



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

Case Reference : **BIR/00GL/LIS/2014/0030**

County Court : **A8QZ4214**

Property : **87 Eastwood Road, Hanley, Stoke on Trent, ST1 3TJ**

Applicant : **Centro Place Management Ltd (Freeholder)**

Represented by : **Jonathon Upton of Counsel**

Respondent : **Mr J and Mrs E Maley (Leaseholders)**

Date of transfer from County Court: **26th September 2014**

Type of Application : **Section 27A of the Landlord and Tenant Act 1985 (The Act).**

Tribunal : **R T Brown FRICS
Judge D R Salter
N Wint FRICS**

Date of Hearing : **12th May 2015**

Venue : **First-tier Tribunal (Property Chamber), Tribunals Centre, Hanley, Stoke on Trent ST1 2QB**

Dated : **16 SEP 2015**

DECISION

DECISION ON PRELIMINARY ISSUE

1. The Tribunal determines that its jurisdiction is limited to determining those matters transferred to it under the order of the County Court and to which the Respondents have made a defence.

DECISION ON SUBSTANTIVE ISSUES

2. The Tribunal determines that the amount payable in respect of the disputed items for the years in dispute is £1,002.78.
3. The Tribunal has no jurisdiction to determine amounts of service charges costs claimed which are not challenged in the defence to the County Court proceedings, those amounts are payable unless the County Court determines otherwise.
4. This determination is referred back to the County Court.

REASONS FOR DECISION

5. This case was transferred, by order of District Judge Jack, on 6th October 2014 from the Stoke on Trent County Court for the determination of the service charges due and follows application to the County Court by the Applicant for non-payment of services charges.
6. The Applicant calculates services charges due for the years ending 31st December 2011, 2012, 2013 and 2014. The total amounts claimed are as follows:

2011 - £827.21
2012 - £840.10
2013 - £873.60
2014 - £873.61

Total £3414.52

The amount shown in the County Court Claim dated 15th August 2014 was £2209.49 plus a £105.00 Court fee.

7. The Applicant seeks recovery of service charges due for the years ending 31st December 2011, 2012, 2013 and 2014. The amounts claimed in respect of the disputed items (common parts cleaning, window cleaning and gardening i.e. those matters defended in the County Court action) only are as follows:

2011 - £315.03
2012 - £221.71
2013 - £229.31
2014 - £236.73

Total £1,002.78

8. There is no dispute that service charge is payable under the terms of the Lease.
9. The Respondents in their defence to the County Court proceedings challenged the charges in respect of common parts cleaning, window cleaning and gardening as being unreasonable and that the standard of the work undertaken is not of a reasonable standard. This Tribunal makes determination on those matters only and for this reason other challenges made during the proceedings are not reproduced here nor is determination made thereon.
10. It appears to the Tribunal that the Respondents have made no payments towards the amounts in dispute.
11. Directions were issued on 5th February 2014 and further Directions (2) on 18th May 2015 following the Hearing.
12. Directions (2) required the Applicant to provide the following information:
 1. A Schedule, in respect of the disputed items of service charge (communal parts cleaning, window cleaning and gardening) giving a full breakdown of the total cost of each item and how those costs are apportioned (in accordance with the terms of the Lease) to the Respondent.
 2. In respect of the disputed items: specification of the work to be undertaken, contract(s) entered into by the Applicant with the contractor(s), and applicable product specifications.
 3. Examples of letters sent to Residents of 77 to 87 Eastwood Road inviting them to attend site inspections undertaken by the Applicants.
 4. In respect of 2014, confirmation that the figures the Tribunal is asked to determine are estimated or budgeted service and not final figures.
 5. Confirmation, with evidence, that the credit given in relation to the non-attendance of the cleaner for four and a half months during 2013 has been applied to the Respondents' service account and reflected the amount claimed in the County Court proceedings.
13. The Parties complied with those Directions.
14. The Respondents submitted further documents on 7th July 2015. The Applicants objected to those documents being admitted by a letter to the Tribunal dated 15th July 2015. The Tribunal considered (before looking at the content of the documents) whether or not they should be included. The Tribunal, taking into account Rule 3 (dealing with cases fairly and justly) of the Tribunal Procedure (First-tier Tribunal) (Property chamber) Rules 2013 determined that it was inappropriate to consider further submissions without seeking further submission from the Applicants. The Tribunal determined that such a process would not assist it in the decision making process. The Tribunal has had the benefit of its inspection, a full day's Hearing and compliance with Directions.

The Property and the Tribunal's Inspection

15. The members of the Tribunal inspected the property on 12th May 2015 in the presence of the parties. For the Applicant, Mr Jonathon Upton of Counsel, Ms A White and Ms T Davies of Centro Place Management Ltd accompanied the members of the Tribunal. For the Respondents, Mrs E Maley was present in person.
16. The property comprises a modern purpose built three storey block of 6 flats with rendered and timber clad walls, tile roof and timber double glazed windows. Car parking and individual storage units at the front. There are gardens to the rear of the property which are also shared with other units on the estate.
17. The Tribunal also inspected the adjoining block on Greyfriars Road which was serviced under the same contracts.
18. The Tribunal noted the following in respect of the subject property:
 - a) The internal areas were very clean and recently redecorated;
 - b) The windows appeared to be regularly cleaned; and
 - c) The communal gardens were recently mown and litter picked.
19. In respect of the Greyfriars Road property, the Tribunal noted that the internal areas were in need of redecoration and that, generally, the standard of cleaning was reasonable.

The Law

20. The relevant law is set out below:

Landlord and Tenant Act 1985

Section 18 Meaning of "service charge" and "relevant costs"

- (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, improvement 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 period*

Section 19 Limitation of service charges: reasonableness

- (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 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.*

- (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 Liability to pay service charges: jurisdiction

- (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.

21B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."

The Lease

21. The Tribunal was provided with a copy of the Lease (the Lease) dated 6th August 2009 between Derwent Housing Association Ltd (1) Centro Place Management Ltd (2) and Mr J and Mrs E Maley (3).
22. The Lease contains provision at Clause 3.2.2 for the lessee to pay service charge costs.
23. Schedule 7 details the services to be provided and this is divided into three parts:

Part A - Estate Costs
Part B - Shared Driveway Costs
Part C - Building Maintenance Costs

24. The Lessees (Respondents) are required to contribute in the following proportions:
- Part A - 5.56% of 25% of the costs in Schedule 7
 - Part B - 16.66% of the costs in Schedule 7
 - Part C - 16.66% of the costs in Schedule 7
25. The detail of those covenants is not reproduced here as the terms of the Lessees' covenants to pay service charge costs are not in dispute.

The Hearing

26. The parties attended the Hearing.
27. The Freeholder, Derwent Housing Association Ltd (1), was not present or represented.
28. The Applicant, Centro Place Management Ltd (2), was represented by Mr Jonathon Upton of Counsel. He called Ms A White, a Home Ownership Manager and an employee of Centro Place Management Ltd as a witness.
29. The Respondents, Mr J and Mrs E Maley, appeared in person and were unrepresented.

The Applicant's Case

Preliminary Issue

30. In respect of the preliminary issue, the Applicant's position was that the Respondents are not entitled to widen the dispute to matters not defended in the County Court. In support of this submission, Mr Upton referred the Tribunal to *John Lennon v Ground Rents (Regisport) Ltd*. [2011] UKUT 330 (LC).
31. Ms White explained that Centro place Management Ltd was responsible for managing the estate.
32. Ms White then explained that complaints had been received from the Respondents. This had been investigated and on at least one occasion a refund had been made in respect of window cleaning when it was found that the cleaning had not been carried out in accordance with the contract.
33. The service charge was demanded on account in advance in accordance with the terms of the lease. At year end, accounts were prepared and audited, distributed to lessees with a demand or credit as appropriate.

Common Parts Cleaning and Window Cleaning

34. Following the further Directions (2), Ms White produced the cleaning and window cleaning contracts dated 24th of March 2010 and 23rd January 2015 respectively. These contracts included a specification of weekly, monthly, six weekly tasks and tasks on request.

35. The Respondents had complained that the wrong cleaning materials had been used, despite the contract including a specification of the cleaning materials which were being used by the Applicant.
36. The Respondents had complained about the both the standard of window cleaning and frequency of attendance. The Applicant's Complaints Officer investigated and agreed there appeared to be a discrepancy. As a gesture of goodwill, a rebate was given in the sum of £59.20.
37. The Respondents complained that window cleaning had not been carried between the 24th November 2014 and 5th February 2015. The explanation was that the contractors were unwilling to attend following an alleged threatening incident. The contractors had, however, attended the other blocks covered by the contract. When this problem was identified a credit was issued and the cleaners re-commenced cleaning.

Gardening

38. In September 2014, the Respondents complained that the grass was only cut once a month and that a strimmer was being used to cut the lawn. This was investigated and a letter written to the contractor in an effort to resolve what appeared to be a misunderstanding about the terms of that contract.
39. Ms White said the complaints were unreasonable and produced evidence of 'scheme inspection sheets'. Monthly inspections were carried out to ensure that the scheme is maintained and kept in a condition that accorded with the requirements of the Lease. Where contractors may not have carried out a particular job in accordance with the terms of the Lease the Respondents had been compensated.
40. With regard to the complaint about a 'Den', Ms White said that whilst she did not recall a complaint about a 'Den' she did recall receiving a complaint about some timber. This had been removed by the time of the Tribunal's inspection.

The Respondents' Reply

Preliminary Issue

41. Without legal argument, the Respondents' position is that they should be allowed to widen the dispute to include matters not defended in the County Court.
42. Similarly without legal argument, the Respondents' position on the substantive issues is that some but not all of these costs are unreasonable in amount.

Common Parts Cleaning and Window Cleaning

43. Mrs Maley explained that she and her husband had never been happy with the standard of cleaning and they had resorted to doing their own cleaning as they could not rely on the 10-15 minutes allowed to the contract cleaners.
44. They had complained on numerous occasions about the standard of cleaning but never considered these complaints were properly resolved.
45. Since Pinnacle was appointed (in January 2015) the standard of cleaning has not improved. However, at the time of the transfer, residents were not informed of the change.

46. The Respondents accepted that a refund of £59.20 had been given in respect of the Respondents' complaints about the cleaning and a delay in carrying out roof repairs. However, it was refuted that this was a gesture of goodwill as it was an obligation where work had not been carried out.
47. Window cleaning had not been carried in the period 17th November 2014 to 5th February 2015.
48. Further, the Respondents and their neighbours had undertaken redecoration themselves as Centro had said it was not due for a further 2 years.

Gardening

49. The standard of gardening left a lot to be desired. A perfectly good lawn was ruined by over mowing and strimming when it was already down to the soil. The Respondents acknowledged that the lawn was now recovering.
50. Mrs Maley said a 'Den' had been in existence for 12 months before being removed and, in her opinion, this was evidence of poor grounds maintenance.

The Tribunal's Deliberations

51. The Tribunal considered all the relevant written and oral evidence (see, the summary in its deliberations above).
52. The Tribunal thanks the parties for their detailed submissions which assisted its deliberations. The Tribunal's decision making process is governed by its jurisdiction and the application of the appropriate tests which must be applied objectively and not subjectively, thereby disregarding an individual's particular requirements or circumstances.

Preliminary Issue

53. The Tribunal agreed with Mr Upton on this point and accepts that *John Lennon v Ground Rents (Regisport)* (above) is the appropriate authority. Accordingly, the Tribunal determines that the only matters it can consider are those matters against which the Respondent has raised a defence in the County Court proceedings.
54. The Respondents are at liberty to make a separate application in respect of other service charge matters they may wish to raise. The Tribunal understands that, to date, no such application has been received.

Substantive Issues

55. In considering the issues in dispute, the Tribunal applied a 'test of reasonableness' to determine if the costs incurred were reasonable and reasonably incurred.
56. This involves a two stage test (1) was the decision making process of the Landlord (Applicant) reasonable and (2) was the sum charged reasonable in the light of market evidence?
57. The Respondents do not dispute that the Applicant had a duty under the Lease to provide the services in dispute.

58. In *Forcelux v Sweetman* [2001] 2 E.G.L.R. 173 (Lands Tribunal), Mr P R Francis FRICS in the course of his judgment stated that the decision making process under section 19(1) of the Act did not provide a licence to charge sums that were out of line with the market and that consideration should be given, in the light of the evidence, to the question of whether the amount charged was reasonable.
59. Accordingly, the Tribunal considered the process undertaken by the Applicant in awarding the contracts and the contents of the contracts as well as the standard of work undertaken for the various services provided.

Common Parts Cleaning and Window Cleaning

60. The Tribunal considered the combined contract for common parts cleaning and window cleaning which comprised part of a wider 'partnership agreement' covering a number of developments.
61. The Tribunal, having considered that contract and the contents thereof, including the materials used, concluded that the process had been undertaken in an open and professional manner and satisfied the first test in *Forcelux* (above).
62. As to the second test (*Forcelux*- above), the Tribunal, with the benefit of its inspection of Greyfriars, was able to assess the standard of cleaning under the contract. In comparison to Eastwood Road (which received additional cleaning by Mrs Maley), the Tribunal concluded that had Mrs Maley not undertaken the additional cleaning the market test had been met and the standard was reasonable.
63. The Tribunal considered the standard of window cleaning and it concluded that it was also to a satisfactory and reasonable standard. The Tribunal noted that there was a process in place to ensure that the required works were carried out in accordance with a scheduled programme.
64. The Tribunal noted that when the Applicant's contractor had failed to attend (regardless of the reason) a refund had been given.
65. With regard to cost, the Tribunal noted that not only had the cost been benchmarked with the change of contractor, the charges over the years in dispute had been consistent.

Gardening

66. The Tribunal noted that, despite its specific Direction, the detailed schedule of work was missing from the contract papers submitted by the Applicants. However, the Tribunal had been advised during the Hearing by Ms White that there was a schedule and that the works were carried out in accordance with it. This included attending the premises 21 times per year, cutting the grass once a month or as and when requested by residents, clearing debris from the car park area, maintaining shrubs, attending to any weeds as part of either a summer-time or winter-time maintenance programme.
67. The Tribunal also noted that at the time of their inspection the grounds were maintained to a reasonable standard and, further, that the Respondents' evidence did not lead it to the conclusion that there had been any persistent neglect.

Tribunal's conclusion

68. On the evidence presented, the Tribunal concludes that the Applicant satisfied the tests in *Forcelux* (above) and that, therefore, the amount charged for common parts cleaning, window cleaning and gardening was reasonable and that such matters were carried out to a satisfactory standard.

Appeal Provisions

69. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013.

Robert T Brown
Chairman

16 SEP 2015