



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

**Case Reference** : **MAN/00BR/LSC/2017/0066**

**Property** : **Flat 14, High Meadow, 5, Grosvenor Road  
Swinton, Manchester M27 5EG**

**Applicant** : **Dalton Christopher Grizzle  
Represented by Linder Myers, Solicitors**

**Respondent** : **(1) Robert Christopher Jackson  
(2) High Meadow Management Company  
(Swinton) Limited**

**Type of Application** : **Landlord and Tenant Act 1985, Section 27A  
and Section 20C**

**Tribunal Members** : **Mr J R Rimmer  
Mr J Rostron**

**Date of Decision** : **16<sup>th</sup> January 2018**

**Decision Issued** : **1<sup>st</sup> February 2018**

**Order** : **1 The service charges in question are not recoverable unless and until Section 21B Landlord and Tenant Act 1985 is engaged**

**2 As and when the charges are recoverable they are the charges shown in the schedule hereto as being reasonably incurred at reasonable cost.**

**A. Application and background**

1. The Applicant is the owner-occupier of a ground floor flat, number 14, High Meadow, 5, Grosvenor Road, Swinton, Manchester M27 5EG which is one of 14 flats located within a small, modern development. The Respondents are, respectively, the effective manager of the development and responsible to the other Respondent, the Management Company (referred to in the lease as “the Residents’ Company” and which is a party to the leases) established to service the development and the landlord under the provisions of the long leases for the respective flats. A copy of the lease for Flat 14 has been provided to the Tribunal. Its principal terms are that it is granted at a premium and a rent of £100.00 a year for 999 years from 24<sup>th</sup> June 1924 less the last 10 days thereof.
2. The Applicant seeks to establish the reasonableness and payability of the service charges for the flat for the period stated in their application as being for the years 2011-16. On the basis that the service charge accounting year, according to the lease ends on 31<sup>st</sup> December each year the Tribunal has taken the application to be for the years ending 31<sup>st</sup> December 2011 to 31<sup>st</sup> December 2016, inclusive (although the lease appears to allow the management company to select whatever annual period might suit it)
3. The lease contains provisions relating to the service charges at several points in the leases:
  - Clause 3.3 contains the covenant by the tenants to pay the service charge referred to in the reddendum to the lease and recoverable as rent if unpaid. The proportion of the total service charge attributable to flat 14 is stated to be 7.14% (suggesting that the charges are intended to be apportioned equally between the 14 flats).

- The obligation to provide the services is that of the Second Respondent by virtue of its covenant under Clause 5 of the lease
  - That clause sets out what the services are those services and obligations are and may described as being “normal” in such a lease and for which a charge is payable. It includes an obligation to insure the premises against fire or other usual risks. They are expanded upon in the second part of the Fourth Schedule.
  - The Fourth Schedule to the lease also requires the service charge to be certified annually according to the management financial year used by the management company. A copy of the certificate should be supplied to the lessee on request. Thereafter there should be an account delivered to each lessee showing the amounts paid and payable with credit or deficit as appropriate
- 4 Directions were given on 2<sup>nd</sup> August 2017 by the Regional Judge of the Tribunal for the further conduct of the matter and requiring the Respondents to provide the appropriate service charge accounts, budgets and statements for the years in dispute.
  - 5 The initial response came in the form of a number of handwritten spreadsheet entries for various different periods of time embracing the period from 2<sup>nd</sup> April 2012 to 31<sup>st</sup> July 2017 with no apparent explanation as to how the figures were arrived at, nor as to why periods of account of different length had been utilised in their preparation.
  - 6 Very little documentation was provided at any stage by way of supporting documentation save and except:
    - Two pages of a buildings insurance renewal schedule
    - A gate repair invoice for £495.00
    - A further gate repair invoice for £1980.00
    - A decorator’s invoice for £1495.00
  - 7 In reply a lengthy statement was provided by the applicant which raised the following issues which the Applicant regarded as amounting to non-compliance with the directions given:
    - The demands were incomplete with significant gaps for the period before 4<sup>th</sup> December 2012 and for August 2014 to May 2016
    - The demands were not accompanied by the required notices
    - No budgets were provided
    - No certificate was provided
    - There was no statement of account for annual periods, merely for different disparate periods within the period in dispute
    - No explanation was included explaining the services believed to be payable, nor how they had been calculated.

- 8 The Applicant sought to draw the attention of the Tribunal particularly to the absence of the certificates and annual statements of account required by the lease. The Applicant, through his solicitor, sought therefore to provide a schedule on an annual basis of what costs appear to have been incurred and upon what basis they were challenged. In due course the Mr Jackson has appended his observations in response.
- 9 Further information was therefore requested on behalf of the Applicant to fill in as many of the perceived gaps as possible so that costs could be compared like for like, year by year, particularly by providing relevant information for the missing periods and explaining how the different amounts for differing periods related one with another.
- 10 Of particular concern, in the light of the information received, were the amounts charged as management fees, listed at paragraph 21 in the statement, in the light of the suggested shortcomings in the Respondents' procedures.
- 11 The further attention of the Tribunal was drawn to apparent inconsistencies in the amounts suggested as being payable in a number of instances and the lack of clarification for significant items of expenditure (notably gate repairs in 2016 and management fees for 2017).
- 12 The Respondents make much in their submission of the view that the Management Company is a dormant company and that the First Respondent is now providing the services directly himself. Leaving aside the issue of whether the company is in fact dormant, and could nevertheless be restored, the Tribunal is provided with no real explanation as to why it is not still providing the services to the development and accounting properly for them
- 13 Following an inspection on 30<sup>th</sup> October 2017, in the absence of a request from either party for a hearing the Tribunal thereafter reconvened later that day to consider those submissions and documents provided by the parties. It was obliged to issue further directions in order to try to obtain additional information sufficient for it to draw reasonable conclusions as to what services had been provided at what cost. Although further submissions were received, and considered, they added little to what had already been provided.

## The Law

- 14 The law relating to jurisdiction in relation to service charges falling within Section 18 Landlord and Tenant Act 1985 is found in Section 19 of the Act which provides:
- (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
- 15 Further section 27A Landlord and Tenant Act 1985 provides:
- (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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

- 16 Section 21B Landlord and Tenant Act 1985 provides:
- (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) ...
  - (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 the non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

### **Tribunal's conclusions and reasons**

- 17 The Tribunal is very quickly drawn to the conclusion that the management of the services provided High Meadow is chaotic. The lease makes provision for the services to be provided and charged for on an annual basis and it provides considerable leeway to the Management Company in determining what that annual period should be. Nevertheless, it is apparent that no set period has been appointed and the billing of services has taken place on a random basis. The Tribunal acknowledges what is said by the Respondents, that this has reflected the way in which expenditure has been incurred in order to bill it as it has happened, but this does not provide a satisfactory way of budgeting for future expenditure, nor enable leaseholders to compare service charges on a year by year basis.
- 18 Furthermore, there appears to be no efficient and proper means of recording expenditure and providing invoices in support of them, nor is there any attempt to provide any certified accounts as provided for in the lease.
- 19 It also appears to be the case that in relation to the particular flat occupied by the Applicant, being the one with external access and no direct entrance to the communal parts of the building, there is some inconsistency over time with what he is charged for and what he is not.
- 20 The Applicant suggests that this may be a deliberate policy on the part of the Respondents to hide poor management and inefficiency.
- 21 The Tribunal would respectfully disagree with that view, given what it saw during its inspection. The development is well maintained and it is clear that the basic services were being provided in a workmanlike manner and at a reasonable standard. It may well be the case that some of what is done is perceived as not being to the Applicant's advantage, or direct benefit, but the Tribunal would not criticise what is being done.
- 22 The principal issue is the way in which those services are accounted for and the costs recorded. The Tribunal has noted the conflicting arguments presented as to the effect this may have had on the ability to sell particular flats. Without full information as to the relevant transactions and how service charges have been dealt with in any particular assignment the Tribunal is undoubtedly concerned as to the detrimental effect the current situation will have in providing full disclosure to a purchaser.

23 The following matters have played a particularly important part in the deliberations of the Tribunal:

- The absence of any annual accounts for the service charge, on any basis.
- The lack of supporting invoices for most items of external expenditure.
- The random nature of the invoicing of the service charge to the leaseholders.
- The lack of consistency with which the Applicant's flat has been dealt with, as the property with lack of access to the common parts (bearing in mind that the lease appears to apportion the charge equally between all flats).
- The absence from the documentation provided to the Tribunal of any service charge demands accompanied by a statement of rights and obligations.
- The clear evidence of services being provided, as shown by the state and condition of the development, and there being an inevitable cost to the Respondents in providing them.

24 With this in mind, the Tribunal is drawn to its first conclusion that until Section 21B of the Act is complied with, the Applicant is entitled to withhold payment of service charges for the periods to which the application relates.

25 The Tribunal has then sought to make sense of the amounts that have been charged by the Respondents for the different services provided in the many and varied periods between, apparently, 2<sup>nd</sup> April 2012 and 31<sup>st</sup> July 2017. It considered allocating the costs provided by the Respondents to successive years of account ending, with the exception of the final period to July 2017, on 31<sup>st</sup> December each year. It further, felt, however that it was unable to do this because of the absence of some amounts in some years and grossly differing amounts for other services in other periods. There is for example reference to only 5 insurance premium payments for what is a period in excess of 5 years and, also, variations between £480.00 and £1350.00 for window cleaning.

26 The Tribunal determined, therefore, to adopt a "straight line" approach to dividing the cost equally over a 64month period from April 2012 to July 2017.

27 The Tribunal is also satisfied that the Applicants obligation under the lease is to pay 7.14% Of the charges for each year as the apparent equal apportionment of the charges between all flats and it notes that there are no lift charges in the schedules provided for which the Applicant is liable. The Tribunal is satisfied that the obligation in the lease overrides a close examination or analysis id direct or indirect benefits to the Applicant of services provided to particular common parts.

28 The Tribunal has therefore sought to use its best endeavours to provide a year on year assessment of what it considers to have been justifiable charges, reasonably incurred at reasonable cost, for the services which have been provided set out in the attached Schedule. These are recoverable once it is clear that Section 21B of the Act has been satisfied and the appropriate notices supplied to the Applicant.



	64 month total	monthly amount	tribunal amount	applicants proportion
insurance	10,436.00	163.06	163.06	11.64
lift	0			
lift phone	0			
internal cleaning	5,516.00	86.18	75	5.36
electricity	8,042.00	125.66	125.66	8.97
window cleaning	5,556.00	86.81	75	5.36
accounting	0			
general maintenance	3,304.00	51.63	0	0
painting	1,495.00	23.36	23.36	1.67
gate repair	2,475.00	38.67	38.67	2.76
gardens/car park	7,128.00	111.38	83.33	5.95
management fee	5,908.00	92.31	92.31	6.59

notes

1 The acceptance of the insurance premiums is predicated upon them having been paid. The Tribunal believes it would not be difficult to obtain proof from the company/companies, or bank.

2 The Tribunal believes that both internal and window cleaning are justified up to £75.00 per month each, being 5 hours work at £15.00 per hour

3 The electricity charges are considered reasonable

- 4 No vouchers or worksheets of any nature are provided to justify general expenditure
- 5 Painting and gate repairs are vouchered
- 6 The Tribunal believes the garden and car park justify a cost of £100 for each of 8 months per year and £50 for each of the remaining 4 months
- 7 The Tribunal has noted the accounting and book-keeping difficulties but accepts that the other aspects of the management would justify a fee of about £75 per flat per year, very similar to the charges levied.