(173)

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LSC/2015/0401**
Property	:	**150 Bacton, Haverstock Road, London NW5 4PS**
Applicant	:	**London Borough of Camden**
Representative	:	**Ms I Ettienne, Applicant's Court Officer**
Respondent	:	**Mr A Kuznetsov**
Representative	:	**In person**
Type of Application	:	**For the determination of the liability to pay a service charge**
Also present	:	**Mr S Twelftree, Applicant's Leasehold Manager**
Tribunal Members	:	**Judge P Korn** **Mr S Manson FRICS**
Date and venue of Hearing	:	**18th January 2016 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**1st March 2016**

DECISION

Decisions of the Tribunal

(1) As clarified at the hearing, the amount intended to be claimed by the Applicant in its County Court claim by way of service charge was in fact the sum of £1,828.68. Of that sum, the block-related CCTV charges (£58.12) and the mobile security charges (£22.50) are not payable, but the remainder of the service charges claimed are payable in full. Therefore, of the total amount claimed the total amount payable by way of service charges is £1,748.06. This is subject to paragraph (2) below.

(2) The Applicant has conceded that a refund is due to the Respondent in respect of cold water charges in the sum of £615.58 for the years 2011/12 to 2014/15 inclusive. It shall be for the County Court to decide whether this amount should be set off (formally or otherwise) against the amount determined to be payable by the Respondent referred to in paragraph (1) above.

(3) The Tribunal makes no cost orders.

(4) The case is transferred back to the County Court for final disposal. For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the County Court in relation to County Court interest or fees.

Introduction

1. The Applicant seeks and, following a transfer from the County Court, the Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of certain service charges charged to the Respondent.

2. As clarified at the hearing, the claim is for alleged service charge arrears amounting to £1,828.68 and relates to the 2013/14 and 2014/15 service charge years. There was some confusion as to whether the claim related to estimated or actual service charges for the years in question but it was agreed at the hearing between the parties and the Tribunal (after some discussion) that the claim would be treated as relating to actual service charges for those years.

3. The relevant statutory provisions are set out in the Appendix to this decision. The Respondent's lease ("**the Lease**") is dated 20th August 2001 and was originally made between the Applicant (1) and Angela Lorraine Bettie (2). The Respondent is the current leaseholder.

4. It should be noted that this decision does not record every point made by the parties in written and oral submissions but instead just records those points considered to be most pertinent to the dispute.

Agreed point

5. The Applicant conceded that the Respondent had erroneously been billed for cold water charges for the years 2011/12 to 2014/15 inclusive and confirmed that these amounts would be refunded. The amounts to be refunded are £257.90 for 2011/12, £112.30 for 2012/13, £121.62 for 2013/14 and £123.76 for 2014/15. The aggregate refund therefore due to the Respondent in respect of cold water charges is £615.58.

The heads of charge

Caretaking

6. The Respondent had challenged the caretaking charges. Ms Ettienne referred the Tribunal to Mr Twelftree's witness statement on this point. Caretakers clean the communal areas inside the building, test/check the lifts, relevant electrical items and health & safety issues, report repairs and anti-social behaviour and liaise with contractors. Costs are calculated according to how much time is spent cleaning each block, apportioned as a percentage of total caretaking hours across the borough. Caretakers also clean the external areas on the estate with the help of an external contractor, and again costs are apportioned as a percentage of total caretaking hours across the borough.

7. At the hearing Ms Ettienne said that the caretaker works for 130 hours a year on the Respondent's block. The caretaking costs included salary, national insurance contributions and supplies.

8. The Respondent said there had been no proper caretaking, as evidenced in part by the fact that as a result £40,000 to £50,000 worth of work needed to be done to the Property, as could be seen from the CPO-related document in the hearing bundle. He also referred to the fact that rubbish had accumulated and that people had urinated in the common areas.

CCTV

9. The Applicant's position was that the charge covers planned preventative maintenance of, and repairs to, the CCTV, as well as a contribution to the cost of the central monitoring centre.

10. The Respondent said that there was no CCTV until November 2015. He had previously complained about anti-social behaviour but had been specifically told by the Applicant that there were no cameras to monitor this behaviour. On this point the Respondent referred the Tribunal to an email from Rhianne Ford of Camden Council dated 23rd June 2014.

11. In response Ms Ettienne said that the cost was recoverable under the Lease even if there was no CCTV on the Respondent's building.

Door entry system

12. The Applicant's position was that this charge covers planned preventative maintenance of, and repairs to, door entry installations.

13. The Respondent said that the system had not been working since February 2013 and that at least 3 out of the 4 main doors had been unlocked for all this time. In this regard he referred the Tribunal to his email of 23rd June 2014 to Eugene Bertrand and Rhianne Ford at Camden Council.

14. In response Ms Ettienne said that the Applicant had received no reports of any faulty entry door apart from one report of a fault in March 2014, and that fault had been fixed.

Electricity

15. The Applicant's position was that this charge covers electricity used in the common parts of the block and the estate for lighting, door entry, water pumps, ventilation, fire alarm systems etc and includes standing charges and metering charges.

Grounds maintenance

16. The Applicant's position was that this charge covers the cost of maintaining the communal green spaces and the trees on the estate, including grass cutting and tree pruning. There is a small patch of grass and 34 trees.

17. The Respondent disputed these figures, stating that there were 2 bushes and no trees. On this point, the Respondent referred the Tribunal to paragraph 3.7 of the CPO Statement of Reasons in the hearing bundle.

Building insurance

18. The Applicant stated that the premium covers repair and rebuild costs in the event of damage. Premiums are based on rebuild values. Each unit's proportion is based on floor area. The block's claims history is taken into account.

19. The Respondent was unhappy that the Applicant had not provided a copy of the insurance policy for the years in question.

Mobile security

20. The Applicant's position was that this charge covers the provision of responsive mobile security patrol call-outs, helping to ensure reduced instances of anti-social behaviour. The Applicant manages the service by liaising with the police and other relevant bodies. Staff complete log sheets which are used to calculate time spent and therefore cost. The charge is worked out by dividing the cost by the total number of properties on the estate.

21. The Respondent submitted that the cost of mobile security was not recoverable under the Lease. He also argued that it was unnecessary, as security was the police's job, and also ineffective.

22. In response Ms Ettienne said that it was recoverable under the Fifth Schedule to the Lease.

Repairs

23. The Applicant stated that this covers general reactive repairs and maintenance to the block and the estate, and the hearing bundle contains basic details of repairs apparently carried out during the relevant period.

24. The Respondent said there had been no proper maintenance and that as a result £40,000 to £50,000 worth of work needed to be done to the Property.

Certification/Audit

25. The Applicant stated that this covers the accounting required to construct annual service charges and the auditing and certification of the service charge accounts. The cost is calculated by allocating the time spent by the accounting team calculating the charges for each service, and therefore the charge is higher if a block benefits from more services.

26. The Respondent submitted that there had been double-charging for certification, but Ms Ettienne for the Applicant replied that a certification process had been needed for the lease extension and that a completely different certification process had been needed for calculating the ordinary service charge.

Management fee

27. At the hearing Ms Ettienne said that this was calculated according to the amount of management time spent. The cost to each unit equals

the total cost across the borough divided by the number of units. She commented that the method of calculation was approved by the First-tier Tribunal in a previous case.

28. The Respondent felt that the management fee was excessive and did not consider that the number of employees justified the level of the fee. He also felt that the quality of the management had been poor – for example, the Applicant had used a contractor who was financially very weak.

29. On the specific point about using a contractor who the Respondent claimed was financially weak, Ms Ettienne said that the Applicant would have gone through a full legal process in choosing its contractors and that each contractor has liability insurance.

Generally

30. The Respondent was unhappy with the level of disclosure from the Applicant.

Tribunal's comments and determination

Caretaking

31. We note that the caretaking charges amount to about £6 per week and that, for this, the caretaker is said to provide a service of 2½ hours per week. We consider the charge itself to be at a reasonable level and we note that according to Mr Twelftree's formal witness evidence (which includes a Statement of Truth) it covers a fair spread of responsibilities.

32. As regards the quality of the caretaking, we prefer the Applicant's evidence on this point. It is not realistic to expect a caretaker to ensure that the common parts are free from rubbish at all times or to ensure that nobody urinates in the common parts, unpleasant though that is to live with. The fact that there is maintenance work still to be done does not demonstrate that the caretaker has not been doing his job, and we consider that the Applicant has done sufficient – in the absence of a more powerful and/or more evidence-based challenge – to show that these charges have been reasonably incurred and that the service has been provided to a reasonable (albeit not perfect) standard. Therefore the caretaking charges for the period of dispute are payable in full.

CCTV

33. There are two separate sets of charges in relation to CCTV, one relating to the Respondent's block and the other relating to the estate.

34. The evidence indicates that the Respondent's block has not benefited from CCTV during the whole of the period of dispute. The Fifth Schedule to the Lease lists the items of expenditure which can be included within the service charge, and paragraph 10 of that Schedule relates to *"the cost of installing maintaining repairing and renewing any ... CCTV ... reasonably considered appropriate or necessary and used or capable of being used by the Tenant in common ...".* Throughout the period of dispute there was no CCTV for the Respondent's block and therefore no block CCTV "used or capable of being used" by the Respondent. Therefore the block-related CCTV charges for the period of dispute (£58.12 in aggregate) are not payable at all.

35. As regards the wider estate, the evidence indicates that there is CCTV on the estate. On the basis of the information that we have, the Respondent benefits from or 'uses' this CCTV in the sense that he shares in the benefit derived from the CCTV performing its function to help protect the estate as a whole and the people who live on it. We have not received any submissions from the Respondent to persuade us that the estate-wide CCTV system is not of a reasonable standard or that the cost has not been reasonably incurred, and therefore the estate-wide CCTV charges for the period of dispute are payable in full.

Door entry system

36. We note the submissions made by both parties and on balance we prefer the Applicant's evidence. The Applicant states that only one complaint has been made about the door entry system, in March 2014, and that in response the system was fixed. The Respondent's claim that the door entry system was not working at any point since February 2013 and that at least 3 out of the 4 main doors were unlocked for all of that time is, in our view, less persuasive. Therefore, on the basis of the information made available to us and in the absence of a more powerful and/or more evidence-based challenge from the Respondent, the door entry system charges for the period of dispute are payable in full.

Electricity

37. There has been no real challenge to these charges and the charges seem to us to be reasonable in the absence of any such challenge. Therefore the electricity charges for the period of dispute are payable in full.

Grounds maintenance

38. We have considered the submissions made on this issue. Whilst neither set of submissions is entirely conclusive, we do not accept that the contents of the CPO Statement of Reasons constitute evidence that there are no trees and on balance we accept the Applicant's position

that there are some trees on the estate. In any event, we do not consider the amount charged to be unreasonable for general grounds maintenance. There is no real challenge to the standard of the grounds maintenance. Therefore the grounds maintenance charges for the period of dispute are payable in full.

Building insurance

39. One difficulty for the Respondent in relation to the building insurance is that the initial confusion as to whether the claim was for actual or for estimated charges has affected the extent to which it was reasonable to expect the Applicant to provide full details of the then current insurance policies, claims history, evidence of market testing etc. Equally, though, if the Respondent had wanted to make a detailed challenge to the cost of buildings insurance he could have made more effort to obtain proper comparable quotes. Whilst he has included a series of quotes in the hearing bundles, these are really no more than a series of figures and they are not capable of demonstrating that the actual building insurance costs are unreasonably high. In order for the evidence to have been useful and credible it would have needed to be much more detailed so that a genuine comparison could be made between the actual insurance and the alternatives sourced by the Respondent.

40. In the absence of evidence to the contrary the buildings insurance policy for the period of dispute is assumed to be similar to the policy of which brief details have been provided by the Applicant. Having considered the charges we consider them, based on our knowledge of the market, to be reasonable in amount. The evidence also indicates that the Property was insured at all relevant times, and there is no credible evidence to indicate that the insurance was defective in a material way. Therefore the building insurance charges for the period of dispute are payable in full.

Mobile security

41. As noted above, paragraph 10 of the Fifth Schedule to the Lease allows the landlord to recover certain costs relating to CCTV in appropriate circumstances. However, in our view that Schedule does not contain provisions which would entitle the landlord to recover costs relating to mobile security. Indeed, apart from the implicit reference to security in providing for CCTV-related costs to be recoverable in appropriate circumstances neither that Schedule nor the remainder of the Lease seems to entitle the landlord to recover any security-related costs. Security is not covered by the landlord's covenants and nor is it mentioned in the Fifth Schedule. There is a reference in paragraph 10 of the Fifth Schedule to "other improvements reasonably considered appropriate or necessary" but we do not consider that mobile security could reasonably have been in the parties' contemplation as an

"improvement" for these purposes. Nor do we consider the reference in paragraph 13 of the Fifth Schedule to the landlord's "reasonable management and administrative charges" to be wide enough to cover mobile security. The Fifth Schedule contains no general sweeper paragraph, although even if it did contain one it does not follow that the cost of providing mobile security would have fallen within such a paragraph.

42. Costs relating to mobile security (£22.50 in aggregate) are therefore not recoverable under the Lease and so are not payable at all for the period of dispute.

Repairs

43. In relation to repairs, it was incumbent on the Applicant to provide some basic details of repairs carried out during the relevant period in order to justify the charges. This it has done, in that it has itemised the repairs and provided a brief description of each one. In response to receiving this information it was open to the Respondent to question specific repairs in more detail, but the evidence suggests that he has not done so. In the Scott Schedule all that the Respondent has done is to make a blanket statement that there has been no maintenance or repair in the block or on the estate at all, a statement that we do not consider to be credible. The implication of the Respondent's statement would seem to be that he believes the Applicant to have fabricated all of the details of work carried out to the block and to the estate, and the Respondent would need to have provided much better evidence on this issue in order for his position to have any merit.

44. In the absence of a proper challenge from the Respondent to the Applicant's evidence we consider the cost to have been reasonably incurred, in that there are no items the cost of which seems unreasonably high on the basis of the information that we have. The Respondent has objected that a large amount of maintenance work needs to be carried out, but this is not evidence that the repairs which were carried out during the 2013/14 and 2014/15 service charge years were done in a sub-standard manner. Therefore, in the absence of any evidence to the contrary having been supplied we conclude that the work was all carried out to a reasonable standard.

45. In conclusion, therefore, the repair costs for the period of dispute are payable in full.

Certification/Audit

46. The query raised by the Respondent was explained by the Applicant to our satisfaction at the hearing. The amount charged seems reasonable,

and in the absence of any other challenge the certification/audit charges for the period of dispute are payable in full.

Management fee

47. Based on our knowledge of the market the amounts charged seem to us to be reasonable. As noted by the Applicant, the method of charging is one that has been approved before. Whilst it does not automatically follow that it is therefore now unchallengeable, the Respondent would need to have provided compelling reasons for such a challenge and he has failed to do so.

48. As regards the standard of management, there is no such thing as perfect management and in our view the Applicant has provided credible prima facie (i.e. basic) evidence of proper management and the Respondent has failed in response to demonstrate that the standard of management has been at a level which would justify a reduction in what is otherwise a reasonable charge. Therefore the management fee for the period of dispute is payable in full.

Other items

49. On the basis of the information provided the other service charge items which were not specifically challenged seem to us to be reasonable in amount and are payable in full for the period of dispute.

Cost Applications

50. The Applicant has applied for an order under Rule 13(2) of the Tribunal Rules that the Respondent reimburse the application fee and hearing fee. The Applicant has been successful on most, but not all, issues. However, at times it has been slow to provide the Respondent with information. The Respondent has had a legitimate defence on certain points, and we consider that it was reasonable generally for the Respondent to defend the claim, and also to seek further information on certain issues. In addition the original claim contains errors, as does the financial breakdown in the Applicant's statement of case in these proceedings. In the circumstances we do not consider that it is appropriate to order the Respondent to reimburse to the Applicant the application fee or the hearing fee.

51. The Respondent has made a section 20C application, and he has also requested an order "for full costs".

52. The section 20C application is an application for an order that none (or not all) of the costs incurred by the Applicant in connection with these proceedings may be added to the service charge. At the hearing the Respondent noted that the amount initially claimed by the Applicant

was incorrect and that the Applicant had had to concede that the water charges are not properly payable. He also argued that the Applicant had failed to disclose proper information. Whilst we accept that the Applicant has made mistakes, nevertheless it has been successful on most issues. As regards the provision of information, first of all we do not accept that its failings in this regard have been nearly as serious as suggested by the Respondent, secondly the relative lack of information arose in part out of an initial understanding that the claim related to estimated charges only, and thirdly the Respondent has to some extent failed to focus on the need to obtain his own detailed evidence (for example on insurance) and on asking pertinent detailed questions on the information actually supplied by the Applicant (for example on repairs). Taking all of the above together, and especially bearing in mind that the Applicant has been successful on most points, we do not consider it appropriate to make a section 20C order.

53. The Respondent has also applied for an order "for full costs". We assume that this is intended to be treated as an application under Rule 13(1)(b) of the Tribunal Rules for the Applicant to reimburse to the Respondent costs incurred by him in connection with these proceedings. Such an order can only be made if the Applicant "has acted unreasonably in bringing ... or conducting proceedings".

54. In the case of *Ridehalgh v Horsfield (1994) 3 All ER 848* Sir Thomas Bingham MR described the acid test of unreasonable conduct in the context of a cost application as being whether the conduct admits of a reasonable explanation. This formulation was adopted by the Upper Tribunal (Lands Chamber) in the case of *Halliard Property Company Ltd v Belmont Hall and Elm Court RTM Company Ltd LRX 130 2007.* Costs are therefore not to be routinely awarded pursuant to a provision such as Rule 13(1)(b) merely because one party's conduct is imperfect and/or because that party has lost the case.

55. The Applicant has been successful on most issues in this case. Whilst it has made errors, and whilst we note the very lengthy written cost submissions from the Respondent, we do not consider that the Applicant's conduct has been unreasonable in anything like the sense contemplated by Sir Thomas Bingham MR in *Ridehalgh v Horsfield.* Therefore we decline to make an order under Rule 13(1)(b) that the Applicant reimburse all or part of the Respondent's costs incurred in connection with these proceedings.

Name: Judge P Korn **Date:** 1st March 2016

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(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, or a superior 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.

Section 19

(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 provisions 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.

(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 adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, 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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.