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

**Case Reference** : **LON/00AP/LSC/2014/0473**

**Property** : **Flat 3, 94 Umfreville Road London  
N4 18A**

**Applicant** : **Ms Marcelle Keen  
Mr A McGowan (Support)**

**Representative** : **In person**

**Respondent** : **Genesis Housing Association  
Limited (“Genesis”)  
Ms K Bhogal (Counsel)  
Mrs R Jesani (Service Charge  
Partner Genesis)**

**Representative** : **Mr C Stephenson – Service Charge  
Officer (Genesis)  
Mr A Were – Business Manager  
(Genesis)**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal Members** : **Ms Haria – Judge  
Mr Lewicki- Professional Member  
Mrs West – Lay Member**

**Date and venue of  
Hearing** : **24 November 2014  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **28 November 2014**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £436.38 is payable by the Applicant in respect of the items in issue as a service charge for the year 2012/2013.
- (2) The tribunal determines that the sum of £260.60 (less any proportion that is attributable to the management fee) is payable by the Applicant in respect of the service charges for the years 2013/2014.
- (3) The tribunal makes the determinations as set out under the various headings in this Decision.
- (4) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2008 to 2014.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicant appeared in person at the hearing together with Mr McGowan as her support. The Respondent was represented by the persons named on the front of this decision.
4. Immediately prior to the hearing Mrs Jesani handed in her second witness statement. Attached to Mrs Jesani's second witness statement was a schedule which showed the revised amounts claimed from the Applicant following a review of the actual accounts and taking into account the previous year's balance as well as any deficit or surplus. The tribunal was not able to ascertain from the accounts produced the amounts due from the Applicant. The tribunal sought clarification on the matter and relied on Ms Bhogal's statement that the actual amounts claimed from the Applicant are as shown as "Revised Individual figure following review of Actual Accounts" in the schedule attached to Mrs Jesani's second witness statement. This showed the revised amounts claimed from the Applicant for the following years to be:

- (i) 2008/9 - £282.30
- (ii) 2009/10 – a surplus of £63.42
- (iii) 2010/11 - £656.61
- (iv) 2011/12 - £441.06
- (v) 2012/13 - £493. 83
- (vi) 2013/14 - £260.60

5. The start of the hearing was delayed while the tribunal and the Applicant considered this new document.
6. The Applicant claimed that she had not received the bundle from the Respondent as she was having difficulty in receiving her post. Ms Bhogal confirmed that the Witness statements had been sent to the Applicant by email as well as by post. The Applicant acknowledged receipt of the emails but stated that she had been unable to open the attachments. The tribunal allowed the Applicant time to consider the bundle including the witness statements. The Applicant confirmed that having been through the bundle she wished to proceed with the hearing.
7. During the course of the hearing it became apparent that the Applicant had not fully appreciated the concessions made by the Respondent. The tribunal allowed the parties time to discuss matters. Having done so the parties confirmed that service charges for the years 2008/9 to 2011/12 were agreed.
8. Accordingly, the tribunal was required to determine the service charges for the years 2012/13 and 2013/14.

### **The background**

9. The property which is the subject of this application is a one bedroom flat in a building known as 94 Umfreville Road (“the building”). The property is situated on the first floor of the building. There is a doctor’s surgery on the ground floor. The doctor’s surgery is located on the High Road and there is a communal entrance from the side of the doctor’s surgery to the flats. The front entrance leads directly onto a staircase up to the first floor where there is a small communal landing. The stairs and landing are carpeted. There are three flats on the first floor. There is a car park in front of the communal entrance, which is shared with the doctor’s surgery. Three parking spaces are reserved within the car

park for the residents of the flats and the remaining six spaces are allocated to the surgery. There is space for the waste and recycling bins.

10. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
11. The Applicant holds an assured tenancy of the property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the tenancy will be referred to below, where appropriate.

### **The tenancy**

12. The tenancy agreement is dated the 30 August 1995. The tenancy commenced on the 18 September 1995. The parties agree that the tenancy provides for the payment of a service charge which is reserved as rent. Clause 1 of the tenancy agreement provides for the payment of the Rent which includes an amount in respect of the service charge weekly in advance on the Monday of each week.
13. Clause 1(3) provides that the Respondent shall provide the services detailed in Appendix A for which the Applicant agrees to pay a service charge. There is no Appendix A attached to the tenancy agreement but there are Appendices 1 and 2 to the tenancy agreement and Appendix 2 specifies that the service charge covers the following services:
  - (i) Landlord's lighting
  - (ii) Refuse collection
  - (iii) Communal cleaning
  - (iv) Gate maintenance
  - (v) TV aerial maintenance.
14. Clause 1(4) of the tenancy provides that the service charge is a variable service charge.
15. Clause 2 is the general repairing and maintenance obligation under which the Respondent basically agrees to keep in repair the structure and exterior of the building, the installations and the common parts.
16. The Applicant agrees under Clause 3 to pay the rent (which includes a payment for the service charge).

## **The issues**

17. The parties identified the relevant issues for determination of the payability and/or reasonableness of service charges for the year 2012-2013 and 2013-2014 relating to:
  - a. Cleaning & refuse collection
  - b. Energy costs
  - c. Communal window cleaning
  - d. Gardening & grounds maintenance, and
  - e. Management fees.
18. During the course of the hearing Applicant raised issues which had not been raised in her application in relation to the following matters:
  - (i) The lack of consultation in relation to qualifying long term agreements.
  - (ii) Service charges for pest control.
19. The tribunal makes no determination in respect of the issues raised at the hearing, which had not been included in the application.
20. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

## **Service Charge year 2012-13**

### **Cleaning and Refuse Collection:**

21. The Respondent relied on the two witness statements of Mrs Jesani. The Respondent produced a copy of the estimated service charges for the period starting April 2012 as well as a copy of the account showing the actual costs incurred [72-75]. The Respondent produced copies of the invoices relating to the costs incurred [318 and 331d].
22. The Respondent referred to the copy of the inspection report attached to the second witness statement of Mrs Jesani. Ms Bhogal referred to the copy of the monthly inspection report. The tribunal heard from Mrs Jesani that the Property Manager attends the building every month and undertakes a full inspection to ensure that the standards in relation to

the services are being met and to highlight any issues. Ms Bhogal explained that the report produced covered only the month of May 2014 but submitted that the inspections are undertaken on a monthly basis and a report is produced for each month. Ms Bhogal stated that as the Applicant had not given full details of her claim in respect of any of the years apart from for 2014, her client was not in a position to respond fully in relation to the other years. Mrs Jesani confirmed that the Applicant could inspect the reports at the Respondent's offices. Mrs Jesani also stated that there is a signing sheet at the entrance to the building which the cleaners sign each time they attend the building. There was an example of one attached to Mrs Jesani's second witness statement.

23. Ms Bhogal stated that the Respondent had acknowledged that there had been a problem with the communal power socket and had made concessions in this respect. Mrs Jesani stated that the cleaners had a generator in their van. Ms Bhogal submitted that the suggestion that no cleaning was done was not made out as the cleaners could use the generator and they were able to sweep the areas when they were not able to vacuum the areas.
24. Ms Bhogal confirmed that in the year in question there was no charge for refuse collection.
25. The Applicant stated there had been no cleaning service as the power socket in the communal area has been broken and so the cleaners were not able to use a vacuum cleaner. She stated that in the past the cleaners only attended sporadically but admitted that she had been aware of the cleaners attending over the last two year i.e 2012/13 and 2013/14. The Applicant accepted that the carpeted areas of the internal common parts could be swept as a temporary measure when vacuuming was not possible. The Applicant admitted that there was a signing sheet but stated that it often disappeared or was on the floor. She stated that she had not heard or seen anyone in a managerial role attend to supervise the service and submitted that the cleaning service provided was unreliable and without adequate management.
26. The Applicant stated that she had seen employees of Forefront, the cleaning contractor turn up but she claimed they didn't do anything. She stated that the Respondent did not provide a cleaning service. The Applicant stated that she had seen the regular cleaners dressed in blue attend the building usually every Wednesday but she stated that they have given up as they could not do much by way of cleaning due to the communal power socket not working and so they just sat in their van and ate their sandwiches. In relation to the deep cleaning, the Applicant stated that this has been outsourced to different contractors and they could not do the deep cleaning as the communal power socket was not working.

## **The tribunal's decision**

27. The tribunal determines that the amount payable by the Applicant in respect of the cleaning is £152.10.

## **Reasons for the tribunal's decision**

28. The tribunal was guided by the principles expressed in the case of Yorkbrook Investments Ltd v Batten [1985] 2EGLR 100, which was followed in the Lands Tribunal case of Schilling v Canary Riverside Development PTD Ltd LRX/26/2005 and supports the fact that it is for the Applicant to make a prima facie case of unreasonableness. At paragraph 15 of the Lands Tribunal decision Judge Rich QC states:

*“... if the landlord is seeking a declaration that a service charge is payable he must show not only that the costs was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook case makes clear the necessity for the LVT<sup>1</sup> to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard*

29. The tribunal noted the oral evidence of the Applicant but was not persuaded by her evidence. The Applicant had admitted that she had seen the cleaners and they usually attended on a Wednesday. The Applicant had not produced any witness statements or given any concrete examples in support of her claim that the service was not being provided or that the standard of service fell below what was reasonable for the sum charged.
30. The Applicant by her own admission agreed that she was ill prepared for the hearing and had not produced any evidence in support of her claim that the service charges were unreasonable or that the services provided were of an unreasonable standard.
31. The tribunal was persuaded by the evidence produced by the Respondent that a regular cleaning service was provided. On the basis of the accounts and invoices produced the tribunal was satisfied that the Respondent had incurred costs in the provision of the service. The tribunal was persuaded that the level of service was monitored by monthly inspections visits. The cleaning service was provided at a cost of £120 per month which is approximately £30 per visit. The tribunal considered this to be reasonable for the service provided.

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<sup>1</sup> The LVT being the Leasehold Valuation Tribunal now the tribunal.

### **Gardening and ground maintenance:**

32. Ms Bhogal explained that the service was provided by Forefront (the same contractor that provides the internal cleaning service). The Respondent produced copies of the invoices in support of the charges [304 -317] Mrs Jesani's witness statement explained that the gardening and external cleaning relates to the cost of maintaining the grounds of the Estate around the property including pavement cleaning and gritting when necessary. The cost includes salary or fees per hour and charges for cleaning materials and transport. Mrs Jesani stated that Forefront provided this service at the same time as they provided the internal cleaning service. The tribunal was referred to the copy of the inspection report, which includes a report on the external cleaning and gardening.
33. The Applicant stated the service was not provided but she stated that she had not come prepared with evidence to support her claim. She stated that she had not appreciated that she would need to present evidence in support of her claims. She acknowledged that she was ill prepared for the hearing but she did not wish to withdraw her application and wanted the tribunal to determine the matter.

### **The tribunal's decision**

34. The tribunal determines that the amount payable in respect of the gardening & grounds maintenance is £146.38.

### **Reasons for the tribunal's decision**

35. On the basis of the explanation given by the Respondent, and on the basis of the copy invoices and the inspection report produced in support of the charge, the tribunal finds the charge to be reasonable for the service provided. The tribunal finds that the Respondent incurred the sum in the provision of the service and finds the Applicant is liable under the terms of her tenancy agreement.

### **Energy costs**

36. Mrs Jesani in her witness statement submitted that the electricity consumption is metered and regularly monitored throughout the year to ensure any anomalies are identified and corrected where possible. The electricity consumption relates to the supply of electricity to the communal internal and external lights and the communal power socket. In relation to the energy costs the Respondent was not able to produce copies of invoices in support of the charges but had produced a copy of the excel spread sheet from their ledger system in relation to this charge [339]. Ms Bhogal stated that the Respondent had difficulty in getting hold of the copy invoices as title to the property became



vested in the Respondent following a statutory amalgamation of Springboard Housing Association Limited, Genesis Housing Group Limited, Paddington Churches Housing Association Limited and Pathmeads Housing association Limited and not all the records had been passed over.

37. The Applicant stated that she had not seen a separate meter for the communal electricity supply. She stated that she had a suspicion that the doctor's surgery was also connected to the same electricity supply. She complained that not all the lights were working and there was no sensor or timed switch on the lights in the internal common parts. She stated that when the electricity supply to her flat goes off, the lights in the communal area also go out although she was not certain.

### **The tribunal's decision**

38. The tribunal determines that the amount payable by the Applicant in respect of the energy costs is £137.90.

### **Reasons for the tribunal's decision**

39. On the basis of the explanation given by the Respondent, and on the basis of the copy ledger and the inspection report produced in support of the charge, the tribunal finds the charge to be reasonable for the service provided. The tribunal noted that the Respondent had not been able to produce any invoices in support of this charge and the ledger entry recorded a Supplier estimated amount for period 09/01/2013 – 28/03/2013. The tribunal accepted the explanation given by Ms Bhogal and on the basis of the estimated charge shown on the ledger the tribunal finds the sum charged to the Applicant to be reasonable. The tribunal noted that the inspection report includes specific reference to the switches, bulbs and lighting and records their condition and whether or not they were found to be in working order. Although the inspection report gives a snap shot as it relates to the position in May 2014, the tribunal accepted that such an inspection is conducted every month. The tribunal finds that the Respondent incurred the sum in the provision of the service and the Applicant is liable under the terms of her tenancy agreement. The tribunal has assumed that the electricity supply to the communal area is separate; clearly this cost would be disallowed if the communal lighting is connected to the Applicant's meter. The tribunal recommends that the Applicant ascertain the supply status and contact the Respondent if it transpires that the supply to the common parts is not separately metered.

### **Management fee**

40. The Respondent stated that a fee of 15% of the total costs is charged as a management fee. The fee covers the cost of the monthly inspections, the day to day running of the services, as well as the contact with the Property Manager by phone and the service charge partner by email.
41. The Applicant stated that she has not had proper responses to her queries sometimes for as long as six months. She did not think the fee was justified.

### **The tribunal's decision**

42. The tribunal determines that the Applicant is not liable to pay the management fee.

### **Reasons for the tribunal's decision**

43. The tribunal noted that there was evidence of communication between the Applicant and staff employed by the Respondent. Attached to the second witness statement of Mrs Jesani, there was evidence of communication between the business manager Mr Were, the complaints resolution and learning officer Ms Hodson and Ms Clarke with the Applicant. Although, on the basis of the explanation given by the Respondent, and on the basis of the inspection report, the tribunal finds the charge to be reasonable for the service provided, the tribunal noted that there was no provision in the tenancy agreement for a management fee therefore the Applicant is not liable to pay a management fee under the terms of her tenancy agreement.

### **Service Charge year 2013-14**

44. The adjusted amount claimed from the Applicant for the service charge year 2013-14 was £260.60. The items of service charges in issue for the year were:
  - (i) Communal internal cleaning
  - (ii) Communal grounds maintenance
  - (iii) Communal internal electricity
45. The parties relied on the submissions made in respect of the previous service charge year in relation to this year.

### **The tribunal's decision**

46. The tribunal determines that the amount payable in respect of the service charges for 2013-14 is £260.60 less the proportion due in respect of any management fee.

### **Reasons for the tribunal's decision**

47. The same reasoning as that given in relation to the charges for the previous year applies equally to this year.

### **Application under s.20C**

48. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, although Ms Bhogal indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** N Haria

**Date:** 28 November 2014

### **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 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.

### **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.