

9181



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

Case References : MAN/00CK/LSC/2013/0067
MAN/00CM/LSC/2013/0068

Properties : Apartment 7, 220-221 High Street West,
Sunderland, Tyne & Wear SR1 1TZ (“Apartment
7”);

Apartment H, Arndale House, 6 Saville Street
West, North Shields Tyne & Wear NE29 6QU
 (“Apartment H”)

Applicant : Mr Terence John Harris

Respondent : Mr Balal Ali

Type of Application : Determination of reasonableness of service
charges - Section 27A Landlord and Tenant Act
1985 (“the Act”).

Tribunal Members : Mr W.L. Brown LL.B,
Mr I.D.Jefferson MRICS

**Date and venue of
Hearing** : 5 September 2013, Newcastle upon Tyne
Employment Tribunal

Date of Decision : 18 October 2013

DECISION

DECISION

1. The amounts determined by the Tribunal for service charge years as reasonable for years ending 31st March 2011 and 2012 are:

Apartment 7 - £250 in each year

Apartment H - £309.60 in each year
2. The Tribunal makes an order under Section 20C of the Act
3. The Tribunal awards to the Applicant from the Respondent the application and hearing fees of £390 and also £120 for his expenses in connection with these proceedings making a total of £510.

REASONS

INTRODUCTION

4. By applications dated 12th April 2013 the Applicant applied under Section 27A of the Landlord & Tenant Act 1985 to the Tribunal for a determination as to the reasonableness of service charges in respect of the Properties for the years ended 31st March 2011 and 31st March 2012.
5. In addition, within each application the Applicant made application for an Order under Section 20C of the Act that costs incurred by the Respondent in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the service charge payable by the Applicant for a future year or years.
6. The parties to these proceedings are respectively tenant and landlord of the Properties. Apartment 7 is a flat located on the 1st floor of the building at 220-221 High Street West, Sunderland which comprises two separate staircases serving 6 flats each above a double ground floor shop. Apartment H is on the 1st floor of the building at 6 Saville Street West, North Shields which comprises 8 flats off a common staircase above a ground floor shop.
7. Directions were made by the Tribunal on 27th May 2013.
8. The Tribunal carried out an external and internal inspection of the common areas of the buildings in which each of the Properties is located on 5th September 2013. Present was the Applicant and Mr Nicholas Westall, director of Potts Gray Limited.
9. A hearing was requested by the Applicant, who attended with Mr Westall.

10. The Respondent did not engage with the proceedings. By an e-mail to the Tribunal dated 19 July 2013 he stated, "I have been away to Kashmir as my uncle had passed away, and because there was no one else in the family who could look after the funeral and all the rest of the problems I have to be there for quite a while. I would like to request until 16th August to prepare my case and send you all the documentation. I understand that this would be an exception, but under my circumstances I would appreciate if you could help on this occasion. I am available via email." An extension of time was granted and notified to him, but he did not submit any evidence to the Tribunal or attend the hearing.

The Leases

11. Copies of the Leases of the Properties dated 27th April 2007 (Apartment 7) and dated 31st October 2008 (Apartment H) between the parties were before the Tribunal. They contain similar provisions and are for terms of 125 years from 1st March 2007 (Apartment 7) and 125 years from 1st March 2008 (Apartment H), both at an initial ground rent of £125.00 per annum.
12. The Tenant covenants in Schedule 7 with the Landlord to pay service charges in accordance with Schedule 6 for expenses identified in Schedule 5. The proportion of contribution to those charges is 8.3334% (Apartment 7) and 13.76% (Apartment H). The Landlord covenants with the Tenant to carry out the works and do the acts and things set out in Schedule 5 including effecting insurance, cleaning, maintenance, repair and management of the common areas of the Building (defined as all of the structural parts of the building at 220-221 High Street West Sunderland SR1 1TZ and of the building at 6 Saville Street West, North Shields Tyne & Wear NE29 6QU, respectively.)

The Issue and evidence

13. The issue for determination by the Tribunal was the reasonableness and payability of service charges claimed by the Applicant in respect of the Properties for the service charge years referred to in paragraph 4.
14. Only the Applicant provided representations. Both Properties are used by him for letting to residential tenants. He produced copy correspondence and photographs of the common areas of the buildings in which the Properties are located taken in January 2012 (Apartment 7, by the Applicant) and in April 2012 for Apartment H, by Mr David Reay. Mr Reay had produced at the request of Potts Gray a Statement of Condition in respect of the common areas of the building at Arndale House North Shields and whose report was provided to the Tribunal. He was described in the report as an AIIC trained Inventory Clark (sic) and an experienced property manager.
15. The service charge demands were for advance charges, provided no information as to expenses incurred or to be incurred, merely describing the charge as "On-Account Service Charge (Adv)" for £1218.70 – dated 24 February 2010 and £1,218.70 – dated 16 February 2011. The invoices were identical as to content and amount for each of the Properties. No reconciliations were produced to the Tribunal.

16. The Applicant advised that he had visited both Properties on two occasions in the relevant periods. Concerning Apartment 7 he stated that the front door to the building was frequently damaged but not properly secured.
17. In respect of both Properties the Applicant submitted:
 - i) He did not receive the service for which he was paying. In particular there was little or no cleaning of communal areas or windows or maintenance undertaken.
 - ii) The buildings insurance cost and charge for communal electricity were anticipated to be excessive (but had not been quantified to him). It was suspected that the charges were also for other premises than those in question.
 - iii) Fire inspections / risk assessments and testing of smoke and fire detection and fighting equipment had not been undertaken. A major fire affecting Apartment 7 had occurred in April 2012.
 - v) No management charges were justified because of the lack of works.
 - vi) He understood that certain monies from the service charge he had paid may have been put into a sinking fund, but he had no information as to whether that was correct, for what the money might be used and the amount in credit (if any).
18. Potts Gray were the appointed managing agents for the Respondent for a period of around 3 months from April 2012 and charged £61.25 per month (Apartment 7) and £65.63 per month (Apartment H) in management fees per flat. The Applicant confirmed that for the short management period under Potts Gray a reasonable cleaning and maintenance regime had been put in place and there had been negotiation of arrangements with suppliers.

The Tribunal's Findings and Decision on the Section 27A Application

19. The Tribunal first ascertained whether the sums which form the basis of the relevant service charges are properly provided for in the leases. The Tribunal noted the lease obligations. Its task of determining payability and reasonableness of service charges was hampered by the lack of particularity on the service charge invoices and the failure by the Respondent to provide any representations in the proceedings. The Tribunal was satisfied that the Applicant's evidence was credible and was supported by photographic evidence of the condition of the common areas in the buildings during the first 4 months of 2012. The Tribunal found that there was a woeful lack of effective management of the buildings in the two service charge years at issue.
20. The Tribunal found on the evidence before it that of services to be provided by the Respondent in accordance with Schedule 5 of the leases only the cost of buildings insurance and electricity charges for the common areas had been incurred by the Respondent. There was no evidence that other services had been performed.
21. The Tribunal had regard to information from a previous service charge decision of the Tribunal, which included evidence of actual invoice costs of expenditure on

building insurance for the High Street West building. Using that information and its own knowledge experience and expertise the Tribunal was able to determine what were reasonable charges for those two elements of expenditure for that building. The Tribunal went on to adjust the sums in light of the differences in the premises to make a determination for the Arndale House building.

22. In respect of Apartment 7 it decided that in service charge year 2010-11 the annual buildings insurance cost for the residential and common areas of the building would not exceed approximately £2,000 and electricity £1,000. Applying the service charge proportion to the total cost arising of £3,000 (8.3334%) the sum determined as reasonably incurred is £250 and the Tribunal had before it no persuasive evidence to alter that sum for the following year. Therefore the Tribunal determined that a total reasonable service charge for the two service charge years at issue is £250 per year.
23. In respect of Apartment H, within a smaller more modern building with only 1 staircase, the Tribunal decided that in service charge year 2010-11 the annual buildings insurance cost for the residential and common areas of the building would not exceed approximately £1,500 and electricity £750. Applying the service charge proportion to the total cost arising of £2,250 (13.76%) the sum determined as reasonably incurred is £309.60 and the Tribunal had before it no persuasive evidence to alter that sum for the following year. Therefore the Tribunal determined that a total reasonable service charge for the two service charge years at issue is £309.60 per year.

As to costs

24. The Applicant made an application under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant for a future year or years.
25. The Applicant has been successful in his applications. The Respondent had not engaged in the proceedings. The Tribunal therefore made an order under Section 20C that the costs incurred by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant for a future year or years.
26. The Applicant requested that the Tribunal awards costs of these proceedings in his favour. For the reasons set out in paragraph 25 the Tribunal determined that the Applicant should be awarded his costs of the application fees (£100 for each) and hearing fee (£190). In addition the Applicant is awarded the sum of £120 for expenses in connection with the proceedings to cover photocopying, postage, accommodation and travel to attend the hearing, making a total of £510.