13109

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LSC/2018/0250**
Property	:	**Various Flats at Hazlitt Court, 80 Northwold Road, London E5 8BN**
Applicants	:	**Ms Amy Stelfox (flat 24)** **Ms Natasha Lockyer (flat 21)**
Representative	:	**In persons**
Respondent	:	**One Housing Group**
Representative	:	**Mrs Bhavini Curtis- In house Solicitor** **Mr James Briggs (service charge manager)**
Also in attendance	:	**Ms Laura Corben (property manager)**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge Daley** **Mr S Mason BSC FRICS FCIArb**
Date and venue of Hearing	:	**25 October 2018 at 10 am 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**10 December 2018**

DECISION

Decisions of the tribunal

The tribunal makes the determinations set out below.

The application

1. On 27 June 2018, the Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985, in respect of the service charges for the period 1 April 2014 to 31 March 2015.

2. Directions for the determination of this matter were given at a case management conference on 24 July 2018, where the Tribunal gave directions for the preparation of this case, and set it down for hearing on 25 October 2018.

The background

3. The premises which are the subject of this application are a selection of one and two bedroom flats in a purpose built block of flats, four of which are for affordable rents and the rest are owned on shared ownership.

4. The premises are subject to a lease agreement dated 12 July 2012, which provides that the Respondent will provide services, the costs of which are payable by the leaseholder as a service charge.

5. Where specific clauses of the lease are referred to, they are set out in the determination.

The Hearing

Preliminary Matter

6. The only preliminary matter was the late filing of emails which were statements from witnesses and also the Applicant's Skeleton Argument and the late provision of the witness statement of Ms Laura Corben Housing Property Manager. As neither party objected to these documents, the Tribunal decided to admit them.

7. At the hearing the Applicants Ms Stelfox and Ms Natasha Lockyer were present. The Respondent was represented by Ms Curtis, also present on the Respondents behalf were Mr James Briggs, the service charge manager and Ms Laura Corben the property manager.

8. The Tribunal was informed that the premises consisted of 24 units of affordable housing in two blocks of unequal size. Blocks 1 comprised flats 1-5 and the remaining flats were within block 2. The Respondent One Housing Group is a Registered Provider of social housing.

9. The service charges which are in issue comprise the service charges for 2014/2015.

10. The Tribunal decided that it would deal with each of the charges in issue by hearing firstly from the Applicants and then hearing from the Respondent in reply. The Tribunal would, however require the applicant to prove its case, on a balance of probabilities.

The Grounds Maintenance

11. The first issue identified was the ground maintenance.

12. The Tribunal was informed by the Applicants that the grounds were not extensive. There was a single triangular shaped tufted area with green shrubs next to the bin store.

13. In their Skeleton Argument, the Applicant stated "...2. As applicants we argue that invoice 45557 is not payable. This is due to the clause relied on by our landlord is a (sic) weak sweeper clause which does not detail that we are to contribute towards garden maintenance. The Applicant further stated that this area was originally gravelled over which was replaced by turf." In paragraph 4. The Applicant stated " The garden was not originally there in 2012 when the lease was signed, so how can it be envisaged by the parties at the time the lease was signed that the parties should contribute to such a cost."

14. The Tribunal were referred to two invoices one in the sum of £942.00 for turf and £858.00 for a "triangular shaped bed" The applicants also submitted that the charge was not reasonable given the size of the area.

15. In reply, the Respondent stated that the work had been undertaken at the request of the leaseholders. The work was carried out by Alfie Bines Gardens and Facilities Management at a cost of £2,502.60. The Respondent referred to the invoices submitted by Alfie Bines. The Tribunal noted that the invoice stated that extra work had been involved in breaking out concrete in the planting bed which involved both the hire of a "Jack Hammer" and disposal costs.

16. The Tribunal was referred to an estimate/specification of work which had been provided by Alfie Bines Gardens which provided details of work for both Saxony and Hazlitt. Ms Curtis stated that the work had been carried out at the request of leaseholders within the block. In the Respondent's reply, to a complaint from the leaseholders, it was stated

that "... during the year, residents requested that we instructed a gardener on an annual basis to carry out maintenance of the grounds. We asked the original contractor to quote for the works and after consulting with the residents who were happy with the quote received we instructed Alfie Bines..."

17. The Tribunal was referred to an email which had the sender name and email address redacted which was included in the bundle. The email which was dated 24 September 2014, stated "...Due to under planting in the courtyard(compare the planting which was implemented with that which was in the original site plan) we've had quite a lot of surface water flooding in the last few weeks. Basically water is just running off the highly compacted soil in the beds. I know a gardener was sent to look at improvements for the courtyard in late spring/early summer. Has there been any progress in the grounds being brought up to their original proposed standards?"

18. Ms Curtis referred to clauses 7.4(b) of the lease which stated that the landlord was entitled to claim the costs as a service charge of "the reasonable cost of incidental to the landlord carrying out any reasonable improvements to the building and the estate" and 7.4 (E) of the lease, which stated " any Outgoings assessed, charged, imposed or payable on or in respect of the whole Building or in the who or any part of the Common parts..."

19. Ms Curtis stated that the Respondent had assessed the costs by reference to what others were charging in the area for gardening services and had decided that the estimate was reasonable.

The Decision of the Tribunal on ground maintenance

20. The Tribunal carefully considered the estimate/quotation provided by Alfie Bines and noted the schedule of work that the ground maintenance had included. It also noted that the lease enabled the landlord to make improvements, and that this work had been undertaken in order to alleviate a problem of surface water flooding which had occurred at the premises.

21. The Tribunal noted that there was a difference of view between leaseholders with the Applicants complaint being that the garden had not been originally there when they signed the lease, whereas the email referred to above set out that the courtyard was not as envisaged by the plan.

22. The Tribunal finds that the decision to make an improvement by laying turf and a planted bed was reasonable and was within the provision of the lease, which provides at clause 7.4 (b) " the reasonable cost of and

incidental to the Landlord carrying out any reasonable improvements to the Building and Estate."

23. Accordingly the Tribunal is satisfied that the costs of gardening is reasonable and recoverable. However the Tribunal noted that the invoiced sum is £2337.60 which is different from the sum set out in the accounts. As no information has been provided to explain the difference. The Tribunal finds that the sum payable is limited to £2337.60

The entry-phone system

24. In their Application the Applicants stated that the cost for entry phone and CCTV had risen six times from £124.58 in the previous year to £984.00 in the period. The applicants in their skeleton argument referred to a charge of £258.00 for the MED not locking which was from a repair reported to a One housing representative which resulted in an out of hours call of £258.00. The matter was reported in error to NACD, who were not responsible for the gate.

25. The Applicants also queried whether the services charged for were correctly recorded as entry-phone charges as these charges appeared to include the entry panel as well as the gate. Additionally the Respondent had also charged for £1860.00 for Gold Cover in respect of the door entry system. Given this any call out charges for the repair should have been covered.

26. The Applicants also stated that there had been problems with the door entry and gate from the outset. Given this the applicants queried why this work was not covered by warranty.

27. In the Applicants' skeleton argument at paragraph 14. The Applicant stated ".... We acknowledge that the charges in relation to CCTV are actually in relation to entry system and video intercom. However, it is stated in the bundle of receipts that an error was noticed with regard to double payment of CCTV maintenance, but not in relation to this payment date. Yet ...there are double payments for CCTV Maintenance of £669.60... but we can't see any reference to receipts for the second charge of £2059.20... That's a lot of money which isn't accounted for..."

28. In reply Ms Curtis accepted that the heading was not accurate in that CCTV was not covered by this heading. She referred to three heads of charges which were in the invoices. She stated that the Respondent had decided to replace a system within the door entry phone system which would enable it to reset automatically without the need for call out. This was

called a "break glass system" In order to upgrade the system it had been necessary to pay a one off charge of £570.00.

29. In respect of the charge of £984.00 this was made up of £669.60 for Gold Comprehensive cover and £130.00 for maintenance/repair. The Tribunal was referred to a schedule of charges. Some of which were for the telephone BT system which was included under this heading in the total sum of £741.60, where were referred to and considered below in lift line charges. The charges in respect of the entry phone were for the break glass system and for the call out repair of £258.00 together with a one off repair of £156.00.

30. In her witness statement, dated 18 October Laura Corben the Head of property management stated in paragraph 18 that "I would like to make it clear that the Property does not benefit from CCTV. However the company NACD provides services in relation to access, communications and CCTV. It seems that when the invoices were received they were coded as CCTV maintenance".

31. She stated that she had subsequently made enquires of NACD who had informed her that the invoice was for the maintenance contract for the TV Satellite system which included the aerial for Sky & HDTV (this was in the sum of £864.00). She also accepted that a fault had been wrongly reported to NACD which had resulted in a call out charge of £258.00

32. The Tribunal was referred by Miss Curtis, to the terms of the lease under clause 3.8, the lease provided that the leaseholder was not to (a) make any alterations or additions to the exterior of the Premises. This included satellite dishes (clause 3.8 (h). Clause 7.4 (a) enabled the landlord to recover the costs of "...the communal TV aerial and entry phone system..."

The decision of the Tribunal on the entry phone and communal aerial

33. The Tribunal carefully considered the invoices, and on that basis was satisfied that the costs had been incurred and that by virtue of the lease terms, the costs were recoverable. The Tribunal noted that due to an error on the part of the landlord, call out charges of £258.00 had wrongly been incurred. The Tribunal note that this error was that of the landlord and as such it is not the responsibility of the leaseholders. Accordingly, the Tribunal finds that the sum of £258.00 should be reduced from the sum claimed of £2,059.20. The sum payable is therefore £1801.20

34. The Tribunal also noted that understandably the leaseholders were concerned because of the descriptions which had been applied, had

these items been better set out in the service charge accounts then the applicants may well have understood that these charges were payable.

The Electricity

35. The Applicants in their application stated that the charges for electricity had doubled. The Applicants stated that they were aware that the Respondent had a contract services department who were responsible for managing and monitoring energy prices. They queried why this had not resulted in an overall reduction for the leaseholders.

36. The total costs for electricity was £2487.37 the Tribunal was informed that this was due to rectification of charges. The Tribunal was informed by the Applicants that the electricity used at the premises was for internal and external lighting for the courtyard and 24/7 electricity inside the block. Electricity was also used for the door entry system, gates and the water pumps as well as the satellite system at the property.

37. There was a bill for the period July 2012 covering the period up until 24 July 2014. In response the Respondent's stated at paragraph 26-27 "... Initially the invoice for the 2013/2014 financial year was incorrectly incorporated into the 2014/2015 service charge account. Therefore, in the initial accounts the electricity cost was reflected as £5,825.82. The accounts have subsequently been adjusted. The adjustment was carried out on or around 1 April 2016 as soon as the Respondent became aware of the error. The reduction was in the sum of £3,338.45. 27. It is wholly disputed that there has been an exorbitant hike in prices as stated by the Applicant..."

38. The Respondent stated that initially the charge for electricity due to the adjusted bill was apportioned over 1 year. However this was considered to be unfair and as a result the charges for 2014/15 were adjusted to allow for the sums claimed to be recovered over a 2 year period. The adjustment meant that the figure for electricity was £126.32 per flat.

39. In respect of the payability of the sum, the Respondent in the witness statement of Laura Corben, referred to steps that they had taken to ensure that the electricity costs were reasonable. In her statement at paragraph 27 she stated "The Respondent has a contract services department that manages and monitors energy pricing and switching suppliers where better value can be achieved..." at paragraph 29. "... I understand that there is a broker that the Contract Services team use. The broker obtains utilities on behalf of the Respondent... the Applicant benefits from the fact that the Respondent has commercial premises which are included in the agreement. The broker is best placed to assess the market and the correct market rate for these utilities..."

40. Miss Curtis also referred the Tribunal to clauses 3.3 and 7.4 were the leaseholder had covenanted to pay outgoings in relation to the property. Accordingly they submitted that the sums claimed were reasonable and payable in accordance with the lease.

The decision of the Tribunal on the electricity

41. The Tribunal noted that the premises used electricity for the intercom system, the lighting in the common parts and the water pump, accordingly the Tribunal finds the sum claimed for electricity reasonable and payable. The Tribunal noted that the costs of the electricity were supported by invoices/bills. There was an issue in that there was a period, were the bills were underpaid which resulted in an adjustment for the periods 2012-2014. This explains the unusual increase in costs for the period.

42. The Tribunal also noted that the Respondent had taken steps to test the market and had where it was possible to gain a reduction switched suppliers as such the tribunal was satisfied that the costs for electricity were reasonably incurred.

The Water Pump maintenance

43. This charge was in the sum of £2624.47

44. The Applicants case concerning the water pump maintenance had some what evolved. In their application they originally queried what this charge was, and why it had not previously appeared in the service charges. However in the Applicants reply and skeleton argument, they stated that residents were charged for callouts and repairs to the water pump which did not fix the problem. The Applicants further complained that power cuts caused the pump to stop working leaving residents without water for periods of up to 24 hours. The Applicants further said that "... many residents have only a trickle of water at peak time..."

45. In reply the Respondent stated that the water was located in a pod under the courtyard in Saxony Court but solely served Hazlitt Court. The Tribunal were further informed that the previous years had been paid for by the landlord and that there had been no need for maintenance in previous periods.

46. The Tribunal was referred to the statement of Laura Corben in which she stated that the Respondent had entered into an agreement with Acorn Pressurisation Services Ltd to carry out work in relation to the Water Pump in the sum of £2624.47.

47. On the Tribunal's inspection of the invoice, it was conceded by Miss Curtis that the invoice was for the whole estate rather than just Hazlitt Court. Accordingly the Respondent conceded this item and agreed that the cost should be £226.80

The decision of the Tribunal on the charges for the water pump

48. The Tribunal noted that by clause 3.3 of the lease, the Applicants covenanted to pay for outgoings, which by virtue of clause 7.4 included repairs. The Tribunal noted that in accordance with the concession by the landlord, that the sum of £2170.87 should not have been charged, the only sum payable is £226.80. The Tribunal finds that this sum is reasonable payable for maintenance of the water pump, by virtue of the terms of the lease.

The emergency phone line

49. In the Applicants application, they referred to the charge for the emergency phone for the lift in the sum of £741.60. The Applicants stated that neither block 1, nor block 2 had a lift.

50. In their reply the Respondent stated that the lift phone line had been mislabelled in the accounts, and that the charge related to the phone line connected to the intercom system for the fob reader and entry panels to the block entrance doors and gates. This was for 3 phone lines. The Respondent stated that this agreement with British Telecom was paid for by direct debit, as a result, there were no invoices in support of this charge.

The decision of the Tribunal on the charges for the phone line

51. The Tribunal noted that the Applicants, once this charge had been explained, did not object to the sum charged and that they were rightly concerned with the mislabelling and previous lack of explanation.

52. The Tribunal noted that the average cost of the phone line to each leaseholder was £61.80 per year. In the absence of any information to suggest that this charge is wholly above the market rate for the provision of such services, the Tribunal finds the charge for the phone line reasonable and payable.

53. The Respondent should review the headings used by them in the account so that in future years the items charged for can be better identified.

The insurance

54. The Applicants in their application set out that they considered the cost of the insurance had risen on average by 30% and that they wished to know what steps had been taken by the Respondent to ensure that the costs were kept down.

55. In their reply the Respondent at paragraph 44. The Respondent stated-: During the Relevant Period the Respondent entered into an agreement with Zurich to provide building insurance. A Group Policy for approximately 15,000 properties was procured in order to provide all the residents with the best coverage for the best value for money. The premium was calculated on the basis of the number of bedrooms and area value based on the rebuild cost. The Tribunal was referred to a schedule which had the costs set out for the properties based on the bedroom numbers and floor space, the costs ranged from £106.34 (for a 1 bed flat) to £233.95 (for a 4 bed flat)

56. The Tribunal was referred to clause 5.2 of the lease, in which the respondent covenanted to insure the property, and the provision in clause 7.4 which enabled the landlord to recoup the costs of insuring the premises.

57. The Tribunal asked the Applicants whether they had any comparable figures to put before the Tribunal. Neither of the Applicants who were present had tested the market.

The decision of the Tribunal on the Insurance charges

58. At the hearing, the Tribunal informed the parties that in the absence of any evidence concerning the Applicants' assertion that the charge was too high, the Tribunal would make an assessment based on its knowledge and experience of insurance costs that had come before the Tribunal in other hearings. The Tribunal also indicated its view that the charge was within the reasonable range for a property of this type, and that the Respondent was in all probability able to obtain economies of scale due to the size of their portfolio and their position as a social housing provider.

59. The Tribunal is satisfied that the costs for insurance for the premises, (for the period in issue) for the individual flats are reasonable and payable.

The summary of rights and obligations

60. In their skeleton argument, the Applicant also set out that they had not been provided with a copy of the summary of rights and obligations in accordance with the Service Charges (Summary of Rights and Obligations etc) (England) Regulations 2007. Miss Curtis stated that this had been provided and referred the Tribunal to a letter dated 26 February 2014 which evidenced this. Accordingly the Tribunal was satisfied that the charges determined above were payable as the Respondent had complied with this requirement.

Application under s.20C and refund of fees

61. The Tribunal has determined that it is just and equitable to make an order under section 20C and also for the recovery of the hearing and application fees. The reason that the Tribunal has made this decision is that there were miss-described items in the service charge account and items that should not have been charged. Although some of these items were small, it is only as a result of bringing these proceedings that the errors have been uncovered, accordingly the Tribunal is satisfied that an order should be made.

Name: Judge Daley

Date: 10 December 2018

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985

(1) 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.

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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

of any question which may be the subject matter of an application under sub-paragraph (1).