subject of a tribunal determination for part of that time and so this decision does not interfere with those findings.
2. All of the leaseholders have acted through one representative (a leaseholder of one of the flats) Mr Stephen Antwi-Boasiako.
3. The application was previously before the Tribunal on the 26 January 2016 when Tribunal Judge Greenan made directions requiring the completion of a Scott Schedule setting out each and every matter in the service charge and that the Applicants should complete this document and send it to the Respondents for comment. There was also to be exchange of witness statements.
4. For the purposes of the hearing, a Scott Schedule was produced and is reproduced at pages 296 through to 317 of the bundle. The schedule required some explanation in that the third column was to be ignored as having no relevance to the issues. There were also some items which were irrelevant and we have noted these in our determination.

The Inspection

5. We inspected the property on the 13 June 2016 at 10 am in the presence of the Applicant and some of the Respondents. Our impression of the property and the results of the inspection are set out below:
6. The property comprises a former bakery with accommodation on 3 floors. The walls are of brick and it has both flat and pitched roofs. The conversion was to a very poor standard and we understand no building regulation approval was ever obtained.

The Hearing

7. We convened to hear this application at City Exchange at 11.30 am on the 13 June 2016. We heard evidence from Ms Tamara Gifford, of Blue Property Management UK Limited as set out in her witness statement at page 64 of the bundle and she was cross questioned by Mr Antwi-Boasiako in relation to the items in the Scott Schedule. We also heard evidence and submissions in relation to the items in dispute in the Scott Schedule from Mr Antwi-Boasiako and Mr Lesley, one of the leaseholders. Submissions were made by Mr Beaumont on behalf of the Applicant.

Preliminary Issue

8. As is apparent from the Directions Notice sent on the 21 June 2016, we were initially concerned about the ability of the Applicants who were no longer managing the property to bring these proceedings. Mr Beaumont on behalf of the Applicant responded to those Directions by way of further submissions dated the 19 July 2016. The Applicants, despite a suggestion that they obtain legal advice in relation to the issues identified in the June Directions simply chose to write to the Tribunal indicating that they were in agreement with the considerations in those Directions that the Application should accordingly be struck out as an abuse of process.
9. However, having considered Mr Beaumont's very forceful submissions we accept that our concerns were misplaced and that the Applicant is entitled to bring these proceedings and to obtain a determination from the Tribunal as to the payability and reasonableness of the service charges. How they might enforce the decision of the Tribunal is a matter for them.
10. Accordingly it follows that we will proceed to make a determination on the substantive issues in this application. We will do this by reference to the Scott Schedule.

The Law

11. The law is contained in sections 18 and 27A of the Landlord and Tenant Act 1985 as follows:

18.— Meaning of “service charge” and “relevant costs”.

- (1) In the following provisions of this Act “*service charge*” means an amount payable by a tenant of a [dwelling] ¹ as part of or in addition to the rent—
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance [, improvements] ² 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.

27A Liability to pay service charges: jurisdiction

- (1) An application may be made to [the appropriate tribunal] ² 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.

12. Save for the issues mentioned above, there is no dispute that the Tribunal has jurisdiction generally to deal with the issues of reasonableness and payability of the various items in the Scott Schedule. There is also no dispute that the items in the Schedule come within the definition of service charge and all things being equal would be payable under the terms of the lease.
13. It follows, therefore that what the Tribunal is tasked to undertake is a wholesale consideration of each and every item in dispute in the Scott Schedule. We went through these items during the course of the hearing and Mr Antwi-Boasiako had an opportunity to cross question the witnesses for the Applicant and make his own submissions on whether they are reasonable. Taking all this on board and utilising the expertise of the Tribunal we found as follows.

The Scott Schedule

14. The numbers refer to the relevant sections of the Scott Schedule.

829 – 840

The claim here is that the work is excessive for the size of the communal areas. However, following our observations of the property and the frequency of works necessary we find that £100 per month plus VAT is not unreasonable in the circumstances.

841

The claim here is that the management fees charged by Blue Properties is excessive. The total fee is £2467.50 for managing 13 flats over a year. This amounts to £189.80 per flat including VAT. Using our expertise in relation to this issue, we found that the reasonable range of charges for managing a flat in the North of England is currently in the region of £150 to £200 per unit. On a small block with only 13 flats we thought that a reasonable charge would be closer to the top of this range and accordingly, we find that £189.80 per flat per year is not unreasonable.

842

This refers to the preparation of the accounts for year 2010 and is in the sum of £490. We accept that the accounts were certified by a chartered accountant and that they are therefore accurate and in the circumstances, we cannot say that this amount is unreasonable.

843

This refers to electricity charges. There is a bill on this page of £1200.57 which the Applicants state comprises of amounts from accurate meter readings with previous balancing of estimates. The Respondents have provided no evidence to substantiate the claim that this bill is inaccurate and in the circumstances, we find that this amount is reasonable and payable.

849

This is a bill for lamping. The Respondents complain that there is not split between labour and consumables, but subsequently the Applicants have broken this amount down. We find the hourly rate to be reasonable and the price of the bulbs to be reasonable. The work required two hours labour which for changing 9 light bulbs, when no lights were working in the building. The bill indicates 10 lamps but the Scott Schedule indicates 9 lamps and so following the amounts in the schedule we find that a reasonable amount would be £132 including VAT, as opposed to £170.27.

851

This relates to a strike by refuse collectors. The charge is £125 labour and £115 goods and services. The Respondents claim that this amount is excessive and question the amount of weight removed. The Applicants break this sum down and we find that this amount is reasonable.

852

This relates to the fitting of two, two-way switches. The work was carried out by a Blue electrician but is not broken down in any detail in the invoice, but the evidence indicates that the works included a fault-finding exercise. Two-way switches are relatively complex and if one was not already in situ there would be a sizeable amount of wiring which, in the absence of any evidence to the contrary indicates that the amount of £190.94 including VAT is not unreasonable.

853

This is £47 for fitting a new ceiling pendant. This is reasonable.

854

This is graffiti removal. The invoice at this page for the amount of work carried out in removing graffiti and associated works is not unreasonable. The amount of £428.87 including VAT is payable.

855

This is not in dispute.

856

This relates to an attendance by Darren Hall, an electrician who does general maintenance, in relation to a number of issues as set out on this page. He has done some painting; made an assessment of damage caused by a leak and fitted some lamps and parking signs. Given the amount of work carried out and the breakdown as set out on this page, the amount of £393.61 is not unreasonable.

857

The cleaning and preparation of walls before painting as set out on this page is reasonable as it includes more than painting – i.e. providing keys to residents. £277.59 is considered reasonable.

858

This amount is not in the region of consultation and in the absence of any other evidence the amount is reasonable in the sum of £282. Including VAT.

859

As above, this is reasonable in the sum of £94.

860

The provision of keys and fobs including the time of a professional engineer. These cost a sizeable amount in themselves and in the absence of any other evidence the amount is reasonable and within a reasonable range.

861

This relates to sump pump cleaning and repairs together with additional cleaning of bin areas. This appears to us as within the range of reasonable costs and is therefore payable in the sum of £246.76.

862

Again, we thought that this amount was at the top end of a range of figures for an operative to attend site; investigate the issue and undertake works on two door closers. The amount of £88.13 is payable.

863

This amount represents the clearing of the basement over 2 days; which, having viewed the extent of the basement strikes us as excessive. We would have thought the task could be completed in one day and therefore we find this amount to be unreasonable and excessive. We find that £505.25 would be a reasonable amount including VAT for one day and skip hire.

864

This represents a fire alarm in-hours call out charge. 6 new detectors were fitting. A call-out of £400 is considered excessive and we would have thought that £200 is reasonable. We therefore think that a reasonable figure for this work is £658 including VAT.

865

This is another fire alarm in-hours call out for work carried out over consecutive or almost consecutive days which we thought to be unreasonable given that the invoice does not indicate what it is for. We would have thought that any professional fire protection company to attend should have been able to complete works on one day and can see no reason why a subsequent visit charging £127.02 would be necessary. We therefore find that the whole of this amount is unreasonable and not payable.

866

We think this must be a duplicate as on page 863 there is a charge for this work which we have reduced to one day. We can see no reasonable reason why a further skip and works on a subsequent day would be necessary and accordingly we find that this amount in the sum of £740.25 is not reasonable nor payable.

867 – 877

These invoices do not form part of the Scott Schedule and have not been questioned by the Respondents.

878 – 889

These are the yearly charge invoices for cleaning and general maintenance of the property by Blue which have been dealt with under pages 829 to 840. The same judgment applies in relation to these charges and whilst we accept that these charges are at the higher end of the range of reasonable charges we cannot find them to be excessive or unreasonable.

896

This is the charges for management of the property. This represents an increase of £52.12 from the previous year which is way above inflation and given that we have already found the previous amount to be at the high end of the spectrum for management costs we find the amount of 2011 to be excessive and unreasonable. We think a reasonable charge should be the same as the previous year which gives rise to a gross figure of £2467.40.

897

This is an amount for preparing the accounts in the sum of £200 which we think is reasonable.

904

This is for cutting trees; general weeding and moving bins in the sum of £164.50 including VAT which we think is reasonable.

905

Given that Mr Simmons charged £140 on the previous day we can see no reason why he would charge £200 on a subsequent day and therefore we reduce this charge to £264.64 as a reasonable amount.

906

This is a site survey which we think should be included in the management fee on the basis that a reasonable manager, charging nearly £200 per unit should attend site from time to time. We therefore determine that this amount is not payable.

907

This is £120 plus VAT to clean and reset a faulty valve which we find to be excessive. £60 plus VAT is entirely appropriate for this work in the sum of £70.50.

908; 918; 919; 920

These invoices represent the building and fitting of shutters to the cellar windows. All of these strike us as reasonable and proportionate to the work carried out and therefore they are payable.

909

This is inspecting roof and breaking off render. On the basis of the further explanation in the Scott schedule £634.20 is reasonable for the amount of work carried out.

910

This is reasonable for the work carried out.

911

This is reasonable in the sum of £295.49.

912

The repairs to the service pump strike us as reasonable in the circumstances in the sum of £273.

913

This represents Tony Simmons attending to trace a wiring fault on a number of circuits. £210 is reasonable for this work.

914

We accept that it is appropriate for a contractor to discover the problem on one day and carry out repairs on another day. In those circumstances the charge of £307.20 including VAT is reasonable.

915

This is for the rerouting of an overflow pipe and associated work. This is reasonable in the sum of £286.50.

916

The fitting of a push button switch in the sum of £200 plus VAT is excessive. A reasonable charge for this job would be £100 plus VAT in the total sum of £120.

917

This is the fitting of one cell switch and repairs to plaster damage is excessive in relation to the labour charge. We think this work could be carried out for £100 labour plus VAT, giving a total sum of £169.80.

921

The labour rate and materials for installing car park signs is reasonable in the sum of £210.

922

This is roof repairs which given the size of the property, the height of the roof and its general condition strike us as being reasonable in the circumstances.

923

This is an additional amount to that included in invoice o page 922 and which is again reasonable.

924

We accept that the sensors required replacing but again we think the call out charge is excessive and we reduce it to £200 giving a total charge of £672.

925

This represents the fitting of a new consumer unit which in the absence of any evidence to the contrary strikes us as reasonable and necessary to be fitted. Accordingly, the sum in the amount o £771.50 is reasonable.

926

This is fitting fire alarm panels and heat detectors in individual flats which we think is reasonable in the sum of £1077.

927

This is an additional £802.50 for additional works related to 926 – fitting a further panel. We are unsure why works could not have been carried out on one day and requires two separate invoices but given the works and our expert understanding of the issue we thing this additional cost is also reasonable.

928

This is fitting more fire detectors which we think is reasonable in the sum of £420.

929

This is again reasonable for the additional costs of installation of a fire system in all apartments.

930

This represents more work in relation to bringing the property up to reasonable fire standards. We are unsure why it is necessary to invoice all of this work separately but given the nature of the work and our expert knowledge of property management we thought that this again is reasonable in the sum of £400.

931

The invoice in the sum of £877.92 does not break down the extent of the works necessary for such a large amount of money and what on the face of it would appear to be a relatively small amount of work. In the circumstances, we think £240 including VAT is reasonable for weeding and waste removal in the common areas.

932

For the installation and erection of CCTV facilities we do not think that an amount of £438.76 is unreasonable and therefore it is payable.

933

This represents the installation of broadband charges for BT. We think this is reasonable in the sum of £165.02.

934

This is again reasonable in the sum of £256.

935

This is a further invoice for CCTV which we think is reasonable in the sum of £228.

936

This is an out of hours call out for malicious damage outside the warranty cover and given that it was out of hours is reasonable in the sum of £216.

937

This is testing and resetting fire panel which strikes us as being excessive for the work required (given that an out of hours call was £180, for example) and so we think £100 plus VAT in the total sum of £120 is reasonable.

938

This is reasonable for the work involved in the sum of £234.

939

This is reasonable in the sum of £42 for attending a wasps nest.

940

This is for general care-taking duties which has been reduced by £50 and therefore we think that £220.80 including VAT is reasonable.

942

This is works for a security issue in Block 2 for malicious damage which is reasonable in the sum of £120.

943

This is a further payment to BT for broadband which we think is reasonable.

944

This is reasonable for the works set out in the invoice.

945

This is further works allied to invoice 944 which again seems to be reasonable despite it having to be done twice.

946

This is reasonable in the sum of £222 including VAT.

947

This is again weeding and tidying the external area which we think is reasonable in the sum of £150 including VAT.

948

Meter reading is not reasonable as it has already been charged for in the cleaning invoice and so this amount is not reasonable in the sum of £42.

949

The charge for the painting of the outside walls and resetting the CCTV system is reasonable in the sum of £198 including VAT.

950

This is not in dispute.

951

For pumping out and cleaning the cellar we think £102 is reasonable.

963-974

This is again the weekly cleaning annualised which we have already found to be reasonable and which is again reasonable in the monthly sum of £120 including VAT.

975

This invoice represents the annual management fees which we have previously found to be excessive and the reasonable sum of £2467.40 as set in the first year of our consideration of this amount.

976

£345 for preparation of accounts is perfectly reasonable and payable.

977

This is the cost of a chartered accountant certifying the accounts which is reasonable in the sum of £150.

989

This is a specific maintenance inspection which is reasonable.

990

This has been credited in the sum of £390.96 as a duplicate and is therefore not reasonable nor payable.

991

This is again broadband charges which are reasonable.

992

This is reasonable for the works carried out on the property to the roof in the sum of £298.16.

993

This strikes us as reasonable for fitting a pump in the main as well as checking door sizes (albeit minimal) in the sum of £210.

994

This is replacement of pipes to prevent potential damage to the property which we think is reasonable in the sum of £1093.19.

995

This is checking the CCTV and is reasonable in the sum of £84.

996

This is again Broadband charges which are reasonable.

997

Repositioning cameras and adjusting and cleaning on two occasions seems excessive and one visit should have been sufficient. Accordingly £126 is reasonable including VAT.

998

This is an out of hours fire alarm call which is reasonable for the call out in the total sum of £216.

999

This is again works to the CCTV and fire alarm panels and repairs. We think the labour charges and work to be reasonable in the sum of £292.76.

1000

This has been reduced by £35 and therefore the balance of £35 plus VAT is reasonable.

1001

This is a call out for a damaged door. Given that it is out of hours, £372 is reasonable for the works necessary.

1002

Updating the CCTV system; checking water and removing post is reasonable in the sum of £126 including VAT.

1003

The works set out on this invoice is reasonable in the sum of £132 including VAT.

1004

This represents a safety test and is a sizeable amount of work and so we find it reasonable in the sum of £231.55.

1005

This is reasonable for the works in the sum of £165 including VAT.

1006

This has been credited to the leaseholders.

1010

This is an invoice for cleaning works in excess of the monthly clean and is reasonable given what is contained in the invoice in the sum of £51.59 including VAT.

1011

This is agreed.

1013

This is agreed.

1015

This is agreed.

1017

This is excessive for replacing two emergency lights. We think the work could be done for £200 plus VAT in the sum of £240.

1018

This is more gardening and weeding work which is reasonable if it includes the cost of hire of a skip in the sum of £330.77.

1019

This is an out of hours call and is reasonable in the total sum of £216.

1020

This has been credited and the balance is reasonable.

1021

This is an invoice for repairs following malicious damage to wiring which is reasonable in the sum of £312 including VAT.

1022

This is reasonable for tenant damage.

1023

In the absence of further details on the Scott Schedule we think this is excessive and should have cost £269 in total.

1024

This is an additional caretaker clean which we are told was required. As a result the amount is reasonable in the sum of £114.

1025

This should form part of management and is unreasonable in its entirety. Nil is therefore payable.

1026

This is excessive for changing a lock and a lock smith might have done the job much quicker. We think that a reasonable amount is £170.50 including VAT in total.

1027

This seems excessive for the work required and we think that £216 including VAT is sufficient and reasonable for this additional cleaning work.

1028

This is more work on the CCTV cameras. In the absence of any reasons why this might not be reasonable we accept that it is chargeable in the sum of £1839 including VAT.

1029

This is not in dispute.

1030

This is part of management and is not reasonable nor payable.

1031

Given that this represents a repair for wear and tear and is not covered by insurance we think that in the absence of evidence to the contrary the amount is reasonable and payable for the works carried out in the sum of £730.

1032

This is reasonable for the works carried out.

1033

This has been credited and so is not in issue.

1034

Given the works done this is reasonable for health and safety requirements in the sum of £228.

1036

A credit has been agreed and so this amount is now reasonable.

1037

For the works set out in the schedule the amount charged in the sum of £601.20 is reasonable.

1038

This is not duplication of works and is reasonable in the sum of £146.40.

1039

This work strikes us as necessary and reasonable in the sum of £203.99.

1040

This was necessary and the charges for the work is reasonable in the sum of £313.20.

1041

Given the explanation in the Scott schedule this is reasonable in the sum of £42.

1042

This was necessary work for a tenant call out and so it is reasonable given that it was out of hours in the sum of £360.

1044

Given that the insurance company disputes all repairs we agree that this sum is reasonable for £370.80.

1045

Credit agreed in relation to this.

1046

£84 is reasonable for these works.

1047

For checking the system this is reasonable in the sum of £93.59.

1066 – 1077

These are again the monthly cleans which as before we find to be reasonable and payable in the sum of £120 per month including VAT.

1078 - 1086

These are management fees for 1/3 of a year in the sum of £900 plus VAT. As set out above we find as reasonable an amount of £822.50 as reasonable for management charges for the same period including VAT. This also represents a monthly fee of £205.62 which we substitute for the figures set out on the monthly invoices.

1087 (the Scott schedule mentions 1089 but this must be wrong)
We think that an amount of £345 is reasonable for preparation of accounts.

1088

We think that £150 for auditing the accounts is also reasonable.

1101

This is an in-hours call out which is reasonable and payable.

1102

Gritting paths and drive ways over 2 hours is necessary and reasonable in the sum of £92.40.

1104

Broadband charges are reasonable, despite the wrong name which is not material to the issues before us.

1105

A telephone call out talking a resident strikes us as excessive and that £40 is more appropriate plus VAT in the sum of £48.

1107 - 1112

These have been credited and so are no longer in dispute.

1113

This is an out of hours call out which took three hours to effect and so is reasonable in the circumstances in the sum of £288 including VAT.

1114, 1115

These have been credited and so are no longer in dispute.

1116

Labour has been credited to £35 per hour and so this is now reasonable and payable.

1118

This was an in-hours call out which, for the works set out seems to us reasonable in the sum of £156.

1119

This has been credited and so is no longer in dispute.

1120

£172 is reasonable for drain repairs.

1121, 1122

An extra lighting and smoke alarm tests which were necessary and so these amounts are reasonable.

1123

Upon inspection we examined the door and in our expert view the works necessary as set out in the invoice could have been effected for £800 total including VAT which we set as a reasonable and payable amount.

1124

For the works set out we think this was reasonable in the sum of £450.66.

1125

Replacing a faulty handrail has been credited and so we think this amount is not reasonable as set out in the Scott Schedule.

1126

This is reasonable as it was not covered by insurance in the sum of £768.04.

1127

Broadband charges are reasonable.

1128

This is work to one flat which was not covered by insurance from a previous leak. In the circumstances and in the absence of any evidence to the contrary we find that this is necessary expenditure and reasonable in the sum of £3009.35.

1129

The charge for removal of rubble is reasonable.

1130

Repairs to the window are considered excessive given that a new window could have been purchased and fitted. We find that £200 plus VAT in the total sum of £240 is reasonable.

1131

Checking the CCTV is reasonable.

1133

This is reasonable for 2 operatives to carry out necessary works in the sum of £314.

1134

This is excessive and could have been included in the management charge. Therefore the whole of this amount is not reasonable.

1135

This has been credited and therefore is now reasonable as amended.

1136

Given the nature of the works and the issues set out in the Scott schedule this is reasonable.

1137

This is reasonable.

1138

Additional cleaning and waste removal is reasonable in the sum of £93.22.

1155

Charges for preparation of accounts are reasonable.

1156

Charges are reasonable.

1163 – 1167

Cleaning charges are reasonable.

1176 – 1180

Management fees as set out above are excessive and should be reduced to £2467.40.

1181

This has been reduced by a credit and so is now reasonable.

1182

This figure is reasonable

1183 – 1185

These have all been credited to £35 per hour and so are now reasonable.

1186

This is reasonable at £125.68

1188

This is reasonable for the works carried out in the sum of £345.01

1189

Unblocking drain is reasonable in the sum of £126.

1190

Fitting lamp shades is reasonable in the sum of £104.

1192

This is reasonable for replacing a damaged Yale lock.

1193

There appears to be an element of double charging, and we reduce the amount by £200 to arrive at a reasonable sum of £370.47.

1194

This is reasonable for the out of office hours and necessary works.

1195

This is tenant damage and is reasonable.

1196 - 1214

We have considered each and every item from 1196 through to 1214 and for the reasons already given in relation to other similar items above, we find that each of these items are reasonable and payable.

Conclusion

15. It follows that certain items are to be reduced but the majority of charges comprising of the service charge in our expert view are both reasonable, coming as they do within the range of reasonable costs for the work required to be done and payable. The works were carried out in accordance with the terms of the leases.