



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

Case References : **MAN/OOBY/LSC/2016/0023**

Property : **Flat 4, 257 Smithdown Road,
Liverpool. L15 2HF**

Applicants : **Peter Carfoot**

Representative : **In person**

Respondent : **Sanctuary (North West) Housing
Association Limited**

Representative : **John Waiting, Counsel
Gowling WLG LLP**

Type of Application : **Application under section 27A (and 19) of
the Landlord and Tenant Act 1985**

Tribunal Members : **Mr G. C. Freeman
Mr J Faulkner FRICS Expert Valuer
Member**

Date and venue of Hearing : **18 April 2017
Social security & Child Support Tribunal
Office, 36 Dale Street, Liverpool L2 5UZ**

Date of Decision : **20 April 2017**

DECISION

DECISION

- 1. The sums of £149.30 per year plus a management fee of 15% charged for communal cleaning in respect of the Property for the periods 2015/2016 and 2016/2017 are reasonable.**
- 2. The sum charged for window cleaning plus a management fee of 15% for the period 2015/2016 is unreasonable. The reasonable sum for window cleaning for 2016/2017 for the Property is £12.28 plus a management fee of 15%.**
- 3. No payment in respect of communal electricity shall be due from the Applicant for the years 2015/2016 or 2016/2017 until actual invoices for the electricity consumed are produced and a proper apportionment for the Property and the periods in question are produced. No management fee may be added to these sums.**
- 4. The Respondent is directed to produce a revised estimate of service charge for the Property for the year 2017/2018 within 28 days of the date hereof.**

Background

1. The Applicant has applied to the Tribunal for a determination of the liability to pay and the reasonableness of service charges for the Property for the periods 2014/2015, 2015/2016 and (prospectively) 2016/2017 inclusive.
2. The Tribunal issued Directions on 31st August 2016 on the basis that the parties had indicated that the matter could be dealt with by a determination on the papers submitted. An inspection followed by a determination was arranged for 28th November 2016, at which the Tribunal decided that a hearing was necessary to determine the issues. The Tribunal made further directions as a result. The parties then lodged further written statements of case. A hearing was arranged for 18th April 2017.
3. The Property was inspected by the Tribunal on the morning of 28th November 2016. No. 267 Smithdown Road is a three-storey mid-terrace house with a small garden to the front and a walled yard to the rear originally built around 1890 and since converted into four flats. There is a door entry system and fire and smoke alarm. Flats numbered 1 to 3 are self-contained one-bedroom flats on the ground, first and second floors respectively. The Property, Flat No. 4, is situated above the ground and first floors of the adjoining property, and immediately under the roof of, No. 265. Although at some time in the past this was in common ownership, Number 265 is no longer owned by the Respondent. Access to the exterior of the rear of the Property can only be gained from the rear garden of 265 which has no direct access from the front garden or the passage at the rear.
4. There have been previous proceedings involving Flat 1, 265 Smithdown Road under case number **MAN/OOBY/LSC/2015/0096** dated 14 October 2015.

The Tenancy Agreement

5. The Applicant occupies the Property on an Assured Tenancy Agreement (“the Agreement”) dated 23rd March 1998 made between Cosmopolitan Housing Association Limited (“Cosmopolitan”) of the one part and the Applicant of the other part. The Respondent is the successor in title to Cosmopolitan. The Agreement provides that the Cosmopolitan will provide the following services:-

Landscaping/Gardening
Cleaning to Common Parts
Lighting to Common Parts
Caretaker
Window Cleaning
T.V.Aerials
Other

The terms of occupation of all the flats within the building are similar.

6. The Agreement provides that the Service Charge is variable. The cost of providing any services is compared against the income which has been received as part of the weekly rent. Any surplus or loss is to be taken into account when assessing the following year’s service charge.

The Applicant’s Case

7. The Applicant objects to the amounts charged under the following heads of expenditure for the periods in question:
- Cleaning the common parts
 - Exterior window cleaning
 - Electricity supply for the common parts

Cleaning the common parts

8. The Applicant’s case is that, having examined the time sheets for the two cleaners employed to clean the common parts for twenty minutes per fortnight, and applying a sum equivalent to the wages paid to the staff, the amount actually charged for cleaning is excessive. He suggested a sum of £312 per year for the entire property would be reasonable having regard to the actual time taken. In so doing he relied on his own experience of working in the cleaning environment. He produced an example costing from a firm of cleaners in support of his argument.

Exterior Window Cleaning

9. The Applicant alleged that no exterior window cleaning had been carried out to the Property until November 2016 by reason of the inaccessibility to the rear windows of his flat.

Electricity supply for the common parts

10. The Applicant challenged the estimated cost of this head of charge, based on the lack of meter readings throughout the period. He also complained that a management charge of 15% of the estimated cost had been added to the service charge account, but had not been refunded when the actual amount for one period had been ascertained and had been found to exceed the estimated cost.

The Respondent's Case

Cleaning the common parts

11. The Respondent alleges that the cleaning costs, which are carried out by the Respondent's own staff are reasonable. The two staff are actually employed for a period of thirty minutes each on this property.

Exterior Window Cleaning

12. The Respondent accepted that the exterior windows may not have been cleaned during part of the period in question. However, when it was brought to their attention by the Applicant, they stated that they ensured such cleaning was carried out and this had been done since November 2016.

Electricity supply for the common parts

13. The Respondent produced a schedule of electricity charges for the scheme since 2012. All of the amounts were estimates except for one dated 28 April 2015 which was for the period 19th October 2012 to 16th April 2015. This showed a refund due to the scheme of £1228.22. The Respondent stated that subsequent accounts had been based on estimates because they were unable to persuade the electricity supplier to read the meter. A photograph of the latest meter reading was also produced at the hearing.
14. In respect of all other heads of charge the Respondent stated that they did not propose to seek payment of a service charge from the Applicant.

The Law

15. The law is stated in the Appendix to this decision.

Discussion

16. In its previous decision in the case noted above, the Tribunal decided on the issues of communal cleaning and communal electricity charges for the scheme for the year 2014/2015. Accordingly the Tribunal did not consider these charges further, having already decided on them.

Cleaning the common parts

17. Although the Applicant produced an example of the charge for cleaning the common parts, the Tribunal noted that such estimate was subject to a minimum cost for two hours per week or three hours per fortnight. Furthermore, it was for the supply of labour only and did not include the cost of cleaning materials or travel expenses. Accordingly it was not a "like for like" estimate on which the Tribunal could rely. In the absence of any evidence of the actual cost of cleaning the Tribunal decided that the cost actually incurred by the Respondent was reasonable. Thus the reasonable service charge for communal cleaning for the year 2015/2016 for the Property is £149.30 per year, to which may be added a 15% management charge. Credit must be given to the Applicant for any other management charges added to the service charge account for cleaning over and above this figure.

Exterior Window Cleaning

18. There was no evidence before the Tribunal relating to if and when the exterior of the windows to the Property had been cleaned, save for that referred to in paragraph 12 above. It seems to have been accepted by the parties that cleaning has been done since November 2016 when it first came to the Respondent's attention. The tribunal decided on the balance of probabilities that cleaning had not been carried out beforehand and therefore any charge for this was unreasonable. The amount due for the period prior to November 2016 must therefore be adjusted to take this into account, and that this adjustment must take into account the fifteen per cent management charge added to the service charge account for these periods. Thus the reasonable service charge for window cleaning for the year 2016/2017 is £12.28 to which a management charge of 15% may be added. Credit is to be given to the Applicant for any service charge for window cleaning for prior years plus management charges of 15% of that sum.

Electricity supply for the common parts

19. The Tribunal noted that, based on the only actual meter reading for the year 2014/2015, the communal electricity charged attributable to the Property was £30.20 for that year. The Respondent acknowledged that the amount under this head of charge for the forthcoming year was excessive at £168.01. The Tribunal were disappointed to note that despite being specifically directed to do so, (paragraph 5.6 of the Directions dated 28 November 2016) the Respondent produced no actual accounts for electricity for subsequent periods. This was allegedly because the electricity supplier failed to read the meter.

20. This situation is unacceptable. If necessary, the Respondent should read the meter and require the supplier to provide invoices based on those readings, as any domestic consumer would arrange. As a result the Tribunal is unable to determine the reasonable and proper charge for communal electricity for the scheme for the periods in question. The Respondent's failure should not be detrimental to the Applicant. The Tribunal therefore decided that no payment in respect of communal electricity should be due from the Applicant for the years 2015/2016 or 2016/2017 until actual invoices for the electricity consumed are produced and a proper apportionment for the Property and the periods in question are produced. Credit is to be given for all payments made by the Applicant to date including all management fees added to the Applicant's service charge account and no management fee of 15% is to be added to the amount due when the amount is eventually known.

21. In the light of the above the Respondent is directed to produce a revised estimate of service charge for the Property for the year 2017/2018 within 28 days of the date hereof.

Appendix

The Law

Section 18 of the Landlord and Tenant Act 1985 (“the 1985 Act”) provides:

- (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 provides that

- (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.

Section 27A provides that

- (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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3)
- (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

No guidance is given in the 1985 Act as to the meaning of the words “reasonably incurred”. Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].