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

Case Reference : CAM/26UK/LSC/2013/0078

Property : Flat 93, Munden View,
Garsmouth Way, Watford,
Hertfordshire, WD25 9DF

Applicant : John Edney
(unrepresented)

Respondent : Watford Community Housing Trust
(Anthony Collins Solicitors)

Date of Hearing : 20th September 2013 held at
Watford Tribunal Service,
Radius House, Watford, Herts

Type of Application : Application for determination of the
reasonableness and payability of
service charges pursuant to section
27A of the Landlord and Tenant Act
1985 ("the 1985 Act")

Tribunal : Judge J. Oxlade
Mrs. H. Bowers MRICS
Mr. Bhatti MBE

Attendees:

Applicant

John Edney

Respondent

Mr. J. Cox, Solicitor
Mr. M. McDonald, R's Income Manager
Mr. G. Stratton, R's Housing Accountant
Mr. S. Hurley, R's Services Manager
Mr. J. Hall, R's Project Surveyor

DECISION

For the following reasons the Tribunal finds that:

- (i) the service charges for the years 2008 to 2012 inclusive are reasonable and payable, save that the sum of £100 should be set off against the Applicant's charges in respect of heating/hot water;**
- (ii) the estimated service charges for the years 2013 to 2017 inclusive are reasonable and payable;**
- (iii) the Respondent do pay to the Applicant the sum of £250 by way of reimbursement of the costs of issuing the application and listing the matter for hearing.**

REASONS

Background

1. John Edney ("the Applicant") is the tenant of 93 Munden View, Garsmouth Way, Watford, Hertfordshire, WD25 9DH ("the premises") let on an assured tenancy by Watford Community Housing Trust ("the Respondent").
2. On 10th June 2013 the Applicant made an application to the Tribunal for a determination of the reasonableness and payability of service charges in respect of the premises, for past years (2008 to 2012), the current year (2013), and future years (2014 to 2017).
3. In respect of the current year he was (i) not satisfied that the Respondent had been clear what service charge he would have to pay and (ii) concerned by the size of the increase of service charges from £5.11 per week in 2012 to £16.15 per week in 2013.
4. In respect of 2012 he was concerned that he had been paying £88.02 when the Respondent notified him that the rent and service charges should be £82.53; he sought recovery of £5.49 per week for 50 weeks.
5. In detailed letters attached to the application dated 10th and 11th May 2013, the Applicant made the following additional points:
 - (i) he had not been compensated for the loss of heating and hot water;
 - (ii) there was noise and draught from the lifts and windows;
 - (iii) when there is no heating in his flat (which the Respondent should provide) he has to heat the flat using electricity, meaning that he pays twice for heating; further, he was paying for heating for 12 months of the year but that the heating was only on for 6 months of the year,
 - (iv) he added that the Respondent's position now appears to be that services charges will be £3.62 per week (20% of the cost), rising over 5 years to 40%, 60%, 80% and then 100% of the costs of £18.12 per week; however, this position was notified only recently, and that this was not made clear previously, and indeed conflicted with what he

had been told; he had gathered that the costs would increase to £80.80 in 5 years time.

6. Directions were made on 3rd July 2013 and the case was set down for inspection and hearing. In preparation for the hearing the Respondent filed a bundle of documents, as directed.

7. On 13th August 2013 the Applicant particularised further concerns: the backdoor to the premises does not open/close properly, which compromises security, and causes noise when people bang it; the car park ramp was broken for months; the bin chutes smelt. The Applicant was concerned by the list of items in respect of which he would be expected to make a contribution, and asked the Respondent to expand upon the items and headings. The Applicant said that as a private tenant wants to know what he is liable to contribute towards.

Inspection

8. The Tribunal inspected the premises in the presence of the Applicant and Mr. Hurley and Mr. Hall. They consist of a one bedroom flat, located on the 9th floor of a tower block built in the 1980's. The premises are served by a lift, by a night-time security/concierge officer on the ground floor, and car parking to the rear. The flat relies on a communal heating system within the flat, which is controlled remotely, and cannot be overridden by the tenant; the hot water supply is also provided communally. The heat exchanger located in a hallway cupboard boosts pressure, and does not provide a secondary source of heating or hot water.

9. The Tribunal noted that there had been a recent application of mastic around the joint between the glass panel and outer wall of the living room, which the Applicant said had taken place the day before the inspection.

10. The Tribunal was shown the building containing the communal plant room housing the communal boilers serving both blocks of flats. Further, the communal boiler has a back up pair of boilers, so that outage of the main boiler can be quickly remedied. The Tribunal was shown the car park to which entry was controlled by a barrier system; security cameras were noted. The Tribunal was told that the electricity used by each block was attributed only to that block. The rear door of the premises was a heavy door, with substantial secure fittings. The communal spaces were generally clean, well-decorated, and appeared to be functioning to a reasonable standard.

The Hearing

11. At the hearing the Tribunal heard evidence from the Applicant, and from Mr. Hall, Mr. McDonald, and Mr. Stratton. The Applicant additionally relied on the documents referred to above and the Respondent additionally relied on a witness statement of Mr. McDonald.

Relevant Law

12. The relevant law is set out in Appendix A.

Discussion

Jurisdiction

13. The Respondent conceded that service charges were variable from 1st April 2012 onwards, and so the Tribunal would have jurisdiction to determine the reasonableness and payability.

14. However, its position was that in service charge years 2008/9, 2009/10 2010/11 and 2011/12, service charges were fixed - not variable - and so did not fall within section 18(1)(b) of the 1985 Act. Accordingly, the Tribunal had no jurisdiction under section 27A to determine the reasonableness and payability of service charges for that period.

15. It is apparent that prior to 1st April 2012 the only service charge for which the Applicant made payment as a service charge, was heating and hot water, and so it would be only in respect of that item that the Tribunal would need to make findings.

16. The Respondent relied on clauses 1.4 and 1.5 of the standard terms and conditions (Page 47 of the bundle) which provide a rent guarantee period limiting an increase in rent by the RPI, plus 0.5%, plus £2.08 per week and that "during the rent guarantee period we will limit any increase... in any heating charge according to the heating and hot water payable in relation to your home". In short, the Respondent's position was that the cap applied to limit the maximum recovery of heating costs, so preventing the service charge for heating and hot water from being truly variable.

17. For the following reasons the Tribunal rejects the Respondent's argument, and finds that the service charge for heating and hot water is variable : clause 1.4 of the standard terms and conditions provides that "during the rent guarantee period the maximum increase in net rent and service charge (excluding support charge or heating charge) will be calculated as the annual increase in the RPI". It is clear that the words in brackets exclude the heating charge from the capping provisions. The matter is put beyond doubt by the wording of clause 1.5 which provides that in the rent guarantee period any increase in "heating charge according to the heating and hot water costs payable in relation to your home". The wording makes it clear that the service charge for heating and hot water will depend on costs, which can go up or down, and is not capped.

18. In oral evidence Mr. Stratton said that when setting the heating and hot water charges he was "mindful" of the cap, but did not go as far as to say that the costs were thereby limited by the cap; further, in answer to questions of the Tribunal he said that the actual costs of one year set the estimated costs for further years although they had been plagued with problems which meant that they did not have accurate records for a four year period.

19. The totality of the evidence and the terms and conditions satisfy the Tribunal that the heating and hot water service charges are a variable service charge, over which the Tribunal has jurisdiction to determine reasonableness and payability.

20. For the avoidance of doubt the Tribunal has found it unnecessary to determine if the sewerage/water charges preceding 1st April 2012 are variable, as the Applicant has not challenged them.

Items in dispute

April 2008 to 31st March 2012

Heating/Hot water

21. In the period April 2008 to 31st March 2012 the Applicant paid service charges for heating and hot water. He said that sometimes both failed and both were inadequate, although he was unable to specify dates, nor give any clear idea of frequency or length of outage. In the absence of any clearer picture the Tribunal is unable to conclude that the sums charged for heating or hot water were unreasonable for what was provided.

Other costs

22. As the Applicant paid no service charges in respect of items other than heating/hot water, there is nothing further for the Tribunal to assess in this period. Whilst he may have legitimate complaints about services during this period, as he was not paying a service charge in respect of them, the Tribunal has no power to make any findings.

1st April 2012 to 31st March 2013

Heating/Hot water

23. The Respondent acknowledged that in this period the heating did fail on some occasions. Where this happened, the delay in getting an engineer on site (who would then have to resolve the problems) could have resulted in an absence of heating/hot water for up to 8 hours. Mr. Hall denied that it could have been for any longer period, though he did not have records to produce. The Respondent did, however, provide a print out of complaints received about heating during the period 1st October 2012 to 16th May 2013 (Page 120), though the identity of the complainants was not known. The Applicant was unable to say if this was an accurate list of all complaints, or not. His impression was that the heating was off for longer than 8 hours.

24. The Respondent had offered compensation to the Applicant, of £100. The Applicant when asked said that he had not previously appreciated that the offer was in respect of this, and did not have an alternative figure in mind.

25. In the absence of better evidence from the Applicant as to when heating/hot water outage took place, and another basis for re-calculating service charges for heating/hot water, the Tribunal finds that the sum of £100 should be set off against heating/hot water in the period 1st April 2012 to 31st March 2013. Otherwise the service charges for heating/hot water are reasonable and payable.

26. Mr. Hall set out the improvements that had been made, including a pair of back-up boilers, and that heating/hot water would be better controlled. It was his intention to write to all tenants to specify the timings and seasons.

27. The Tribunal explored with the Applicant whether there was a physical way of providing additional heating, so giving rise to the Applicant incurring additional costs, but this did not appear to be the case. On the evidence adduced the Tribunal is not satisfied that the Applicant has incurred additional expenditure arising from loss of heating/hot water.

Other costs

28. As the Applicant paid no service charges in respect of items other than heating/hot water, there is nothing further for the Tribunal to assess in this period. Whilst he may have legitimate complaints about services during this period, as he was not paying a service charge in respect of them, the Tribunal has no power to make any findings.

Overpaid rent

29. The Applicant complained that during this period he was paying £88.02 per week but the costs should have been £82.53. It appears that the Applicant received a notice of increase (page 106 of the bundle) dated 28th February 2013 in respect of his increase from 1st April 2013; this said that his existing rent and service charges were £82.53. In fact the notice of increase issued to him for 2012/13 (page 261) shows that the weekly cost during that period would be £88.02, which is what the Applicant paid.

30. The Tribunal is satisfied that the Applicant has paid in accordance with the notice of increase, and has not been over charged. However, it is another example of inaccurate figures and paperwork, which has given rise to the issues to which the Tribunal now turns.

1st April 2013 to date

Items Generally

31. The Applicant has made various observations about problems on the estate in the current year. The point is that at the moment the Applicant is paying an estimated sum, and it is only once all the bills are collected in, and a reckoning done, that the actual costs will be known. It is therefore premature for the Tribunal to now be making a finding that an estimated sum is reasonable or not on the basis of the level of service. The other point to make, is that the Applicant is only subject to demands in this period for 20% of the actual costs (i.e. only paying £1 in every £5 which are estimated as likely to be spent). In those circumstances it is highly unlikely that the Tribunal would find that those costs are unreasonable unless the service is so poor, as to be non-existent or damaging to the building.

Applicant. The Tribunal considers that this would be appropriate to make the Order sought, for the following reasons.

38. The Respondent has made their charging structure complicated, so that it is difficult to understand: there are layers of charges, some capped, some not. The letters sent to the tenants are in language which is complicated, in some cases conflicting and in others inaccurate. Whilst the Respondent has tried to explain to the Applicant how the charges are to be recovered, there is no formal mediation process, and only a complaints process to follow. Whilst the Respondent is to be congratulated for having tenants on their user group and for listening to the consultation feedback, at the hearing the Respondent accepted that they had “lost” some of their tenants along the way. As some of the Respondent’s tenants are in vulnerable groups, it is an obvious point to make that communication should be pitched at an understandable level. It can be said that the Respondent did rather bring the dispute upon itself. Finally, the Respondent did encourage the Applicant to issue a section 27A application at the hearing in May 2013 of the application for assessment of a market rent, which principally concerned service charges.

Joanne Oxlade

First Tier Tribunal Judge

11th October 2013

Variation

32. The Applicant asked whether the Respondent could change the services provided, or add to the heads of charging. His point is that the tenancy agreement sets out the “payments for your home” as net rent, and under the heading “service charge” figures were inserted against heating/hot water and water rates; there was nothing against “other services”, nor “concierge/security” nor “gardening”. The tenancy agreement said “the costs of services charged for in addition to the net rent must either be listed or if they do not apply crossed out”, and there was nothing crossed out.

33. The standard terms and conditions provide at 1.2 that the net rent, service charge and support charge may be varied, and at 1.16 under the heading “changes to services” provides that the services provided can “be increased or decreased, added to or removed” provided that the Respondent undertakes a consultation process. The document attached at Appendix B is a breakdown of the estimated costs for the year 2013/14, setting out the various amounts and headings, and provides clarity of the costs in earlier years.

34. The Tribunal received evidence that a consultation process had been undertaken, which we find gives rise to the right to vary the amounts and the services for which a charge can be levied.

2014 and onwards

35. The Applicant’s application asked for an assessment of the reasonableness of costs from 2014 to 2017. As stated above the costs are estimated costs, and it will only be once the final bills are known and the quality of services given that a proper assessment can be made.

36. The Applicant has been concerned with the phasing in of service charges over 5 years, paying 20% in 2013, 40% in 2014, 60% in 2015, 80% in 2016 and 100% of costs in 2017. The Respondent adjusted the phasing in, as a result of the consultation procedure. Whilst the Tribunal has been asked to making findings about this, in reality, this is a matter of concessions by the Respondent not to recover all actual costs. Our remit at this stage is to say whether the estimated service charges are reasonable, and we find that they are.

Costs

37. The Applicant made an application for an order pursuant to section 20C of the 1985, preventing the Respondent from adding the costs to the service charge account. However, as the Respondent has conceded that it cannot do so, an order to this effect is unnecessary.

Reimbursement of Fees

38. The Applicant has paid fees of £100 (application costs) and £150 (hearing fee and asks that the Respondent should meet the costs, by reimbursing the

Appendix A

The 1985 Act as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

Section 18

“(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling house as part of or in addition to the rent –

- (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or in the landlord’s cost 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 of which the service charge is payable.

(3) For this purpose

- (a) costs include 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 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 provision 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 27 A

(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 it costs were incurred for service, repairs, maintenance, improvements, insurance, or management of any specified description, a service charges would be payable for the costs and if it would 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.

Kent + Service Charge Summary

		2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14
RNT	Rent	£ 64.94	£ 65.71	£ 67.24	£ 68.71	£ 72.97	£ 77.42	£ 79.83
HTG	Heating Charge	£ 6.75	£ 7.05	£ 7.37	£ 7.37	£ 5.17	£ 5.49	£ 7.33
SWR	Sewerage Rates	£ 1.76	£ 1.90	£ 2.01	£ 1.96	£ 2.13	£ 2.36	£ 2.52
WTR	Water Rates	£ 2.22	£ 2.36	£ 2.43	£ 2.51	£ 2.68	£ 2.75	£ 2.68
SC1	Bin Area & Rubbish Chute Maint							£ 0.69
SC11	Communal Keys, Locks & Fobs							£ 0.01
SC15	Door Entry System Maintenance							£ 0.15
SC17	Emergency Lighting Test & Main							£ 0.03
SC19	Fire Safety Equipment Maintena							£ 0.01
SC2	Caretaking Services							£ 0.23
SC23	Legionella Testing & Maintenan							£ 0.47
SC25	Lift Servicing & Repairs							£ 0.18
SC26	Lighting Costs							£ 0.48
SC30	Rubbish Clearances							£ 0.06
SC31	Security							£ 0.69
SC34	Window Cleaning							£ 0.01
SC5	Cleaning to Communal Areas							£ 0.53
SC8	Communal Area Repairs & Furnis							£ 0.08
Total		£ 75.67	£ 77.02	£ 79.05	£ 80.55	£ 82.95	£ 88.02	£ 95.98