



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

Case Reference : **MAN/OOCG/LSC/2014/0043**

Property : **APARTMENTS 33, 36, 49 and 68, WHITE
CROFT WORKS, 69 FURNACE HILL,
SHEFFIELD, S3 7AF**

Applicants : **MR and MRS HAYES**

Respondent : **P. A. S. PROPERTY SERVICES LIMITED**

Represented by : **J. B. LEITCH SOLICITORS**

**Type of
Application** : **SECTION 27(a) LANDLORD and TENANT
ACT 1985 and SECTION 20C.**

Tribunal Members : **Mr C. P. TONGE, LLB, BA.
Mr J. PLATT, BSc EST MAN, FRICS, FIRPM
MRS B. MANGLES, BA**

Date : **24 JUNE 2014**

DECISION

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PRELIMINARY MATTERS

1. This Tribunal, constituted with the same members, dealt with this case during 2012, a decision being issued in October 2012, case reference number MAN/OOCG/LSC/2012/0058. One of the matters decided was that service charges could not be demanded by the Respondent in relation to the use of gas for years 2007 to 2012, inclusive. With the evidence before the Tribunal it was impossible for the Tribunal to determine how much had been paid by the Applicants in respect of gas over these years. It was therefore ordered that the parties agree these figures, with liberty to apply for the Tribunal to determine the amounts, should agreement not be possible.
2. The Respondent appealed against this part of the decision to the Upper Tribunal (Lands Chamber), case reference, LRX/166/2012. The appeal was dismissed. At paragraph 49 of that judgement Her Honour Judge Alice Robinson stated, "...the Landlord is entitled to recover from the lessees the cost of the supplying gas from the Common Heating System in order to heat the common parts as a Part II Service within paragraph 1.1.3.12. However, I do not consider that that avails the Landlord in this appeal. The service charge demands do not purport to identify the cost of providing such heating."
3. Agreement was reached between the parties in relation to the credits for 2010, 2011 and 2012. Agreement was not reached for the earlier years.
4. On 18 March 2014 the Applicants applied for the Tribunal to determine the amounts to credit to the respective service charge accounts for these properties for years 2007, 2008 and 2009.
5. Directions were issued on 24 March 2014 indicating that this matter could be dealt with without a hearing, unless either party requested a hearing. Neither party requested a hearing.
6. The Tribunal met to determine this matter, by means of a paper determination, in Sheffield on 24 June 2014.

WRITTEN EVIDENCE ON BEHALF OF THE APPLICANTS

7. The Applicants' statement of case indicates that they went to some effort to attempt to reach agreement in relation to the sums to be credited to their service charge accounts. Letters were produced to support this.

8. Their application had indicated that in respect of 2007, only apartment 49 had paid a service charge and they did not know if that included anything in respect of gas. In their statement of case they accepted that nothing had been paid in respect of gas.
9. In respect of 2008 and 2009, they had relied upon documents served upon them by the Respondent, or the Respondent's predecessor in title to ascertain the figure that relates to the service charge being demanded for the use of gas for each property, for each year. This had been divided by the appropriate percentage to determine what should be credited to each service charge account for each property, for each year. This had been supplied to the Respondent, by letter, during the abortive attempt to reach an agreement.
10. The Applicants' served copies of the documents that they had relied on in this regard.
11. The Applicants' served a Service Charge Reconciliation for year 2008, for all four apartments, compiled 8 June 2009 and therefore before this Respondent acquired the freehold on 14 September 2009 (Applicants' bundle, page 96, 97, 98 and 99). The Applicants' stated that this established that a total of £1500 had been charged as service charges in relation to gas for that year. [These are also included in the Respondent's bundle at pages 77, 78, 79 and 80.]
12. The Applicants' served an Expenditure Variance Report for year 2009 (Applicants' bundle, pages 92 and 93). This document must have been produced by the Respondent who had taken over the freehold before the end of this period. It compared the figure that the previous Landlord had budgeted for gas in that period with the figure spent, which was £19,888.76. [This is also included in the Respondent's bundle at pages 102 and 103.]
13. The Applicants' also served a Service Charge Certificate for year 2009 calculating all the service charge expenditure at the complex during that year and certified as being correct by the Respondent's accountant on 16 November 2011. (Applicants' bundle, page 90 and 91.) This document established that £19,888.76 had been spent during this year on gas. The Applicants' pointed out that such a certificate is deemed to be conclusive proof of its content pursuant to clause 1.3.1. of the Eighth schedule of the lease. [This is also included in the Respondent's bundle at pages 105 and 106.]
14. The Applicants' case was that in 2009 £19,888.76 had been collected from all the long leaseholders at this complex for payment of this expenditure on gas.

WRITTEN EVIDENCE ON BEHALF OF THE RESPONDENT

15. The Respondent made submissions in relation to 2007, which bearing in mind the approach of the Applicants', are not dealt with in this decision.
16. In relation to 2008 the Respondent indicated that the Respondent has no knowledge of any service charge relating to gas for this year. The Respondent did not take over the freehold until 14 September 2009. The Respondent believes that there may have been an allocation towards communal gas use within the budget for that year, but that any money paid by the Applicants' during 2008 was not attributed to gas. Nothing should be recoverable by the Applicants' for that year.
17. In relation to 2009 the Respondent indicated that any money paid by the Applicants' during this year was not attributed to gas. Nothing should be recoverable by the Applicants' for that year.

THE DELIBERATIONS

18. The Tribunal noted that the Respondent had failed to serve any gas bills as part of the case for the Respondent, although it was perfectly clear that the precise figure of £19,888.76 spent on gas during 2009 must have come from such a bill.
19. The Tribunal found as a fact that in determining what had been paid in service charges for gas, it did not matter whether the recipient of the service charge had in fact paid the gas bill. What mattered was what it had been collected for. There was clear evidence that in both years money was being spent on the cost of gas.
20. The Tribunal noted that the Respondent acquired the freehold on 14 September 2009 and had no real knowledge of what happened during 2008 and only knowledge of what happened in the last 15 weeks of 2009.
21. The Tribunal decided that there is nothing to credit to the Applicants' service charge accounts in respect of 2007.
22. The Tribunal accepted the Applicants' case, supported by the written evidence served by both parties to the effect that in 2008, £1500 had been charged in relation to the use of gas by service charges for the complex.
23. The Tribunal accepted the Applicants' case that in 2009 £19,888.76 had been charged as service charges for the complex in relation to the use of gas. This is supported by written evidence served by both parties to the effect that in 2009, £19,888.76 of gas had been used at the complex.

24. The Tribunal further noted that the Respondent has not attempted to apportion any of the gas use to heating of the common parts. With the evidence before the Tribunal it would be impossible to do so, because it was not separately metered. The Tribunal in any event, based upon the inspection of the complex, was of the opinion that any use of gas for heating the common parts would be minimal.
25. The Respondent has not challenged the calculations by which the Applicants' have arrived at the figures that should be credited to the service charge accounts of the properties in respect of service charges for the cost of gas.
26. The Tribunal for the reasons stated above agrees that the figures as stated by the Applicants' in their statement of case should be credited to the respective service charge accounts.
27. In relation to the application pursuant to section 20c of the Landlord and Tenant Act 1985. The Tribunal accepts the case for the Applicants' that they made significant efforts to come to an agreement with the Respondent as to the sums that should be credited to the respective service charge accounts in relation to the service charges for the use of gas. The stance of the Respondent that nothing at all should be credited in relation to 2008 and 2009 made it impossible to avoid this application. It is just and equitable to make such an order.

THE DECISION

28. The following sums must be credited forthwith to the respective service charge accounts for these properties:

2007: nothing.

2008: Apartment 33	£18.30
Apartment 36	£26.10
Apartment 49	£15.15
Apartment 68	£31.50

2009: Apartment 33	£242.64
Apartment 36	£346.06
Apartment 49	£200.88
Apartment 68	£417.66

29. The Applicants' having raised the matter of section 20c of the Landlord and Tenant act 1985, the Tribunal decides that it is just and equitable to make an order that the Respondent's costs incurred in connection with these proceedings are not to be considered as relevant costs to be taken into account in determining the amount of service charges payable.