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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/18UH/LSC/2016/0055
Property:	16 Beechcroft, Salisbury Terrace, Teignmouth, TQ14 8JA
Applicant:	Mr A Davies
Representative:	In Person
Respondent:	The Guinness Partnership
Representative:	Mr L Coatham
Type of Application:	Section 27A of the Landlord and Tenant Act 1985 (Liability to pay service charges) Tenant's application for the determination of reasonableness of service charges for the years 2014/15 and 2015/16.
Tribunal Members:	Judge A Cresswell (Chairman) Mr T Dickinson BSc FRICS IRRV
Date and venue of Hearing:	12 January 2017 at Newton Abbot
Date of Decision:	24 January 2017

DECISION

The Application

1. This case arises out of the tenant Applicant's application, made on 31 May 2016, for the determination of liability to pay service charges for the years 2014/15 and 2015/16.

Summary Decision

2. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has determined that, subject to limited exceptions relating to cleaning of wheelie bins and fire alarm call outs, the landlord has demonstrated that the charges in question were reasonably incurred and are payable by the Applicant.
3. The table below sets out the heads of expenditure challenged by the Applicant and the sums which the Tribunal found to be reasonable and payable:

Disputed Heads of Expenditure	**Sums Payable £ 2014/15**	**Sums Payable £ 2015/16**
Gardening	2352.36	2676.99
Cleaning	2538	2148.12
RLA	3511.56	3064.92
Cleaning of Wheelie Bins	Nil	Nil
Window Cleaning	1008	960
Fire Alarms	2141.31	2,260.85
Speech Alarms Tunstall Aid Call	687.66	708.43
Assisted Bathroom Hoist	99.60	48
Automatic Doors	1012.74	1803.36
Cobwebs Rubbish Removal	75	No challenge

Preliminary Issues

4. There were a number of issues raised by the Applicant, which were not pursued at the hearing; some before evidence was heard and some during the course of the hearing. Those issues are not dealt with substantively in this determination because they were not further pursued by the Applicant.

Inspection and Description of Property

5. The Tribunal inspected the property on 12 January 2017 at 1000. Present at that time were Mr AJ Davies, Mr R Grange and Mr S Dalton, respectively the Respondent's Housing Officer and Retired Living Advisor (a title subsequently referred to as "RLA").

6. The property in question consists of a 3-storey detached block comprising, on the ground floor, a disused day centre, communal laundry room for the benefit of the 19 tenanted residential flats on the first and second floors of this sheltered scheme for the over 55s, and rooms for electricity supply and the boiler facility, both with separate outside entrances. Common facilities include, on the first floor level, a disabled toilet together with a residents' lounge and kitchen with access to an outside terrace with sea views. On the second floor is an assisted bathroom and 2 guest bedrooms.
7. Outside, the grounds included a tarmacked drive and car park to the front (11 spaces for residents and visitors, non-allocated), a bin store area, a garage to the side to house up to 4 mobility scooters, a front garden area and extensive gardens to the side and rear with shrubberies.

Directions

8. Directions were issued initially on 28 July 2016.
9. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
10. This determination is made in the light of the documentation submitted in response to those directions and the evidence and submissions made at the hearing. Evidence was given to the hearing by Mr Davies and Mr Grange and by Mr L Coatham and Mr S Martens, respectively the Respondent's Housing Manager and Accountant. At the end of the hearing, Mr Davies and Mr Coatham told the Tribunal that they had had an opportunity to say all that they wished and had nothing further to add.

The Law

11. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
12. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
13. *"Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available:* **London Borough of Havering v Macdonald** [2012] UKUT 154 (LC) Walden-Smith J at paragraph 28.

14. The lessee is obliged to identify the costs which s/he disputes and to give reasons for his/her challenge. The landlord is expected to produce evidence which justifies the costs and answers the lessee's challenge. If the lessee succeeds in persuading the Tribunal that the costs should be reduced, the Tribunal will expect him/her to produce evidence of the amount by which the landlord's costs should be reduced. It is a key element of the section 27A determination process (**The Gateway (Leeds) Management Ltd v (1) Mrs Bahareh Naghash (2) Mr Iman**

Shamsizadeh [2015] UKUT 0333 (LC)).

15. Where a party does bear the burden of proof:
"It is common for advocates to resort to [the burden of proof] when the factual case is finely balanced; but it is increasingly rare in modern litigation for the burden of proof to be critical. Much more commonly the task of the tribunal of fact begins and ends with its evaluation of as much of the evidence, whatever its source, as helps to answer the material questions of law... It is only rarely that the tribunal will need to resort to the adversarial notion of the burden of proof in order to decide whether an argument has been made out...: the burden of proof is a last, not a first, resort." (Sedley LJ in **Daejan Investments Ltd v Benson** [2011] EWCA Civ 38 at paragraph 86).

16. The relevant statute law is set out below:

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

18 Meaning of "service charge" and "relevant costs"

(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.

19 Limitation of service charges: reasonableness

(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 provision 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.

Ownership and Management

17. The Respondent is the owner of the freehold. The property is managed by it.

The Lease

18. The Applicant holds Flat 16 under the terms of a lease dated 27 March 2015, which was made between the Respondent as lessor and the Applicant as lessee.

19. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:

Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

> 15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14.

20. The lease provides for a weekly (monthly in practice) payment of a Service Charge. At the end of the year, any disparity in spend as between the aggregation of the monthly payments and actual annual spend is reconciled by an increased or decreased monthly requirement in the following year.

Gardening

The Applicant

21. The Applicant argued that the 19 tenants should be responsible only for a proportion of the gardening costs represented by their share of the building. He suggested a 50/50 split. He suggested that each tenant should pay £5.80 per month or a total of £1322.40 per annum.

The Respondent

22. For the Respondent, Mr Coatham said that the service charge is for Beechcroft, being the building and its grounds. The day centre closed in September 2015 and had never contributed to the grounds which are for the use of the residents only. The gardening contract had been awarded some 5 years previously following tendering by 4 contractors and consultation with residents across all of the Respondent's schemes, based upon a schedule of service standards and price. Awarding such a contract provided economies of scale and ensured the necessary insurance, health and safety standards, etc. for properties of this nature. There were proposals to review the contract in the near future.

The Tribunal

23. The Tribunal saw no evidence which could lead it to conclude that the whole of the (reasonable) gardening costs should not be borne by the 19 tenants. The Tribunal was presented with no alternative costings by the Applicant and, on their face, the overall costs of £2352.36 in 2014/15 and £2676.99 in 2015/16 did not seem unreasonable given the size of the grounds, the mix of bushes, trees and lawn. The Tribunal noted the benefits of the economies of scale available from the tendering of the contract and the need to ensure appropriate skills, insurance, etc.

Cleaning

The Applicant

24. The Applicant believed that cleaning took up only 3 hours per week over 2 x 1½ hour sessions. He said that only hoovering was performed and that the stone staircases were never washed. He felt that £4 per tenant per month or £912 per annum would be a more reasonable cost.

The Respondent

25. The Respondent, via Mr Coatham, said that there was a cleaning contract across its Devon properties, which had been tendered 3 years ago and included a tenants' vote. The RLA checks that the cleaning has been performed. Mr Grange told the Tribunal that the contract requires the operative to hoover, dust and wipe and mop as and when required. He said that the RLA completes a form to show that the work has been done and that he in turn checks the form.

The Tribunal

26. The Tribunal noted the benefits of the economies of scale available from the tendering of the contract and the need to ensure appropriate skills, insurance, etc.

27. The Tribunal noted that the contract includes materials and equipment. No comparative costs were provided by the Applicant and the overall cost, given the size of the common parts and the tasks involved, appeared to be reasonable on its face. The common parts included the entrance area, corridor, lift, laundry, residents' lounge, assisted bathroom and disabled toilet. The costs suggested by the Applicant would not be lawful, being below the minimum wage and representing only £5.85 per hour.

RLA

The Applicant

28. The Applicant did not believe that the RLA inspected the property and said that sometimes he did not visit, such as the previous week. His work consists of checking the fire alarms once per week and the pull cords once per month; not every flat has a pull cord. He sits in the day centre offices for 4 hours. He does not provide help or support and has told tenants to stop complaining to him.

The Respondent

29. The Respondent, via Mr Coatham, indicated that the RLA is there to monitor the building and to manage contracts, but also the welfare of residents if needed, including such issues as housing benefit, correspondence, doctors' appointments, etc. All residents are over 55 and no other complaints about the RLA have been received from residents at the property. The RLA is on site in case anybody needs him.

30. The fact that there is a visiting RLA to the building is mentioned when flats are advertised via councils' choice-based letting scheme and elsewhere. Mr Martens said that the RLA calls up the repair team and refers matters brought to his attention by tenants.

31. Mr Grange told the Tribunal that previously there had been Sheltered Scheme Managers, but that funding for these had ended. RLAs were appointed after consultation with tenants. The RLA works on 6 premises, spending half a day per week at the property. Mr Martens indicated that the team of RLAs was monitored by a RLA manager. The costs of the RLA included an element of management costs together with National Insurance, holiday pay, etc.

The Tribunal

32. The Tribunal calculated the cost of the RLA at 5 hours per week (260 hours per annum) was £13.50 per hour in 2014/15 and £11.78 per hour in 2015/16. No alternative costings were provided by the Applicant and the Tribunal could see no reason for finding other than that the costs involved represented a reasonable expenditure for such a responsible position in a property of this nature, given the functions described. The Tribunal noted that the RLA represented a substantial reduction on the previous situation of Sheltered Scheme Managers and was a position voted for by tenants. As well as being on site once a week to check

cleaning, safety and respond to tenants' concerns, the RLA acted as a coordinator for the repairs team and reported to the Housing Officer.

Cleaning of Wheelie Bins

The Applicant

33. The Applicant queried the charges for cleaning of wheelie bins. The only invoice provided by the Respondent referred to 10 x 240 litre green bins and 2 x 360 litre green bins and was in the total sum of £37.60 and was for cleaning on 25 February 2014. As the Tribunal would have noted at the Inspection, the bin store comprised 9 large black bins, 7 large green bins, 1 small green bin and 5 blue food waste bins.

The Respondent

34. The Respondent, via Mr Grange, indicated that bin numbers had been changed in early 2015. He said there was no bin-cleaning contract at present and that the contractor had ceased cleaning the bins in May 2016, as he had discovered in June or July of 2016. A new contract would be discussed with tenants.

The Tribunal

35. The Tribunal noted that there was no clarity as to the make-up of the bin store over the relevant period and that the only evidence available to it to substantiate any bin cleaning at all was the invoice paid on 14 May 2014, but relating to a service of 25 February 2014. The service charge year for the property is 1 April to 31 March and the Respondent indicated that costs are allocated to the service charge account in the year in which they accrue, whether or not an invoice has been received and that a reconciliation occurs at year end. On the basis of the evidence available to the Tribunal, the Tribunal cannot be satisfied that any wheelie bins were cleaned during the years 2014/15 and 2015/16, so that for those years there should be a nil cost for the Applicant.

Window Cleaning

The Applicant

36. The Applicant believed that the tenants were paying for the cleaning of the day centre windows as well as cleaning of other windows at the property. He had been told by the window cleaner that he provides only one bill to the Respondent.

The Respondent

37. The Respondent, via Mr Coatham, told the Tribunal that its contract was for the cleaning only of the windows of the first and second floors and that no arrangements had ever been made for the cleaning of the ground floor windows. He was unable to say whether cleaning of the laundry room and entrance windows were included in the contract.

The Tribunal

38. The Tribunal noted the detail of the contract as reported by Mr Coatham and the suspicion of the Applicant. On the basis of the evidence before it, it may well be that the contractor is cleaning more windows than he is contractually required to clean, but there was no evidence available to show that a charge greater than the contractual price was being required by him of the Respondent. Accordingly, the Tribunal is unable to find that the window cleaning cost is unreasonable.

Fire Alarms

The Applicant

39. The Applicant believed that a charge of £162 to reset the fire alarm levied by Interserve Fire Services was too high. One tenant had caused the alarm to sound on numerous occasions at considerable cost to the other tenants.

The Respondent

40. The Respondent, via Mr Coatham, indicated that there is a 4-hour response time within a national contract. If the alarm box is not reset, the alarm will still activate a second time but not show the location of the second incident. A national contract was required following a decision by the Fire Brigade to cease attending for such a purpose. Mr Martens was surprised at the charge of £162 and noted that the charge appeared, from the reconciliation sheet provided by the Respondent, to have increased during the course of a year. Mr Grange believed that the particular call out queried by the Applicant of 6 September 2015 had been for more than a reset and had been to check a fault out of hours. Mr Coatham indicated that steps had been taken to prevent alarms in relation to one of the flats including provision of equipment and measures to meet particular needs.

The Tribunal

41. The Tribunal noted the concerns of the Applicant, but was satisfied on the basis of the available evidence that the Respondent had taken steps to address the discrete issue of repeat call outs. There had been prompt action with a range of resources. The particular difficulty was one of the recognised risks associated with this type of accommodation.

42. In respect of the actual costs, however, the Tribunal found the evidence for the Respondent to be unsatisfactory. The Tribunal was not shown or given details of the call out contract. Nor was the Tribunal provided with invoices for the 5 occasions when £162 had been charged for a reset. The evidence of the Respondent's accountant was that he believed that the charge should be £96 including VAT and the evidence of Mr Coatham was that the contract is a 24-hour contract. There being no actual evidence as to why the contractor should be able to charge £162 in respect of the 5 specific resets, the Tribunal finds that only £96 on each of those 5 occasions is the reasonable sum chargeable to the tenants.

Speech Alarms and Tunstall Aid Call

The Applicant

43. The Applicant told the Tribunal that he did not want this system and that it was not fitted in his apartment when he moved in. He said that Mr Grange was not being truthful when he told the Tribunal that it had been fitted when he moved in.

The Respondent

44. The Respondent, via Mr Grange, indicated that he had taken the Applicant through his tenancy agreement and that the system had been in place when he moved in and that it had been the Applicant's choice to remove pull cords. He said that the Applicant still uses the speech box, as he himself had stated during the course of the hearing and that he also uses it for operation of the door entry system. Mr Coatham told the Tribunal that the Tunstall kit is owned by the Respondent and that a contractor takes calls from residents via the kit. He said that it is hard-wired and integral to the building. It is subject to a quarterly maintenance contract, there being 5 pull cords and a speech box in each flat. There is an intercom in the residents' lounge, disabled toilet and assisted bathroom, some 100+ different items of equipment requiring maintenance for life safety.

The Tribunal

45. The Tribunal noted the utility of this equipment in a property of this nature. The costs of £687.66 for 2014/15 and £708.43 for 2015/16 for the checking of some 100+ items every quarter seemed very reasonable and no comparative figure was

provided by the Applicant. Whilst it was a matter of choice for the Applicant to remove part of the equipment in his own apartment, the equipment provided an important lifeline for residents as well as being an effective means of remotely controlling entry to the building.

Assisted Bathroom Hoist

The Applicant

46. The Applicant queried the requirement of the hoist in the assisted bathroom.

The Respondent

47. The Respondent, via Mr Grange, indicated that although the equipment is not currently used, it does require an annual service and electricity safety test and is there for the future for disabled tenants to use.

The Tribunal

48. The Tribunal agreed with the Respondent that it is reasonable to have such equipment in a property of this nature. Such equipment needs to be monitored for safety, and, there being no suggestion of comparable costs from another contractor, the actual costs of £99.60 in 2014/15 and £48 in 2015/16 appeared to be entirely reasonable.

Automatic Doors

The Applicant

49. The Applicant indicated that whilst incidents appeared to have decreased recently, there had been occasions of damage and he argued that automatic doors are not required in the building.

The Respondent

50. The Respondent, via Mr Coatham, indicated that the doors were part of the scheme and were fitted to most of the Respondent's properties and assisted entry to the building. He said that because the doors are mechanical they will require repairs and that it was the policy of the Respondent always to repair unless repair was not the economically viable proper course. Mr Grange told the Tribunal that there could be no entry without using a fob or push button and the doors provided security within the building and assisted those using walking aids and carrying shopping.

The Tribunal

51. The Tribunal could see that the doors represented a safety/security feature for the building. They enabled easy access for those with varying degrees of mobility and were what the Tribunal would expect in such a sheltered scheme. Clearly, the Respondent must monitor the number of call outs and keep under consideration the most economic method of addressing that issue. On the basis of the evidence available to it, the Tribunal could not conclude that the costs in question of £1012.74 in 2014/15 and £1083.36 in 2015/16 were unreasonable.

Cobwebs Rubbish Removal

The Applicant

52. The Applicant queried the charge of £75 for 15 January 2015 relating to the removal of rubbish from the site. Although he had not been resident at the time, he said that his enquiries of a couple of tenants led to him being told that they could not remember a big lorry or a big pile of rubbish at the time.

The Respondent

53. The Respondent, via Mr Grange, told the Tribunal that the rubbish in question had been observed by the RLA. The code used to describe the load, referring to a mini

skip, was generic and no actual skip had been required, but the description of the rubbish itself was accurate. Mr Coatham told the Tribunal that, whilst the Respondent will always seek to charge an identifiable tenant for dumping of rubbish, unidentifiable costs must fall to the service charge.

The Tribunal

54. The Tribunal can only work upon the basis of the evidence before it. Whilst noting the suspicion of the Applicant, there was nothing to gainsay the clear evidence of the Respondent on this issue or to find other than that the sum was chargeable to the service charge. It was not suggested that the sum itself was unreasonable. It was clearly a health and safety issue.

General

55. The Tribunal was not required by the Applicant to make a finding in relation to Depreciation. However, the Tribunal notes that depreciation forms the highest single cost within the service charge schedule in 2014/15 and one of the highest costs in 2015/16. It would be sound practice for the Respondent to give the tenants a breakdown of this cost so that they can understand which items are depreciating and how the calculation is made for each of those items.

56. Clarity of accounting can remove suspicion and reduce administration costs for the tenants.

A Cresswell (Judge)

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.

2. 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.

3. 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.

4. 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.