

9600



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

**Case Reference** : MAN/OOCCM/LSC/2013/0107

**Property** : 26 Orchard Place South Shields Tyne & Wear

**Applicant** : Mr Edward Ernest Boddy

**Representative** : Mr Jonathan Askins, Solicitor

**Respondent** : Gentoo Sunderland Limited

**Representative** : Mr Michael Hill, Counsel

**Type of Application** : Landlord and Tenant Act 1985 –  
Section 27A(1)

**Tribunal Members** : Mr W.L. Brown LL.B,  
Mr I H Harris FRICS

**Date and venue of** : 11 October 2013 AIT North Shields  
Hearing

**Date of Decision** : 18 December 2013

---

**DECISION**

---

© CROWN COPYRIGHT 2013

## ORDER

1. The Tribunal determines that for the service charge years ending 31<sup>st</sup> March to pay only the charge for the communal telecommunications for the emergency call system, being £0.18 per week for 2011/12 (payable by the Applicant only for the period from 24<sup>th</sup> February 2012 when his tenancy commenced, to 31<sup>st</sup> March 2012), £0.18 per week for 2012/13 and £0.36 per week for 2013/14. The Tribunal determines under the terms of the tenancy of the Property that only this element of charge is reasonably incurred and the said sums are reasonable in amount for that service.
2. The Tribunal makes no order under Section 20(C) of the Act.

## INTRODUCTION

3. By an Application dated 8<sup>th</sup> June 2013 the Applicant applied to the Tribunal for a determination under Section 27A of the Landlord & Tenant Act 1985 (the "Act") as to the reasonableness of service charges for the Property for the service charge years ended 31<sup>st</sup> March 2012 and 2013 and for the advance service charge for 2014.
4. The parties to these proceedings are respectively landlord and tenant of the Property.
5. Directions were made by the Tribunal on 16<sup>th</sup> August 2013.
6. On 11<sup>th</sup> October 2013 the Tribunal carried out an external and internal inspection of the Property and its surroundings. The Property is a new terraced bungalow with paved area to front and garden to the rear. It is an energy efficient property comprising lounge through to kitchen, bathroom and two bedrooms, one of which the Applicant uses as a dining room. The Tribunal also visited the main building of the Cherry Tree Gardens Extra Care Scheme comprising residential apartments and a number of communal facilities (the "Main Building").
7. The Tribunal was informed by the Respondent that the development known as Cherry Tree Gardens Extra Care Scheme (the "Scheme") consists of 47 properties, 40 apartments and 7 bungalows, of which the Property is one.
8. The Tribunal was informed that there are a number of communal facilities benefitting the Scheme, including laundry services, lounges, treatment room, assisted bathing suite, a restaurant and hairdressers in the Main Building (which has a lift) and surrounding landscaping and lighting, general social activities and 24 hour emergency care. There is cctv security covering areas in the Main Building and its surrounds. It covers some of the rear gardens of the terrace in which the Property is situated, but not that of the Applicant or its front entrance. Access to the Main Building is by a key fob after 7.30pm. A fob is given to all tenants living in the Scheme.

9. A hearing took place at AIT Kings Court Royal Quays North Shields on 11<sup>th</sup> October 2013. The Applicant provided a witness statement in support of his case and the Respondent provided witness statement from Michelle Banks and Sharon Sykes.

### **The Tenancy**

10. The Applicant granted to the Respondent a weekly "starter" Tenancy which commenced on 24<sup>th</sup> February 2012 and became a fully assured Tenancy on 24<sup>th</sup> February 2013
11. The Tenancy Agreement contains relevant provisions as follows:

#### **"The Property**

The property let to you is: 26 Orchard Place, Hutton Rise, Houghton le Spring. DH5 8GZ"

#### **"Service Charges**

*If you pay a service charge, ie charges for caretaking, cleaning, warden services, heating costs, lighting etc;*

*Gentoo Sunderland Limited may increase your service charge at any time if you are given at least one month's notice in writing but not more than once a year unless there is a change in the services provided.*

*You will be asked to pay a service charge based upon the sum likely to be spent in providing such services to you over the coming year. That will be the service charge you are asked to pay for the year.*

*You should refer to your annual service charge statement, which forms part of this agreement, for a breakdown of the specific services provided and the amount charged for each service."*

The tenancy set out the rights of a tenant to apply to the Tribunal if they believed that the service charge was unreasonable and advises that details appear in the "Tenant's Handbook".

#### **"Rent**

*You must pay your rent (and any other charges, including service charges) weekly in advance on the Monday of each week."*

The tenancy sets out a breakdown of payments due weekly totalling £127.08, payable in advance on the Monday of each week, described as "gross (full) rent" including service charge of £42.96.

The tenancy document contains a declaration which includes an acknowledgment of receipt of a copy of the "Tenant's Handbook". Within the bundle presented to the Tribunal was a copy of a document entitled Extra Care Tenant Handbook.

## **The Issue**

12. The issue for determination by the Tribunal was the reasonableness and payability of service charges claimed by the Applicant in respect of the Property for the service charge years referred to in paragraph 3.
13. The amount of the service charge at issue for 2011/12 is £42.96 per week, for 2012/13 is £38.28 per week and 2013-14 is £42.71 per week. The Respondent has assessed apportionment based upon equal sharing by the 47 apartments and bungalows in the Scheme of the total charge involved, but adjusted for the Applicant as referred to in paragraph 29.

## **The Law**

14. The relevant law is to be found in the Act.
15. Section 18 of the Act states

### **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 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.....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 of the Act states

### **Limitation of service charges: reasonableness**

*(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 or are of a reasonable standard: and the amount payable should 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 adjustments shall be made by repayment, reduction or subsequent charges or otherwise.*

Section 27A of the Act states

**Liability to pay service charges: jurisdiction**

- (1) *An application may be made to leasehold valuation Tribunal for a determination whether 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 service, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the cost and, if it would, -*
- 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.*

**The Applicant's case**

16. The Applicant's case was presented on the basis that when he accepted the offer of a tenancy from the Respondent he had not been told that he would be granted access to the Scheme in its entirety or that he would be paying to use its communal areas and facilities and nor was he referred to a breakdown of the service charge, although one was in the substantial binder left with him at handover. He did not receive a service charge statement until one or two months after the tenancy commenced, following receipt of which his daughter raised a complaint with the Respondent on his behalf.
17. He denied receiving any explanation of how the service charge would be used.
18. He did not use the communal facilities in the Main Building and had no need for them. He cleaned the Property and tended its garden and had his own washing machine, cooker and dishwasher supplied in the Property by the Respondent.

19. It was unreasonable to expect him to walk, perhaps in bad weather, from his bungalow to the Main Building, some 85 metres away up a slight incline, to use its facilities.
20. He conceded that he did use and he agreed to pay for the following element of the service charge - communal telecoms relating to the emergency telephone line in the Property (although he was asking the local authority to remove the emergency Telecare line from the Property), the applicable charges for which are 2011/12 £0.18 per week, for 2012/13 £0.18 per week and for 2013/14 £0.36 per week.
21. During the hearing it became apparent that his case rested particularly on the fact that his Property only benefited from very limited services and that the Main Building had no connection to the Property.

### **The Respondent's case**

22. The Respondent's fundamental position was the Applicant had signed up to a tenancy that obliged him to contribute to charges for services supplied to the Scheme, which includes communal facilities to which all residents have access.
23. The Applicant had applied through Sunderland City Council for accommodation at the Scheme, or in one of three others, by completing a self-assessment form. The application did not refer to the type of property requested. The basis for the application was that the Applicant, who at the date of the hearing was 82 years old, would like to live closer to his daughter in Houghton-le-Spring, but to retain his independence.
24. Residents for the Scheme are chosen based on their care need and suitability for extra care accommodation
25. The Applicant's needs were assessed as requiring low care, to operate in accordance with care hours offered by the local authority, meaning he did not require accommodation in an apartment in the Main Building but he was offered a tenancy of one of the seven bungalows in the Scheme. The Respondent referred to the following statement at point 16 in the application form dated 2<sup>nd</sup> February 2011 as evidence that it understood that the Applicant would make use of the Scheme's communal facilities:  
"Has a need to move nearer to family. Needs to move to accommodation with less stairs or a lift and to be among people to be able to access the communal facilities and to feel safe and secure."
26. Family of the Applicant had worked at the Scheme. Before the allocation of a tenancy to him the Applicant visited the Scheme on a number of occasions and was shown the facilities available.
27. The service charge was calculated by reference to budget costs and adjustments in accordance with guidance from the National Housing Federation.

28. The tenancy document was clear as to the obligation to pay service charges and a general breakdown of the elements involved was included in the binder provided at handover.
29. The service charge sum demanded of the Applicant has been adjusted to remove contribution to those elements of the overall charge referable to window cleaning (because the rear garden of the Property is not accessible from the outside; water testing (as this was referable only to the apartments in the Main Building) and grounds maintenance (as gardens belonging to the bungalows in the Scheme are not tended. The removal was a gesture of goodwill by the Respondent, but it noted that those properties benefit from the other communal landscaped areas). The effect was to reduce the applicable service charge to £38.28 per week in 2012/13, rising to £42.71 per week for 2013/14.
30. Neither the Applicant nor his close family supporting him lacked understanding that the Property was part of the Scheme and he signed up to his tenancy knowing that he would bear the costs of the apportioned service charge referable to all communal facilities of the Scheme. The terms of the tenancy would have been explained to him by the housing officer on handover on 26<sup>th</sup> February 2012, at which time he received a pack of documents, including a general breakdown of the service charge.
31. As the Scheme was newly completed when the Applicant's tenancy commenced he did not initially receive a fob for access to the Main Building although he was offered one after about 3 months, but declined it.
32. The Applicant was choosing not to use communal facilities in the Main Building and of the Scheme, but they were available to him and under the terms of his tenancy he was required to contribute to them by way of the service charge on the basis of the contractual documents identified in paragraph 11.
33. The Application relied upon allegations of misrepresentation and not issues of apportionment or quantum of the amount of the service charge.

### **The Tribunal's Findings and Decision on the Section 27A Application**

34. The Tribunal first ascertained whether the sums which form the basis of the relevant service charges are properly provided for in the tenancy. The Tribunal noted that the reference to services in the Tenancy Agreement are rather general, as set out in paragraph 11. The Tribunal found little reference of relevance in the Extra Care Tenant Handbook to services, the extent of the property to which they could or would apply or how they would be calculated. There is no explanation that the tenant of the Property is to be asked to pay a particular percentage of an overall charge for services.
35. These documents are important to this case because it is only if there is a contractual obligation upon a tenant to pay service charges can the door open to assessment by the Tribunal in accordance with the jurisdiction conferred upon it by Section 27A of the Act. The Tribunal was careful to ensure it was not engaged in assessing whether there had been misrepresentation between the parties, as that is outside its jurisdiction.

36. The evidence before the Tribunal was that the contractual liability upon the Applicant to pay service charge was contained in Tenancy Agreement and in the Extra Care Tenant Handbook. It noted that there had not been presented in evidence a copy of the service charge breakdown apparently included in the binder handed to the Applicant on the day he signed the Tenancy Agreement.
37. The Tribunal found that the attention of the Applicant had not been drawn to any specific elements of the service charge the Applicant said applied to the Property.
38. The Tribunal had to identify and interpret the information available concerning the service charge and it found that there was a lack of particularity as to the services to be provided or how they would be calculated. There was only limited information so as to define "services" and therefore their payability. The Tenancy Agreement relevant content is set out in Paragraph 11 and the Extra Care Tenant Handbook contained very little of relevance to a service charge. The Tribunal was not persuaded that the Tenancy Agreement and the Extra Care Tenant Handbook individually or collectively gave any indication that the Applicant would be paying towards the cost of all services applicable to the Scheme.
39. The Tribunal noted that the service charge statements provided did not contain the landlord's address and omitted to detail the percentage of the overall service charge claimed as payable by the Applicant. In addition, they were not consistent, as they had different heading for each year and no balancing charge reconciliation. These omissions would make it very difficult for the Applicant to understand even what elements of service he was being asked to contribute towards.
40. There was no evidence before the Tribunal that the services benefiting the Main Building extended to the Property expressly or impliedly. The Tribunal preferred the evidence of the Applicant that his obligation was to pay for services benefiting the Property only. The Tribunal determined that the Property received only limited services and that was the provision of communal telecommunications for the emergency call system, which the Tribunal determined is the only charge reasonably incurred as relating to the Property.
41. It followed that the Tribunal therefore only had to decide if the charge in each year at issue for the communal telecommunications for the emergency call system were reasonable in amount. It so determined. Therefore the amounts determined as reasonably incurred and reasonable in amount are: £0.18 per week for 2011/12 (payable by the Applicant only for the period from 24<sup>th</sup> February 2012 when his tenancy commenced, to 31<sup>st</sup> March 2012), £0.18 per week for 2012/13 and £0.36 per week for 2013/14.

#### **As to costs**

42. The Applicant made no application under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant for a future year or years. The Applicant's representative explained that this was an erroneous omission.



43. The Respondent through its representative advised at the hearing that it would not seek to recover the costs of these proceedings in service charges payable by the Applicant for a future year or years. In consequence of this statement the Tribunal makes no Order under Section 20C of the Act, but it has noted the Respondent's representation.