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

Case Reference : CHI/29UD/LSC/2014/0092

Property : Beaumont Court
36 Westgate Road
Dartford
Kent
DA1 2AD

Applicants : Lessees of Beaumont Court

Representative : Mrs. J. Norman and Miss J. Weston

Respondent : Moat Homes Limited

Representative : Ms M. Turner

Type of Application : Liability to pay service charges
Section 27A Landlord and Tenant Act 1985
Limitation of Costs
Section 20C Landlord and Tenant Act 1985
Reimbursement of fees
Rule 13(2) of the Tribunal Procedure
(First-tier Tribunal)(Property Chamber)
Rules 2013
Costs

Tribunal Member(s) : Judge R. Norman
Mr. R. Athow FRICS MIRPM

Dates and venue of Hearings : 19th February 2015
4th September 2015
Dartford

Date of Decision : 16th September 2015

DECISION

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Decision

1. The Tribunal made the following determinations:

(a) Moat Homes Limited ("the Respondent") agreed that the Lessees of Beaumont Court, 36 Westgate Road, Dartford, Kent DA1 2AD ("the subject property") are entitled to a credit of £3,029.29 as set out in the document headed "Agreed credits & Interest" annexed to this decision. That equates to a credit of £144.25 per flat at the subject property plus compound interest @ 1% on that sum giving a total of £146.93 per flat. Those credits are to be effected within 28 days.

(b) The Respondent agreed that in respect of the supply of water to the subject property some Lessees had been overcharged and others had been undercharged and that the Lessees who had been overcharged are entitled to a credit dependent on the period of occupation. This means that current and former residents' accounts will be credited based on the number of days in occupancy each year. The credit will include compound interest @ 1%. The position as to overcharging and undercharging is set out in the document headed "Summary showing over or undercharge of water costs per property" annexed to this decision. Those credits are to be effected within 28 days.

(c) In addition, the Respondent is to credit the Lessees with the sum of £394.10 in respect of the work to the communal rear door not reasonably incurred together with interest on that sum @ 1%. That credit is to be effected within 28 days.

(d) In addition, within 28 days the respondent is to pay to Mrs. J. Norman the sum of £403.89 in respect of the expenses incurred by the Lessees who made this application.

(e) In addition, within 28 days the respondent is to reimburse Mrs. J. Norman the sum of £630.00 in respect of the fees paid by the Lessees who made this application.

(f) An order is made under Section 20C of the Landlord and Tenant Act 1985 ("the Act") that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Lessees of the subject property.

Background

2. An application was made to the Tribunal by the following Lessees of the subject property:

- Mr. P. and Mrs. J. Norman – Flat 20
- Miss J. Weston – Flat 16
- Miss K. Edwards – Flat 12
- Miss Natalie Preece – Flat 17
- Mr. P. and Mrs. C. Walsham – Flat 2
- Mr. D. Byram – Flat 10

Mr. W. Lyons and Ms Z. Thomas – Flat 22
Mr. J. Rodrigues – Flat 4.

They are referred to collectively as “the Applicants”.

3. The freehold of the subject property is held by the Respondent.
4. On 19th February 2015 there was a hearing at which it was discovered that there were a number of matters where discussion between the parties was on-going and directions were issued.
5. Further papers were received but it was not entirely clear just what had been agreed and it was decided that the hearing should resume on 4th September 2015 and that there should be a further inspection on that day.
6. A number of matters of concern to the Applicants such as the stay put fire policy are outside the scope of this application.

First Inspection

7. On 19th February 2015 the Tribunal inspected the exterior and the interior common parts of the subject property. Present were: Mrs. Norman and Miss Weston and other Lessees and Ms P. Millington and Mr. I. Ralph on behalf of the Respondent. The subject property is a purpose built block of 21 flats above commercial premises in the centre of Dartford.
8. The attention of the Tribunal was directed to a number of matters including the front door which did not close properly, the rear fire door, the standard of cleaning, the area around a manhole cover and a water pipe and drain.

Hearing 19th February 2015

9. On 19th February 2015 present at the hearing were:
On behalf of the Applicants: Miss J. Weston, Mrs. J. Norman, Miss K. Edwards, Miss N. Preece, Mrs C. Walsham, Mr. D. Byram and Ms Z. Thomas.
On behalf of the Respondent: Ms M. Turner service charges manager, Mr. J. Pitcher service charges accountant.
10. Evidence was given and submissions were made by those present in respect of a number of matters including communal cleaning, management fees and water charges.
11. However, during the course of the hearing it was discovered that there were a number of matters where discussion between the parties was on-going. For example, there was to be a meeting with Thames Water; the outcome of which could have a significant impact on the proceedings. Further information was required before a decision could be reached. The case was adjourned and directions were issued to give the parties the opportunity to meet and discuss the situation and to see where agreement could be reached.

12. Further papers were received but it was not entirely clear just what had been agreed. The position was more complicated for two reasons. Firstly, because some matters had been referred to the Ombudsman and secondly because calculations in respect of water charges were inaccurate and were being re-analysed. The Respondent confirmed that Thames Water did carry out a survey of the subject property and confirmed which meters served which properties. However, unfortunately upon re-billing the Respondent, Thames Water incorrectly labelled the new bills. The Respondent was waiting for Thames Water to correct its error in order to provide final adjustments to the residents. This caused a delay in proceeding with this matter.

Second Inspection

13. On 4th September 2015 the Tribunal inspected the front and rear doors and the interior common parts of the subject property. Present were: Mrs. Norman and Miss Weston on behalf of the Applicants and Ms M. Turner (Head of Service Charges), Mr. I. Ralph (Technical Officer) and Mr. McGowan (Acting Housing Manager) on behalf of the Respondent.

14. The attention of the Tribunal was directed to a number of matters including the following:

(a) The front door which had been repaired and did close properly. Although there was some suggestion that some residents had difficulty opening the door, it worked well during the inspection.

(b) It was not clear whether the communal rear door, which is intended for use only in emergency, had been repaired or replaced but we were told that some residents use this door as a short cut and we could see that if the door is opened beyond a certain point then it does not close automatically, meaning that the building can be left insecure.

(c) The standard of cleaning of the floors and skirtings. We could see that there were marks on the floor tiles and on the skirtings. There was dust and fluff on the stairs leading to the rear door showing that they had not been cleaned recently and it was accepted by the representatives of the Respondent that although the stairs were intended for use only in emergency they should be cleaned.

(d) Opposite the door to Flat 4 there was an area of wall which needed redecoration and Mr. Ralph stated that that would be done at the Respondent's expense.

Hearing 4th September 2015 and Reasons

15. The hearing resumed on 4th September 2015 and was attended by those who had been at the inspection on 4th September 2015.

16. The Tribunal pointed out that not all the matters about which the Applicants were concerned are within the scope of this application which is in respect of service charges. The policy to stay put in case of fire rather than

having a fire alarm does not involve a service charge. Whether or not the correct boilers were installed when the subject property was built did not involve service charges. To check this, we asked the Applicants to indicate if there was any relevant service charge and they confirmed that there was not.

17. We needed to clarify what had been agreed. Those present confirmed that the parties were in agreement that:

(a) The credits listed in the document headed "Agreed credits and Interest" be made except that the Applicants wanted a higher rate of interest and a greater credit in respect of some matters including cleaning.

(b) In respect of the supply of water to the subject property, as set out in the document headed "Summary showing over or undercharge of water costs per property", the Lessees who had been overcharged are entitled to a credit dependent on the period of occupation. This means that current and former residents' accounts will be credited based on the number of days in occupancy each year. The credit will include compound interest @ 1%. Ms Turner confirmed that the Respondent will not try to claim the undercharges shown in that document. The only exception to full agreement being that the Applicants wanted a higher rate of interest.

18. A list of "Resident disputed repairs" was included in the papers before us and had been seen by the parties. The Applicants confirmed that, except for cleaning, interest and costs that document set out all the items still disputed. As we went through that document and further information was provided, the Applicants stated that some of the items were no longer disputed.

19. We then heard evidence and submissions in respect of the matters still disputed.

20. Communal drain - £123.49.

(a) Part of the ground around the manhole cover has sunk. The Applicants were concerned that they were being repeatedly charged for the same thing. They wondered why that was and why an adequate repair had not been carried out. They disputed the charge for the second attempt at a repair. Mr. Ralph stated that without lifting the manhole cover and having a look to see what underlying problems there were, he did not know what the problem was. It could be drainage problems. The first attempt at a repair cost £119.35 and had lasted 18 months. Had it failed after just 6 months there would have been no charge for the second attempt. Apparently the second attempt which cost £123.94 has now also failed after a further 2 years. Mr. Ralph submitted that in the circumstances the charges were reasonably incurred. In the list of "Resident disputed repairs" there is a further mention of the communal drain and a charge of £501.30 but it was explained that that charge included the charge of £119.35 for the first repair to the communal drain and the remaining £381.95 was in respect of repairs to steps.

(b) The Tribunal found on the evidence presented that the charge for the first attempt at a repair was reasonable and that as it lasted for 18 months it was reasonable to attempt a second repair. The charge of £123.49 was reasonably incurred and is payable.

21. Lead Flashing £273.13, Leak communal roof £28.46, Leak communal roof £86.74, Leak communal roof £28.46, Leak communal roof £614.79, Leak communal roof £194.89 and Leak communal-tiles replaced £88.60 – Total £1,315.07.

(a) The Applicants considered that they should not have to pay for these repairs as they were as a result of poor upkeep. The evidence from Mr. Ralph was that at the time there were extreme weather conditions and repairs were made to different parts of the roof. The wind had ripped out lead flashing and it was difficult to access the area to carry out the work. Miss Weston referred to the render just outside her flat which had to be replaced because it had buckled. It became apparent only in extreme weather and caused damp. She wondered if it was possibly an underlying problem of the initial build and if so the Lessees should not be responsible for charges resulting from the initial build. Mr. Ralph explained, and it was agreed by the Applicants, that the weather had been extreme. He also stated that it was not possible to get a cherry picker to the affected areas and it had been necessary to wait for the weather to improve before making a repair. A section of render had blown and no charge had been made for the re-rendering. It was agreed that it was the first time such problems had occurred and that no similar problems had occurred since.

(b) These charges were reasonable incurred for a series of repairs over a 3 month period made necessary by severe weather conditions and are payable.

22. Communal back door.

(a) This door is intended to be used only as an emergency exit but we were told that some residents use it as a short cut. The Respondent has agreed to credit back 2 repairs totalling £176.65 and they appear in the document headed "Agreed credits and interest". However, the Applicants dispute the charge of £644.10 because the repair was not carried out in accordance with the timescale of the Respondent's service level agreement. The problem was reported on 19th November 2013 and repaired on 28th December 2013 which left the subject property insecure for a time. The replacement door is not a like for like replacement and is not so secure. The Respondent's representatives consider that the repair is reasonable as to cost and quality. Mr. Ralph thought that it was probably a new door fitted in an existing frame. It had been clear for some time that the Applicants were challenging this charge and we asked for evidence, such as an invoice, detailing the work done but, although efforts were made to find such evidence, apparently the work was part of a larger contract and no such evidence could be produced.

(b) It was agreed that some work was needed and had been done and there was evidence of a callout by a contractor but the Respondent could not prove what work had been undertaken for the charge of £644.10. In the absence of

detail to quantify the work, we were left to use our judgement and experience to assess a figure which we considered to be reasonable. On the limited evidence available we found that a charge of £250 would have been reasonably incurred and therefore a credit of £394.10 is to be made by the Respondent to the Lessees plus interest at 1%.

23. Fire door third floor.

(a) The Applicants state that this door bangs in high winds. Mr. Ralph explained that it is difficult to adjust the door because there are different pressures depending on whether or not the windows on the landings are open or closed and the strength of the wind at any particular time.

(b) The Tribunal accepted the explanation given by Mr. Ralph and found that the charge of £100.75 was reasonably incurred and is payable.

24. Dreams leak. The Applicants considered that Dreams who occupy the commercial premises on the ground floor should pay for this but Mr. Ralph stated that the leak comes from above Dreams and water drips from a soil stack as he is not sure from which flat it comes. The Applicants are no longer disputing the charge of £21.37.

25. Communal drain. As explained in paragraph 20 above, this charge of £501.30 comprises the charge of £119.35 for the first repair to the communal drain and the remaining £381.95 was in respect of repairs to steps. The Applicants are no longer disputing this charge.

26. Dreams leak. The Applicants accepted that the charge of £116.66 should no longer be disputed as the leak was not from Dreams' pipe work.

27. Leak communal roof. The Respondent has agreed to credit back the charge of £241.32 and it appears in the document headed "Agreed credits and interest".

28. Water hammer. This matter is being dealt with by the Ombudsman and is not a service charge issue.

29. As to water charges, the Applicants were concerned that the meter for the 9 flats Nos. 1 – 12 showed more usage than the meter for the 12 flats Nos. 14 – 22 but accepted that they could neither prove nor disprove the accuracy of the charges. The Respondent would like to have individual meters for each flat and would have paid for their installation but Thames Water state that it is not possible to reroute the pipe work. Ms Turner has been badgering Thames Water about the apparent discrepancy but Thames Water state that there are no leaks and that the meters are not faulty. It is not known what checks were made by Thames Water or when they were made but Ms Turner said that if large bills are received she will get Thames Water to check again. Quarterly bills are now being received and hopefully will be accurate for next year but for this year water is free.

30. The Applicants had disputed a charge of £588.52 in respect of lighting repairs but the Respondent has agreed to credit back £294.26 being half the charge and it appears in the document headed "Agreed credits and interest". It is agreed that repairs were carried out and the Applicants now accept that the Respondent's offer is as fair as it can be.

31. As to the charge for cleaning, we heard evidence about this at both hearings.

(a) We were told that the cleaner attends every Tuesday and is supposed to be there for 3 hours (1 hour per floor roughly) but he is there for only 2 hours because he can get only 2 hours free parking and his employers Cleanscape who have the contract with the Respondent will not pay for extra parking. Cleanscape have said that is not true; that they do not charge per hour and that the cleaning should be done until the necessary standard is reached. However, the decision as to when the standard is reached appears to be made by the cleaner. The Applicants stated that they were more than happy to pay a good rate for a good cleaner but wanted a better service for the money they pay. It had been brought to the attention of the Respondent and was an on-going issue. The Applicants felt that they were not being listened to. They stated that no hot water was being used to clean the floors and that the cleaner used a dirty mop. The Applicants pointed out that it was their home and they wanted a certain standard of cleaning. They also stated that having complained to the Respondent, the charge went up. The Respondent explained that there had previously been undercharging for cleaning but agreed that standards had slipped for a month and offered a credit of £405.67 which is included in the document headed "Agreed credits and interest". The Applicants calculated that they were paying £50 an hour for cleaning but it was also explained that the charge was not £50 per hour just for a cleaner. For example, the cleaning contractor would have to pay for public liability insurance, there had also been 3 deep cleans within a year at no extra charge that some weeding had been done and internal and external window cleaning. In fact the windows of the flats are cleaned even though not included in the tender.

(b) The standard of cleaning achieved may not be to the standard of the Applicants but it has to be to a reasonable standard, judged objectively. At the inspections, we could see that the cleaning was not perfect but was to a reasonable standard for the charge made and it was necessary for the Tribunal to bear in mind that the charge for cleaning had also covered 3 deep cleans and window cleaning; some of it outside what the contractor was obliged to carry out under the terms of the contract. In all the circumstances, the Tribunal finds that the credit of £405.67 included in the document headed "Agreed credits and interest" is reasonable and that no further credit is required.

32. Payment of interest.

(a) The Applicants considered that the offer of 1% compound interest was insufficient and that a rate of 8% as applied by the Ombudsman should be paid. Ms Turner gave evidence that she had come to the conclusion that 1%

compound interest was correct based on the Bank of England base rate over the years concerned. We asked what rate the Applicants could have obtained had they not been overcharged and had had the money to invest. They agreed that rates of interest have been very low over the last few years and nowhere near 8%.

(b) The Tribunal found that 1% compound interest based on the average Bank of England base rate was reasonable as that was as much interest as the Applicants could have obtained on the money overcharged without risk and/or conditions.

33. Costs and reimbursement of fees.

(a) The Respondent accepted that the Lessees had been overcharged; that the overcharging should have been resolved without the need to make an application to the Tribunal and that it was the making of the application which prompted resolution. The Respondent therefore accepted responsibility for the Applicants' costs and reimbursement of fees.

(b) The Respondent accepts that it is liable to pay the Applicants' expenses. The Applicants were unable to find one receipt for £13.70 but Mrs. Norman undertook to produce that receipt to Ms Turner. The Tribunal found that the Applicants' expenses consisting of the preparation and progression of the Application, as supported by documentary evidence and including the Tribunal application fee of £440 and hearing fee of £190 amounting to £1,033.89 is payable by the Respondent to Mrs. Norman who is responsible for reimbursing herself and the other Applicants according to their contributions to the expenses.

34. Section 20C Order.

There is before us an application for an order under Section 20C of the Act. We find that it is just and equitable in the circumstances to make such an order because the Applicants were justified in bringing these proceedings to clarify the position.

35. The Tribunal considered all the evidence, both oral and documentary and all the submissions made and made findings of fact on a balance of probabilities.

Appeals

36. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

37. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

38. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

39. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Judge R. Norman (Chairman)

Agreed credits & interest

Reason & year of credits	Credit Amount	Per Property	Interest Rate @ 1%
2010 - 2011			
Recalls	17.51	0.83	Multiplied for 4 years
3 repairs for lighting between 10/12/10 - 07/02/11. Part Credit as full evidence cannot be obtained due to age of repair	294.26	14.01	
Total credit for 2010-2011	311.77	14.85	0.59
2011 - 2012			
ROS codes used inappropriate - Part credit required	126.25	6.01	Multiplied for 3 years
2 repairs for lighting - Part Credit as full evidence cannot be obtained due to age of repair	493.35	23.49	
Total credit for 2011-2012	619.60	29.50	0.89
2012 - 2013			
2 repairs should have been recharged to residents/Dreams not via service charge	120.88	5.76	Multiplied for 2 years
1 repair to replace suspended ceiling tile - ROS code not appropriate - Part Credit required	68.75	3.27	
Additional credit in respect of job no. 713999 - Roof Leak	241.32	11.49	
Total credit for 2012-2013	430.95	20.52	0.41
2013 - 2014			
Items being credited by contractor (agreed)	402.26	19.16	
Credits to be given due to non recharge & recalls	464.88	22.14	
Confirmation received from Pam that this repair to back door frame would not be recharged to residents	127.36	6.06	
Part credit to be given to inaccurate ROS code used for door handle	72.15	3.44	
Repair carried out under 2 job numbers but a credit required due to job no. 785106 (communal fire door)	176.65	8.41	
Additional credit in respect of job no. 790979 - Skylight	18.00	0.86	
Credit for cleaning	405.67	19.32	
Total credit for 2013-2014	1,666.97	79.38	0.79
TOTAL CREDITS REQUIRED	3,029.29	144.25	2.68
TOTAL CREDIT TO BE APPLIED TO EACH PROPERTY INCLUDING INTEREST			146.93

SUMMARY SHOWING OVER OR UNDERCHARGE OF WATER COSTS PER PROPERTY

PROPERTY	Total of Actual Charge	Total of what should have been Charged	Difference (Total)	Under/Over charged?	Compound Interest added	Total Under/Over Charge including Compound Interest
Flat 1	2,151.15	1,648.59	502.55	OVERCHARGED	7.79	510.34
Flat 2	2,151.15	1,648.59	502.55	OVERCHARGED	7.79	510.34
Flat 3	2,151.15	1,648.59	502.55	OVERCHARGED	7.79	510.34
Flat 4	2,151.15	1,648.59	502.55	OVERCHARGED	7.79	510.34
Flat 5	2,151.15	1,648.59	502.55	OVERCHARGED	7.79	510.34
Flat 6	2,151.15	2,637.35	-486.21	UNDERCHARGED	7.79	-478.42
Flat 7	2,151.15	2,637.35	-486.21	UNDERCHARGED	7.79	-478.42
Flat 8	2,151.15	2,637.35	-486.21	UNDERCHARGED	7.79	-478.42
Flat 9	2,151.15	1,648.59	502.55	OVERCHARGED	7.79	510.34
Flat 10	2,151.15	1,648.59	502.55	OVERCHARGED	7.79	510.34
Flat 11	2,151.15	1,648.59	502.55	OVERCHARGED	7.79	510.34
Flat 12	2,151.15	1,648.59	502.55	OVERCHARGED	7.79	510.34
Flat 14	2,272.36	2,637.35	-364.99	UNDERCHARGED	£8.44	-356.55
Flat 15	2,272.36	2,637.35	-364.99	UNDERCHARGED	£8.44	-356.55
Flat 16	2,272.36	2,637.35	-364.99	UNDERCHARGED	£8.44	-356.55
Flat 17	2,272.36	1,648.59	623.77	OVERCHARGED	£8.44	632.21
Flat 18	2,272.36	1,648.59	623.77	OVERCHARGED	£8.44	632.21
Flat 19	2,272.36	1,648.59	623.77	OVERCHARGED	£8.44	632.21
Flat 20	2,272.36	2,637.35	-364.99	UNDERCHARGED	£8.44	-356.55
Flat 21	2,272.36	2,637.35	-364.99	UNDERCHARGED	£8.44	-356.55
Flat 22	2,272.36	2,637.35	-364.99	UNDERCHARGED	£8.44	-356.55
TOTAL OF OVERCHARGES				12		6,489.72
TOTAL OF UNDERCHARGES				9		-3,574.56