9723

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/OOFA/LSC/2013/0120**
Property	:	**189 & 190 Coltman Street Hull HU3 2SQ**
Applicant	:	**William David Robert Marshall**
Representative	:	**In person**
Respondent	:	**Mr Kirby (Flat 1, 189 Coltman St)** **Mr Gascoyne (Flat 2, 189 Coltman St)** **Mr Heaseman (Flat 3, 189 Coltman St)** **Mr Stow (Flat 1, 190 Coltman St)** **Mr Cain & Mr Harper (Flat 2, 190 Coltman St)** **Mr Clark (Flat 3, 190 Coltman St)**
Representative	:	**In person**
Type of Application	:	**Section 27A (and 19) Landlord and Tenant Act 1985 – Service charges**
Tribunal Members	:	**Mrs J.E. Oliver** **Mr P. Mountain** **Mrs M.B.M. Mangles**
Date of Determination	:	**20th November 2013 and 6th February 2014**
Date of Decision	:	**10th February 2014**

DECISION

Decision

1. The amounts payable for the Service Charge in each year are given below, such sums being the total amount payable and which are to be divided equally between the accounts prepared for 189 and 190 Coltman Street Hull:

• 2010-11-	Cleaning	£101.15
	Insurance	£400
• 2011-12	Insurance	£422
	Accountant's fees	£600
	Management fees	£164
• 2012-13	Insurance	£445
	Accountant's fees	£600
	Legal fees	£6118
	Management fees	£716

2. An order is made pursuant to section 20C of the Act.

Reasons

Introduction

3. This is an application by William Marshall (the Applicant) for a determination of the liability to pay and the reasonableness of service charges relating to Flats 1-3, 189 & 190 Coltman Street Hull (the Properties) pursuant to section 19 and 27A of the Landlord and Tenant Act 1985 (the Act).

4. The Respondents to the application are the leaseholders of each of the flats, Mr Kirby (Flat 1), Mr Gascoyne (Flat 2), Mr Heasman (Flat 3) all of 189 Coltman Street and Mr Stow (Flat 1), Mr Cain & Mr Harper (Flat 2) and Mr Clark (Flat 3) all of 190 Coltman Street (the Respondents).

5. The application relates to the service charges for the Properties for 2010-11, 2011-2012 and 2012-2013.

6. Directions were issued on 13th August 2013 providing for the filing of statements and bundles. An extension of time was granted. A hearing was fixed for 20th November 2013.

7. At the hearing the Tribunal directed the filing of further evidence to clarify issues raised at the hearing. The Tribunal reconvened on 6th February 2014 to determine the issues.

Inspection

8. The Tribunal inspected the Properties in the presence of the Applicant and Respondents.

9. The Properties are a pair of terraced houses each of which have been converted into 3 flats. They are both in a significant state of disrepair and are uninhabitable.

10. The Tribunal was advised that over a period of time, during redevelopment, the Properties had been broken into. Copper piping had been stolen causing burst waster pipes that, in turn, had caused considerable water damage. In some of the flats floors were missing. On two occasions kitchens that had been delivered to the Properties had been stolen and consequently the flats had no kitchens. Similarly there were no fittings in the bathrooms. None of the Respondents had ever occupied or let the Properties.

11. The Properties had small gardens to the front and yards to the rear both of which were overgrown. There was buddleia growing out of the brickwork.

The Lease

12. The Leases under which the Properties are held are made between the Applicant (1) and each of the Respondents (2). The Properties were bought by each of the Respondents in 2007.

13. The provisions relating to the payment of the service charge are as follows:

- Paragraph 1 (m) provides the "Service Charge" as the costs and expenses described in the Seventh Schedule of the Lease.
- Paragraph 1(n) states the "Services" are those to be provided by the Lessor as contained within the Sixth Schedule.
- The Sixth Schedule provides for the insurance of all the buildings and the maintenance of the "Reserved Property".
- The Reserved Property is all the common parts within the Properties to include the gardens and other open spaces, hallways, the main structural parts of the building and water pipes.

The Issues

14 The Applicant sought a determination for the service charges payable for the Properties for the years 2010-11, 2011-12 and 2012-13. In those years the items to be considered were
2010-11-Cleaning, Block insurance and management charges
2011-12- Block Insurance, Accounting and management charges
2012-13-Block Insurance, Accounting, Legal fees and management charges.

15 The Respondents filed an application seeking an order pursuant to s20C of the Act.

The Law

(1) Section 27A(1) of the 1985 Act provides:

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.

16. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

17. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.

18. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.

19. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

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

20. The Tribunal must also have regard to any limitation on the demand of the payment of any service charge as provided for by section 20B of the Act that provides as follows:

> *(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before any demand for payment of the service charge is served on the tenant, the(subject to subsection (2), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*
> *(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would be subsequently be required under the terms of his lease to contribute to them by payment of a service charge.*

The Hearing

21. The Applicant attended the hearing accompanied by Mr Tom Marshall. The Respondents' representative was Mr Stow, the leaseholder of Flat 1, 190 Coltman Street.

22. The Applicant outlined a history of the issues that had arisen between the parties following his disposal of the leasehold interests in the Properties to the Respondents.

23. The Applicant stated that in December 2010 water pipes had been "maliciously removed" from one of the flats in 189 Coltman Street causing damage that the Respondents blamed on a contractor appointed by the Applicant. As a result of this the Respondents advised the Applicant they would not allow any other contractors appointed by him to enter the Properties.

24. The Applicant thereafter invited the Respondents to set up their own management company but nothing was done to progress this.

25. In 2011 the Respondents appointed a contractor, Nick Hinchcliff to install new windows at the Properties. No planning permission was obtained and subsequently Hull City Council advised that the replacement windows were unsuitable given the Properties were in a conservation area. The Applicant states that he asked the Respondents to apply for the necessary permissions. The Council thereafter threatened enforcement action. At this stage the Applicant sought legal advice and was told that if enforcement action was to be taken he would be joined in any proceedings with the Respondents and could be made liable for the cost of any remedial work.

26. The Applicant sought legal advice with a view to issuing an action pursuant to section 146 of the Law of Property Act 1925.

27. The Applicant states that in April 2011 Mr Stow advised him that the Council's concerns was not with the newly installed windows but those which had been in the Properties at the time they were purchased in 2007. The Applicant's architect had then spoken with the Council and it had confirmed their concerns with the windows installed by the Respondents.

28. In May 2011 The Yorkshire Design Partnership, instructed by Nick Hinchcliff, applied for planning permission and although this had been done on the instructions of the Respondents the application was made in the name of the Applicant. The Applicant advised that he was not aware that this had been done until Mr Stow advised him of this in October 2011.

29. Planning consent was subsequently given for compliant windows to be installed conditional upon them being fitted by 12th November 2011.

30. In August 2011 the Council advised the Applicant a note would be put on the file because the windows did not have Building Control approval.

31. The Applicant advised that in October 2011 Mr Stow, on behalf of all the Respondents, maintained that the cost of installing the replacement windows rested with the Applicant due to the planning application being in his name and, further, the Applicant had failed to serve the Respondents with notice of the approved application. The Applicant did not accept this was his responsibility.

32. The deadline for the installation of the windows passed and in December 2011 the Applicant instructed his solicitor to write to each of the Respondents advising them that they had each breached the terms of their lease and that unless those were remedied he intended to apply for an order pursuant to section 146 of the Law of Property Act 1925.

33. The Applicant advised that in December 2011 Mr Stow told him that the Council did not intend to take any enforcement action provided they were informed of progress. However, in January 2012, the Council advised the Applicant that they were to commence enforcement action because no progress had been made. The Council issued enforcement notices on 9th March 2012 against the Respondents and the Applicant.

34. The new windows were installed in May/June 2012. The Council confirmed the matter was then closed. However Building Control Building Control advised that the note on their file was still applicable.

35. The Applicant sought further legal advice and was advised an application under section 146 would be successful because although

issues relating to the major works had been resolved, the breach with Building Control remained unresolved.

36. At this time the Applicant prepared the ground rent and service charge demands for 2010-11, 2011-12, 2012-13 together with the estimate for 2013-14 and those were issued to the Respondents on 3rd May 2013. Thereafter the Applicant applied to the Tribunal in respect of the current application.

37. The Respondents advised that they had all purchased the Properties as an investment with a view to subletting each of them. Problems with the condition of the Properties had arisen shortly after their purchase, in 2007, and the two remaining tenants had been given notice to vacate. Since that time all the Properties had been vacant.

38. The Respondents were unhappy with the condition of the Properties and between 2007 and 2010 there were meetings between the parties to try and have remedial work undertaken by the Applicant. There was an issue with the damp proof course and although the Applicant appointed a contractor, the Respondents were not satisfied with his work. The Respondents asked the Applicant to undertake necessary works to the windows at the Properties and re-charge the cost to the Service Charge but this could not be agreed. Thereafter the Respondents appointed Mr Nick Hinchcliff to install replacement windows. He advised that planning permission for replacement windows was not necessary because similar replacement windows had been put in other properties on the same street.

39. Mr Stow advised that the Respondents had relied upon Mr Hinchcliff and therefore were not aware that the area in which the Properties were situate had become a conservation area and that planning permission was required.

40. The Respondents were aware of a meeting between the Applicant's architect and Mr Hinchcliff and the fact that a planning application was to be made but they were not aware it had been made in the Applicant's name. It seems that at this point Mr Hinchcliff disappeared and had taken from the Respondents some £30000 for work not carried out.

41. The Respondents expressed a sense of frustration at their dealings with the Applicant. In particular they referred to the significant water damage caused to the Properties when copper piping was stolen and their inability to obtain assistance from the Applicant. They had been unable to make any claim for the damage from the insurance policy held by the Applicant since they had no details of the policy and the Applicant had never made any claim on their behalf. The Applicant advised that he had not made any claim under the policy because he had not been asked to so do. Further, he had never been given enough information to make such a claim.

42. With regard to the items contained within the Service Charge accounts the Respondents disputed the charge made for cleaning in the year 2010-2011 in the sum of £502. The Respondents maintained that during this year the Properties were uninhabitable and no cleaning would have been necessary, all the Properties being empty. There was no evidence that any gardening had been done in the same period. The Applicant advised that some of the charges related to the removal of rubbish, in particular settees at the Properties. Further, the Applicant stated that charges would only have been made for cleaning if the work had been done.

43. The Respondents stated that the items for insurance and accounting in each of the years were not in dispute.

44. The Tribunal had sight of the accounts for the Properties for 2011-12 and 2012-13 and in the former there was a charge for legal fees of £5838 and in the latter for £6118. The Respondents challenged the necessity for the Applicant to take legal advice and, in particular, from a firm in London where charges would be higher. The Applicant provided a copy account from his solicitors for £5838 but no further evidence was available for the remaining charges.

45. The Applicant maintained that he was justified in seeking legal advice throughout the course of his dispute with the Respondents. He had been named on the planning application without his knowledge or agreement and was to subject to any enforcement action taken by the local authority. Further, the Respondents had not paid their service charges.

46. The Respondents argued that they were not liable to pay the service charge for the years 2010-11 and 2011-12 relying upon section 20B of the Act. Mr Stow stated that no notice had been given of the service charge until the accounts and demands were sent in May 2013, more than 18 months after they were due.

47. The Applicant maintained that he had sent out a demand for the service charge for the year ending 2011 in May 2010. Within his bundle he produced a copy of such a demand sent to Mr Kirby of Flat 1 189 Coltman Street and endorsed that copy with "All lessees sent identical documents". At the hearing Mr Kirby acknowledged that he had received the demand and had paid the same. None of the other Respondents accepted they had received the demand and the Applicant acknowledged that no other payments had been received in respect of them.

48. The Respondents challenged the management charges for all years citing them to be unreasonable given the difficulties they had experienced.

49. At the conclusion of the hearing and, given the issues, the Tribunal directed that further evidence be filed. Those directions were to

provide further information in respect of the Applicant's legal costs and to provide a copy of the schedule for the block insurance policy of Properties for all the years in dispute.

Further Evidence

50. The Applicant complied with the directions and provided a Schedule of the hourly rates and work done by his solicitors in respect of the account dated 13th January 2013 totaling £4738.00.

51. The Applicant advised that the accounts for the year 2011-12 considered at the hearing were in fact the wrong accounts. Another set of accounts was provided and the Applicant stated these were those sent to the Respondents with their service charge demands in May 2013. Neither party raised this discrepancy at the hearing.

52. The amended accounts for 2011-12 did not include the charge for legal fees in the sum of £5838. The Applicant explained that whilst this item was incorrect the opening and closing balances on the accounts were correct.

53. The Applicant confirmed that the charge made for legal fees in 2012-13 in the sum of £6118 was the correct figure and not only included the account from his solicitor of £5838 but also the charge made by his architect for dealing with the local authority in the sum of £280.

54. The Respondents advised that the breakdown of costs in relation to the legal charges remained insufficient. Further, in the light of the error in the accounts they now considered the accountant's fees for 2011-12 to be unreasonable.

Determination

55. The issue of whether the Respondents could rely upon s20B of the Act to enable them to refuse payment of the service charges for the years 2010-11 and 2011-12 was considered. The Tribunal noted the demand sent to Mr Kirby in May 2010 for 2010-11 that he accepted he had received and paid. The Tribunal further noted the Applicant's statement that the demands had been sent to the remaining Respondents even though no copies had been provided. In explanation the Applicant had said he did not think that the production of all the demands was necessary but that identical demands had been issued. There was no reason why that would not have been done. The Tribunal accepted this explanation; it appeared unrealistic that having prepared a service charge demand the Applicant would not have issued it to all the Respondents. Having determined that, the Tribunal found that the Respondents could not rely upon section 20B for the year 2010-11, nor 2011-12. The Service charge demands issued in May 2013, which included the demand for 2011-12, was within 18 months of the year end for 2011-12, namely 31st March 2012. The Tribunal thereafter went on to consider the reasonableness of all the charges in the years

in question.

56. The Tribunal considered the accounts for the year 2010-11 and the charge made for cleaning. It accepted the Respondents' evidence that, at that time, the properties were empty and no cleaning of the common parts would have been required. Upon inspection there had been little evidence of any gardening and, given the state of the Properties from 2007 onwards, considered no gardening would have been undertaken. The Applicant was relying upon a local company to undertake this work on his behalf. Consequently he had no direct knowledge of when any work had been done. The Applicant had provided copies of the invoices relating to this item which had no narrative, other than identifying, on the invoice for June 2010 how the charge had been broken down into cleaning, gardening and clearance. Thereafter the invoices did not charge separately for each item. The Tribunal did accept that the Applicant had cleared items from the Properties. Consequently the Tribunal allowed from the June invoice the item charged for clearing in the sum of £30 but disallowed the remaining items for gardening and cleaning, charged at £40. Similarly the Tribunal disallowed the same sum for July 2010 of £40 and allowed the remainder of £71.15. The Tribunal noted that for the remaining invoices the contractor had charged £80 per month. In the absence of any narrative and the uniformity of the sums charged the Tribunal assumed these charges all related to gardening and cleaning and were therefore disallowed. Consequently the amounts payable for this item in this year are in the total sum of £101.15, apportioned equally between the accounts for 189 and 190 Coltman Street.

57. The Tribunal considered the charge made for insurance in the years 2010-11.2011-12 and 2012-13 in the total sums of £424, £440 and £442. Upon the filing of the schedules of insurances for the Properties the Tribunal identified the charges made for those years in the sums of £400, £422 and £445. Thus the amounts in the accounts are amended accordingly, again divided equally between the two properties.

58. The Tribunal looked at the charges made for legal services for both 2011-12 and 2012-13 and noted the Applicant's admission that the item for the year 2011-12, in the sum of £5838, was in the wrong year. This item had in fact been charged twice, both in that and the subsequent year. The Tribunal found this to be highly unsatisfactory, especially given the evidence given at the hearing when the Applicant had failed to notice the Tribunal was relying upon the wrong set of accounts. The charge made in the year 2011-12, as shown in the original accounts was therefore disallowed.

59. The Tribunal noted the Respondents' assertion that the further evidence supplied in respect of the legal fees was inadequate and that the Applicant did not need to instruct a London law firm. The Tribunal did not consider the Applicant's use of a London firm to be unreasonable; the Applicant was entitled to instruct a firm of his own choice. The schedule of costs provided and the hourly rates charged

did not appear unreasonable and the detail provided was adequate. Consequently the Tribunal determined that the charge for legal fees in the year 2012-13 to be reasonable. Whilst the Respondents had argued that the Applicant did not require legal advice the Tribunal did not agree with this. The Applicant had found himself in a position with the local authority over which he had no control and which was not of his making. He was entitled to take such advice as was necessary to protect his position.

60. In respect of the accountancy charges the Tribunal noted the errors made in the accounts, both in respect of the insurance premiums that were inaccurate in each year and the wrongly charged legal fees. The Tribunal failed to understand why there were two sets of accounts for 2011-12, the incorrect ones having had been signed by the accountants. It was noted that the amended accounts, filed after the hearing, had not been so signed.

61. The Tribunal considered that the item for the insurance premiums was de minimis. However the error in the accounts for 2011-12 was significant. The charge in this year was £1200 and for the following year was £600. No charge had been made in the accounts for 2010-11 and it was therefore assumed the fees had been doubled in 2011-12 to cover the previous year. The Tribunal determined that no fees would be allowed for 2011-12, given the error in the signed accounts and consequently reduced the amount in that year to £600 again divided equally between the two properties. The fees charged in 2012-13 are reasonable.

62. The Tribunal looked at the management charges made in each year. No charge was made in 2010-11, £164 in 2011-12 and £716 in 2012-13. The Tribunal considered these amounts to be reasonable. Whilst the Respondents had argued they were unreasonable the Tribunal did not consider them to be so, given the Applicant's continuing obligations regarding the insurance of the Properties and the preparation of accounts and service charge/ground rent demands.

63. The Tribunal finally considered the issue of costs and the application made by the Respondents for an order pursuant to section 20C of the Act. It determined that such an order would be granted. The Respondents had successfully challenged the application and secured a significant reduction in the service charges. Whilst the Applicant had provided a further set of accounts for 2011-12, advising that those had been the ones issued to the Respondents, this had not been evident at the hearing. It was therefore considered appropriate that such an order be made.