



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

Case Reference : **LON/00BG/LSC/2013/0752**

Property : **Phoenix Heights West and Phoenix Heights East, 142 Byng Street/4 Mastmaker Road, London E14 9UB**

Applicant : **Various leaseholders**

Representative : **Mr R Southam, Chainbow Limited**

Respondent : **One Housing Group Limited (OHG)**

Representative : **Mr O Strauss and Ms M Di Stefano
Paralegal
Mr M Affleck, Head of Contract Services
Mr D Oehlman all of One Housing Group Limited**

Type of Application : **Sections 27A and 20C of the Landlord and Tenant Act 1985**

Tribunal Member : **Tribunal Judge Dutton
Ms S Coughlin
Mr A D Ring**

Date and venue of Hearing : **18th August 2015 at 10 Alfred Place, London WC1E 7LR**

Date of decision : **1st September 2015**

DECISION

DECISION

The Tribunal records that the parties reached agreement on the reductions to made to the service charges for the period 2009/10 to 2013/14 as set out on the “Final Figures Spreadsheet” attached hereto.

The Tribunal declines to make an order under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (the Rules) for the reasons set out below.

The Tribunal makes a partial order under section 20C of the Landlord and Tenant Act 1985 (the Act) limiting the Respondent’s recoverable costs in these proceedings to £2,000 for the reasons set out below

Background and Reasons

1. At a hearing on 19th February 2015 we were asked, amongst other matters, to make decisions in respect of the Management fee and an Examination fee incurred by the Respondent in the service charge year 2013/14 (the Year). In addition certain matters required further explanation by the Respondent and the hearing was adjourned to either proceed as a paper determination, with both parties agreement, during the week commencing 27th April 2015 or, if a hearing was required that was fixed for 1st May 2015. We have agreed directions which were set out in our decision and directions dated 19th February 2015.
2. As a result of the directions issued the parties lodged papers with us but we found it impossible to determine the financial position between the Applicants and the Respondents. We asked the parties to confirm whether certain figures produced by Mr Southam for the Applicants could be agreed. The Respondent said they could not, which necessitated a further hearing on 18th August 2015.
3. At that hearing the parties were able to record agreement on the impact of the management fees at the rate we had reduced both at a hearing in 2014, which gave rise to a decision dated 6th May 2014, and our decision in February 2015 and the credit due for water rates. These figures are set out on a schedule headed “Final Figures Spreadsheet” produced as a result of liaison between Mr Southam for the Applicants and Mr Oehlman for the Respondent. We should however, record the somewhat circuitous route by which such agreement was reached.
4. As we indicated above we asked the Respondent whether it could agree figures produced by Mr Southam reflecting the Management fees for

2009/10 through to 2012/13 and the water credit. It was not until the hearing on 18th August 2015 that these figures were conceded. We discovered, by questioning Mr Oehlman, the reason why Mr Southam had not agreed the figures produced by the Respondent. This was because notwithstanding our findings made in the 2014 decision on the question of the impact of s20B, the Respondent had, wrongly in our finding, sought to utilise the actual costs incurred in the years before us to 2012/13 instead of the estimated figures, which were not tainted with the impact of s20B. When this was conceded by the Respondent and with the agreement on the reductions to be made it was possible to create the schedule referred to above and find an agreement between the parties.

5. It is therefore with some surprise that we were asked to provide extended reasons on the findings we made in February 2015 on the management fees, given that these amounts are now the subject of the agreed schedule. Nonetheless we will do so. Our findings in respect of the management fee were as follows. We could see no reasons to depart, at least for the year 2013/14, from the findings of our colleagues in the case the subject of a decision dated 6th May 2014, subsequently the subject of a refusal for permission to appeal, both by this Tribunal and the Upper Tribunal, and order that the management fees for 2013/14 should be £150 for each unit in West Tower and £100 for those in the East Tower.
6. The evidence before us in February was from Mr Oehlman and Mr Affleck. We were told that the Respondent had moved to an actualised management fee basis in 2012/13. It was felt, by the Respondent, that this was fair, having considered the staffing and conducted a time and motion study. The costings took into account the expense of providing, for example, pensions. It was, we were told, based on actual expenditure. Mr Affleck confirmed that a set fee was being charged for both blocks and in his experience the problems in managing two blocks, which themselves have different management regimes complicates matters.. He raised the costs of implementing s20 procedures although he conceded that there had been no such issue in the years we were dealing with. We noted the contents of the witness statements in respect of this matter.
7. The findings we made in February were supported by the conduct of the Respondent leading up to the hearing in August. Clearly this conduct was not in our mind at that time but the manner in which the Respondent dealt with the finalisation of the figures, the unwillingness to agree the figures of Mr Southam until the hearing and to base the calculations on the erroneous use of the actual figures for the year in question supports our earlier finding. In any event, as we have indicated above these figures for the year 2013/14 are no longer in issue and accordingly we do not propose to spend more time on this point.
8. We turn then to question of costs and will deal firstly with the application by Mr Southam for costs under rule 13 of the Rules. He told us that he had

departed from a no win-no fee arrangement and had agreed a fixed fee of £2,500 with the applicants. This left us in a difficult position if we were to consider making an order under Rule 13 against the Respondent in respect of their conduct in defending the proceedings. We were certainly critical of the manner in which the Respondent dealt with the run up to the hearing on 18th August. If they had agreed the figures of Mr Southam and not adopted the actual costs instead of the estimated costs, which are the only sums they could recover under the provisions of s20B, then the hearing could have been avoided. However, the hearing has not resulted in any additional costs being incurred by the Applicants as a result of the fixed fee, which Mr Southam openly agreed had been utilised before the attendance on 18th August. He may well have suffered a loss in having to attend the hearing but that has not had a financial impact on the Applicants. In those circumstances we do not consider that we can order any payment of costs by the Respondent, which had the costs regime agreed between Mr Southam and the Applicants been different, we may well have wished to do in respect of the hearing.

9. On the question of costs under s20C the Respondent indicated that they would limit those to 50% and further limited that 50% to £2,500. Although the conduct of the Respondent was open to criticism in so far as the hearing was concerned there is truth in its submission that the total sums recoverable for each Applicant at around £250 for the years in dispute, about £50 per year does not warrant the amount of paper work generated and the time spent on dealing with this dispute, which could be said to be somewhat disproportionate. That is not to say that the Application was without merit. We think that doing the best we can we agree that the starting point for the costs would be the sum of £2,500. However, although we cannot make an order for costs under the Rules we wish to reflect the conduct of the Respondent resulting in the hearing taking place on 18th August and would reduce the sum sought to reflect this. We consider that a further reduction of £500 to reflect this element would be reasonable and therefore order that s20C will apply save for the sum of £2,000 which may be recovered as a service charge and needs to be factored into the final figures, which the parties said they would resolve themselves without further Tribunal involvement.

Andrew Dutton

Name: Tribunal Judge
Andrew Dutton

Date: 1st September 2015

Final figures spreadsheet
LON/00BG/LSC/2013/0752

		2009/10			2010/11			2011/12			2012/13				2013/14									
		on account	mgt fee credit	refund for year	on account	y/e credit	mgt fee credit	refund for year	on account	mgt fee credit	refund for year	year End actual	on account	y/e balance	mgt fee credit	refund for year	Year End actual	On account	y/e balance	mgt fee credit	refund for year	water credit	Total refunds	
East	101				362.48		-35.04	-35.04	1,749.96	-50.00	-50.00	3,305.60	2,853.00	452.60	-57.93	394.67	2,625.44	2,786.95	-161.51	-66.91	-228.42	-117.30		-36.09
	102						0.00	0.00	1,491.96	-50.00	-50.00	2,828.47	2,454.36	374.11	-57.93	316.18	2,255.00	2,398.03	-143.03	-66.91	-209.94	-99.99		-43.75
	201				1,162.52	-45.61	-114.63	-160.24	2,065.68	-50.00	-50.00	3,853.86	3,340.56	513.30	-57.93	455.37	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-144.34
	202				1,786.06		-185.23	-185.23	2,240.88	-50.00	-50.00	3,305.60	2,959.20	346.40	-57.93	288.47	2,625.44	2,890.64	-265.20	-66.91	-332.11	-117.30		-396.17
	203				1,836.54		-144.75	-144.75	1,491.96	-50.00	-50.00	2,828.47	2,454.36	374.11	-57.93	316.18	2,255.00	2,398.03	-143.03	-66.91	-209.94	-99.99		-188.50
	301				1,836.93		229.98	229.98	2,065.68	-50.00	-50.00	3,853.86	3,765.48	88.38	-57.93	30.45	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-639.00
	302				2,114.21		-219.95	-219.95	2,065.68	-50.00	-50.00	3,853.86	3,340.56	513.30	-57.93	455.37	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-204.05
	303	101.72	11.17	-11.17	2,513.64		-261.50	-261.50	2,065.68	-50.00	-50.00	3,853.86	3,839.52	14.34	-57.93	-43.59	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-755.73
	304			0.00	1,667.49	-68.55	-167.40	-235.95	2,180.40	-50.00	-50.00	4,053.10	3,517.68	535.42	-57.93	477.49	3,243.03	3,435.37	-192.34	-66.91	-259.25	-146.14		-213.84
	401	7.27	0.80	-0.80	2,513.64		-261.50	-261.50	2,065.68	-50.00	-50.00	3,853.86	3,340.56	513.30	-57.93	455.37	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-246.40
	402			0.00	1,191.58	-46.74	-117.50	-164.24	2,065.68	-50.00	-50.00	3,853.86	3,340.56	513.30	-57.93	455.37	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-148.35
	403			0.00	864.62	-33.88	-85.26	-119.14	2,065.68	-50.00	-50.00	3,853.86	3,340.56	513.30	-57.93	455.37	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-103.25
	404			0.00	2,464.77		-276.94	-276.94	2,180.40	-50.00	-50.00	4,053.10	3,517.68	535.42	-57.93	477.49	3,243.03	3,435.37	-192.34	-66.91	-259.25	-146.14		-254.84
	501			0.00	1,255.95		-130.40	-130.40	2,065.68	-50.00	-50.00	3,853.86	3,340.56	513.30	-57.93	455.37	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-114.50
	502			0.00	1,756.81		-219.95	-219.95	1,516.20	-50.00	-50.00	3,853.86	3,765.48	88.38	-57.93	30.45	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-628.97
	503			0.00	2,320.81		-241.44	-241.44	2,065.68	-50.00	-50.00	3,853.86	3,340.56	513.30	-57.93	455.37	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-225.54
	504			0.00	1,398.54	-57.49	-140.40	-197.89	2,180.40	-50.00	-50.00	4,053.10	3,517.68	535.42	-57.93	477.49	3,243.03	3,435.37	-192.34	-66.91	-259.25	-146.14		-175.78
	601	36.33	3.99	-3.99	2,513.64		-261.50	-261.50	2,065.68	-50.00	-50.00	3,853.86	3,340.56	513.30	-57.93	455.37	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-249.59
	602			0.00	1,416.82	-55.58	-139.71	-195.29	2,065.68	-50.00	-50.00	3,853.86	3,340.56	513.30	-57.93	455.37	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-179.39
	603			0.00	1,009.94	-39.52	-99.59	-139.21	2,065.68	-50.00	-50.00	3,853.86	3,340.56	513.30	-57.93	455.37	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-123.31
	604	100.01	11.15	-11.15	2,661.96		-281.57	-281.57	2,679.36	-50.00	-50.00	4,053.10	3,245.64	807.46	-57.93	749.53	3,243.03	3,435.37	-192.34	-66.91	-259.25	-146.14		1.42
	701	7.27		-7.27	2,513.64		-261.50	-261.50	2,065.68	-50.00	-50.00	3,853.86	3,340.56	513.30	-57.93	455.37	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-252.87
	702			0.00	1,756.81		-219.95	-219.95	1,516.20	-50.00	-50.00	3,853.86	3,765.48	88.38	-57.93	30.45	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-628.97
	703			0.00	1,973.50	-67.77	-195.60	-263.37	2,065.68	-50.00	-50.00	3,853.86	3,340.56	513.30	-57.93	455.37	3,078.40	3,262.51	-184.11	-66.91	-251.02	-138.45		-247.47
	704			0.00	2,552.56		-270.00	-270.00	2,180.40	-50.00	-50.00	4,053.10	3,517.68	535.42	-57.93	477.49	3,243.03	3,435.37	-192.34	-66.91	-259.25	-146.14		-247.90
West	1401			0.00	23.16		0.00	0.00	1,207.56		0.00	2,906.93	2,307.00	599.93	-7.93	592.00	2,426.64	2,423.95	2.69	-16.91	-14.22	-125.59		452.18
	1402			0.00	1,944.20		0.00	0.00	2,646.24		0.00	3,487.60	2,753.64	733.96	-7.93	726.03	2,895.21	2,894.86	0.35	-16.91	-16.56	-151.57		557.90
	1403			0.00	931.14		0.00	0.00	1,409.52		0.00	2,308.41	1,823.64	484.77	-7.93	476.84	1,919.62	1,914.45	5.17	-16.91	-11.74	-97.44		367.66
	1404			0.00	682.00		-54.10	-54.10	1,503.60		0.00	2,446.59	1,935.36	511.23	-7.93	503.30	2,036.78	2,032.20	4.58	-16.91	-12.33	-103.94		332.93
	1405			0.00	127.42	-7.40	-44.67	-52.07	2,214.60		0.00	3,989.07	2,878.80	1,110.27	-7.93	1,102.34	2,973.01	3,048.44	-75.43	-16.91	-92.34	-175.15		782.78
	1501			0.00	1,448.02		0.00	0.00	2,074.68		0.00	2,889.29	2,694.84	194.45	-7.93	186.52	2,387.76	2,384.88	2.88	-16.91	-14.03	-123.43		49.06
	1502	257.42	31.85	-31.85	1,740.00		0.00	0.00	1,816.44		0.00	2,935.28	2,307.00	628.28	-7.93	620.35	2,426.64	2,423.95	2.69	-16.91	-14.22	-125.59		448.69
	1503			0.00	1,575.52		-138.31	-138.31	2,451.96		0.00	3,257.43	2,567.40	690.03	-7.93	682.10	2,699.80	2,698.46	1.34	-16.91	-15.57	-140.74		387.48
	1504			0.00	705.64		0.00	0.00	1,472.28		0.00	2,400.39	1,898.28	502.11	-7.93	494.18	1,997.86	1,993.10	4.76	-16.91	-12.15	-101.76		380.27
	1601	92.71	96.02	-96.02	1,656.48		-158.83	-158.83	1,761.84		0.00	2,707.14	2,247.24	459.90	-7.93	451.97	2,387.76	2,351.32	36.44	-16.91	-19.53	-114.86		101.79
	1602	497.46	63.32	-63.32	1,671.66		0.00	0.00	1,816.44		0.00	2,935.28	2,307.00	628.28	-7.93	620.35	2,426.64	2,423.95	2.69	-16.91	-14.22	-125.59		417.22
	1603			0.00	0.00		0.00	0.00			0.00	3,257.43	2,567.40	690.03	-7.93	682.10	2,699.80	2,698.46	1.34	-16.91	-15.57	-140.74		525.79
	1604			0.00	1,248.44		0.00	0.00	1,415.16		0.00	2,400.39	1,846.32	554.07	-7.93	546.14	1,997.86	1,993.10	4.76	-16.91	-12.15	-101.76		432.23
	1701			0.00	0.00		0.00	0.00	2,361.60		0.00	3,542.92	3,074.76	468.16	-7.93	460.23	3,285.10	3,211.96	73.14	-16.91	-15.91	-154.17		362.29
	1702	471.11	70.60	-70.60	2,528.76		0.00	0.00	2,631.00		0.00	4,132.32	3,273.96	858.36	-7.93	850.43	3,441.15	3,443.45	-2.30	-16.91	-19.21	-181.89		578.73
	1703			0.00	1,167.41		-267.56	-267.56	1,785.36		0.00	2,860.94	2,269.92	591.02	-7.93	583.09	2,387.76	2,384.88	2.88	-16.91	-14.03	-123.43		178.07
	1704			0.00	0.00		-135.81	-135.81	2,769.36		0.00	4,500.47	3,571.44	929.03	-7.93	921.10	3,753.20	3,757.03	-3.83	-16.91	-20.74	-199.20		565.35
	1705			0.00	2,330.83		0.00	0.00	3,180.72		0.00	2,354.79	3,084.48	-779.69	-7.93	737.62	3,480.51	3,146.99	333.52	-16.91	316.61	-98.29		-519.30
	1706			0.00	1,237.55		0.00	0.00	1,774.68		0.00	2,400.39	1,898.28	502.11	-7.93	494.18	1,997.86	1,993.10	4.76	-16.91	-12.15	-101.76		380.27