



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

**Case Reference** : BIR/31UD/LSC/2013/0024  
**Property** : Flat 3 Main St Illston on the Hill Leicester LE7 9EG  
**Applicant** : Seven Locks Housing Ltd  
**Representative** : Mr Geraint Jones of Fenner's Chambers  
**Respondents** : Mr Mark Hedges & Mrs Zahra Hedges  
**Representative** : In person  
**Type of Application** : Landlord's application for the determination of liability to pay and reasonableness of service charges pursuant to section 27A of the Landlord and Tenant Act 1985  
**Tribunal Members** : Mr Vernon Ward BSc (Hons) FRICS & Judge Roger Healey  
**Date and venue of Hearing** : 21 January 2014 at Leicester Magistrates' Court  
**Date of Decision** : 20 February 2014

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**DECISION**

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## **Introduction**

1. This is an Application under sections 19 and 27A of the Landlord and Tenant Act 1985 ("the Act") which requires the Tribunal to determine as to whether the service charges demanded by the Applicant, Seven Locks Housing Ltd are payable and the amounts which are reasonably payable in respect of Flat 3 Main St Illston on the Hill Leicester LE7 9EG ("the Property") for the Service Charge Years ending 31 March 2012, 31 March 2013 and 31 March 2014.
2. Following directions issued by a procedural Chairman on 21 October 2013, the Tribunal directed that the Application be dealt with on the basis of an oral hearing. Written representations were received from the Applicant and the Respondents and these were copied to either side.

## **Background**

3. The Applicant is the Lessor of the Property whilst the Respondents, Mr Mark Hedges & Mrs Zahra Hedges, are the Lessees and hold the residue of a lease dated 11 October 2011 for a term of 125 years from the date of the lease. The ground rent is £10 per annum.
4. The Applicant seeks determination from the Tribunal as to the liability to pay and reasonableness of the service charge relating to the following service charge years:
  - a. 11 October 2011 – 31 March 2012. Total Charge £87.30
  - b. 1 April 2012 – 31 March 2013. Total Charge £149.53
  - c. 1 April 2013 – 31 March 2014. Total Charge £275.45

## **Inspection**

5. On 21 January 2014 the Tribunal attended at the Property. Present at the inspection were Mr Martin Dyer on behalf of the Applicant and the Respondents. The building in which the Property is situated comprises a small development of four flats arranged over two floors with two flats per floor served off a communal hallway. There is a communal parking area and gardens to the front elevation and further communal gardens to the rear.
6. The internal communal areas appear to be in a reasonable condition whilst externally in respect of the communal gardens, the grass was at a reasonable length considering the time of the year, but it was noted that the hedge to the right hand flank boundary did not appear to have had any attention for some considerable

period. Fire extinguishers and smoke detectors were noted to be present in the communal areas.

## **The Law**

7. The Act provides:

### **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 –
- 2) Only to the extent that they are reasonably incurred, and
- 3) Where they are incurred on the provisions 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.

- 4) 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 of subsequent charges or otherwise.

### **8. Section 27A Liability to pay service charges: Jurisdiction**

- 1) An Application may be made to a Leasehold Valuation Tribunal (now the First-tier Tribunal Property Chamber (Residential Property)) 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, 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 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.

- 4) No Applications under subsection (1) or (3) may be made in respect of a matter which –
- a) has been agreed or admitted by the tenant;
  - b) has been, or is to be referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party;
  - c) has been the subject of determination by a court, or
  - d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.
- 5) But the tenant is not to be taken as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to these Applications.

### **Hearing**

9. Following the inspection a hearing took place at Leicester Magistrates' Court, Pocklington Walk, Leicester. Present at the hearing were Mr Geraint Jones, counsel for the Applicant ("Mr Jones"), Mesdames Caroline Alison, Nicola Topping and Sally Ringrose of Seven Locks Housing Limited and Mr Mark & Mrs Zahra Hedges, the Respondents who were representing themselves.

### **Preliminary Issue**

10. Immediately after the hearing had opened, Mr Hedges challenged the jurisdiction of the Tribunal to deal with the dispute and required it be heard before the "Queens Bench". The parties were advised that the Tribunal had a jurisdiction to deal with this matter which was an application for determination of liability to pay and reasonableness of service charges under Section 27A of the Landlord & Tenant Act 1985. The Tribunal further advised Mr Hedges that any other issues other than those raised in the Application were not matters for the Tribunal on this occasion and some matters, such as allegations of fraud, were not matters for the Tribunal under any circumstances.
11. The issues specified in the Application were as follows:
- a. Communal electricity and lighting.
  - b. Grounds maintenance.
  - c. Fire safety equipment.
  - d. Management fee.

e. Repairs

These items were to be considered in each service charge year with the exception of 'e' which relates to the budget for the year 2013/2014 only.

12. It was apparent to the Tribunal from the Respondents' submission that they questioned the Applicant's ability to levy a service charge in respect of their Property. Accordingly the Tribunal asked Mr Jones on behalf of the Applicant to detail the lease provisions which provided the contractual obligation for the payment of the service charge.
13. Mr Jones essentially went through the following lease provisions:

*"Clause 2*

*The Lessee hereby covenants with the Association as follows:*

*(2) Subject as hereinafter provided to pay the service charge and Improvement Contribution to the Association annually on demand or by such instalments in advance and in accordance with estimates of expenditure prepared by the Association as the Association may require **PROVIDED** that the Lessee shall pay to the Association immediately on demand the Lessee's due proportion of any item or items of expenditure incurred by the Association which would otherwise be included in an annual or part annual service charge and Improvement Contribution demand subsequent to the date of such expenditure but which the Association decides is of such an amount that immediate payment should be made."*

14. Continuing Mr Jones stated that the scope of the service charge was laid out in Part 1 of the Third Schedule which detailed the heads of expenditure to be provided which can be summarised as follows:
  - 1) The maintenance and repair of the Common Parts.
  - 2) Outgoings.
  - 3) Equipment.
  - 4) Administration and Staffing.
  - 5) Any other services.
  - 6) Insurance.
  - 7) Maintenance and Repair.

#### 8) Improvements.

15. Part 2 of the Third Schedule laid out the provision for the basis of the charge relating to the Property and the accounting provisions relating to the same.
16. On the basis of the provisions above, Mr Jones concluded that the Applicant did have the authority to levy a service charge in respect of the Property.
17. Mr Jones then presented the Applicant's case and called Ms Nicola Jane Topping ("Ms Topping"), Tenancy Services Manager and also Ms Sally Ringrose ("Ms Ringrose"), Area Housing Officer both of whom had provided witness statements in the Applicant's submissions. In the hearing both confirmed their statements.
18. The Tribunal attempted to deal with the matter on a year by year basis and then deal with each of the issues in turn for that particular year. It was apparent that apart from a few specific instances, the Respondents' concerns in respect of the services provided were of a general nature and spanned several years.

#### **Communal Electricity and Lighting.**

19. With regard to the charges related to communal electricity and lighting, the only specific challenge of note was that for a period during May 2012, when the communal lights were on during the day due to a failure by the timer. This was exacerbated by the fact that the timer was in a locked communal cupboard which the Respondents did not have access to. Mr Hedges considered this an example of poor management of the development by the Applicant although he did not have any challenge to the electricity invoices themselves.

#### **Grounds Maintenance.**

20. With regards to grounds maintenance there were several matters of concern to the Respondents. In respect of the services falling under this category, Ms Topping stated that it is part of their service standards that hedges are generally cut twice a year, however this can be varied if it is felt that they are in reasonable order. At the hearing, Ms Ringrose stated that she believed that the hedges were last cut in July 2013, although this could not be confirmed. When challenged by Mr Hedges, Ms Ringrose said that she did not accept that the hedges were not satisfactorily maintained.
21. In her witness statement, Ms Topping confirmed that the grounds maintenance carried out by the Applicant is a basic service and grass cuttings are not removed from site. Ms Ringrose indicated that on the "grasscrete" parking area, grass cutting was problematic due to the use of the area as it was intended for the parking of vehicles. After being challenged by Mrs Hedges, she acknowledged that the grass

near the rear drying area wasn't cut. Overall however Ms Ringrose felt that the grass cutting was of a reasonable standard. Mr Hedges did not accept that this work was carried out to a satisfactory standard and further said that the Applicant's contractor had been rude to him on site.

### **Fire Safety Equipment**

22. The Respondents did not make any specific challenges to the cost relating to fire safety equipment.

### **Management Fees**

23. With regard to management fees, the Respondents both in their submissions and also at the Hearing, complained about poor management at the development and matters relating to their Property. In the witness statements provided by Ms Topping and Ms Ringrose, they confirmed that they carried out monthly inspections of all developments including the subject and further that when matters are reported to them they are dealt with promptly and efficiently. Additionally the days when the development is to be inspected are advertised in the communal hallway of each block so that if leaseholders wished to discuss an issue on site they could do so. Ms Ringrose in her statement, said that to date no leaseholders had requested to meet with her. Following an inspection, a form is completed, copies of which were provided to the Tribunal.
24. In response Mr Hedges stated, both in his submissions and also at the Hearing that the response times in respect of any problems reported were poor. He cited several instances including the issue regarding the lighting where communal lights were left on during the day for two weeks and further in May 2012 when the communal lights were off for a period of between one and two weeks.
25. Of major concern to the Respondents was how the Applicant dealt with a roof leak to the property when water passed through the roof space into the Property causing significant damage. Mr Hedges, in this regard, was particularly critical of the contractors employed by the Applicant and he was of the opinion that the repair was not dealt with as quickly as possible. Mr Hedges also complained that an insurance claim that he allegedly lodged in respect of this matter has not been dealt with by the Applicant.
26. Mr Hedges said that the Applicant did not comply with their own service standards and the hedge had not been cut twice yearly nor the grass cut competently. Another specific incident of poor maintenance raised by Mr Hedges was the removal of a branch of a dead tree which was advised to the Applicant by another leaseholder. Ms Ringrose did not accept that there had been an undue delay in dealing with that

item and apparently from report to removal, the time span was approximately three weeks.

## **Repairs**

27. The Tribunal was also asked for determination as to the reasonableness of the budget for the year 2013 – 2014. When questioning the Applicant in respect of the proposed charges, with the exception of repairs, the Tribunal advised that the costings were based on previous charges and thought to be reasonably accurate. The Tribunal noted that the amount allocated to future repairs was £250 and asked how it had been calculated. The Applicant was unable to provide any information as to how it was calculated although it did not appear to have been based on any formal survey or planned maintenance schedule.
28. Summing up Mr Jones, on behalf of the Applicant, said that the Tribunal had to take note of the fact that the charges levied in respect of the property were very small and hence more than reasonable and were so due to the nature of the Applicant as a public body who had adopted a reasonable stance between quality and cost.
29. In his closing remarks Mr Hedges said that he wished the Tribunal to consider the matter under the principles of “Maxim Law” and considered that he did not have a contract with an untrustworthy company. Mr Hedges was unable to elaborate on Maxim Law and Mr Jones for the Applicant could add nothing in this regard.

## **The Tribunal’s determination**

30. Having considered the provisions of the lease, the Tribunal considers that there is an obligation for the leaseholder of the Property to pay a service charge as outlined by Mr Jones above.
31. The Tribunal then considered the reasonableness of cost relating to the various items. With regard to communal electricity and lighting, whilst noting the comments that the lights had been left on for a two week period, it did not consider that the electricity charges in respect of the property which ranged from £32.63 to a maximum of £43.34 in any one year were by any means excessive and were therefore considered reasonable.
32. In respect of ground maintenance, the Tribunal considered that at the inspection the state of the lawn areas did not seem unreasonable for the time of year and further the nature of the “grasscrete” parking area would by its nature inhibit maintenance of some of the surrounding areas. The Tribunal however did not agree with Ms Ringrose’s statement that the hedges were trimmed last year as they did not appear to have been tended for some considerable period. The Tribunal then considered the costs in respect of these items which ranged from £36.72 - £82.59 in



any one year and whilst there have undoubtedly been deficiencies in the maintenance of the hedge the overall costs are considered by the Tribunal to be reasonable.

33. There was no specific challenge to the costs of the fire safety equipment and these are considered reasonable by the Tribunal.
34. In respect of the management charges these range from £11.39 to a maximum of £35.93 in any one year. It is contentious as to whether or not there have been any failures in management and it was acknowledged at the Hearing and quite clear to the Tribunal that the relationship between Mr & Mrs Hedges and the Applicant and members of the Applicant's staff has broken down. From its own knowledge and expertise the Tribunal is aware that management charges levied by commercial concerns in respect of leasehold developments in Leicestershire range from £90 - £180 per property per annum plus VAT and therefore even if there had been deficiencies in the services provided by the Applicant, the management was still of a reasonable standard to justify the charges levied and they are therefore considered reasonable.
35. In respect of the repair item for the budget for the year April 2013 – March 2014 whilst there did not appear to be any basis for the estimated amount of £250 the Tribunal does not consider it unreasonable that such an amount be included in the budget and would expect any prudent managing agent to include an item for miscellaneous repairs which will undoubtedly be required in any form of development. A budget of £250 for a development of four properties is therefore not considered unreasonable. It is emphasised however that this figure is for budgetary purposes, and the Tribunal's decision does not preclude the actual expenditure for the year being challenged in due course.
36. The Tribunal would make the comment that if the subject property were to be managed on a commercial basis then the services charges would be significantly higher than those levied.
37. The Tribunal therefore makes no adjustment to the service charges and considers them all reasonable and payable by the Respondents.

### **Summary of the Decision**

38. The Tribunal finds that the following charges are due and payable by the Respondents in respect of the Property:
  - a. 11 October 2011 – 31 March 2012. Total Charge £87.30
  - b. 1 April 2012 – 31 March 2013. Total Charge £149.53

c. 1 April 2013 – 31 March 2014. Total Charge £275.45

39. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. The application must be received by the Tribunal no later than 28 days after the date the Tribunal sends this decision to the party making the application. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Vernon Ward (Chairman)

**20 FEB 2014**