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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/00CU/LIS/2014/0023**
Property	:	**22 Bealeys Close, Bloxwich, Walsall WS3 2JP**
Applicant	:	**Mr Lee Yardley**
Representative	:	In person
Respondents	:	**(1) Walton Homes Limited** **(2) Walton Property Management Limited**
Representative	:	Mr Jon Ward
Type of Application	:	Application under Section 27A of the Landlord and Tenant Act 1985
Tribunal Members	:	Judge Dr Anthony Verduyn Mr Colin Gell FRICS
Date and venue of Hearing	:	12th November 2014 Priory Court, Bull Street, Birmingham
Date of Decision	:	9th December 2014

DECISION

(1) The Tribunal, applying sections 19 and 27A of the Landlord and Tenant Act 1985 ("**The Act**"), finds that:

(a) the service charges payable for the period 2006 to 2013 were reasonably incurred, save in respect of the charge for the 24 Hour call out service, which should not have been incurred as an additional charge to the management charge and must be deducted in full in the sum of £50.15; and

(b) all services and works were of a reasonable standard save in respect of gardening, which was only partially carried out and so was overcharged to the Applicant's account in the sum of £300, and window cleaning which was only partially carried out and so was overcharged to the Applicant's account in the sum of £144.55.

The amount which is payable is adjusted accordingly.

(2) The Tribunal holds that, pursuant to Section 20C of the Act, the Respondents costs of the application shall not be added to the Applicant's service charge in this case.

REASONS

INTRODUCTION

1. Mr Lee Yardley is the leasehold proprietor of 22 Bealeys Close, Bloxwich, Walsall WS3 2JP, known when developed as Apartment 9 and Garage 9 of Oakwood Manor, Bealeys Lane, Bloxwich. He is successor in title to the original lessees Mr C.M. Law and Miss K.A. Broadhurst. The lease is dated 23rd January 2004 for a term of 125 years from 1st January 2001 (referred to as "**the Lease**" below).

2. On 23rdJuly 2014 Mr Yardley's application was received by the Tribunal to determine his liability to pay, and reasonableness of, service charges, under Sections 19 and 27A of the Landlord and Tenant Act 1985 ("**the Act**"). He also made an ancillary application under Section 20C of the Act that all or any of the costs incurred by the Respondent Landlord in connection with these proceedings are not to be taken into account in determining the amount of any service charge payable by him.

3. Whilst not apparent from his application form, Mr Yardley set out in his Statement of Case that a lot of "administrative charges" had been added to his account during the dispute over service charges and he "would like these to be struck out from my account as the charges have increased over the years."

THE RELEVANT LAW

4. The relevant law is as follows:

Landlord and Tenant Act 1985

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 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.

19.— 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 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.

20C.— Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made— ...

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal ...

(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.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate 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 the appropriate 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.

Commonhold and Leasehold Reform Act 2002 Schedule 11

1(1) In this Part of this Schedule *"administration charge"* means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly— ...

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(3) In this Part of this Schedule *"variable administration charge"* means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease ...

Reasonableness of administration charges

2A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

5(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

THE APPLICATION AND STATEMENTS OF THE PARTIES

5. Mr Yardley specifically contested liability from 2006 for the following:

(a) electricity supplied to common areas;

(b) electrical repairs;

(c) car park security;

(d) general repairs;

(e) 24 hour assistance (a help line, especially out of hours);

(f) the cost of health and safety inspections;

(g) landscape gardening;

(h) window cleaning; and, prospectively,

(i) external decoration.

6. Mr Yardley is especially aggrieved that part of the liability under the Lease for these charges accrues because he has a garage, when he supplies the electricity to his garage, it has no windows (so minimal maintenance) and only he has the key.

7. In his application form he states: "I would like to know if the construction of my lease would be deemed fair with regard to having to pay for services that are carried out within a communal property that I do not live in" and "I would like to see my lease varied so that the only service charges payable would be of benefit to my property". This is not, however, an application to vary the Lease.

8. Directions were given dated 15th August 2014 requiring a written statement from Mr Yardley by 10thSeptember 2014 and a reply from the Respondents 21 days after receipt.

9. Mr Yardley's written statement enlarged on his complaints stating there were several charges he considered to be unreasonable because they were incurred at all, for both flat and garage: electricity common areas, electrical repairs, car park security, general repairs, the 24 hour help line, and health and safety inspection. These all relate to the "communal building behind my property". His flat and garage are accessed separately and see no benefit for this expenditure.

10. Window cleaning and gardening were contested by Mr Yardley because they were not in fact carried out, although such services could have been provided. A previous manager, Mr Mark Mansell, admitted that window cleaning had not been carried out and credit for two years' costs was given. Gardening on the site was undertaken by "Groundlevel", but they have confirmed that the area adjacent to the entry to the flat and garage were not included in their area of work from taking the contract in June 2008. Only following recent communication was this work started.

11. Mr Yardley also stated that there are external decoration proposals for rendering, windows, external doors, fascias and soffits, but the benefit to Mr Yardley was only in respect of fascias and soffits, as his windows are uPVC and there are no relevant doors and rendering. Administrative

charges were also challenged in his statement against the background of complaint.

12. Mr Yardley copied to the Tribunal an e-mail from Mr Mark Mansell of "**HLM**" dated 20th September 2013 stating that gardening was now being carried out, but confirming full credit for failure to have windows cleaned between 1st April 2012 and 31st March 2013, and 3 of the 6 visits in the service charge year starting 1st April 2013 (the remaining 3 being for prospective cleaning that would be undertaken).

13. Mr Yardley did not submit a witness statement or other documentation before the hearing, but the Tribunal considered that the statement of case verified by Mr Yardley at the hearing was sufficient.

14. Walton Homes Limited stated to the Tribunal by letter dated 7th October 2014 that it was merely the freeholder and the services were in the hands of Walton Property Management Limited as managing agent. On 14th October 2014 the latter confirmed Countrywide Estate Management, trading as HLM, were authorised representatives of the managing agent. It was not in issue that Mr Mark Mansell had been an employee of HLM at the relevant time of the communication in his name.

15. Ms Charlotte Scurr of HLM produced a full statement of case dated 3rd October 2014 and supported by a substantial bundle of documents. The thrust of this statement was that the matters comprised in the service charge were payable under the Lease. She cites Clause 4 and then paragraph 37 from Part II of Schedule 4, which sets out Mr Yardley's covenant: "*To pay to the Management Company the Service Charge at the times and in the manner specified in Schedule 8 without any deduction whatsoever*". The Charge is defined in the Particulars of the Lease as 8.49% of the Service Costs, which are defined in Clause 1.16 by reference to Schedule 6 (which itself includes at paragraph 1 "*All costs expenses and outgoings whatsoever incurred by the Management Company in and about the discharge of its obligations in particular (but without limiting the generality of this provision) those set out specifically in Schedule 5 (and also the costs of providing any additional services deemed necessary by the Management Company).*"

16. Turning then to the headings raised by Mr Yardley, and in respect of both apartment and garage, Ms Scurr offers the following:

(a) electricity supplied to common areas, appears in paragraph 5 of Schedule 5, with an obligation to contribute to the communal electricity supply in respect of the Estate. The Estate is defined as "... *Oakwood Manor, Bealeys Lane, Bloxwich ...*" and the Apartments as "... *the apartments and garages comprised in the building that forms part of the Estate ...*". At inspection, as set out below, it is clear that Mr Yardley's apartment is in a separate building from the principal block, but there is no ambiguity his apartment forms part of the Estate because of the terms of its detailed description in Schedule 1: "*FIRST ALL THAT Apartment specified in paragraph 4 of the Particulars situate in the*

Apartment Building forming part of the Estate being the upper floor ... and the hall and staircase ...";

(b) electrical repairs appear in paragraph 4.2 of Schedule 5 where Walton Property Management Ltd are obliged to keep "... *in good and substantial state of repair and condition and decoration including the renewal and replacement of all worn and damaged parts and including ... all conduits*". Conduits are defined at Clause 1.14 as including electricity supply;

(c) car park security was a matter of expenditure in 2012 when halogen spot lights were installed. It is stated to be within paragraph 10.3 of Schedule 5: "*to provide maintain renew replace and keep in serviceable order and condition any common system or mechanical devices which the Management Company may deem desirable for the general conduct of management and security of the Estate*". Alternatively, paragraph 6 of Schedule 5 requires the management company: "*To keep clean and lighted such parts of the Estate as are enjoyed and used by the lessees of the Apartments*";

(d) general repairs come under paragraph 4 of Schedule 5;

(e) 24 hour assistance (a help line, especially out of hours) is stated to be justified under paragraph 10 of Schedule 6, which relates to the engagement of professional persons, as a service when HLM offices are closed and billed by Cunningham Lindsey, the supplier, at £12 plus VAT per unit per annum;

(f) the cost of health and safety inspections is again stated to be justified under paragraph 10 of Schedule 6;

(g) gardening appears under paragraph 4 of Schedule 5;

(h) window cleaning appears under paragraph 9 of Schedule 5: "*So far as reasonably practicable and so often as it shall think necessary to clean the exterior of the windows of the Premises and the Other Apartments*"; and

(i) external decoration appears under paragraph 7 of Schedule 5: "*... to decorate the exterior (and such part of the interior as is not included in the Apartments) of the building of which the Premises forms part ...*".

Finally, administration charges are stated to be recoverable under paragraph 29.3 of Part II to Schedule 4, which relates to "*expenses*" and "*All costs in connection with the recovery of arrears of the Rent and the Service Charge.*"

17. Ms Scurr also takes the point that another Tribunal had already assessed the Service Charges for 2007 to 2013 on application of the leaseholder of Flat 4, and determined them reasonable and payable (BIR/00CU/LSC/2013/0037 and BIR/00CU/LAC/2013/005 Mr Gary

Clift, Applicant). Whilst she does not submit that this Tribunal is bound by the earlier decision, she observes that Mr Yardley does not appear to contest reasonableness *per se* of the sums, more reasonableness of the liability imposed by the Lease.

18. By email of 22nd October 2014 Ms Scurr renewed the concession of Mr Mark Mansell in respect of window cleaning, but offered no concession on gardening, because the money had been spent elsewhere on this, even if areas adjacent to Mr Yardley's apartment and garage had been missed.

19. On 30th October 2014 Mr Yardley provided further documents, including copy correspondence with a useful spread sheet of the sums he contested. The content of the spreadsheet was not contested and is adopted by the Tribunal in respect of window cleaning and landscape gardening.

SITE VIEW AND HEARING

20. With these documents in mind, the Tribunal inspected the property on the morning of the hearing, with Mr Yardley, Mr Ward and Ms Scurr in attendance. The main building with contiguous wing to rear fronts on to a gated car park and lawned area. The main building was rendered, unlike Mr Yardley's building. Mr Yardley's apartment is part of the same development, but separated by a small strip of land which accommodates a footpath between buildings. His apartment is over two garages and its entry is on to a close with other housing, rather than on to the development itself. It follows that he has no particular use of the car park or lawned areas, although they are available to him. The windows serving his apartment are uPVC, but the soffits showed staining where the guttering was leaking and there was a need for maintenance and redecoration in this area. Near the front door to the staircase to the apartment was a small grass area and there were shrubs adjacent to the front of his garage.

21. At the hearing Mr Yardley succinctly enlarged on his case, emphasising the detachment of his apartment from the historic main building and its extension. He considered that he did not benefit from the car park (which neither he nor his visitors used) and other facilities serving the main building, nor its repair. Similarly, neither health and safety inspection nor 24 Hour call out benefitted him. He was baffled why the leasing of the garage added to his service charges. He benefitted from gardening and window cleaning, but the gardening had in fact been done until recently by Mr Yardley and a neighbour. Groundlevel, the gardening contractor appointed by the Respondents, had only taken it on when informed it was their responsibility. Mr Yardley stated the position was the same in respect of window cleaning, which also only started this year, despite his possession of the apartment since 2006. In respect of external redecoration, he considered that this demand was not tailored to his own property. This was not rendered and had uPVC windows and so the cost should have been much lower.

22. Whilst Mr Yardley did not consider it reasonable that he pay charges at all, save for those directly benefiting his apartment, he did not criticise the sums incurred under the Service Charge, save for gardening, window cleaning and prospective redecoration. He did not provide alternative figures for any element of the service charges.

23. Mr Ward essentially adopted the contents of Ms Scurr's statement. He observed that apartments in the main building typically paid 9.6% to Mr Yardley's 8.49% to reflect the differing benefits received (or , perhaps, floor area, as he later conceded on questioning by the Tribunal); albeit that he contended that some expenditure was not specific to any apartment and actual benefit was immaterial, since the Lease dictated contribution. The Tribunal was directed to the case of Solarbeta Management Company Ltd -v- Ms Adetinuke Akindele [2014] UKUT 0416 (LC) on this point, although copies were not provided to the Tribunal or Mr Yardley. In the circumstances, the application will be considered on the law as set out above in this decision, which is comprehensive to the issues, and the Tribunal considered it unnecessary to seek further submissions after the hearing on case law.

24. Mr Ward stated that the leases for all apartments were in common form, albeit with differing percentage contributions. He contended that communal electricity supplied to the car park, health and safety inspections, and 24 Hour assistance were of benefit to Mr Yardley as they served all lessees. He was in no position to dispute Mr Yardley's contention about gardening and lack of this service since 2006. Although disinclined to concede that there was no benefit for this element of the service charge (since other areas were gardened), a credit would be offered. The window cleaning credit would be extended back to 2006 as well. Mr Ward observed that external redecoration had not yet been charged, and that Mr Yardley was not being charged the full amount in any event (£721.65 instead of £772.73). Indeed, year on year there had been undercharging to Mr Yardley: 2010 8.49% of £7,492 was £636.07 and not the £597.24 charged; 2011 £8,565.73 yielded £727.23 and not the £620.76 charged; 2012 £9,020 yielded £765.80 and not the £682.02 charged; and 2013 £7,744 yielded £657.47 and not the £569.56 charged. The budget for 2014 was £19,466 yielding £1,652.67 and not £1,398.25 anticipated to be charged. Further, he noted that administrative charges £144 for late payment (28 days after demand) and £198 for the solicitors' documents were determined to be reasonable at the previous Tribunal.

25. Neither Mr Yardley nor Mr Ward gave ground when question by the other party, but after the short adjournment for lunch, Mr Ward offered a concession of £75 for gardening charges. This was calculated on the basis that 10 minutes would be spent on the shrubs and 5 minutes on the grass monthly, hence 3 hours a year over 5 years. Half this time was Mr Yardley's and half his neighbour's, so at the contract rate Mr Yardley was offered £75 for his time. This was not extended beyond 2013 as then Groundlevel should have started work. Mr Yardley considered this concession too low. The window cleaning concession was maintained.

26. Under questioning from the Tribunal, Mr Ward stated that quotes for external works varied from £6,500 to £15,500, but £8,500 would be ring-fenced and cover the intended works. Management fees were £150 per unit and did include call out, but 24 Hours service was an extra cost. It was separated out as a charge for purposes of clarity from 2010/11. The health and safety inspections were for the whole site, including the bin store and paths.

27. The Tribunal took time to consider the submissions made and has reached the following conclusions:

28. The Respondents are correct in submissions relating to the terms of the Lease. As was set out in Ms Scurr's statement, the Lease is clear in respect of the liabilities and the proportion that is payable, save in respect of 24 Hour call out which is discussed below. Since the elements of the service charge are payable under the Lease and the proportion payable is stipulated by the Lease, they must be paid unless they are unreasonable in amount. Unless the Lease was varied by agreement or appropriate application to the Tribunal, it is no valid argument to contend the apartment in question does not benefit fully or at all from a particular element of the service charge. The charge is what has been contracted for and that is sufficient in law. It may also be observed that there may in fact be benefit from the proper upkeep of services that could be used (the car park, for example, and lawned area around it) and from the proper maintenance and good external appearance of the immediately adjacent building. Since Mr Yardley did not contend that the sums charged were unreasonably incurred (and the Tribunal finds that he was right not so to challenge the sums and that he was in fact charged below the percentage reserved in the Lease) all sums, including administrative charges, are allowed as charged accordingly. The prospective sums for redecoration are likewise found to be reasonable.

29. The sole exception is the 24 Hour call out. Paragraph 10 of Schedule 6 does not cover the 24 Hour call out helpline, it expressly relates to "*any solicitor architect surveyor or other professional person whom the management company may from time to time employ in connection with matters concerning the Estate including any costs incurred pursuant to the remedy or attempted remedy of a breach of covenant by the Lessee* ..." The operator of the helpline is not a professional in this sense, but is essentially providing a sub-contracted out of hours management service. This conclusion is fortified by the evidence at the hearing, which was that this was separated out from the management fees for clarity. The Tribunal finds that, although it is stated to have been separated out from the management fees, when it was introduced there was no corresponding drop in the management fee or any identifiable allowance made. The reality is that it is an additional charge for a service properly comprised in the management fee itself. Consequently it was not reasonably incurred and is unreasonable in amount, and should be deducted from the service charge. The sum incurred for the relevant period 2010 to/2011 to 2013/2014 and therefore deducted is £50.15.

30. Window cleaning costs have been conceded as to be deducted from 2006 to September 2013 and this concession is noted. It was not reasonable to charge these sums in the years concerned, because the service was not provided to Mr Yardley's apartment when it should have been. This was plainly not a service to a reasonable standard. The concession was rightly made and would otherwise have been imposed by the Tribunal. The sum incurred and therefore applied as a credit is £144.55.

31. In respect of gardening, the concession of £75 was too low and the Tribunal finds it was rightly rejected by Mr Yardley. Even on Mr Ward's calculation, some £150 of work was not done, and it is not clear why the Respondents should be the ones to benefit from the generosity of Mr Yardley's neighbour in doing half the work. The proper deduction of Mr Ward's calculation would have been £150 and not £75, because this represents the extent to which the service was not of a reasonable standard. The Tribunal, however, considers that the amount of work and time spent was underestimated by Mr Ward and the proper allowance is not £150 but £300, and the latter must be applied as a credit.

SECTION 20C OF THE LANDLORD AND TENANT ACT 1985

32. This application is allowed by the Tribunal. Mr Ward fairly observed that the Respondent had attempted to keep costs to a minimum by being represented at the hearing by HLM. This is true, but poor communications were obviously a major part of the dispute in this case and Mr Yardley is not responsible for this. He plainly struggled to get answers to his issues over gardening and window cleaning. Even then, concessions were wrung out of the Respondents at the hearing itself, and then not in sufficient sum as the Tribunal determined. In the circumstances, the Tribunal considers it appropriate to disallow any addition to Mr Yardley's service charge by virtue of his application which succeeded in part, and beyond the level previously offered to him.

APPEAL

33. If any party is dissatisfied with this decision, application may be made for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2)) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge Dr Anthony Verduyn

Dated 9th December 2014