

12010



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

Case Reference : LON/00AW/LSC/2016/0357

Property : 86G Philbeach Gardens,
London SW5 9EU

Applicant : Maria Cevola

Respondent : Women's Pioneer Housing

Type of Application : Liability to pay service charges

Tribunal : Judge Nicol

Date of Decision : 6th March 2017

DECISION

Decisions of the Tribunal

- (1) The application is dismissed.
- (2) The Tribunal makes no order as to costs.

Relevant legislative provisions are set out in the Appendix to this decision.

The Application

1. The Applicant is an assured tenant of the subject property. The Respondent is her landlord and is a charitable housing association.
2. The Applicant has applied for a determination under section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of her service charges for 2016/17. The Respondent sent her a summary

of service charge estimates and actuals which she attached to her application and the relevant parts of which read as follows:

Element	2015 Estimate	2015 Actual	2016 Estimate	2016 Individual Charge
Cleaning	£1,300	£1,338	£1,400	£181
Window cleaning	£70	£40	£80	£10
Communal Electric Repairs	£100	£0	£150	£19
Contents Insurance	£30	£27	£30	£4
Door Entry Systems	£250	£247	£250	£32
Pest Control	£150	£0	£150	£19
TV Aerial	£0	£0	£200	£26
Estate Services Officer	£1,060	£1,194	£1,110	£143
Equipment Depreciation	£0	£1,170	£1,170	£151
Fire Safety Equipment	£800	£653	£750	£97
Communal Electricity	£200	£166	£190	£25
Total	£3,960	£4,833	£5,480	£707
Management Fee 15%	£594	£725	£822	£106
2013 (Surplus)/Deficit	(£1,207)	(£1,207)		
2014 (Surplus)/Deficit	(£1,272)	(£1,272)		
2015 (Surplus)/Deficit			£2,108	£272
TOTAL SCHEME COSTS	£2,075	£3,079	£8,409	£1,085

3. The annual charge of £1,085 works out at £90.40 per month on top of the Applicant's monthly rent of £567.60. This compares with the previous year's figures of £22.30 and £573.33 respectively.
4. The Applicant works but is of limited means and is understandably taken aback by such a large increase in her service charges. She points to acquaintances who are tenants of other housing associations but pay considerably less in service charges. In a letter dated 22nd February 2017 responding to the Respondent's statement of case, she makes an impassioned argument that the poorest in society who make up the majority of housing association tenants should not be expected to pay such relatively large sums.

5. Unfortunately, the Tribunal believes that the application is not aimed at the right target. The Applicant has sought to challenge the estimated costs for 2016/17 for door entry, window cleaning, cleaning, electric repair, insurance, TV aerial, estate services officer and equipment depreciation. Her objections mostly consist of requests for an explanation or unsupported assertions that the charges are too high. Her principal evidence as to high charges comes from the total service charges payable by tenants at other housing associations but the Tribunal simply does not know enough about those other tenancies to know if they are comparable.
6. The Respondent has provided a statement dated 16th February 2017 from Jamie Beckwith, an Estate Services Manager, which explains each of the charges. The Tribunal is satisfied that her explanation is sufficient to justify each of the estimated charges in the absence of any more detailed or substantive objections from the Applicant.
7. The Applicant's real objection is to the large increase but the table set out in paragraph 2 above shows that there has been little change in the estimated charges which, at least for the last year, were fairly close to the actual expenditure. The reason for the increase is not any change to the charges for any category of services but that, in the previous year, there were two surpluses credited from previous years while, in the current year, a deficit has been applied. The Applicant benefited last year from the reduction to the total service charges due to the credits but has been asked to pay a share of the deficit this year.
8. The surpluses or deficit are not the result of changes to the estimated charges but the Tribunal cannot tell from the information provided where they come from. The Respondent would be well-advised to provide the Applicant with a full explanation of the surpluses and the deficit so that she can understand them. If the Applicant is dissatisfied with any lack of information or with any explanation provided, it will be open to her to make a separate application challenging the surplus/deficit element of her service charges.
9. The Applicant applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent may not add their costs of these proceedings to the service charge but, in the circumstances, there is no basis for making such an order.

Name: NK Nicol

Date: 6th March 2017

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 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;

- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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.