

10797



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

Case Reference : **BIR/00CU/LSC/2013/0037
BIR/00CU/LAC/2013/0005**

Property : **Flat 4, Oakwood Manor, Bealeys Close, Bloxwich,
WS3 2JP**

Applicant : **Mr Gary Clift**

Representative : **Unrepresented**

Respondents : **Walton Homes Ltd (1)
Walton Property Management Ltd (2)**

**2nd Respondent's
Representative** : **Mr P Mantel of Counsel**

Date of Applications : **Both dated 1st August 2013**

Type of Application : **Sections 19, and 27A of the Landlord and Tenant
Act 1985 (the 1985 Act) and Schedule 11 to the
Commonhold and Leasehold Reform Act 2002
(the 2002 Act) and in respect of both applications
Section 20C of the 1985 Act.**

Tribunal : **Mr R T Brown FRICS
Mr P J Hawksworth**

Date of Hearing : **13th March 2014**

Venue : **The Tribunal's Hearing Suite, Priory Courts, 35
Bull Street, Birmingham B4 6DS**

Dated : **16th April 2014**

DECISION

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DECISION

1. The Tribunal determines that service charges as shown in the accounts for the years ending 31st March 2007 to 31st March 2013 are reasonable and payable.
2. The Tribunal determines that the budget for services for the year ending 31st March 2014 is reasonable and payable.
3. The Tribunal determines that the administration charges as levied are reasonable and payable.
4. The Tribunal, for the avoidance of any doubt, makes an order under Section 20C of the Act that in so far as the costs of these proceedings may be recoverable under the Lease they are not so recoverable.

REASONS FOR DECISION

The Application and Introduction

5. These two Applications (0005 and 0037) involve the same parties. 0005 relates to the entitlement of the Respondent to collect Administration Charges, while 0037 relates to a dispute over service charges for the years ending 31st March 2007 to 2013 and to be incurred in the year 2014.
6. The Applicant seeks determination of the following:
 - (a) Reasonableness of the standard and costs of services provided by the Respondent for all years in respect of:
 - (1) External and internal decorating
 - (2) Health and Safety
 - (3) Car park security and maintenance
 - (4) General repairs
 - (5) Electrical Repairs
 - (6) Cleaning account
 - (b) The right to recover and if recoverable the cost of Administration charges in respect of late payment of service charge
 - (c) An application under Section 20C of the Act limiting the recoverability of the 2nd Respondent's costs of these proceedings.
7. It does not appear to be in dispute between the parties that service charge is recoverable from the Applicant under the terms of the Lease.
8. Directions for case no: BIR/OOCU/2013/0005 were issued on 18th October 2013 and for case no: BIR/OOCU/LIS/2013/0037 on 25th October 2013.
9. The 2nd Respondent produced a trial bundle (including the Applicant's statement) to the Tribunal on 22nd January 2014. Two additional bundles were produced by the Applicant (and accepted by the 2nd Respondent) one dated 14th November 2013 and one undated but headed 'Page 3'.

10. Further Directions were issued orally at the end of the hearing for the production by the Respondent of the following:
 - (a) A properly coloured lease plan.
 - (b) A copy of the letter to Lessees notifying of the change in the 'service charge percentage' served in accordance with clause 8.4 to the lease.
 - (c) The extent of the gardening works (by reference to the plan).
 - (d) Schedule (spreadsheet) showing the service charge costs per year across the headings identified in the schedule at page 259 of the Respondent's Bundle.
 - (e) Evidence that part of the Reserve Fund (as explained by Mr Mansell) is ring fenced for internal and external decorating.
 - (f) An explanation as to why two invoices (A1 Building Services invoice dated 31st January 2007- [page 75]) was not the subject of an insurance claim, and (A1 Glass and Glazing Invoice dated 6th June 2007 [page 78]) was not recovered from the lessee responsible.

The Property and the Tribunal's inspection

11. The members of the Tribunal inspected the property on the morning of the hearing in the presence of the Applicant Mr Clift and his wife. Mr Philip Mantel of Counsel representing the 2nd Respondent and Mr M Mansell and Mr J Ryan of HLM Countrywide (the managing agent).
12. The property comprised a conversion and extension of a former stone and slate country house to 11 self contained apartments.
13. The Tribunal members inspected the exterior and grounds of the property but were not asked to inspect any of the internal common parts.
14. The Tribunal found the property to be in need of maintenance to the external decorations, some woodwork, gutters and downpipes. The car park areas were in need of jet washing to remove green moss and debris.
15. The Tribunal enquired about the grounds maintenance of the grass verge to the road on the western boundary and were told it was maintained as part of the services although it appears to be out with the boundary of the site identified on the plan.

The Law

16. The relevant law is set out below:

Landlord and Tenant Act 1985

Section 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, improvement 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 period.*

Section 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.*

Section 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 or leasehold valuation tribunal, or the Lands 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—*
 - (a) *in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;*
 - (b) *in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;*
 - (c) *in the case of proceedings before the Lands Tribunal, to the tribunal;*
 - (d) *in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.*
- (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.*

Section 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

Part 1 Reasonableness of administration charges

Meaning of "administration charge"

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—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals...

(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.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Reasonableness of administration charges

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

3 (1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

(a) any administration charge specified in the lease is unreasonable, or

(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made...

Liability to pay administration charges

5 (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 Lease

17. The Tribunal was provided with a copy of the Lease dated 31st March 2004.

18. The original parties to the Lease (the Lease) are Walton Homes Ltd (Lessor), Walton Property Management Ltd (Management Company) and Peter and Barbara Wilson (lessees).

19. The services to be provided by the Management Company are set out in Schedule 5 and the Service Costs are set out in Schedule 6 to the Lease.

20. Administration Charges are set out in Part II of Schedule 4 – Covenants by the Lessee with the Lessor and Management Company at clause 29.3 – ‘All costs in connection with the recovery of arrears of the Rent and Service Charge’

The Hearing

21. The hearing took place after the inspection.
22. The 1st Respondent made no submission and was neither present nor represented and for the purposes of this decision the term “Respondent” means only the 2nd Respondent.
23. Mr Mantel called Mr M Mansell of HLM Countrywide as a witness for the Respondent.

The Applicant’s Case

Service Charges

24. The Applicant says (for all years in dispute):

External and Internal Decorating

25. That on checking the accounts over several years he has contributed to a contingency fund and this money should have been used to meet the expenditure on external and internal decorating. He has owned the property since 2005 and the Manor House was totally refurbished in 2004 and no external or internal decoration has been carried out since.
26. On checking the accounts he cannot identify the contingency fund to which he has contributed £177.64 for each year of ownership since 2005.
27. He claims that there should be sufficient monies in the contingency fund to which he has been contributing to cover the cost of the proposed internal and external decoration works.
28. He has no objection to the proposed works which he says should have been carried out twice since the conversion took place.

Health and Safety

29. The Applicant did not realise he was able to request copies of reports and is unable to make comment until these are received.
30. Having seen the reports in the Respondents’ bundle he was satisfied that the charge was reasonable.

Car Park Security and Maintenance

31. These are stated on both the estimate and service charge statement but due to the confusing formats the Applicant is unable to decide whether to challenge this charge due to lack of information.
32. After the explanation given, Mr Clift said he was satisfied that the standard of work and cost was reasonable.

General Repairs

33. Mr Clift had a number of concerns about specific invoices which he detailed.
34. *A1 Building Services*. Invoice dated 31st January 2007- This invoice should have been the subject of an insurance claim.
35. *A1 Glass and Glazing*. Invoice dated 6th June 2007 should have been recovered from the lessee responsible.
36. *Cleaning*. There was no concern with regard to the cleaning but the cost was too high for the years in dispute. Mr Clift had obtained a quote from "Time For Your Domestic Cleaning" in November 2013 in sum of £390.00 per annum which quote made the costs incurred appear excessive.
37. *Housemans Management Co Ltd*. Invoice dated 30th May 2008 for cutting one key appeared excessive.
38. *Property Services Ltd*. This invoice should have been claimed against insurance.
39. *General Electrical*. Invoice dated 4th January 2010. The cost is excessive. As a former construction worker Mr Clift estimated the cost of replacing a light switch should be no more than £40.00.
40. *General Electrical*. Invoice dated 23rd January 2010. The cost for adjusting a door closing mechanism is excessive.
41. *HLM Property Management*. This invoice was in fact identified to the Tribunal as a credit note to Mr Clift so there was no issue now for the Tribunal to decide on this point.
42. *Property Services Ltd*. Invoice dated 22nd November 2010 for carrying out works to gutters and roof as per quotation at £878.90. Mr Clift accepted the explanation that it was wear and tear to the building and had no further issue with the invoice.
43. Summing up, Mr Clift said that the points he was getting at were uncompetitive quotes; having no reserve fund and the poor level of communication by HLM Countywide.

Administration Charges

44. The Applicant says administrative charges have been applied to his account on 3rd and 17th January 2013 in the sum of £120.00 plus VAT and £165.00 plus VAT respectively.
45. Previously in 2012 administrative charges had been credited back to his account.
46. Administration charges have been placed on the account without explanation as to what they related to. Lack of communication and taking over a year to commit to a meeting on site the Applicant said resulted in his withholding payment. Unfair fees were applied to the account.

The Respondent's Reply

47. The Mr Mansell says in his statements that he believes all the charges incurred are reasonable and recoverable under the Lease.

Service Charges

Internal and External Decorating

48. Questioned by Mr Mantel, Mr Mansell explained how the amounts in the reserve fund had varied over the years and that there was currently insufficient monies in the account to pay for the proposed decoration works and hence the demand for an additional £1,000.00 from the Applicant to cover this cost.
49. Notice of Intention in accordance with the statutory compliance procedures had been served and Notice of Estimates (paragraph B notice) would follow as soon as estimates were received but the cost was estimated to be in the region of £11,000.00.
50. At this point in the proceedings Mr Clift responded to a question from the Chairman that he was satisfied with the explanation given and that this item was not longer in issue between the parties.

Health and Safety

51. Mr Mantel explained the reason and purpose of the Health and Safety surveys.
52. Mr Mansell explained that the costs of the service charges were estimated by way of an initial budget, which was sent to all lessees at the beginning of each year, and then paid on the actual invoice issued after the costs had been incurred.

General Repairs

53. *A1 Building Services and A1 Glass and Glazing.* Mr Mansell was not the manager of the development at the time, having only taken over in 2012.
54. *Cleaning.* The job specification was for 26 visits per annum with no specific time limit but on the basis that the schedule of work had to be completed at each visit. Sahara Cleaning Services worked on 8 other sites, were based in Wolverhampton, had never let him down and were considered competitive. An attendance sheet was left at the property with the cleaners email and telephone. No complaints had been received.
55. *Housemans Management Co Ltd.* Mr Mansell said the only keys cut would have been to the common parts.
56. *Property Services Ltd.* Mr Mansell explained no claim could be made as the invoice was below the policy excess of £250.00.
57. *General Electrical.* (Both invoices) The cost was for call out, labour and parts. This contractor works on a number of HLM sites.
58. Summing up, Mr Mantel said that no evidence had been presented by the Applicant which demonstrated that the charges were unreasonably incurred or unreasonable in neither amount nor that the costs were outside the market norm.
59. There had been no complaints about the cleaning even if a cheaper alternative could be found.

60. Arguably, a reserve fund should have been created for the internal and external decorations, however, nothing in the Lease required them to be carried out every 3 or 4 years. The service charge levied was 'bare bones'.

Administration Charges

61. The Applicant disputes the payment of 2 administration fees of £144.00 and £198.00.
62. The Respondent says charges were raised in accordance with the terms of the Lease, in particular in accordance with Schedule 4 Part II clause 29.3.
63. At the time the charges were raised the Applicant was in arrears and as no payment was forthcoming charges were incurred.
64. The level of fee is reasonable taking into account the administrative staff, postage and other costs incurred in chasing payment due under the Lease.
65. A first reminder letter was issued after 14 days, followed by second and third reminder letters thus meaning that the Applicant had incurred Administration Charges and Solicitors were instructed after the third letter had failed to procure payment of outstanding sums.
66. The Applicant could telephone the office and speak to anyone and if not satisfied there was a complaints procedure in place.
67. Summing up, Mr Mantel said the charges had been reasonably and properly incurred, and whilst appreciating the Applicant's position this did not entitle the Applicant to withhold the service charge.

Further Directions

68. The Respondents complied with the Further Directions on 28th March 2014. The Applicant was not invited to respond because the information requested was factual.

Plan

69. A coloured plan was produced which showed the verge on the west side of the development and maintained by the Respondent was not in fact part of the development.

Notice of change to percentage contribution by lessees

70. A letter dated 5th April 2006 attached to which is a budget with the revised schedule of percentage contributions.

Confirmation that the service charge percentage is shown in the accounts

71. Service Charge certificates for the years 2011, 2012 and 2013 were produced showing the percentages charged.

Specification for grounds maintenance

72. The specification was produced and the Respondent says that this head of expenditure has not been disputed in the proceedings.

Confirmation that section 20 monies collected are ring fenced

73. An extract from a sub ledger was produced.

Explanation as to why no insurance claim was made in respect of A1 invoice

74. An insurance claim was made and rejected on the grounds that the insurance company determined that the wind was not strong enough on the day in question to cause the damage for which the claim was made.

The Tribunal's Deliberations

75. The Tribunal considered all the relevant written and oral evidence (as summarised above) in its deliberations.

Reasonableness of Service Charge Costs incurred in the years ending 31st March 2007 to 31st March 2013

76. The Tribunal was not entirely satisfied that the responses given following further directions satisfactorily explained the actions taken. For example the letter of the 6th April 2006 does explain that the percentage contributions have been changed however, the issue of percentage contributions was not raised by the Applicant nor was it an issue which the parties required the Tribunal to adjudicate upon.

77. There is no dispute in relation to the quality of the work undertaken.

78. It is unfortunate, and perhaps an indication of the level of care taken in the management of the building, that a reserve fund has not been established and built up in anticipation of the inevitable cyclical maintenance.

79. The Tribunal is not, however, persuaded on the evidence before it that services charges have been unreasonably incurred nor that they are unreasonable in amount. The Applicant's evidence of estimated cleaning cost was unsupported by evidence for the work to be undertaken. Similarly the Applicant's opinion evidence of the cost of certain works was unsupported by current evidence of the appropriate rate applicable to the type of work involved sufficient to demonstrate, on a test of the balance of probability, that the cost incurred was unreasonable.

Service Charge Budget year ending 31st March 2014

80. The Tribunal was satisfied that the budget for 2014 was on a 'broad brush' basis reasonable and payable.

81. The Tribunal's determination on this point does not prevent a further application being made after the final accounts have been produced.

Reasonableness of Administrative Charges

82. The Respondent is entitled under the lease to recover administrative charges.

83. No explanation as to why previous administration charges have been rebated is given, however, this does not alter the fact that the Lease allows recovery of administration charges in this case for late or non payment of service charge.

84. The Applicant admits he has not paid his service charge and accordingly the only conclusion the Tribunal can reach is that the administrative charges have been reasonably incurred. They are also considered to be reasonable in amount.

Section 20C of the Act

85. On the limited evidence before it the Tribunal finds that there appears to have been a serious failure by the Respondent's agent to communicate properly with the Applicant over a significant period leading inevitably to the present Application.
86. The Tribunal concludes that although it has found against the Applicant on the issues and amounts in dispute this was because of a lack of adequate communication on the part of the Respondent's agents, leaving the Applicant with no alternative but to bring the action to achieve a satisfactory explanation from the Respondent. This is amply demonstrated by the number of matters which were agreed during the hearing.
87. In any event, the use of Counsel, in this straightforward case where there are no complex issues of law or Lease construction in issue, is a cost which the Tribunal considers should not be included in a reasonable Service Charge.
88. Accordingly, it is appropriate that an Order is made under section 20C preventing the Respondent from recovering any costs of these proceedings by way of the Service Charge.

Appeal Provisions

89. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Robert T Brown
Chairman