

12.8.17



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

Case Reference : BIR/17UC/LIS/2017/0022

Property : 12 Pegasus Court
Welbeck Road
Bolsover
Chesterfield
S44 6BZ

Applicant : Mr M Huntington

Respondent : The Guinness Partnership Limited

Type of Application : Application under Section 27A(3)
Landlord and Tenant Act 1985 for the
determination of the payability of
service charges

Tribunal Member : Judge T N Jackson

**Date and venue of
Hearing** : 14th August 2017
Chesterfield Magistrates Court

Date of Decision : 31 August 2017

DECISION

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Decision

The Tribunal finds the service charge payable for the property for window cleaning in 2016/7 is £55.70.

Background

1. This case concerns the payment of service charges for Flat 12 Pegasus Court, Welbeck Road, Bolsover. The property is let on a weekly tenancy which contains provision for service charges.
2. The Applicant commenced proceedings in the County Court under claim number C1QZ4X4M for recovery of an overpayment of service charges in 2016/7 due to a reduction in the frequency of the provision of window cleaning, plus interest.
3. On 20th April 2017, sitting in Chesterfield County Court, District Judge Bond transferred the matter to the Tribunal for determination.
4. The Applicant's claim at the County Court is for £260 plus interest. The £260 represents £130 each for the Applicant and his neighbour. The neighbour is not a party to the claim/application and the Tribunal therefore cannot consider the neighbour's service charge.
5. The Applicant states that £130 represents the full service charge for the two months, (January and February 2017), the window cleaning was not provided in service charge year 2016/7. The Applicant has not restricted his claim to the cost of the element for window cleaning as he says there are problems with the reasonableness of other elements of the service charge. The claim did not specify the other elements of the service charge he disputes. Those elements would need to be addressed by a separate application to the Tribunal under section 19 of the Landlord and Tenant Act 1985. The Tribunal can only consider the element relating to window cleaning in 2016-7.
6. This Tribunal has jurisdiction under section 27A(3) of the Landlord and Tenant Act 1985 to determine the payability of service charges but not County court costs or statutory interest.
7. The case was therefore confined to the determination of the payability of the window cleaning element of the service charge in 2016/7.
8. The case was heard on 14th August 2017. The Applicant attended and was unrepresented. The Respondent Company was not represented due to holiday commitments but had provided a witness statement and documentary evidence. The Tribunal did not inspect the property.
9. At the hearing the Applicant said that he intended to withdraw the County Court claim and the Tribunal adjourned the case pending such withdrawal. By letter dated the 15th August 2017 to the County Court, the Applicant withdrew his claim for the money but stated that he

wished a determination of the issue regarding consultation. The Tribunal has therefore made a determination on the only matter within its jurisdiction, namely the payability of the service charge.

Tenancy Agreement

10. The property was let to the Applicant by Northern Counties Housing Association Limited by agreement signed on 25th and 26th July 2004 respectively. The tenancy began on 2nd August 2004 and was an assured non shorthold tenancy. The agreement requires a weekly payment in advance comprising rent and service charge. The rent is reviewed in April of each year. The service charge year is April to March.

11. Clause 1.4 provides:-

“If your weekly charge includes a service charge, we will provide the following services to your property Exterior Window Cleaning...”

We review the cost of providing these services to the property or estate once a year and we work out the charge based on the following information

- a. The amount we spend during the previous accounting period*
- b. The amount we estimate we will spend in the next accounting period. If we do not know exactly how much it will cost, we may estimate the costs and make any necessary changes at the first change of service charge after we produce the accounts for that period.*

We may spread the cost of buying or providing service charge items over more than one service charge period.

We then divide the cost of providing the services fairly between all the tenants who have to contribute - that is all those who receive the services at their property or on their estate.”

12. Clause 1.14 provides:-

“We will give you a statement each year showing:

.....

Any difference in the amounts paid to us by you and the other tenants, and the amounts we have paid for the services. If you have paid us more than we have spent, or we have spent more than you have paid, any overpayment or underpayment will be subtracted from or added to the charge payable for the next year”.

13. The Respondent provided a copy of the standard terms and conditions of an assured tenancy agreement for the Guinness Partnership Ltd as at

1st July 2012. Guinness Northern Counties were amalgamated into the Guinness Partnership Ltd in approximately 2011.

14. Clause 1.2 refers to a service charge to reflect the share of the cost of providing services “set out below and in the attached Schedule”.....*We may increase the Service Charge by giving you at least one month’s notice of the change in writing....”*

15. Clause 1.2.4 provides:
“Your Service charge is calculated on the basis of expected costs for the year. We will require you to pay a reasonable amount of the Service Charge to cover these costs in advance. We will give you reasonable notice of any change in the amount you will be expected to pay, usually at least one month”

16. Clause 1.2.5 provides:-
“Each year we will give you a breakdown of the actual service costs incurred compared with the total amount of Service Charge due for that same period. This will be as soon as possible after the end of each Service Charge accounting year”

17. Clause 1.2.7 provides:-
“.....Similarly, at the end of an accounting period, or other time, if there is a surplus in the Service Charge account after service costs have been met, Service Charge payments will be reduced in the following accounting period. Refunds will only be made if the surplus reaches a level that is, in our view, excessive”

18. Clause 1.2.8 provides:-
*“You must pay the Service Charge set out in the attached Schedule. It may cover costs in connection with, (but not exclusively):
.....
Gardening and Window Cleaning
.....”*

Matter in dispute

19. By letter dated 15th November 2016, the Respondent notified the Applicant that window cleaning was to be provided quarterly rather than monthly in order to standardize services for tenants across the country and to provide the tenants with value for money. The letter explained that there would be a lower window cleaning charge in the 2017/8 service charge and that any credit for window cleaning in 2016/7 service charge year would be adjusted in the Applicant’s service charge account for 2018/9.

20. The Applicant says that he should have been consulted, (rather than notified). He wishes the frequency to remain at monthly due to the

excessive “traffic film” on the windows caused by stationery traffic waiting at the traffic lights on Welbeck Road onto which 9 of the 15 flats face. He says the decision was taken by staff in the London office who had not inspected the site and who did not know of the problem with this block arising from the traffic.

21. On receipt of the 15th November letter, the Applicant raised his concerns regarding lack of consultation with the Operations Manager and subsequently issued County Court proceedings on 21st November 2016. In May 2017 he emailed the London office regarding the lack of consultation.
22. The Applicant says that the windows were cleaned in November and December 2016 and then March and June 2017. There were no cleans in January and February 2017.
23. The Applicant accepts that the estimated annual cost of the quarterly window cleaning has been reflected in the reduced service charge for 2017/8. The estimated and actual annual costs for window cleaning in 2016/7 for the Appellant’s property were £64.00 and £55.70 respectively and the estimated annual cost in 2017/8 is £25.20. The Applicant also accepts that the credit for the overpayment will be accounted for in the service charge for 2018/9.
24. The Respondent says that consultation was not required as the Guinness Partnership Ltd tenancy terms did not state the frequency of the services provided and the change in frequency would be regarded a minor change in the services provided thus not requiring full consultation.

Deliberation

25. The Tribunal does not have jurisdiction to give declaratory relief as to whether or not consultation is required to vary the frequency of the window cleaning. The Tribunal’s jurisdiction is limited to determining the payability of the service charge.
26. The tenancy agreement dated July 2004 clearly includes provision for a service charge for window cleaning (but does not state the frequency with which the cleaning is to be provided).
27. The Guinness Partnership Ltd tenancy agreement provided to the Tribunal is a template version and does not state the address, a start date or the initial rent and service charge. It does not contain a copy of the Schedule which sets out the services to be provided. It has not been signed by either party. The Applicant says he has not signed such an agreement nor had discussions regarding transfer to the terms and conditions of that agreement. However, for the purposes of this case, it is not necessary to determine which terms and conditions apply. Both agreements include reference to window cleaning (without stating frequency) and the Applicant has not suggested that a service charge

for window cleaning per se, (as opposed to frequency), is not payable. Both agreements also include clauses relating to accounting and adjustments in future service charge years for overpayments.

28. The Tribunal finds that, whether or not consultation is required under the tenancy agreement, a service charge of £55.70, (based on actual cost), is payable for window cleaning in 2016/7. The Tribunal also finds that due to the reduction in frequency from monthly to quarterly, the Applicant has overpaid for window cleaning in 2016/7 but, as stated by the Respondent and accepted by the Applicant, credit for the overpayment will be given and accounted for in the 2018/9 service charge in accordance with the provisions of the tenancy agreement(s).

Appeal

29. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision stating the grounds on which that party intends to rely in the appeal.

Judge T N Jackson
First Tier Tribunal