

10584



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

Case Reference : **CAM/11UF/LSC/2014/0064**

Property : **23 Millgate, High Wycombe, Bucks
HP11 1GL**

Applicant : **Richard Pierce**

Representative : **In person**

Respondent : **Thames Valley Housing Association
(TVHA)**

Representative : **Mr H Dawson Deputy Housing
Director; Ms C Rew Senior Service
Charge Officer; Mr M Lehy Senior
Housing Officer and Ms E Lorimer
Service Charge Officer.**

Type of Application : **Determination of the liability to
pay and reasonableness of service
charges (s27A Landlord and Tenant
Act 1985 (The act))**

Tribunal Members : **Tribunal Judge Dutton
Mrs S F Redmond BSc Econ MRICS
Mr M Z Bhatti MBE**

**Date and venue of
Hearing** : **15th January 2015 at The Law
Courts, High Wycombe**

Date of Decision : **26th January 2015**

DECISION

DECISION

The Tribunal determines that the sums claimed in respect of the Service Charges claimed by TVHA in the period 2007/8 to 2013/14 were reasonably incurred and that the services were of a reasonable standard. They are therefore due and owing by Mr Pierce. In so far as the year 2014 /2015 is concerned no specific challenge was made and accordingly we find that the sums claimed attributable to estimated service charges for this period are reasonable and are due and owing by Mr Pierce.

We determine that before Mr Pierce has liability to make any payments TVHA must review the annual charge to reflect the external common parts allocation on a 38th division, instead of a 34th division which appears to have occurred. Upon completion of that review they must send to Mr Pierce a certificate (in no particular format) setting out the amounts due for each year in question with a total amount said to be payable. Such sum should be settled by Mr Pierce within 56 days of the certificate being sent to him or such other period as the parties may agree. As Mr Pierce will have liability it would be sensible for him to start setting money aside whilst the accounts are reviewed.

Neither party applied for costs. Mr Pierce in his application did seek an order under s20C of the Act and as TVHA confirmed that it would not be seeking the costs of this application we make an order that the provisions of s20C should apply, it being just and equitable in the circumstances.

Background

1. By an application dated 4th June 2014 Mr Pierce applied to the Tribunal for a determination as to the liability to pay and the reasonableness of service charges levied by TVHA for the period 2007 through to 2015. There was an initial concern that the tenancy agreement under which Mr Pierce occupies flat 23 Millgate may not contain terms which create a variable service charge regime. However, as a result of documents supplied by TVHA and as confirmed by Mr Dawson at the hearing, it is accepted by both parties that the tenancy agreement does indeed contain a variable service charge provisions and that accordingly we had jurisdiction to determine Mr Pierce's application.
2. A directions order was issued on 21st July 2014. Unfortunately Mr Pierce had not complied with his obligations to produce a statement of case. This impacted on the ability of TVHA to respond to his application which was somewhat lacking in particularity. Only the year 2014/15 is specifically referred to and in this way when Mr Pierce posed the following question "*Why does it cost £56K a year to look after a site without green space. Also with most residents on benefits are TVHA deceiving the tax payer!*"
3. Prior to the hearing we received a bundle of documents prepared by TVHA. This bundle included the application, a copy of a letter to Mr Pierce by TVHA dated 1st October 2014 which provided detailed comments on Mr Pierce's tenancy agreement, the management fee,

services provided and a number of exhibits. These exhibits included a copy of the tenancy agreement commencing on 8th December 2006 which included a schedule headed "Schedule 1 to Tenancy Agreement Variable Service Charge". In addition we were presented with copies of the service charge breakdown for each of the years and a statement of account indicating that Mr Pierce owed TVHA, as at 3rd October 2104 £365.52, which was not challenged during the course of the hearing, or indeed before.

4. At the hearing Mr Pierce produced some documents which in truth did not take the matter any further.

Inspection

5. Prior to the hearing we inspected the development at Millgate in High Wycombe. It is situated a mile or so from the town centre on London Road and is adjacent to a retail area. The property comprises a modern four storey purpose built block with 4 entrances servicing, in effect, four separate blocks within the one building. At ground floor much is taken up with covered car parking and a walk way to the retail park. The flats appeared to have balconies. Also on the development were four terraced houses. There is a reasonable sized car parking area, which is lit. There are limited shrub beds and limited grassed areas. Externally the development appeared in good order. We inspected the common parts of the block which housed Mr Pierce's flat. There was some damage to the walls in the stair case caused by the fire door handle banging into the wall but apart from that the common parts were clean and in reasonable order. It had CCTV at upper levels but at the time of our inspection the entry door lock was not functioning. There was a lift, as there is in each block. Two other blocks have carpeting in the common-parts, the block we inspected did not but instead had a non-slip floor covering.

Hearing

6. In the absence of a statement of case we asked Mr Peirce, at the start of the hearing, what his concerns were. He told us they were:
 - (a) that the rent had gone up by 4% over 8 years but the service charge had increased considerably above that;
 - (b) had the service charges being increased by vandalism?
 - (c) A number of the residents were unemployed, unlike himself, and they were state funded whereas he had to pay the service charges from his earnings.
7. He went on raise the issue of management fees but then accepted that this was not an issue. There was also a concern regarding water charges but that seems to have been resolved as a result of each tenant having, since it would seem 2012, their own meter.
8. Mr Dawson and Ms Rew for TVHA attempted to respond to the concerns of Mr Pierce. A schedule covering a period of 6 years showed that service charges and risen and fallen. TVHA had, in 2011, undertaken a tendering exercise resulting in new cleaning and gardening contracts being awarded, which appeared to have had a substantial impact on the costs, dropping from over £21,000 in the year 2011 to 2012 to under £13,000 in the year 2014 to 2015. There were

concerns about the communal electricity. It seems that the meters have not been read for some two years. This resulted in a potential liability of £7,000 in the year 2014 to 2015, although only £5,000 was passed to the tenants. It was also noted that the estate charges, which now appear as a separate element on the accounts may not have been properly calculated in that cleaning and refuse removal has not been split between 38 units, as TVHA accepted it should be, but rather between 34 only. They agreed to review this and correct any error as soon as possible.

9. Mr Dawson told us that the rent increases were governed by legislation and that the service charges reflected the costs to TVHA. He confirmed that any damage caused by vandalism was met from the rental income and not added as a service charge.
10. At the conclusion of the hearing Mr Pierce told us that he believed the costs were increasing because the State was paying for those on benefits.
11. Neither party sought costs or a refund of fees, if any.

The Law

12. This is set out on the schedule at the end of this decision.

Findings

13. With all respect to Mr Pierce his challenge to the service charges for the numerous years set out in his application lacked any focus. There was no specific item which he sought to challenge in any meaningful way. His real complaint was that the service charges had risen far in excess of the rent over the period during which he had been a tenant. His concern was that his wages were not keeping pace and that he could not afford the increases.
14. In his application he had asked whether TVHA were "*deceiving the tax payer*". There was no evidence of this. If his case had been better prepared and concentrated on specific service charge issues TVHA would have been able to focus on those specifics. Doing the best they could in the light of the non-specific issues they had attempted to explain the back ground to the service charge increases. It is quite clear that the tendering exercise resulted in substantial saving in gardening and cleaning. This begs the question why the exercise was not done until 2011. Further the failure to obtain meter readings for the communal electricity for two years, resulting in an apparent liability of £7,000 should not have happened, although we accept that TVHA has borne some of the cost. It is hoped that there will be a resolution of this matter in a short period of time which could result in a rebate to the tenants.
15. The services supplied by TVHA are quite extensive. They include fire equipment maintenance; pump engineers, cleaning and gardening of the external common parts; refuse collection; internal common parts cleaning, communal electricity, security costs, lift maintenance, door entry system and general maintenance work. For the year ending March 2014 this cost Mr Pierce £18.90 per week although it may be that the communal services need to be revisited to correctly apportion them between 38 units. It is estimated to rise to £24 per week for the

year ending April 2015 but it is to be hoped that the actual costs may be somewhat lower. We cannot say, on the limited information available and in the light of the application made by Mr Pierce, that these costs are unreasonable. Our inspection showed us a development which appeared to be cared for, clean and well maintained.

16. Whilst we are a specialised Tribunal with the ability to question the parties it is not for us to make one party's case for them. Mr Pierce's concerns were as much directed at political issues and stagnating wages as they were at the costs of the services provided, which as we have indicated are not, on the face of them unreasonable.
17. Neither party sought costs and to ensure that remains the position we consider it reasonable to make an order under s20C to prevent TVHA from seeking to recover the costs of these proceedings as a service charge. Our reasons for this is that during the hearing we learned of the tendering process which has saved money and which should perhaps have been considered in a more timely way, the lack of meter readings in respect of the communal electricity and the possible mis-apportionment of some of the external common parts costs.

Tribunal Judge
Andrew Dutton

26th January 2015

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.