



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

Case Reference : CHI/00HG/LSC/2016/0106

Property : 10 Wyoming Close, Plymouth PL3 6SU

Applicant : Nigel Pinto

Representative :

Respondent : Stonewater

Representative :

Type of Application : Service Charge

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 18 May 2017

DECISION

The Tribunal determines that a refund of £367.71 should be made in respect of 10 Wyoming Close in respect of service charge year 2015/2016 only. No refunds are due for 2014/15 and 2016/17.

Background

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable for the service charge years ending 31 March 2015, 2016 and 2017.
2. The Tribunal identified the sole issue to be determined is whether the cost of general repairs carried out by "Sexton" is reasonable.
3. The Tribunal decided that the application would benefit from a case management hearing which was attended by the Applicant Mr Pinto. There was no attendance by the Respondent.
4. Mr Pinto said that he was content for the application to be dealt with on the papers without an oral hearing.
5. Directions were made on 5 December 2016 indicating that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless either party made application for an oral hearing. No application has been received and the determination is therefore made on the bundles received.
6. The Directions also required that by 22 December 2016 the Respondent was to send Applicant copies of all invoices from Sexton for the period from 1 April 2014 to date.
7. On 3 January 2017 the Tribunal received a letter from the Applicant indicating that disclosure had not occurred and enclosing a letter from Stonewater dated 28 November 2016 which referred to their failure to consult on entering into a service agreement with Sextons in accordance with the Landlord and Tenant Act 2002 as a result of which they were unable to charge more than £100 per year in any financial period.
8. The Respondents then calculated the refund due;
 - *During 2015/16 Sextons undertook works to the communal areas that totalled £20,997.62. Your property incurred 1/189 of the proportion of this charge. A further £6,137.59 of communal works were undertaken and your property incurred 1/48 of this charge. Your individual properties (sic) contribution was for the sum of £111.10 and £127.87 respectively. Therefore you are entitled to a credit for the sum of £138.99 for this period.*
 - *During 2016/17 Sextons undertook works to the communal areas that totalled £7,068.60. Your property incurred 1/189 of the proportion of this charge. A further £1,259.13 of communal works were undertaken and your property incurred 1/48 of this charge. Your individual properties (sic) contribution was*

for the sum of £37.40 and £26.23 respectively. Therefore you are entitled to a credit for the sum of £0.00 for this period.

9. The Applicant's letter also indicated that he would still need to see the invoices so that he could check the calculations.

Evidence and submissions

10. On 31 January 2017 the Tribunal received a letter from the Applicant enclosing a letter dated 13 January 2017 which was described as the Tenant's statement in accordance with Direction 9 confirming that only the invoices to March 2016 had been received, referring to the Respondent's acceptance that only £100 per year could be charged but disputing the calculation of the refund;
 - *You say that during 2015/16 Sextons undertook works to the communal areas of fund A that totalled £20,997.62 and my property incurred 1/189 share of this charge. What actually took place was Sextons undertook temporary repairs to the roofs of Wyoming Close which made up the bulk of the £19,925.73 charge to Fund C not fund A therefore my share was 1/48.*
11. Directions required the landlord to reply to the Tenant's statement by 27 January 2017 but it appears this did not occur and therefore the Tribunal's requirement for a reply from the Applicant did not arise.
12. Directions also required the Respondent to be responsible for the bundle and after receipt of one that was totally inadequate a further bundle was received on 3 April 2017.
13. Contrary to Directions the bundle did not contain the Applicant's statement and a separate bundle was therefore received from the Applicant on 10 April 2017 a copy of which was sent to the Respondent.
14. The Applicant says that the Respondent's calculations are incorrect, that the Respondent kept £100 for each fund when it should have been £100 in any financial period. He calculates the refund to be;
 - 2016/17 No refund
 - 2015/16 £367.69
 - 2014/15 £77.75
15. To calculate the above amounts the Applicant refers to documents referred to as "Service Charge Summaries" and, for each year takes 189th of the amount shown for "General Repairs and Maintenance for Fund A, and adds that amount to a 48th of "General Repairs and Maintenance" for Fund C to arrive at a total for Repairs and

Maintenance. From this he deducts the £100 allowed under S.20 arriving at the sums above to be refunded.

16. In his bundle the Applicant includes a letter from him to the Respondent dated 21 February 2017 setting out his calculations in some detail.
17. In what the Respondent refers to as a "Summary" they make the following comments;
 - Stonewater in accordance with the terms of the lease, issue service charges in arrears.
 - In April 2014 Stonewater appointed Sexton Contractors to undertake repair and maintenance works to the Wyoming Scheme but failed to consult under the Landlord and Tenant Act 1985. Consequently, the accounts for 2014/15 are included but are not relevant to the appointment of the contractor Sextons.
 - In November 2016 following a resident's challenge regarding the failure to consult they wrote to all residents affected and credited all accounts where applicable.
 - On 4 December 2016 Stonewater sold the Freehold.
 - The last service charges issued were for the financial period 2016/17 only contained Sexton invoices up until 31 March 2016. No actual costs have been incurred by residents and these are not due until April 2017. The new Freeholder shall issue any service charges for the financial period April 2016-March 2017.
 - 10 Wyoming contributes to Fund A (189 properties) and Fund C (48 properties)

18. In the Respondent's bundle are the demands for each year in question together with supporting invoices.

Discussion and determination

19. The lack of a statement of case from the Respondent and any attempt to address the points raised by the Applicant has not assisted the Tribunal in making its determination.
20. There has been no challenge to the terms of the lease and the Tribunal make no findings in this respect. From examining the service charge Invoice for 2015/2016 and comparing it with the Service Charge Summary and Repairs and Maintenance Summary it is clear that the 2015/2016 service charge covers expenditure incurred during the previous year (2014/15). In support, an examination of the Repairs and Maintenance Summary Fund C shows expenditure from 15 May 2014 to 20 February 2015.
21. As Sextons were appointed in April 2014 the Tribunal accepts that the first service charge year in which their charges appear is 2015/2016 and

that service charge year 2014/2015 does not include Sexton invoices and no refund will therefore arise.

22. The Tribunal determines that the Applicant's calculation is largely correct and that the refund calculation contained in the Respondent's letter of 28 November 2016 contains errors.

23. Based on the information contained in the bundles the Tribunal's calculations are for 2015/16

Fund A	9,940.33	1/189	52.59
Fund C	19,925.77	1/48	415.12
		Total	£467.71
		Less	£100
		Refund	£367.71

24. For 2016/17

Fund A	4,390.78	1/189	23.23
Fund C	2,933.99	1/48	61.12
		Total	£84.35
		Less	£100
		Refund	£0.00

25. **The Tribunal therefore determines that a refund of £367.71 should be made in respect of 10 Wyoming Close in respect of service charge year 2015/2016 only. No refunds are due for 2014/15 and 2016/17.**

26. Although service charges for 2017/18 are not included in this application the Tribunal would expect the Respondent or their successor freeholder to similarly limit the recovery of any expenditure in respect of Sextons until the proper consultation has taken place.

27. **The Applicant has made an application under S.20C of the Landlord and Tenant Act 1985 that the Tribunal should make an Order to the effect that any of the Landlord's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account when determining the service charge.**

28. **No submissions have been received on this application by either party and before determining whether an order should be made the parties are invited to make representations within 14 days of the date of this decision.**

1. 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. 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.
2. 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.
3. 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.