



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

Case Reference : **MAN/00BN/LSC/2013/0119**

Property : **16 Lakeside Drive, Manchester, M9 8QD**

Applicant : **Mr S E Reid**

Respondent : **Lakeside (Blackley) Management Co.
Limited**

Represented by : **Mainstay Group Limited**

Type of Applications : **Landlord and Tenant Act 1985 - Section
27A and Section 20C
Commonhold and Leasehold Reform Act
2002 – Schedule 11, Paragraph 2**

Tribunal Members : **Mrs C Wood
Mr D Bailey
Mr L Bottomley**

Date of Decision : **17 October 2014**

DECISION

Decision

1. The Tribunal determines as follows:
1.1 that the Applicant is not liable to pay the amount of £276.90 in respect of the 2007 service charge year;

1.2 that the following costs have been reasonably incurred by the Respondent and the Applicant is liable to pay the respective amounts as service charge for the years 2008 -2013 (inclusive) as set out in the following paragraphs:

| | | |
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| 1.2.1 | service charge year ended 31 December 2008: | £ |
| (i) | concierge : | 6059.10 |
| (ii) | security: | 6226.00 |
| (iii) | utilities: | 6000.00 |
| (iv) | general maintenance: | 9000.00 |
| (v) | landscape maintenance: | 13581.00 |
| (vi) | insurance: | 15560.00 |
| (vii) | access control system: | 218.00 |
| (viii) | out of hours fee: | 300.00 |
| (ix) | CCTV access control rental: | 3866.00 |
| | Total expenditure on which management fee levied: | 60810.10 |
| (x) | management fee @ 12.5%, say: | 7600.00 |
| (xi) | accountancy and audit fees: | 1534.00 |
| (xii) | renewals sinking fund: | 11090.00 |
| (xiii) | bank charges: | <u>167.00</u> |
| | Total service charge expenditure: | <u>81201.10</u> |
| | Service charge @ 0.4%: £324.80 | |

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| 1.2.2 | service charge year ended 31 December 2009: | £ |
| (i) | concierge: | 10,382.00 |
| (ii) | cleaning: | 390.00 |
| (iii) | grounds and gardens: | 7200.00 |
| (iv) | utilities: | 6536.00 |
| (v) | common area repairs: | 9994.00 |
| (vi) | access control system: | 3308.00 |
| (vii) | mechanical and engineering: | 483.00 |
| (viii) | insurance: | 13150.00 |
| | Total expenditure on which management fee levied: | 51443.00 |
| (ix) | management fee @ 12.5%: | 6430.00 |
| (x) | professional fees: | 1549.00 |
| (xi) | reserve fund: | 3200.00 |
| (xii) | cyclical reserve maintenance fund: | <u>1820.00</u> |
| | Total service charge expenditure: | <u>64442.00</u> |
| | Service charge @ 0.4%: £257.77 | |

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| 1.2.3 | service charge year ended 31 December 2010: | £ |
| (i) | concierge: | 11282.00 |
| (ii) | cleaning: | 700.00 |
| (iii) | grounds and gardens: | 7200.00 |
| (iv) | utilities: | 11121.00 |
| (v) | common area repairs: | 8651.00 |
| (vi) | access control system: | 2889.00 |

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| (vii) | mechanical and engineering: | 917.00 |
| (viii) | insurance: | 13800.00 |
| | Total expenditure on which management fee levied: | 56560.00 |
| (ix) | management fee @ 12.5%, say: | 7070.00 |
| (x) | auditors fee: | 1065.00 |
| (xi) | professional fee: | 426.00 |
| (xii) | accountancy fee: | 462.00 |
| (xiii) | renewals sinking fund: | 3200.00 |
| (xiv) | cyclical maintenance reserve fund: | 1820.00 |
| (xv) | bank charges: | <u>234.00</u> |
| | Total service charge expenditure: | <u>70837.00</u> |
| | Service charge @ 0.4%: £283.35 | |

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| 1.2.4 | service charge year ended 31 December 2011: | £ |
| (i) | conciierge: | 5800.00 |
| (ii) | cleaning: | 800.00 |
| (iii) | grounds and gardens: | 7800.00 |
| (iv) | utilities: | 7030.00 |
| (v) | common area repairs: | 16459.00 |
| (vi) | access control system: | 3629.00 |
| (vii) | mechanical and engineering: | 1070.00 |
| (viii) | insurance: | 13895.00 |
| | Total expenditure on which management fee levied: | 56483.00 |
| (ix) | management fee @ 12.5%: | 7060.00 |
| (x) | auditors fee: | 1065.00 |
| (xi) | accountancy fee: | 462.00 |
| (xii) | renewals sinking fund: | 3200.00 |
| (xiii) | cyclical maintenance reserve fund: | 1820.00 |
| (xiv) | bank charges: | <u>265.00</u> |
| | Total service charge expenditure: | <u>70355.00</u> |
| | Service charge @ 0.4%: £281.42 | |

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| 1.2.5 | service charge year ended 31 December 2012: | £ |
| (i) | conciierge: | 5900.00 |
| (ii) | cleaning: | 824.00 |
| (iii) | grounds and gardens: | 7800.00 |
| (iv) | utilities: | 8244.00 |
| (v) | common area repairs: | 14147.00 |
| (vi) | access control system: | 14521.00 |
| (vii) | insurance: | 15000.00 |
| | Total expenditure on which management fee levied: | 66436.00 |
| (viii) | management fees @ 12.5%, say: | 8300.00 |
| (ix) | auditors' fee: | 1065.00 |
| (x) | accountancy fee: | 462.00 |
| (xi) | renewals sinking fund: | 3200.00 |
| (xii) | cyclical maintenance reserve fund: | 1820.00 |
| (xiii) | bank charges: | <u>46.00</u> |
| | Total service charge expenditure: | <u>81329.00</u> |
| | Service charge @ 0.4%: £325.32 | |

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| 1.2.6 | service charge year ended 31 December 2013: | £ |
| (i) | concierge: | 6000.00 |
| (ii) | cleaning: | 849.00 |
| (iii) | grounds and gardens: | 7800.00 |
| (iv) | utilities: | 7587.00 |
| (v) | common area repairs: | 11558.00 |
| (vi) | access control system: | 6153.00 |
| (vii) | insurance: | 18175.00 |
| | Total expenditure on which management fee levied: | 58122.00 |
| (viii) | management fee @ 12.5%: | 7265.25 |
| (ix) | auditors' fee: | 1065.00 |
| (x) | accountancy fee: | 462.00 |
| (xi) | renewals sinking fund: | 3200.00 |
| (xii) | cyclical maintenance reserve fund: | 1820.00 |
| (xiii) | bank charges: | <u>91.00</u> |
| | Total service charge expenditure: | <u>72025.25</u> |
| | Service charge @ 0.4%: £288.10 | |

1.3 that having regard to the decisions made in paragraphs 1.1 and 1.2 above, management fees are reduced to 12.5% of all Estate Service Charge expenditure (but excluding professional fees and reserve fund contributions);

1.4 that having regard to the decisions made in paragraphs 1.1 and 1.2 above, the administration charges charged during the service charge years 2007 – 2013 (inclusive) as set out below were not reasonable and the Applicant is not liable to pay them:

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| | | £ |
| (i) | administration fees – late payment charges: | 516.00 |
| (ii) | interest: | 325.46 |
| (iii) | legal fees: | 456.00 |

1.5 that it is fair and reasonable in the circumstances to grant the Applicant's application under section 20C of the Landlord and Tenant Act 1985, ("the 1985 Act"), restricting the Respondent from charging as service charge any costs incurred by it in respect of the Application;

1.6 that the Respondent is ordered to reimburse the Applicant with the application fee of £125.00.

Background and Evidence

2. By an application dated 22 July 2013, ("the Application"), the Applicant sought a determination as to the liability to pay, and reasonableness of, service charges for the years 2007 – 2014.

3. Following a Case Management Conference held on 14 October 2013 at which both parties attended/were represented, directions dated 15 October 2013, ("the Original Directions"), required the submission of written representations by the Respondent identifying the service charge year and the relevant "Estate Proportion" and by the Applicant identifying the items of expenditure within the service charge which were in issue. Both parties

indicated to the Tribunal that they wished the matter to proceed as a paper determination.

4. Evidence was received from the parties in response to the Original Directions and the matter was scheduled for determination on 17 March 2014. However the Tribunal was concerned that certain information which was necessary in order to make a determination was still missing and further directions were issued dated 24 March 2014 detailing the information/documentation required.
5. Further evidence was submitted by both parties and the Tribunal reconvened on 18 June 2014. However, the Tribunal again considered that information integral to a satisfactory determination of the issues was again lacking and final directions dated 25 June 2014 again specifying the information required were issued. The parties were advised that a determination of the Application would be made on the evidence submitted on 18 July 2014.

Inspection

6. The Tribunal inspected the external communal areas on 17 March 2014. The Applicant attended in person, and the Respondent was represented by Ms J Roebuck of Mainstay Group Limited.
7. The Property is one of a number of 39 houses which form part of the Estate. In addition, there are 4 blocks of flats comprising a further 209 units.
8. The external communal areas comprise car parking, bicycle shelters, bin stores and gardens which are part-grassed and part-planted. To the rear of the Property, the grounds slope down to the boundary; there was a considerable amount of litter amongst what was an area of rather scrubby planting.
9. There are electric gates to the entrance to the Estate which were working on the date of inspection. It was acknowledged by both parties that there were ongoing problems with the gates which were frequently out of order, sometimes as a result of mechanical failures and sometimes as a result of vandalism and/or misuse by occupiers.

The Leases

10. The Tribunal's deliberations in this matter were complicated by the state of the documentation: specifically, although the Property is a house, the lease dated 30 November 2006 made between LPC Living Limited(1), Lakeside (Blackley) Management Company (2) and the Applicant (3), ("the Property Lease"), is in the form appropriate for one of the flats within the Estate.
11. The Tribunal noted that the form of lease which was supplied on request to the Applicant by the Respondent's solicitors, and which the Applicant filed in support of the Application, states on the front page that it is a "LEASE relating to [House], ("the House Lease").

12. Whilst it therefore appears to the Tribunal that the parties may have entered into the Property Lease in error, and whilst the parties may wish to take action to redress the situation, it is outside the Tribunal's jurisdiction in respect of the Application to make any determination in this respect.
13. Under clause 4.3 of the Property Lease, the Lessee agrees to pay the "Estate Proportion" of the "Service Charge" where:
 - 13.1 "Estate Proportion" is defined as: "A proportion based upon the percentage the aggregate square footage of the Property bears to the aggregate square footages of each unit of accommodation within the Estate capable of enjoying the benefit of the Estate Services...subject to variation in accordance with paragraph 1 of the Fourth Schedule of this Lease", (clause 1.1);
 - 13.2 paragraph 3 of the Fourth Schedule provides that the Service Charge is a sum comprising;
 - (i) the sum estimated as likely to be incurred in the Service Charge Year...for the Services as are appropriate to the Property together with
 - (ii) an appropriate amount as a reserve...
 - (iii) a reasonable sum to remunerate the Lessor or the Management Company
 - (iv) but reduced by such amount...as the Lessor or the Management Company...intends to draw from reserve.....
14. The "Purposes for which the Service Charge is to be applied" are set out in the Fifth Schedule and the Service Charge expenditure is itemised in the Sixth Schedule, which refers in the heading to "all flats".

The Law

15. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:
 - (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.
16. Section 19 provides that –
 - (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.
17. Section 27A provides that:
- (1) an application may be made to a 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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
 - (2) Subsection (1) applies whether or not any payment has been made.
 - (3)
 - (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
18. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

Tribunal’s Deliberations

19. The Tribunal made the decisions set out in paragraph 1 of this Decision, having regard to the following matters:
- 19.1 despite repeated requests to the Respondent to produce evidence supporting the carried forward amount of £276.90, (being the amount claimed as the service charge payable by the Applicant for the service charge year 2007), the Respondent failed to do so;
- 19.2 in respect of the Service Charge Year ended 31 December 2008:
- (i) the Respondent failed to produce any evidence explaining the service charge amount in the Budget of £553.79 (excluding ground rent of £75) for all of the houses, including the Property, based on an Estate Proportion of 0.27% of all Estate Expenditure; and,
 - (ii) that, in accordance with paragraph 3.1 of the Fourth Schedule of the Property Lease, (see paragraph 14.2(i) above), the Applicant’s liability is stated to be limited to the Estate Proportion of the Services “appropriate to the Property”. The Tribunal considered that, in view of the difficulties presented by the Property Lease (see paragraphs 10 and 11 above), it was appropriate to limit the Service Charge expenditures for which the Applicant is liable to pay to those purposes listed in the Sixth Schedule to the House Lease, all of which

also appear in the Sixth Schedule to the Property Lease. As noted in paragraph 19.3 below, this is recognised in the subsequent service charge years by the introduction by the Respondent of the Estate Service Charge and the Apartment Service Charge;

- 19.3 for the service charge years ended 31 December 2009 – 31 December 2013 (inclusive), it is consistent with the terms of the Property Lease and the House Lease that there should be two separate levels of charges, identified in the budgets and accounts as “the Estate Service Charge” and “the Apartment Service Charge”;
- 19.4 “the Service Charge Year” was changed to 1 January – 31 December with effect from, at least, the service charge year which commenced on 1 January 2008;
- 19.5 for the service charge years ended 31 December 2009 – 31 December 2013 (inclusive), the calculation of the Estate Proportion for the Property as 0.4% of the Estate Service Charge is based upon a total number of units (flats and houses) at the Estate of 248, of which 39 are houses. Whilst there was no evidence that the Respondent had given formal notice of the variation of the Estate Proportion for the 2008 service charge year in accordance with paragraph 1 of the Fourth Schedule to the Property Lease, the Tribunal considered that the leaseholders, including the Applicant, had de facto notice of the Estate Proportion of 0.4% for each of the service charge years ended 31 December 2009 – 31 December 2013;
- 19.6 that it is reasonable to include the following heads of expenditure in the budgets and the accounts for the Estate Service Charge for the service charge years 2009-2013 (inclusive) as expenditure incurred in respect of “Estate Management”: Concierge, Cleaning, Utilities, Common Area Repairs, Mechanical and Engineering;
- 19.7 based primarily on its inspection of the Estate, the Tribunal considered that the leaseholders of the flats were more significant beneficiaries/users of the concierge services and that the expenditure in respect of the Concierge services should therefore be apportioned between the Estate Service Charge and the Apartment Service Charge 30:70;
- 19.8 based on the Tribunal’s inspection of the Estate and on the evidence produced by the Respondent as to insurance claims, that the insurance premiums payable in respect of the Estate should be apportioned between the Estate Service Charge and the Apartment Service Charge 30:70;
- 19.9 that all amounts charged in respect of the gym (including under the headings entitled “Cleaning” and “Site Specific Facilities”) are disallowed, there being no provision in the Property Lease for the charging of this expenditure;
- 19.10 having regard to the state of the gardens and grounds observed during the inspection of the Estate, the amounts charged in the service charge years 2008 – 2013 (inclusive) for grounds and garden maintenance are reduced to the amounts set out in paragraphs 1.2.1 – 1.2.6;

- 19.11 having regard to the circumstances and, in particular but without limitation, the following matters, it was reasonable to determine that the administration charges charged to the Applicant during the period 2007-2013 were unreasonable and the Applicant was not liable to pay them:
- (i) the discrepancy between the amounts charged by the Respondent for service charge and the amounts determined to be reasonable by the Tribunal: in each of the years 2008-2013, the reduction in the charge was c50% which was evidence supporting the merit of the Application;
 - (ii) the repeated failure of the Respondent over a number of years to enter into any meaningful discussion with the Applicant which may have resulted in an amicable resolution of this matter;
 - (iii) that, in view of the failure referred to in (ii) above, and of the “threat” of proceedings being instituted against him, the Applicant’s decision to make the Application;
- 19.12 Save for the Applicant’s concession to make payment of the Land Registry fees of £31.50 the Tribunal would have determined that they were not reasonable and the Applicant was not liable to pay them.