

9033



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

**Case Reference** : **MAN/00CZ/LSC/2013/0044**

**Property** : **Apartments 1,2,3,5,6,7 and 8, The Old  
Chapel, Bennett Street, Liversedge, WF15  
7ES**

**Applicant** : **Stephen Mark Watson**

**First Respondent** : **Adrian Dilenardo**  
**Second Respondent** : **Lucinda E A Black**  
**Third Respondent** : **Nigel and Ruth Hughes**

**Type of Application** : **Landlord & Tenant Act 1985 – Section 27A**

**Tribunal Members** : **K M Southby (Chair)**  
**S Kendall BSc MRICS FNAEA**

**Date of Decision** : **23 July 2013**

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**DECISION**

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DECISION

- (1) The Landlord Service Charges budget for the period 1/1/2013 to 31/12/2013 shall be varied as shown in the Schedule to this order.
- (2) The Applicant's costs of this referral to the Tribunal shall not be added to the service charge account.

Landlord's Service Charge Element	Service Charge Year <b>2013</b>		
	Applicant Claimed (£)	Agreed/Disputed between parties	Allowed (£)
Locks	320	Agreed	320
Guttering and Drainage	1770	Disputed	850
Other maintenance	300	Agreed	300
Management Charge	2625	Disputed	1680
Investigatory costs – damp	2100	Agreed at lower figure of £1000	1000
Accounting and Administration	1034	Disputed	1034
Major Works	41730	Disputed	16730
Sinking Fund	3000	Agreed	3000
Misc/Contingency	400	Agreed	400
Interest Receivable	1079	Agreed	1079
Tax	85	Agreed	85
<b>Total</b>	<b>54443</b>		<b>26478</b>

**REASONS**

BACKGROUND

1. On 1 March 2013 an Application was made to the Tribunal under s27A and s19 of the Landlord and Tenant Act 1985 for a determination of liability to pay and reasonableness of service charges.
2. This Application follows several previous applications before differently constituted Tribunals concerning preceding Service Charge Years. The Tribunal notes that it is not bound or constrained in any way by previous decisions and considered the evidence and representations presented to it on this occasion together with the knowledge of the Property gained by the Valuer Member on a previous inspection of the Property in December 2012.

3. The Property has until 10 June 2013 been managed by Landlords managing agents, but from 11 June 2013 onwards the Property has been managed by the Right To Manage Company, of which Mr Dilenardo of the Respondents is a Director and for whom Inspired Management are the managing agents.

#### PROPERTY

4. No inspection of the Property was made specifically in response to this Application, although the Valuer Member of the Tribunal had completed a recent inspection of the Property in relation to a preceding Service Charge Application.
5. The Tribunal understands that the Property is a former industrial/mill building which has been converted six years ago into 8 apartments, seven of which comprise the Properties for the purpose of this application. The communal areas are relatively limited in scope and there was agreement between the parties that these were tired and marked and in need of some attention although the extent of the works required was not agreed.

#### THE LEGISLATION

6. The relevant legislation is as follows:

##### **S27A Landlord and tenant Act 1985**

(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.

#### THE LEASES

7. The Leases for the Properties contained identical terms. The relevant clauses of the Leases were as follows:
- “The Landlords Services” – the services which the Landlord covenants to provide (or Procure) in clause 5 and the services listed in Part 2 of Schedule 6 which the Landlord may provide in its absolute discretion
  - “The Management Services” – the services set out in Part 1 of Schedule 6
  - “Expenditure” – the aggregate of all costs fees expenses and outgoings incurred by the Landlord in providing the Landlord’s Services including bank charges interest and VAT and such sums as the Landlord in its absolute discretion considers desirable to set aside from time to time for the purpose of providing for periodically recurring items of expenditure in connection with the Landlord’s Services whether recurring at regular or irregular intervals and such provisions for anticipated expenditure in connection with the Landlord’s Services as the Landlord in its absolute discretion considers fair and reasonable in the circumstances.
  - By Clause 2.1.1 and 2.1.2 and Schedule 4 para 2 and 3.1 the Tenant covenants with the Landlord and the Management Company to pay the Service Charge and the Management Charge respectively

- By Schedule 4 para 5 the Tenant covenants to pay the Landlord all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the Landlord in connection with the recovery of arrears of rent...
- Clause 5.1 - Subject to the Tenant paying the Service Charge the Landlord covenants with the Tenant that the Landlord will keep the roof foundations Structural Parts and exterior of the Building in good repair and condition throughout the term...
- Clause 5.1.2 – In supplying the Landlord’s Services the Landlord may employ managing agents contractors or such other suitably qualified persons as the Landlord may from time to time think fit and whose fees salaries charges and expenses (including VAT) will form part of the Expenditure
- By Clause 6.1 the Management Company (and in default the Landlord) covenants to provide the Management Services as defined in Schedule 6.
- Schedule 6, Part 1 – The Management Services
  1. Provision replacement renewal repair maintenance and cleaning (as the case may be) of
    - 1.1. The Common parts
    - 1.2. Water and sewerage supplies
    - 1.3. Lighting and heating to the Common Parts
    - 1.4. Signs (if any)
    - 1.5. Fire fighting equipment in the Common Parts ( as required by law or as the insurers or the Management Company deem reasonable)
    - 1.6. Decorating and furnishing the common parts (if applicable and as the Management Company deems reasonable)
    - 1.7. Provide methods for the collection and disposal of waste
    - 1.8. Cleaning of exterior windows of the Building
    - 1.9. Any other amenities the Management Company deems reasonable or necessary for the benefit of the Building but excluding in each case any such which are provided as part of the Landlords Services
- Schedule 6, Part 2 – The Landlord’s Services
  2. Maintenance repair rebuilding replacement and renewal of
    - 2.1. the main structure and exterior of the Building including all structural or load bearing walls and columns the structural parts of the floors and ceilings and the timbers stanchions girders roof and foundations of the Building
    - 2.2. the boundary walls fences and other structures of the Building
    - 2.3. the party walls within the Building
    - 2.4. the Conduits

2.5. all other parts of the Building not included in the above...

#### THE HEARING

8. At the hearing the Applicant Mr Watson appeared in person, as did Mr Dilenardo of the Respondents together with Mr Poppleton and Mr Murray of Inspired Management the new Managing Agents. The Tribunal also had the benefit of bundles of documents and written representations produced by both parties.
9. A number of issues were raised by the parties in the Application and Response in this matter including issues of Data Protection. The Tribunal reminded the parties that its jurisdiction is limited to the reasonableness and payability of service charges as set out in paragraph 5 above.

#### MANAGEMENT CHARGES

10. Whilst these formed part of the original application these were agreed between the parties at the hearing at a global figure of £12,510 for 2013. In the light of this agreement, and in the absence of any account or invoices to support or challenge this figure the Tribunal makes no determination on these budgeted charges.

#### LANDLORD'S SERVICE CHARGES

11. The Tribunal was not presented with any accounts or invoices in relation to 2013. Instead the tribunal was presented with a budget for 2013, largely unsupported by quotations or previous invoices, save for in respect of major works which was supplemented by a surveyor's report from 2011 provided by the Applicant. The Respondents challenged the Applicant's budget as being too high but provided no alternative budgets, quotations, reports or costings, preferring instead to argue that the budget figure should be set at zero as they believed they could perform both elements of the services for the global figure agreed under Management Charges.
12. Mr Poppleton for the Respondents' Managing Agents described the process of the Tribunal in trying to establish a reasonable budget as 'nitpicking over imaginary figures'. The Tribunal does not disagree with this analysis, but notes that the figures were made all the more imaginary by the lack of any budgets or supporting documentation from the Respondents.
13. The Tribunal notes that the figure allowed by the Tribunal for the budgeted current year's service charge is dependent upon satisfactory provision of those services.
14. In the absence of any other figures to work from the Tribunal examined the Applicant's budget and limited supporting documents line by line as per the subheadings below. The parties were in agreement in a number of

areas. The Tribunal made determinations in those areas where a dispute remained.

#### LOCKS

15. The parties were in agreement on a sum of £320.

#### GUTTERING AND DRAINAGE

16. The Applicant stated that guttering and drainage cleaning was required three times a year to prevent a repeat of historic water ingress problems into flat 4. There was provision within this element of the budget for some exterior repairs in respect of this. It was conceded by the Applicant that the cherry picker allowed for in his budget was not necessary. The Respondent suggested annual clearing of gutters and drains would be sufficient but accepted the repairs figure of the Applicant.
17. The Tribunal found that taking into account the removal of the cherry picker from the budget, and using its knowledge and expertise a figure of £850 was reasonable.

#### OTHER

18. This was agreed by the parties at £350

#### MANAGEMENT CHARGE

19. This was agreed by the parties at £1680

#### INVESTIGATORY COSTS

20. This was agreed by the parties at £1000

#### ACCOUNTANCY AND ADMINISTRATION

21. The Applicant stated that his figure of £1034 was broken down into £890 of Accounts and Admin and £144 of Trust tax work. Mr Poppleton for the Respondents stated that his company would be able to provide the entirety of the accounting necessary for both the Landlord's Service and the Management Charges for £150 plus VAT. The Tribunal noted that both representations came from individuals with accountancy backgrounds but who had very different attitudes to the time which needed to be taken. The Tribunal noted that in future Mr Poppleton's figure may well prove to be correct, but for the 2013 budget under consideration the Tribunal accepted the Applicant's assertions that the legacy of non payment and arrears meant that the figure would have to be substantially higher. Based upon the evidence before it and using its knowledge and expertise the Tribunal concluded that the Applicant's budget figure of £1034 should be allowed in full.

#### MAJOR WORKS

22. This item was both the most significant financially and the most contentious between the parties. The Applicant provided at page 466 of its bundle a planned maintenance programme budget as part of its surveyor's report from May 2011. This shows a total for 2011 of £57,250. Of that

£15,520 was put into the accounts by way of a provision for future expenditure. The Tribunal was informed that this sum is the subject of parallel county court litigation and the Tribunal offers no further comment on this sum other than to note that both parties agree that no work has been carried out. The remaining £41,730 is included in the Applicant's 2013 Budget for Landlord's Services).

23. The Tribunal noted that s20 consultations had been carried out in respect of these works but that the tenders had since expired and the contractors had declined to retender because of a history of non payment and arrears by lessees within the property.
24. The Tribunal was not provided with the original quotations, and nor was it provided with any alternative quotations or proposed budgets by the Respondents. The Respondent was reluctant to offer any alternative figures at all, but did agree that the property needed servicing, cleaning, internal plastering, repainting, guttering repairs and clearance, work on problems with damp and attention to the front doors and window frames. The Respondent broadly suggested that the work could be done more cheaply than the surveyor's report set out.
25. The Tribunal was therefore faced with determining a reasonable budget for items estimated by a surveyor some two years previously, none of which had been carried out to date, and which were not currently the subject of an adequate consultation process.
26. The Tribunal found that several items within the Surveyor's report seemed excessive, and noted that as per *Plough Investments Ltd v Manchester City Council [1989] 1 EGLR 244* a test as to whether (proposed) works (to be) carried out by a landlord and reimbursed by a tenant are reasonable is whether the landlord would have chosen that method of repair if he had to bear the cost himself.
27. The Tribunal using its knowledge and expertise accepted in part the Respondent's submissions that the estimated costs were too high in respect of the tower scaffold, guttering and drainage (which in part duplicated items dealt with above), insulation, painting and decoration and contractors overheads and profit. The Tribunal noted reference in the surveyor's report to a drainage survey which had not been made available to the surveyor when the hypothetical provision was made in the report for drainage works. The drainage report was not made available to the tribunal either and so the Tribunal chose not to allow this element. The Tribunal's decision is as set out in the table below:



<b>Element of Major Works</b>	<b>Applicant's Budget (£)</b>	<b>Tribunal Figure (£)</b>
External Redecoration	2500	2000
Roof repairs	1500	1500
Gutter cleaning and relaying lead parapet gutter	4500	2000
Repairs to parapets and chimney stacks	3500	3500
Windows resealing and repairs	1500	1500
Repointing and brickwork	3500	3500
Intercoms	1500	1500
Repair pipework and stacks	750	750
Cutting back drylining re damp	2000	1500
Damp treatment	4500	4500
Thermal insulation	4500	2500
Remedial works to underground drainage	2500	0
Tower scaffold	12000	5000
Contingency Sum	2500	2500
Contractors Overheads and Profit	10000	0
<b>SUBTOTAL</b>	<b>57250</b>	<b>32250</b>
Less sum already allowed in accounts	(15520)	(15520)
<b>TOTAL</b>	<b>41730</b>	<b>16730</b>

28. As noted above, of the surveyor's report figure, the sum of £15,520 has already been included in the accounts in previous years. The Tribunal therefore decides that the sum of £16730 is a reasonable provision in the budget for 2013. The Tribunal notes that in the absence of a compliant consultation process the amount of expenditure recoverable from any tenant will be limited to £250.

#### SINKING FUND

29. This was agreed by the parties at £3000

#### MISC

30. This was agreed by the parties at £400

#### INTEREST

31. This was agreed by the parties at £1079, noting that interest accruing ultimately goes back into the pot for the benefit of the lessees.

#### TAX

32. This was agreed at £85

#### COSTS

1. The Tribunal considered the issue of costs under s20C Landlord and Tenant Act 1985 and decided that in the circumstances it would be inappropriate for costs of this referral to be added to the service charge account. Accordingly an order was made that the costs of this referral should not be added to the service charge account.