



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

Case Reference : LON/00BK/LSC/2014/0371

Property : Flat 8 Orleans Court, 4 Douglas Street, London SW1P 4PB

Applicant : Mr Peter McKeown

Representative : none

Respondent : Network Housing Association Limited

Representative : none

Type of Application : For the determination of the liability to pay a service charge under section 27A Landlord & Tenant Act 1985 (the "Act")

Tribunal Members : Judge Pittaway
Mr R Shaw FRICS

Date of Decision : 23 September 2014

: Determination without an oral hearing in accordance with Regulation 31 The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

DECISION

Decision of the tribunal

1. The tribunal determines that the estimated service charge for the service charge year to July 2014 is unreasonable, and that the applicant's estimate of £3,156.00 is reasonable. From the evidence before it the tribunal was unable to establish whether the sum of estimated service charge was £7,634.22 or £6,698.00, but it determines that either sum would have been unreasonable.
2. The tribunal determines that the respondent's costs in connection with the proceedings are not to be treated as relevant costs to be taken into account in determining the service charge payable by the applicant or any other person in the Building.

The application

1. By an application dated 23 June 2014 the applicant seeks a determination under section 27A of the Act as to whether the estimated cleaning charges for the service charge year of 2014 for the block of which the Property forms part are reasonable.
2. The applicant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Act.
3. The Tribunal issued directions on 29 July 2014 in which they requested, among other matters,
 - 3.1. that the applicant confirm that the only challenge was in respect of the 2014 cleaning charges, whether these were actual or estimated, why the applicant believed them to be unreasonable, with supporting evidence and a statement of what would be a reasonable charge, with supporting evidence or justification. The applicant was also asked to set out his argument in support of his section 20C application.
 - 3.2. that the respondent should set out a clear breakdown of the cleaning costs, including the scope of the work, hours worked and the hourly rate, whether the costs were an estimate, and any comparable or supporting evidence. It was also asked for any arguments that it wished to raise in opposition to the applicant's s20C application.
4. In their directions the tribunal indicated that they considered the matter suitable for determination on paper; that is without an oral hearing or inspection, unless any party requested an oral hearing. No oral hearing was requested.

5. The relevant legal provisions are set out in the Appendix to this decision.

The background and evidence

1. The tribunal has had regard to the bundle received by it on 18 August from the applicant and the bundle received by it from the respondent on 19 September in reaching its decision.
2. The applicant is the lessee of the Property under a lease dated 5 December 1997 for a term of 99 years from 28 November 1997. The lease provides at Clause 7 for payment of 7.14% of the Service Provision which includes the cost to the landlord of keeping the common parts of the Building (as defined) adequately cleaned and lighted.
3. It is the applicant's submission that
 - 3.1. The charge demanded by the respondent is in respect of actual service charge.
 - 3.2. The charge levied by Green Clean, the cleaning contractors, is unreasonable when compared to the charge levied for the immediately preceding year (when the work was undertaken by Thorough Estates Services), stated by the applicant to have been £1,744.00. The applicant included in his bundle an estimate from Thorough Estate Services dated 1st July 2014 for cleaning for one year in the sum of £3,156 including VAT. This was broken down between internal communal cleaning, external estate sweeping, communal window cleaning and annual carpet and light cleaning.
 - 3.3. Green Clean are not spending 3 ½ hours per week at the Building. This was supported by letters from three other residents of the Building.
4. The respondents
 - 4.1. submitted that a new cleaning contract was placed in July 2013 with Clean Green on the basis of the Network Stadium Estates Services Specification. (This is a 76 page specification and was attached to their letter). Their submission was confusing as it also made other statements as to the service year 2013/2014 and 2014/2015 (the latter not being the subject of the current application).
 - 4.2. agreed that the cost with Clean Green was higher than that provided by the previous contractor Thorough Cleaning Services, the contract specification being broader than the specification that Thorough Estate

Services provided. They referred to their attached specification to substantiate this.

- 4.3. stated that the cost was an estimated cost for the service charge year 2013/2014, stating that the first set of actual accounts will be demanded by 30th September 2014.
- 4.4. stated that the service was delivered by “an on site caretaker” being a shared service with another scheme, the cleaners’ designated day for service being Friday.
- 4.5. stated that they attached evidence of estate inspections for April, May and June 2014, and that they had reduced the frequency of their estate inspections. (The Tribunal notes that one of the attached estate inspections did not relate to Douglas Street but to Hindon Court)
5. Neither party provided argument in respect of the s20C application.

The tribunal’s reasons.

1. The tribunal accepts that it is more probable that the costs the subject of the application are estimated costs in respect of a service charge year to July 2014 rather than actual costs, given the respondent’s statement to that effect. The tribunal note that the parties are using a service charge year to July in each year rather than March as contemplated by the applicant’s lease. The tribunal also note that they have been unable to establish whether the estimated service charge the subject of the application is £7634.22 or £6,698 by reason of the ambiguity of the evidence before it, but this is not relevant given the tribunal’s determination.
2. The respondent has not complied with the tribunal’s directions. It has not provided a clear breakdown of the cleaning costs, the scope of the work, the hours worked (except for a generic reference to the work being undertaken on Friday mornings) nor the hourly rate. They have provided no supporting evidence from Green Clean. One of the site inspections provided does not relate to Douglas Street.
3. The specification attached to the respondent’s submissions is generic and not specific to the Building.
4. In the absence of any evidence to the contrary from the respondent the tribunal accepts the statements included with the applicant’s submission that the cleaner is not taking 3 ½ to carry out the cleaning work.

5. In the absence of any evidence to the contrary the tribunal accepts the estimate obtained by the applicant from Thorough Estate Services as a reasonable estimate for the services required to be provided under the terms of the applicant's lease. They also had regard to the amount of £1,744.00 which the applicant stated had been the actual service charge cost for cleaning in the previous year and which sum was not refuted by the respondent.
6. Neither party made any submission on s20C costs, but given there was no oral hearing the tribunal determine that the respondent's costs in connection with the proceedings are not to be treated as relevant costs to be taken into account in determining the service charge payable by the applicant or any other person in the Building.
7. This decision relates to the applicant only; no other tenant of the Building having applied to be joined as a party to this application.

Name: Judge Pittaway

Date: 23 September 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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 or leasehold valuation tribunal, or the Lands 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;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Lands 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.

Section 27A

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.