



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

Case Reference : MAN/OOCM/LSC/2014/0088

Property : 19 Cotswold Close Lambton Washington Tyne & Wear NE38 0PF

Applicant : Mr R Bradley

Represented by : In person

Respondent : Gentoo Group Limited

Represented by : Mr Brett Nicholson, Leasehold Manager of Respondent

Type of Application : Landlord And Tenant Act 1985 – Section 27A(1)

Tribunal Members : Judge W.L. Brown LL.B
Mr I.R.Harris FRICS

Date of Decision : 18 November 2014

DECISION

The amounts determined by the Tribunal as reasonable for the service charge years ended 31 March 2009 to 2015 are as invoiced by the Respondent to the Applicant for those years.

The Tribunal makes no order under Section 20C.

REASONS

INTRODUCTION

1. By an application dated 12 July 2014 the Applicant who is the leasehold owner of the Property the Tribunal was requested to make a determination under Section 27A of the Landlord & Tenant Act 1985 as to the reasonableness and liability to pay of service charges for the Property for the service charge years ended 31 March 2009 to 2015.
2. On the morning of 18 November the Tribunal carried out an external inspection of the common areas of the Property in the presence of the Applicant's father (on his behalf) and on behalf of the Respondent, Mr Nicholson, Mr Grey (Repairs Manager) and Mr Robert Barron (Roofer).
3. The Property is a 1st floor flat in a two storey block of brick and tile roof construction (the "Building").
4. A Hearing took place at Law Courts, Quayside Newcastle upon Tyne on 18 November 2014. The parties provided their own statements of case, bundles of documents and a Scott Schedule provided in accordance with directions of the Tribunal dated 8 August 2014. The Applicant attended and appeared as his own advocate. The Respondent was represented by Mr Nicholson and present were Mr Grey and Mr Barron.

The Lease

5. The Tribunal was presented with a copy of the lease of the Property (the "Lease"). It is dated 13 November 1995 and is between The Council of the City of Sunderland (1) and Keith Hollins (2) for a term of 125 years from 13 November 1995 at an annual ground rent of £10.00 per year.
6. Clause 4.2 of the Lease provides an obligation on the leaseholder to pay service charges, quarterly in advance. The relevant contribution is set out in the Fourth Schedule and therein and in the Fifth Schedule are the items to which the Service charge relates. The service charge includes expenditure of the Lessor in fulfilling its obligation to provide repair and maintenance of the Building, including its structure which is expressed to include ".....roofand timbers (including the timbers joists and beams of the floors and ceilings of the Building).....gutters....."
7. There is no dispute between the parties as to the apportionment of expenditure in this matter or the allocation of expenditure according to the lease.

The Issue

8. The issue for determination by the Tribunal was the reasonableness and payability of service charges claimed by the Respondent in respect of the Property for the service charge years referred to on the Application.
9. The Tribunal had directed the Applicant to present in the Scott Schedule for each year at issue each disputed amount and to set out his reasons. It was clear from that document and the other papers presented by the parties that the only point of concern disclosed by the Applicant was for contributions towards repairs to the Building. In particular the Applicant was unhappy that he had incurred personally an expense of £550 in 2011 for a roofer to repair the lead valley in the roof tiles above his flat. He stated that the Respondent had failed to effect suitable repairs after complaints from him. The defect had caused leaking into the bathroom at the Property, which had required replastering of its ceiling.

The Law

10. The relevant law is to be found in the Act.
11. Section 18 of the Act states

‘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.....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.’*

12. Section 19 of the Act states

‘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 should 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 adjustments shall be made by repayment, reduction or subsequent charges or otherwise.'*

13. Section 27A of the Act states

'Liability to pay service charges: jurisdiction

- (1) *An application may be made to the 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 Tribunal for a determination whether, if costs were incurred for service, 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.'*

14. It also is appropriate to record a relevant provision from Section 81 Housing Act 1996, as follows:

"Restriction on termination of tenancy for failure to pay service charge.

- (1) *A landlord may not, in relation to premises let as a dwelling, exercise a right of re-entry or forfeiture for failure to pay a service charge unless the amount of the service charge—*

.....

or

(b) *has been the subject of determination by a court*

(2) Where the amount is the subject of determination, the landlord may not exercise any such right of re-entry or forfeiture until after the end of the period of 14 days beginning with the day after that on which the decision of the court

*(3) For the purposes of this section the amount of a service charge shall be taken to be determined when the decision of the court is given, notwithstanding the possibility of an appeal or other legal challenge to the decision.
.....*

(5) In this section “service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).”

The Applicant’s case

15. The essence of the Applicant’s case was that the Respondent had failed in 2011 to fulfil its obligations under the Lease to repair the roof of the Building when defects appeared in the lead valley in the roof partly above the Property. He stated that he had reported the problem and although a repair had been undertaken it was deficient and despite further requests the respondent had failed to properly repair the defect. In consequence the Applicant had commissioned his own roofer to undertake repair works including replacement of felting and part of the lead. His contractor’s invoice was in the sum of £550.00 and he believed he should be reimbursed by the Respondent for this cost and that credit should be given to him against the expenditure by the Respondent on structural repair charges within each of the service charge years at issue.
16. At the hearing the Applicant made reference to some concerns he had about cleaning of the communal entranceway to the Building. As there had been no representations in accordance with the Tribunal’s directions the Tribunal declined to hear evidence on this point.

The Respondent’s case

17. The Respondent made written representations about the roof repair, conceding that resolution of the leak through the roof had taken longer than anticipated due to unsuccessful attempts to repair, adverse weather and the need to inspect when water was penetrating.
18. It stated that the Applicant had arranged his own repair in March 2011 without allowing the Respondent a further opportunity to inspect and repair as necessary.
19. However, of particular relevance to the Application was a determination pursuant to Section 81 Housing Act 1996 by District Judge Howard in Gateshead County Court on 19 June 2013 (the “Order”) in proceedings brought by the Respondent against the Applicant arising from the Applicant’s failure to pay service charges due for the years 2008/09 through to 2012/13 (which latter year was an estimate of

charges). The Court had determined that the service charge payable for the Property for those years was £2, 2522.36. The Respondent stated in its written representations that the effect was that this Order may remove the Tribunal's jurisdiction to make a determination on the Application.

The Tribunal's Findings and Decision on the Section 27A Application

20. The Tribunal first ascertained whether the sums which form the basis of the relevant service charges are properly provided for in the Lease. The Tribunal noted the Lease obligations and established that the Lease contains at clause 4.2 a right in principle for the Respondent to recover from the Applicants relevant service charges. The Tribunal also found that repairs to the roof of the Property falls within the Respondent's repair obligations, the costs of which are recoverable from the Applicant under the service charge provisions.
21. The Tribunal next considered the status of the Order. The Applicant advised the Tribunal at the hearing that he had not responded to the proceedings that lead to the Order and had settled the sums determined as payable by the County Court. The Respondent confirmed that the Order was in respect of all unpaid service charges for the years referred to in those proceedings. While the Tribunal does not believe the Order removes its jurisdiction in respect of the Application it does find that it is bound by the determination in the Order. The effect is that the Tribunal can do no other than to determine that the service charges for the years ending 31 March 2009 to 2013 (inclusive) are both properly incurred and reasonable in amount, pursuant to the Order.
22. Service charge year 2013/14 and 2014/15 (both understood to be estimates only at the date of the hearing) had been the subject of the Order. However, the Applicant's reason for objecting to those charges was exactly the same as he was putting forward in support of his case for the earlier years – as set out in paragraph 15. The Applicant was, in effect, seeking reimbursement of his personal expenditure on the roof repair. The Applicant was repeating his representations but the Tribunal determined that they were not relevant to the later years (the expense having been incurred by the Applicant in 2011) and importantly the amount payable as service charge (including regarding repairs to the Building) had already been determined by the Order for the years to which it applies. The County Court had not reduced the charges in respect of such repair costs and there was nothing before the Tribunal to persuade it that it should do. It therefore determined that the service charges for the years ending 31 March 2014 and 2015 are both properly incurred and reasonable in amount based upon the estimates. Of course it is open to the Applicant to make a fresh application to the Tribunal for a Section 27A regarding actual charges for that year, but the Tribunal does not consider that there is a challenge relying exclusively on the representations set out in paragraph 15.
23. Therefore the Tribunal determines as reasonable the amounts as invoiced by the Respondent to the Applicant for the service charge years ended 31 March 2009 to 2015.

As to costs

24. The Applicant made no application under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant for a future year or years. However at the hearing the Respondent confirmed that it would not seek to recover its costs of these proceedings through the service charge now or in the future. Having recorded that statement within the proceedings the Tribunal has determined not to make an Order under Section 20C.
25. Both parties conceded at the hearing that they did not seek an order for costs of the proceedings against the other and therefore the Tribunal makes no order.