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

Case References : **MAN/32UG/LSC/2013/0023**

Property : **Flat 4 Grosvenor Mews, Billingborough,
Sleaford, Lincolnshire NG34 OPT**

Applicant : **Mr Alexander Watt**

Respondent : **Crane Elegance Ltd represented by Blue Water
Property Management Company UK Ltd**
Representative : **Mr Evans
Mr Beaumont (Counsel)**

Type of Application : **Section 27A (and 19) Landlord and Tenant Act
1985 – Application for a determination of
liability to pay and reasonableness of service
charges**

Tribunal Members : **Mrs J.E.Oliver
Mr P.Mountain
Mrs M. Oates**

Date of Hearings : **1st October and 18th November 2013**

Date of Decision : **9th December 2013**

DECISION

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Decision

1. The Applicant is not liable to pay the excess charge for the year 2006-07 in the sum of £261.85.
2. The service charges for 2007-08 and 2008-09 are reasonable and are payable by the Applicant.
3. The service charge for 2009-2010 is reduced in the sum by the total sum of £1257.36 resulting in a reduction to the Applicant of £62.87.
4. The service charge for the year 2010-2011 is reduced in the total sum of £1127.20 resulting in a reduction to the Applicant of £53.36.
5. The service charge for the year 2011-2012 is reduced in the total sum of £2746.08 resulting in a reduction to the Applicant of £137.31. In addition, the charge made for arrears in the same year of £50 is not payable.
6. An order is made pursuant to Section 20C of the Landlord and Tenant Act 1985.

Reasons

Introduction

7. This is an application made by Alexander Watt (The Applicant) for a determination of the liability to pay and the reasonableness of service charges relating to Flat 4 Grosvenor Mews, Billingborough, Sleaford, Lincolnshire (the Property) pursuant to Section 27A and section 19 of the Landlord and Tenant Act 1985 (the Act).
8. The Respondent to the application is Crane Elegance Ltd represented by Blue Water Management Co Ltd, the company appointed to manage the complex of 20 properties at Grosvenor Mews on 1st November 2006.
9. The application relates to the service charges payable for the Property for the period 2006 to 2103.
10. On the 14th March 2013 directions were issued providing for the filing of statements and bundles and a hearing was fixed for 1st October 2013.
11. At the hearing the Tribunal directed the filing of further evidence to clarify issues raised at the hearing. The Tribunal reconvened on 18th November to decide the issues.

Inspection

12. The Tribunal inspected the common parts of the complex at Grosvenor Mews in the presence of the Applicant and Respondent's representatives.
13. The Property is part of a complex of 20 flats built in 2005, comprising of two blocks. There are parking spaces allocated to some flats.
14. At the inspection the Applicant drew the Tribunal's attention to matters of concern, including the replacement to water gullies in the car park which had been in-filled with concrete and the lack of maintenance to the car park area.

The Lease

15. The Lease relating to the Property is dated 19th September 2005 and made between the Respondent (1) and the Applicant (2).
16. Those provisions relating to the payment on a service charge are as follows:

Paragraph 1- the Lessee's Proportion means the proportion of the Maintenance Expenses payable by the Lessee in accordance with the Provisions of the Seventh Schedule and amounting to 4.62% of the total of the maintenance expenses for any particular year.

-the Maintained Property means those parts of the Development which are more particularly described in the Second Schedule and the maintenance of which is the responsibility of the Manager.

17. The Second Schedule describes those areas which are the "Maintained Property" and include the gardens, entrance halls, passageways, lifts and the glass of the windows, roofs, foundations, communal heating systems and any doors and windows not forming part of the individual properties.
18. The Seventh Schedule provides for the payment of the Lessee's Proportion in accordance with the services provided within the Sixth Schedule.
19. The Sixth Schedule outlines those services to be provided including the insurance and heating of the Property.

The Law

20. Section 27A(1) of the 1985 Act provides:
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.

21. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

22 The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It 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.

23. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.

24. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:

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.

The Issues

25. In his statement the Applicant specified those items in dispute for each year relating to an “excess service charge”, the charges made for cleaning, window cleaning and compensation for heating.

26. The Applicant stated that the “excess service charge” was an item shown on a statement of account received by him in 2011 but relating to service charges from 2006 . The Applicant maintained that until that statement was received he was unaware of these further charges. He has subsequently challenged the charges made, with no agreement being reached and resulting in the application to the Tribunal.

27. The Tribunal was provided with copies of the statements dated from 2011 to 2013 and those illustrated the amounts disputed by the Applicant and which were shown as "Excess Charge" as follows:

2006-07-	£261.85
2007-08-	£39.35
2008-09-	£464.05
2009-10-	£865.50
2010-11-	£46.00 and £87.48
2012-13-	£633.35.

28. The Applicant also stated that charges had been made for window cleaning which had not been carried out as follows:

2006-07-	£22.00
2007-08-	£22.00
2008-09-	£22.00
2009-10-	£22.00
2011-12-	£22.00
2012-13-	£22.00

29. The Applicant further challenged the charges made for the cleaning of the common parts although, within his statement, he relied upon the figures within the Service Charge Budget, rather than the amounts within the audited accounts. Within those budgets an allowance of £1250.00 had been made and the Applicant objected to those charges for the years 08/09, 09/10, 10/11, 11/12 and 12/13.

30. The Applicant maintained that there had been occasions when the Respondent had failed to maintain the gas supply to the central heating resulting in the Property being without heat for periods of time. Consequently he sought compensation for those periods as follows:

2007-08-	£200.20
2008-09-	£75.90
2009-10-	£45.10 and £62.55
2010-11-	£100.10
2011-12-	£33.00
2012-13-	£87.10

31. The Applicant claimed further sums for compensation for the failure of the aerial at the complex to provide adequate T.V. reception. The Applicant claimed the sums of £46.44 and £48.50 for the year 2007-08.

32. Within the statements provided the Respondents had sought payment from the Applicant for Gas invoices and those were the subject of dispute in the sums of £75.00, £45.00 and £62.10 for the year 2010-11.

33. The last Service charge statement available to the Tribunal showed that, as at 1st March 2013, the Applicant was in arrears in the sum of £3668.47

The Hearing

34. At the hearing the Applicant was accompanied by the tenant of Flat 3 Grosvenor Mews, Mr Martin Thompson and Mrs Deere, the mother of the lessee of Flat 8 Grosvenor Mews, Mark Mayhew.
35. At the outset a preliminary issue was determined, namely the late filing of the Respondent's evidence. The Applicant, in written submissions to the Tribunal, objected to the late filing stating that this had been a feature of his application. However, at the hearing the Applicant confirmed he did not object to the evidence being admitted.
36. It was clarified that whilst the Lease specifies the Lessee's Proportion to be 4.62% of the total of the maintenance expenses, Clause 8.10 allows "the Manager" to "recalculate on an equitable basis the percentage figure(s) comprised in the Lessee's Proportion appropriate to all the Properties comprising the Development". The Respondent confirmed that the Lessee's Proportion had been divided equally amongst all the leaseholders within the complex.
37. The Applicant referred to those items referred to on the statements as "excess charges" as referred to above and stated that he did not know how those charges had arisen.
38. Mr Beaumont advised that following the preparation of the accounts for the year 06/07 the Respondent had changed accountants from M R Cowdrey & Co to their own in-house accountant. When re-visiting the 06/07 accounts the accounting basis had been changed so that, rather than charging to the accounts bills paid, it recorded bills due and both paid and unpaid. This resulted in the accounts moving from a surplus on the shareholders funds of £307.00 to a deficit of £5237.00. This deficit had been charged to the leaseholders in the sum of £261.35 each.
39. In respect of the remaining years each of the excess charges related to a deficit between the budget and the actual charges made within the accounts.
40. The Tribunal noted that the budgets issued for each of the years until 11/12 were identical providing a monthly payment from each of the leaseholders of £60.00. Each item was identical for a period of 5 years. Clearly, given there was a deficit in 06/07 the budgets should have been more closely estimated by the Respondent, since to continue to under-estimate resulted in each of the leaseholders receiving unexpected demands for payment. In years 11/12 and 12/13 the budgets were revised estimating a monthly payment of £80.00
41. The Tribunal heard from the Applicant that charges had been made for window cleaning which had not been carried out. Consequently he sought a refund of £22.00 for each year.
42. Mr Beaumont confirmed that although window cleaning was within the budgets for each year, no window cleaning had been carried out to the common parts for a number of years. This followed an agreement reached at

an earlier AGM. Consequently there was no charge within the accounts for this item.

43. The Tribunal noted the Applicant had mistaken the budget for actual charges made.
44. The Applicant stated that the Respondent had failed to adequately clean the common parts and the charges made were excessive for the cleaning that had been done.
45. The Applicant advised that until March 2009 the cleaning of the common parts was undertaken by one of the occupiers of another property within the complex. She was remunerated in the sum of £10.00 per hour, an amount the Applicant considered to be reasonable. However, after that time the Respondent assumed responsibility for the cleaning which became erratic. The Applicant therefore claimed that the charges made for cleaning for each of the subsequent years was excessive.
46. Mr Beaumont stated that the Respondent did not have a responsibility to find another cleaner as before and it was entitled to engage commercial cleaners charging £20.00 per hour, to include travelling time.
47. The Applicant advised that he had kept a diary of when the cleaners attended the complex and the amount of time spent. The Tribunal noted that all the cleaning invoices supplied by the Respondent had exactly the same narrative and failed to provide any information as to how the charges made by Blue Property Maintenance Ltd had been arrived at. Therefore at the hearing further directions were given for the filing of additional information by both parties.
48. The Applicant subsequently filed copies of his diaries upon which he had noted the dates the common parts had been cleaned and the length of time the cleaners had stayed.
49. The Tribunal heard from the Applicant that the Respondent had failed to ensure an adequate supply of gas to the complex resulting in periods when no heating was available to the Property. Within his statement he produced a copy of an e-mail dated 23rd November 2007 from Peter Evans of Blue Property Management, the Respondent, to say that there would be an allowance of £0.55 per day towards electricity consumption until the heating was turned back on. This was later ratified at an EGM where it was said: "Mr Evans stated his intention to repay a proportion of the service charge to cover at least some of the cost of additional heating. Criteria for receipt of this payment were agreed as follows ..."
There then followed a formula for calculating any refund.
50. The Applicant claimed the sums referred to in paragraph 20 above those periods when heating was unavailable.
51. Mr Beaumont conceded the offer made was "a strange offer" since where was any compensation to be paid from? If such a payment was to be made it

would have to be paid by the Respondent and then added to the Service Charge. Therefore the lessees of the complex, including the Applicant, would be paying themselves. Mr Beaumont agreed the offer was an unhelpful one and should not have been made. He also submitted that if it was an offer to pay from the Respondent's own resources then this was a contract for no consideration.

52. The Applicant submitted that any compensation for the heating should be deducted from the management charges.
53. The Applicant claimed compensation for payments made by him in 07/08 to improve T.V. reception to the Property. This included a payment of £46.44 made to a T.V. engineer who had advised that the poor reception at the Property was because the aerial had not been earthed. There was then a further payment of £48.50 being the amount paid by the Applicant to cancel his Sky subscription because he could not access the necessary channels because of the poor reception. In 2006, when the Respondent assumed responsibility for management, there was in place a Sky dish that had been installed by another lessee. When this had been replaced by the Respondent problems had arisen.
54. Mr Beaumont challenged this payment on the basis there was no evidence that any problem was the responsibility of the Respondent. Technical data would be required and none had been provided. Further, if any repairs were required the cost would be included within the Service Charge. Mr Beaumont advised that some remedial work had been undertaken in 2009 for which invoices had been produced.
55. The Applicant challenged the charges made for gas within the Service Charge statement for 2010/11 in the sums of £75.00, £45.00 and £62.10. He stated that the monthly sum (either £60 or £80) should include all the charges made for gas and additional invoices should not be raised.
56. Mr Beaumont advised that the additional charges had been made because there had been insufficient cash to pay the invoices due. A covering letter, explaining the additional charges, had been sent with each invoice.
57. During the hearing other issues arose which had not been included within the Applicant's original statement.
58. At the inspection and hearing the Applicant referred the Tribunal to the replacement of metal gullies at the complex with concrete infill. This had been charged at £527.50 plus VAT in the year 2011/12. The Applicant had claimed that not only was the work unnecessary but that the amount charged was excessive.
59. At the hearing the Applicant raised the issue of an invoice dated 28th March 2011 in the sum of £168 the narrative for which was "Helped gas engineer to find gas pipe installation areas-Ref Steve". The Applicant stated that this work was not only unnecessary but the amount charged was excessive.

60. The Tribunal referred to the managements charges for the years in question and noted that in 2011/12 the amount claimed was significantly higher than the budget and previous years as follows:

<u>Year</u>	<u>Budget</u>	<u>Accounts</u>
2006/07	£4700	£1800
2007/08	£4700	£4700
2008/09	£4700	£4700
2009/10	£4700	£4700
2010/11	£4000	£4700
2011/12	£5000	£6656

61. The Tribunal had sight of the management agreement signed by the Respondent upon their appointment in 2006 that provides the basis of their charges. This entitles the Respondent to charge a fee of £200 plus VAT per flat and is therefore the basis for the charge made in each year of £4000 plus VAT. The agreement further allows the Respondent to index link their charges to the Retail Price Index.
62. It was confirmed that the charges made in 2011/12 included an uplift in line with RPI. However, there was no calculation to show how the amount had been calculated. The Tribunal therefore directed that a detailed breakdown be provided.
63. The Applicant referred the maintenance of the electric gates at the entrance of the complex to the Tribunal. There were two invoices in the sums of £811.90 (dates 18.3.2010) and £1517.47 (dated 13.5.2010). The Applicant disputed that the work charged for had been carried out. Mr Thompson, who attended the hearing and who had originally installed the gates, agreed the charges were excessive.
64. The Respondent advised that the gates had been taken away and galvanised.
65. The Tribunal directed the Respondent to file further information/documentation to show the work undertaken in respect of the charges made for the gate repairs.
66. In the 2009/10 accounts the Applicant challenged an invoice for the replacement of a cupboard key claiming an employee of the Respondent had lost it and consequently this cost should have been borne by the Respondent. The invoice was for the sum of £180.66.
67. Mr Beaumont argued that he had no information upon this issue given it had not been included within the Applicant's statement.
68. The Tribunal noted that the invoices produced for insurance did not accord with the amounts charged within the accounts and therefore directed that the Respondent provide further evidence for the years 09/10, 10/11 and 11/12.
69. The application included one that the Tribunal make an order pursuant to section 20(c) of the Act, namely that the Respondent be prevented from including his costs within any future service charge.

70. Mr Beaumont argued that if the Respondent was successful then no such order should be made. Further there was no power within the lease to allow the Respondent to make such a charge.

Further Evidence

71. The Applicant complied with the Tribunal's directions and filed copies of his diaries to show those times the cleaners had attended the complex.
72. The Respondent filed a response providing details of the insurance premiums and the cost of remedial works. The Respondent did not file, as directed, a calculation to show how the additional management fee of £1968.38 for the year 2011/12 had been arrived at.
73. The Applicant, having complied with the Tribunal's direction, continued to make further written submissions regarding matters of concern. The Tribunal could not take these further statements into account when considering the application, the filing of evidence having concluded once the directions issued at the hearing had been fulfilled.

Determination

74. The Tribunal considered the excess charge made for the year 2006/07 in the sum of £261.85 and determined that this sum was not payable. The Respondent had stated that this had arisen because of a change in accounting practices and which had not been notified to the Applicant until 2011. It was the Respondent's decision to change to their in-house accountant but should the original accounts be defective then this was not a charge for which the Applicant should be liable.
75. The Tribunal did not consider there should be any allowance for window cleaning, as claimed by the Applicant for any of the years in dispute. The Tribunal were satisfied that no charge had actually been made. The Applicant was mistaken in believing a charge had been made; the item had been erroneously included within the budget.
76. The Tribunal noted that one complaint made by the Applicant within his written statement was that the Respondent had failed to clean the windows as provided by the Lease. It was clarified at the hearing that this was a covenant of the Lessee and not the Lessor.
77. The Tribunal determined that no compensation payment was to be made to the Applicant for the lack of heating at the Property as claimed for the years 2008-12 as referred to in paragraph 20 above. The Tribunal considered the terms of the Lease and found there was no provision under its terms for compensation to be payable in the event the heating failed to work. It also noted that had the heating worked there would have been a higher charge made for the gas consumption during the relevant period. The Applicant had not been charged for the cost of the heating when not working.

78. The Tribunal determined that the charges made for the cleaning of the common parts for the years ending 2010-2012 were unreasonable. In his evidence the Applicant accepted the charges made for cleaning in 2008/09. The cleaning had been undertaken by another resident until March 2009 which the Applicant said was acceptable.
79. The Tribunal noted the diary entries filed by the Applicant and accepted these to be a contemporaneous note of when the cleaners had attended the complex. The Tribunal saw that all the invoices supplied by the Respondent had the same narrative and were largely for the same amounts. There was no detail provided on the accounts of the dates and times the cleaners had attended the Property. The Tribunal therefore preferred the Applicant's evidence in this respect.
80. In the year 2009/10 the charge for cleaning within the audited accounts was £1746.00 whilst the invoices supplied by the Respondent within their bundle for the same period amounted to £2107.45. The Applicant's diary confirmed that the first cleaning in that year was in June 2009. It further recorded that between July and December 2009 cleaners attended at the complex for a total of 28 hours and between January and June 2010 for 20.5 hours. This would reflect an hourly charge for cleaning (assuming the charge within the accounts) of approximately £31.30 (ex VAT) per hour. The Tribunal considered that an hourly rate of £12 per hour (including travel time) was reasonable and therefore determined that for this year the charge for cleaning would be £582.00 plus VAT, in the total sum of £669.30.
81. In the year 2010/11 the charge for cleaning was £1132.00 whilst the invoices filed in support amounted to £896.25. The Applicant's diary entries stated that there had been no cleaning undertaken at the complex from 30th April to 3rd November 2010. Despite this there was an invoice for October in the sum of £58.75. The Tribunal determined that this invoice was not payable. The Applicant's diary showed cleaning at the complex from January to April for a period of 3 hours. There was a further entry to state that although cleaners had attended on 27th May 2011 for 3 hours they had not done any cleaning. The Tribunal determined that for this year the charge for cleaning would be in the sum of £144 plus VAT, in the total sum of £172.80.
82. In the year 2011-2012 the accounts showed a charge for cleaning in the sum of £996.00 whilst the invoices produced for the same period amounted to £1250.04. The Applicant's diary showed the total number of hours for cleaning in this period of 32 hours. The Tribunal therefore determined that the amount to be charged in this period is £384 plus VAT, in the total sum of £460.80.
83. The Tribunal determined that no allowance should be made for the failure of the aerial at the complex as claimed by the Applicant as referred to at paragraph 21 above. There was insufficient expert evidence produced to conclude that the poor reception was due to the fact that the aerial had not been earthed correctly. There was evidence to show the Respondent had carried out remedial repairs to the aerial when required.

84. The Tribunal considered the issue of the excess gas invoices charged for the year 2010/11 as referred to in paragraph 22 above and determined them to be reasonable. This item was for gas that had been used.
85. The issue of the charge made for replacement keys was one raised at the hearing. A charge of £180.66 had been made in 2009/10 as referred to at paragraph 57 above. The Tribunal noted the Respondent had no information on this, given it had not been raised within the original application. However it considered that the Applicant's detailed knowledge of events at the Property made it more likely than not that his explanation was valid. It therefore determined that this charge was unreasonable and the cost should be borne by the Respondent.
86. The Tribunal considered the invoice for the concrete infill charged in 2011/12 as referred to at paragraph 49 above and found this to be excessive. The Tribunal considered that a reasonable time to complete the work would be 13.5 hours together with an additional hour for collecting the necessary sand/cement. A charge of £20 per hour would be reasonable giving a total of £378 inclusive of VAT allowing the sum of £30 for materials.
87. The Tribunal considered the charge made for £168 as referred to at paragraph 49 above and determined that this charge was unreasonable. A gas engineer should have been able to locate the gas pipes and the Tribunal would have expected that service to be part of the gas engineer's invoice.
88. The Tribunal considered the repair costs for the gate as referred to at paragraph 53 above and the further evidence filed by the Respondent and determined them to be reasonable.
89. The Tribunal noted, from the additional evidence filed by the Respondent, the charge made for insurance within the accounts was supported by the invoices produced. They were therefore determined to be reasonable.
90. The Tribunal considered the further evidence filed by the Respondent in respect of the management charges. The Tribunal had directed that a calculation be filed to show how the management charge had been calculated in accordance with the RPI, as referred to in paragraphs 50-52 above. No calculation was produced, only a further copy of the original invoices. The Tribunal therefore could not ascertain whether the management charges had been correctly calculated or otherwise.
91. In determining the issue of the management charges the Tribunal not only considered the Respondent's failure to comply with the Tribunal's direction, but also some of the issues highlighted both at the hearing and within the application. The Tribunal noted that when preparing the budgets no revisions had been made from 2007 to 2011. They had all estimated costs, including management charges, at £14400 per annum. In those years there had been significant increases in the actual costs, none of which were reflected in the budgets for subsequent years. For example, the actual costs in 2007-2008 were £32287, in 2008/09 were £33385, in 2009/10 were

£31596 and in 2010/11 were £20245. This was a serious failing on the part of the Respondent. Consequently the Applicant had an expectation that the amount he was paying on a monthly basis would be sufficient to meet his costs, a position the Respondent had allowed to continue. The Applicant did not receive a statement to show the actual costs until 2011 by which time he was in arrears. It was not until 2011/12 was the budget was revised showing a estimated figure of £19200. However, even the revised budget was a serious underestimate of actual costs, the costs for 2011-12 being £33450.

92. The Tribunal determined that due to the Respondent's failure to adequately manage the accounts and their failure to file a calculation as directed the management charges for each of the years from 2007-2012 inclusive would be limited to £4000 plus VAT at the prevalent rate.
93. The Tribunal, for the same reasons determined a charge made by the Respondent on the 24th August 2011 in the sum of £50, as "Arrears Admin Charges", was not payable.
94. The Tribunal did not make any determination in respect of the charges for the year 2012-13 given no audited accounts are yet available.
95. The Tribunal considered the application that an order be made pursuant to section 20C of the Act. The Tribunal noted the submissions made by the Respondent, namely that there was no power under the Lease to enable it to pass the costs of the Tribunal to the Applicant, in the event the application was successful. The Tribunal considered that Clause 3 of the Eighth Schedule to the Lease could, potentially, allow such costs to be passed to the Applicant and therefore determined that such an order would be made. The Tribunal noted that the Applicant had not succeeded on all the issues raised. However those issues upon which he had succeeded were of significance and consequently the Tribunal determined that such an order be made.
96. No further applications had been made upon the issue of costs and therefore no other orders are made.