



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

Property : 17A Tangier Road, Portsmouth PO3 6JG

Case Reference : CHI/00MR/LSC/2017/0036

Applicant : Mr Glen Childs

Representative : None

Respondent : Mr S Slater

Representative : Mr Faulkner of AFP

Type of Application : Payability of service charges under s.27A
Landlord and Tenant Act 1985 and limitation of
service charges under s.20C

Tribunal Members : Judge A Johns QC (Chairman)
Derek Barnden MRICS (Surveyor Member)

**Date and venue
of hearing** : 24 August 2017
Havant Justice Centre, Elmleigh Road, Havant PO9 2AL

Date of Decision : 7 September 2017

DECISION

Introduction

1. This is at least the fourth occasion since 2015 on which it has been necessary for the Tribunal to determine issues relating to the payability of service charge under a flat lease at 17 Tangier Road (“the Building”).
2. By this application Mr Childs, as lessee of 17A Tangier Road, challenges a number of items in the service charge account for the year 2015/2016 and in the budget for the year 2016/2017 (no account yet being available for that year).
3. As will appear, some of those items were conceded or not pursued by Mr Faulkner, now acting as managing agent for the respondent landlord, Mr Slater. The Tribunal will however set out for at least the principal concession why such was rightly made in the hope that it will help the parties avoid future disputes.

Jurisdiction and law

4. This application is made under s.27A of the Landlord and Tenant Act 1985. As amended by the Transfer of Tribunal Functions Order 2013, such section provides that the Tribunal may determine whether service charge is payable and in what amount. By section 19(1) of that Act, relevant costs are to be taken into account in determining the amount of service charge payable only to the extent that they are reasonably incurred and the services or works of a reasonable standard. Subsection (2) of section 19 provides that where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is payable.

Inspection and hearing

5. The Tribunal inspected the Building immediately before the hearing in the company of Mr Childs, Mr Faulkner and Mr Stanley of Flat 17B.
6. The Building is a two-storey end of terrace property of post WW2 construction. Built originally as a bank, it has been converted into flats, apparently in the late 1990s. It is constructed of brick with a part interlocking tile pitched and part felt flat roof. It has wood-effect UPVC windows.
7. Access to the first floor flats, flats A and B, is by an external staircase. There are four off street parking spaces, one for each flat. There is a small paved

communal garden area at the rear of the property, and a small front forecourt used by one of the ground floor flats.

8. Mr Childs represented himself at the hearing and was supported by Mr Stanley. Mr Faulkner represented Mr Slater.

Items challenged

9. The service charge account for the 2015/2016 year ending 25 March 2016 totals £2127. Mr Childs challenges 4 items in that account as follows:
 - 9.1 Cleaning in the sum of £144. This sum is for cleaning the windows of the flats in the Building.
 - 9.2 Bank charges in the sum of £105.
 - 9.3 Repairs and renewals in the sum of £345. This sum was made up of 2 invoices from The Joiners Shop. One of £205 dated 14 April 2015 for clearing the flat roof and the carport drain, in both cases to prevent blockage. And one of £140 dated 10 November 2015 for clearing the flat roof, again to prevent blockage.
 - 9.4 Building repairs in the sum of £240. This was also an invoice from The Joiners Shop. It was dated 12 November 2015 and was for the resizing and refitting of an “*unsuitable replacement handrail (replaced without permission)*”.
10. The items challenged in the 2016/2017 service charge budget were as follows:
 - 10.1 £144, again for window cleaning.
 - 10.2 Daily repairs in the sum of £150 and building repairs in the sum of £900.
 - 10.3 External ground maintenance in the sum of £300. This budget item was supported by an invoice dated 18 September 2016 from 5 Star Gardens Ltd in the sum of £384 for “*Garden Blitz, remove all green waste*”.
11. It is convenient to outline the parties’ cases and necessary factual background for each item in turn as part of arriving at a decision on them. We start with the challenges to the 2015/2016 service charge account.

Discussion

Window cleaning £144

12. Mr Childs’ case was not that the figure is too high but that this is not an item recoverable under the Lease at all on its true interpretation.
13. Mr Faulkner conceded at the hearing that that was correct. He was right to make that concession.

14. The lessee's maintenance obligation is found in clause 2(3) of Mr Childs' 125 year lease dated 3 April 1998 ("the Lease"). It includes keeping "*the glass in the windows in good and substantial repair*".
15. There is also, in clause 2(2), a covenant by the lessee to comply with the provisions of the Second Schedule. Paragraph 13 of the Second Schedule is in these terms: "*The window glass in the Demised Premises shall be kept clean both inside and outside*".
16. The costs to which the lessee is to contribute by way of service charge are set out in the Fifth Schedule. Paragraph 1(a) of that schedule refers to "*The expenses of maintaining repairing making up cleansing decorating and renewing ... the outer parts of the window frames*". There is no other reference in that schedule to the windows.
17. The effect of those provisions is, in the view of the Tribunal, that the cleaning of the windows is the responsibility of the lessee not the landlord and that, accordingly, window cleaning is not a service charge item.
18. The landlord's maintenance obligation in clause 4(2) does include reference to the "windows" but such is part of the description of the structure and is consistent with the ability to recover the costs of works to the window frames as provided in the Fifth Schedule. It is not inconsistent with the clear provisions of the lease relating to responsibility for cleaning the glass of the windows.
19. Mr Faulkner did observe that earlier decisions of the Tribunal have been on the basis that window cleaning is a recoverable service charge item. But he made clear he did so only by way of explanation for why such had been included in the 2015/2016 account and the 2016/2017 budget. He was not suggesting that the earlier decisions meant the parties or this Tribunal were bound to continue that error. Again, he was right to take that stance. This was not a point previously argued and, even had it been, the clear provisions and length of the Lease would have amounted to special circumstances leaving the Tribunal free to act on the correct interpretation of the Lease.

Bank charges £105

20. The Lease does provide for the recovery by way of service charge of bank charges if such are incurred as part of managing the Building; bank charges being expressly referred to in para.6 of the Fifth Schedule to the Lease.

21. But Mr Childs' case was that there were no documents supporting the suggestion that bank charges of £105 had been incurred by Mr Slater in such management. He was right and Mr Faulkner sensibly did not pursue this item.

Repairs and renewals £345

22. Mr Childs' case was that the work to which this item related, being principally roof cleaning, was simply not done. Mr Faulkner was unable to assist, having been appointed after the work is said to have been carried out.
23. The Tribunal was satisfied on the evidence that there was at least no effective cleaning so that this sum was not reasonably incurred. Photographs taken by Mr Childs after the work is supposed to have been done showed the debris still on the roof. While one invoice making up this item referred, in addition, to cleaning the carport drain, Mr Childs says that was also not done and the Tribunal has no reason to doubt him. Indeed, it is an inference that we would have drawn from the lack of effective work on the roof.

Building repairs £240

24. The background to this item is that there was an old handrail on one side of the first flight of external stairs leading to the first floor flats in the Building. Mr Childs and Mr Slater replaced it with a new oak handrail. Mr Slater took exception to the replacement and had it removed, refashioned, and reinstalled. It is the cost of that work which makes up this item.
25. The Tribunal asked what the justification was for such work. Mr Faulkner made clear no reliance was being placed on the need for the handrail to comply with building regulations or any other statutory obligations and he was unable to offer any other reason for such work. The Tribunal therefore finds that this cost was not reasonably incurred.
26. It is convenient at this point to deal with an argument advanced by Mr Faulkner on this and the previous item. It was that such items had been agreed and could not now be disputed.
27. The argument relied on s.27A(4) of the Act which provides that no application may be made under s.27A in respect of a matter which, amongst other things, has been agreed, and on an email exchange in March 2017 between Mr Childs and a Kirsty Marshall for Mr Faulkner.
28. The Tribunal examined those emails but could not find an agreement. By an email of 15 March 2017 Mr Childs made an offer, which was in any event in

the nature of a payment on account, adding “*When I have a copy of the accounts then we can decide where to go from here*”. The response by email was to the effect that that was acceptable if full payment were made that day. But no payment was made and so there was no concluded agreement, even as to a payment on account, let alone to a final liability for this item; which is what the Tribunal is concerned with on this application.

2016/2017 Budget

29. Turning to the 2016/2017 budget, of the challenged items the only one pursued by Mr Faulkner was the £300 for external ground maintenance; the other disputed budgeted costs not, in the event, having been incurred.
30. Mr Childs’ case was that this was not a reasonable sum. The garden is largely paved and the work involved 3 men for an hour dealing with weeds and cutting back growth. He suggested £100 as a reasonable figure for that work.
31. Mr Faulkner relied on the invoice referred to at para. 10.3 above but accepted that he would expect a professional gardening firm to charge labour at £25 per hour plus VAT and an additional sum for disposal of the garden waste.
32. On the evidence, the Tribunal is of the view that the sum sought in the budget was unreasonable. A reasonable figure is £125, representing 3 man hours at £25 plus VAT per hour and provision for disposal; so a reduction of £175 to the figure sought.
33. Before summarising the effect of the above, we should record that while mention was made during the hearing of the insurance administration fee in the account and budget, Mr Childs made clear he was not challenging this item.

Overall

34. The effect of the concessions and the findings above is that:
 - 34.1 The service charge account for 2015/2016 in the sum of £2127 is reduced by a total of £834 (£144+£105+£345+£240) leaving a balance of £1293. Mr Childs’ proper one quarter contribution is therefore £323.25, before giving credit for any receipts.
 - 34.2 The service charge budget for 2016/2017 in the sum of £3087.10 is reduced by a total of £1369 (£144+£150+£900+£175) leaving a balance of £1718.10. Mr Childs’ proper one quarter contribution is therefore £429.53.

Costs and fees

35. Mr Childs asks for an order under s.20C of the Act which provides that the Tribunal may order that any costs incurred in proceedings are not to be taken into account in determining service charge payable by the tenant or any other specified persons. Mr Childs specified Mr Stanley as well as Mr Dando and Miss Wolley, the tenants of flat 17D.
36. Mr Childs having been successful in these proceedings and many of the challenged items not, in the end, being pursued it is just and equitable that an order should be made as asked. Mr Faulkner indicated at the hearing that he did not oppose such an order.
37. For the same reasons, Mr Childs should also have his Tribunal fee of £100 reimbursed by Mr Slater.

Summary

38. From the above, the Tribunal determines that:
 - 38.1 The sum payable by way of service charge under the 2015/2016 account is £1293, making Mr Childs' contribution £323.25.
 - 38.2 The sum payable by way of service charge under the 2016/2017 budget is £1718.10, making Mr Childs' contribution £429.53.
39. The Tribunal further orders that:
 - 39.1 Any costs incurred by Mr Slater in these proceedings are not to be taken into account in determining service charge payable by Mr Childs or the tenants of Flats 17B and 17D.
 - 39.2 Mr Slater must reimburse Mr Childs' Tribunal fee of £100.

Judge A Johns QC (Chairman)

Dated 7 September 2017

Appeal

- (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.