



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

Case Reference : **CAM26UH/LSC/2015/0085**

Property : **52 Walden End, Monkswood,
Stevenage SG1 1TZ**

Applicant : **Mr George Sidney Filer**

Representative : **Mr G S Filer In person**

Respondent : **Stevenage Borough Council**

Representative : **Ms Emma Goff
Senior Leasehold Adviser**

Type of Application : **Section 27A Landlord and Tenant
Act 1985 – determination of service
charges payable**

Tribunal Members : **Judge John Hewitt
Mr Roland Thomas MRICS
Mr John Francis QPM**

**Date and venue of
Hearing** : **11 January 2016
Holiday Inn, Stevenage SG1 1HS**

Date of Decision : **28 January 2016**

DECISION

Decisions of the tribunal

1. The tribunal determines that:

1.1 The amount the service charges payable by the applicant to the respondent are as follows:

Year ended 31 March 2013	£1,011.01
Year ended 31 March 2014	£ 611.03
Year ended 31 March 2015	£ 542.65

These sums are made up as shown on Appendix A attached to this decision

1.2 As regards the year ending 31 March 2016 interim on account payments are payable by the applicant are as follows:

1 April 2015	£168.51 (this has been paid)
1 July 2015	£168.51 (this has been paid)
1 October 2015	£168.51 (this has been paid)
1 January 2016	£168.51 (this had not been paid at the time of the hearing)

(A final account for the year ending 31 March 2016 will be given to the applicant by the respondent later in the year which will show the amount of any balancing debit or credit claimed by the council which the applicant will be entitled to challenge if he considers the amount of costs claimed are unreasonable)

2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. By an application dated 9 September 2015 [1] the applicant (Mr Filer) sought the determination of service charges payable by him in the years:

2012/13
2013/14
2014/15
2015/16

in respect of his one bed-roomed flat at 52 Walden End.

4. The subject lease is dated 19 November 2001 [51] and was granted by the respondent (the council) to Mr Filer for a term expiring on 11 December 2113, Mr Filer having exercised his right to buy conferred on him by the Housing Act 1985.

5. The service charge regime was not in dispute. Clause 2 of the lease is a covenant on the part of the tenant to pay the service in the manner set out. The regime was not in dispute and in short it may be summarised as follows:
 - 5.1 The service charge year is the period 1 April to 31 March;
 - 5.2 Prior to each year the council is to estimate what the service charge might be for the ensuing year. With each quarterly payment of rent the council is entitled to require the tenant to pay such sum in advance and on account as it shall specify at its discretion to be a fair and reasonable interim payment;
 - 5.3 As soon as practicable after the end of each year the council is to issue a certificate to the tenant containing a summary of the expenses and outgoings incurred and specifying the actual amount of the service charge payable for that year;
 - 5.4 If the actual amount payable is greater than the aggregate of any interim payments made by the tenant the balancing debit is payable upon demand. If the aggregate of any interim payments exceed the actual sum payable the tenant is entitled to a balancing credit.
 - 5.5 The expenses and outgoings to which the tenant is obliged to contribute are set out in the Third Schedule [69] and are fairly standard in form including the costs of repairs, maintenance, caretaking, cleaning and decoration of common parts and the provision of buildings insurance.
6. Despite the directions dated 29 October 2015 [27] Mr Filer has not filed and served a statement of case in which he sets out the specific service charges which are challenged and the gist of the reason(s) why.

Inspection and Hearing

7. On the morning of 11 January 2016 we carried out an external inspection of the flat. Present were Mr Filer and for the council Ms Hodgkinson and Ms Goff. Mr Filer told us that most of his concerns were the manner in which the accounts were prepared and he alleged mismanagement arising from that. There were no particular physical features of the development he wished to draw to our attention save further damage to the front door of the block which rendered it insecure and he pointed out the rubbish chutes on the stairwell which he said strangers used for fly tipping.
8. At the hearing Mr Filer represented himself. He was accompanied by several friends who wished to observe the proceedings. Mr Filer said that his son was on his way but had been delayed in traffic. Mr Filer said that he was content to proceed with and present his case despite the absence of his son. Mr Filer's son arrived partway through the proceedings and observed them but did not take an active role. The council were represented by Ms Laura Hodgkinson, service manager and Ms Emma Goff, senior leasehold adviser.

9. Mr Filer endeavoured to outline the nature of his case but said that he was in difficulty because he had lots of files and papers going back years but he had left them at home. Mr Filer lives quite near to the venue and he was offered a short adjournment so that he could return home to get his papers, but he declined the offer.
10. By dint of questions and answers it emerged that the basis of Mr Filer's case was that the council were wrongly billing him for service charges long after the service charge year had ended and thus there was duplication and some double counting. In addition to this, Mr Filer alleged that the way the council presented its accounts to him gave him some difficulty with the Department for Work and Pensions (DWP) in calculating the correct amount of pension credit to which he was entitled.
11. Ms Goff told us that she and her colleagues had, over the years, spent quite a bit of time with Mr Filer dealing with his queries on the account and had endeavoured to explain to him the system of four on account interim payments during the course of the year and then later, usually in September, when all the bills for the year in question were in and the actual amount of the service charge calculated, there was a balancing debit or credit as the case may be.
12. The members of the tribunal took Mr Filer carefully through the scheme again, as set out in the lease, which is a scheme often adopted by private landlords as well as local authorities. We believe that at the hearing Mr Filer understood how the system worked.
13. The final accounts for each of the years ended 31 March 2013, 2014 and 2015 were in the hearing file at [18, 19 and 20]. We went through each of these with Mr Filer and the only expenditure he wished to challenge was the management fees. The basis of his challenge was the alleged errors on the billing arrangements and billing for costs after the year had ended.
14. As to the management fee, the lease allows the council to recover the costs of providing the services and the costs incurred in providing the annual certificate and the accounts. Ms Goff told us that most of these services were provided in-house and records were maintained to apportion them fairly across the estates and buildings on those estates and that this exercise was carried out each year. For the year ended 31 March 2013 the management fee apportioned to Mr Filer was £185.40. In the following years that fee has been capped at £170.00 even though in both years the actual costs exceeded that sum.

Conclusions

15. On the evidence before us and drawing on the accumulated experience of the members of the tribunal we are satisfied that the accounting system adopted by the council accords with the scheme as set out in the lease. It is also a 'classic' scheme adopted by many residential landlords across the country. We are also well satisfied that the amount of the

management fee claimed by the council in each of the three years in issue was reasonably incurred and is reasonable in amount because it is below what we typically see for developments such as that at Walden End.

16. In case it may be of further assistance to Mr Filer the attached Appendix A has been set out in such a way to show the actual costs incurred by the council and the manner in which Mr Filer was obliged to pay those costs. We hope that Mr Filer will see that his concerns about duplication and double counting are unfounded.

(We acknowledge that we have included in Appendix A the ground rent and that we do not have jurisdiction in connection with ground rent. The amount of the ground rent is not in issue and it has been paid in any event. We have included it so that the appendix can be readily reconciled with the accounts given to Mr Filer by the council. One of the concerns expressed by Mr Filer was that the council issues different accounts in different ways which renders it difficult to reconcile them.)

17. We have sympathy with Mr Filer who appears to have difficulty with DWP and the correct calculation of his pension credit. That difficulty is not the fault of the council. It may be that DWP has difficulty with the concept of payments on account and then a balancing debit/credit as the case may. We can appreciate that going forward it is difficult for Mr Filer to tell DWP exactly how much he is going to have to pay by way of service charges for the ensuing year. But nobody has a crystal ball and the exact amount payable can only be accurately calculated at the end of the year and after all the bills are in and all the various apportionments made. We would hope that DWP would appreciate this because it is a classic and widely adopted system as regards residential service charges.

Cash account

18. Mr Filer was also concerned that the accounting practices adopted by the council meant that he was in debt to the council. Again that concern was unfounded. At [50] the council had included its cash account with Mr Filer for the period 1 April 2012 to 30 November 2015. It shows that as at that date Mr Filer's account was in credit in the sum of £40.08. Of course that account did not include the interim on account payment of £168.51 that fell due for payment on 1 January 2016.

John Hewitt
Judge John Hewitt
28 January 2016

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.