

13051



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

**Case Reference** : MAN/00CM/LSC/2018/0022

**Property** : Flat 2 The Hawthorns Sea View Road  
Grangetown Sunderland Tyne & Wear SR2 7UP

**Applicant** : M&H Developments Ltd

**Respondent** : Mr Darren Cliff

**Type of Application** : Landlord and Tenant Act 1985 –  
Section 27A(1) and 20(C)

**Tribunal Members** : Judge W.L. Brown  
Mr I R Harris MBE FRICS

**Date of Decision** : 07 December 2018

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**DECISION**

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## **Decision**

- (1) The service charge cost for 2016 is determined as reasonable, other than as to the management charge which is reduced to £350 plus VAT as payable by the Respondent.
- (2) The service charge cost for 2017 and 2018 is determined as reasonable, other than as to the cost to the Respondent for Call Point management charge which is reduced to £250 per year and as to the management charge which is reduced to £350 plus VAT per year as payable by the Respondent.
- (3) The Respondent shall pay to the Applicant £100 in respect of the Applicant's Tribunal fee.

## **Background**

1. The Applicant is the registered proprietor of the freehold of the building in which the Property is situated ("The Hawthorns"). The Applicant formerly was known as GD Property Developments Limited. The Respondent is the leaseholder owner of the Property.
2. By Application dated 11 April 2018 (the "Application") the Tribunal was requested to make a determination under Section 27A of the Landlord & Tenant Act 1985 (the 1985 Act) as to the reasonableness of service charges for the Property for the service charge years ending 31 December 2016, 2017 and for the advance charge for 2018.
3. Directions were made by the Tribunal on 22 May 2018.
4. On 8 October 2018 the Tribunal inspected the exterior and internal common parts of The Hawthorns and the interior of the Property, which is located on the first floor. Present were the Respondent and for the Applicant, Ms Barbara Blenkinsop from its managing agent Robertson Simpson. The Hawthorns is a 3 storey building of brick construction comprising for the purposes of the Application 4 flats. The Tribunal observed that there had been no recent external decoration and noted overhanging tree foliage to the forecourt and some weeds in the blockwork. Inside the Property the Tribunal noted staining from water penetration to ceilings and walls above the kitchen door, around certain ceiling boards and to a wall in bedroom 1.
5. No party having requested a hearing the Tribunal convened on 22 October 2018 to make its determination.

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## **The Lease**

6. The parties referred the Tribunal to the lease for the Property. It is dated 10 June 2005 for a term of 125 years from that date at an annual ground rent of £250. It is made between GD Property Developments Ltd (1) The Hawthorns Management Company (Sunderland) Limited (2) and the Respondent. The Respondent covenants in clause 2.2 to pay charges for services in accordance with obligations contained in Schedule 7. The Service Charge contribution of the Respondent is (defined as 25% (clause 1.1.20)).

7. The Services are defined in Schedule 7 as:

*"1. Repairing and, whenever the Landlord, acting reasonably, regards it as necessary in order to repair, replacing or renewing the Retained Parts and the car parking spaces on the Estate whether or not included in this Lease or in the lease of any Other Flat;*

*2. Decorating the Retained Parts where appropriate or necessary"*

**The Law**

8. Section 19 of the 1985 Act states

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 for the services or works or are of a reasonable standard: and the amount payable should be limited accordingly.*

*(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than as reasonable as so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise.*

9. Section 27A of the Act states

Liability to pay service charges: jurisdiction

*(1) An application may be made to the appropriate tribunal for a determination whether 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 service, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the cost and, if it would,*

- 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.*

10. Also relevant to this case is Section 20 of the Act which states:

Limitation of service charges: consultation requirements

*“(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—*

*(a) complied with in relation to the works or agreement, or*

*(b) dispensed with in relation to the works or agreement by (or on appeal from) a First-tier tribunal.”*

The relevant contribution is limited to £250.00.

The Section 20 consultation process generally has three stages:

A notice of intention

Notification of estimates

Notification of award of contract

### **The Evidence and Submissions**

11. The Applicant is the freehold owner of The Hawthorns. The Applicant stated that the Respondent has failed to pay the service charges due for service charge year 2016 and thereafter. The Applicant's representatives contacted the Respondent's mortgage provider, Birmingham Midshires, which agreed to meet the service charge arrears on behalf of the Respondent in order to protect its interest in the leasehold title of the property. In July 2016, Birmingham Midshires stopped paying the service charge as the Respondent had advised it that the service charges claimed by the Applicant were in dispute.
12. The Applicant helpfully provided a breakdown of the services charges claimed against the Respondent:

2016

Electricity - £290.82

External repairs and maintenance - £3,020.00

Insurance ~~£1,773.48~~

Internal Cleaning - £260.00

Safety systems maintenance £732.66

Management fees £3,000

Total actual expenditure for period ending 31st December 2016 was £9,076.96

Total amount due was £2,269.25 (ie 25% of total expenditure)

Total amount received £1,266.78 (paid by the Respondent's mortgage lender due to the respondent's failure to pay).

Outstanding balance due £1,002.47

2017

Electricity £239.73

Drain Maintenance £78.00

External repairs and maintenance - £270.00

Insurance £1,511.02

Internal cleaning - £660.00

Safety systems maintenance £1,592.43

Management fees £3,000.00

Total expenditure for service charges during period ending 31st December 2017 was £7,411.18

Total amount due was £1,852.80 (ie 25% of total expenditure)

Annual Ground rent - £250

Total amount received from Respondent £0

Outstanding balance due £2,102.80 (£1852.80 excluding ground rent)

2018

Electricity £250

Drain Maintenance £200.00

External grounds maintenance - £200.00

External repairs and maintenance - £500.00

Insurance £1,600.00

Internal cleaning - £860.00

Safety systems maintenance £2,000.00

Management fees £3,000.00

Total expenditure for period ending 31st December 2018 budgeted at £8,610.00

Total amount due from Respondent £2,152.50 (ie 25% of total expenditure)

Total amount due in monthly instalments of £179.38 to date: £538.13

Total amount received from Respondent £0

Total due to the remainder months of 2018 = £179.38 x 9 months = £1614.42

Annual Ground rent - £250

Outstanding balance due for 2018 £2,402.50 (£2,152.50 excluding ground rent).

13. The Applicant responded to the Respondent's statement of case, which it received on 9 August 2018.
14. Leaks, defective pipework and damage to the Property detailed by the Respondent have not been reported. The property management company was not aware of defective equipment in the Property and in any event, the internal elements of the Property are the Respondent's responsibility.
15. A fire risk assessment was carried out as required under the Regulatory Reform (Fire Safety) Order 2005. The risk assessment determined that a weekly test of the call points to the building should be carried out. The cost for call point testing is £25 per week and is a competitive price. As is the cost for fire alarm servicing which includes emergency lighting testing and fire extinguisher servicing. Visits are undertaken on the basis agreed with the freeholder. The cost is £2,400pa plus VAT.

16. There was an internal drainage issue when the management company took over, which was remedied. It was found that internal pipes from the flats were not connected and water was flowing underground. All repairs are complete and there are no smells now.
17. The intercom was changed as it was broken and irreparable for Flats 1 and 3. The Respondent was notified that the intercom system was being replaced and was asked to provide access for the installation of a new handset to the Property. The Respondent failed to respond.
18. The driveway was pressure washed with prior notification to all leaseholders. The water was not stolen as the Respondent alleges. An agreement was made with the occupier of Flat 1 to use water and the occupier was compensated for the water used.
19. The building has had essential repairs carried out as funding has become available. Redecoration is to be carried out as planned maintenance and will be included within the annual budget for the Property. The stairwells are cleaned once per month which is appropriate for the use. Another factor is to keep costs to the leaseholders as low as possible.
20. The external drive way and parking areas have been weed sprayed and swept. Funds for any further maintenance to the shrubbery has not been possible while the Respondent is not paying his service charge as funds have been prioritised for structural and health and safety works.
21. The budget heading of 'life safety equipment' refers to the testing, maintenance and repair of the fire alarm, emergency lighting and fire extinguishers'. No testing of any of these items was in place prior to the management company taking over on 15 January 2015.
22. The Respondent gave context to his position, indicating that he had been paying to his mortgage lender, Birmingham Midshires, the amount of service charge it had been paying on his behalf. Around July/August 2016 the lender ceased to make payments. During this time, the Respondent's daughter was suffering from cancer and sadly passed away on 8 January 2017. In addition the Respondent had been going through a bitter divorce with his daughter's mother. The management company knew about the mental stress upon the Respondent.
23. The Respondent's statement of case is set out in his email to the Tribunal, subsequently copied to the Applicant, dated 1 August 2018. The Tribunal discerned 7 points at issue, being the Respondent's reasons for disputing the amount of the service charge for the years in question, for it to address. Those points are:
  - i. Following numerous leaks from Flat 3 above the Property, the fire alarm was taken down from the kitchen in 2013 as it was waterlogged and this was never replaced, despite him reporting the problem to the managing agent. Leaks on at least four occasions from defective

pipework/wastes have damaged walls and ceilings in the Property but the Respondent himself has repaired/redecorated.

ii. It is the Respondent's opinion that the costs for the Life system safety maintenance (fire and smoke alarms and testing) are excessive and alternative quotes should be obtained. Also, he understood that weekly testing is not necessary and this could be carried out every 21 or 28 days, which would reduce costs.

iii. He challenged the management fees of £3,000 pa, as ".....for the last five years at least there has been little works undertaken and no visits from the management company....." that the Respondent can recall.

iv. The internal drainage has been a problem for years and the flats smell very strongly of human waste, but nothing has been done to alleviate this despite complaints being lodged.

v. The management company installed a new intercom system, only for flats 1 and 3, omitting the Property, which has been without the system for around 2 years.

vi. The maintenance works that have been carried out have been poorly executed, such as a company attending to jet wash the forecourt. Water was used from the leaseholders' external tap without permission and the accumulated debris was left as a mountain of sludge at the end of the driveway which eventually blocked the external drains. No redecoration has ever been carried out and cleaning of the internal stairwells is once a month. The external shrubs and trees are only maintained at the point of being unable to access the driveway due to overhanging branches from trees.

vii. The service charges are around the highest in the area.

#### **THE TRIBUNAL'S FINDINGS AND DECISION**

24. The Tribunal was first satisfied that the Respondent's lease provides that responsibility for repairs and maintenance lies on the Applicant and the basis of the Respondent's potential liability to pay for the costs of service charges is recorded in paragraph 6. There was no dispute over apportionment of the charge.
25. The Tribunal noted that all sums at issue are based on budgeted figures and there does not appear to have been reconciliations of budget against actual expenditure for 2016 and 2017 giving credits as appropriate. The Lease provides (clause 7-2-8) a process of reconciliation at the end of each financial year. However, the Tribunal has proceeded to make determinations of the basis of the following charges to the Respondent:

2016 £2,269.25 (disregarding payments made by Birmingham Midshires)

2017 £1,852.80

2018 £2,152.50

26. The Tribunal makes findings and determinations by reference to the Respondent's expressed reasons for challenging the service charges, as set out in paragraph 23. Following that numbering (point vii being a general comment):

i. The cost of repairing damage caused from leaks from the flat above the Property has no service charge implication as no charges have been made. There are mutually enforceable covenants in the lease between leaseholders which may provide a source of remedy for the Respondent regarding his expense.

ii. No individual charge for the fire alarm testing has been identified in the documents presented to the Tribunal. The point of contention for the Respondent is the cost of weekly testing, which appears to have begun in 2017. The cost of call point testing (noted as "Life Safety Systems Maintenance") is identified as £25 per week – i.e. £1,325 pa, apportioned as to £325 per leaseholder. The work is undertaken on an ongoing basis and the conclusion the Tribunal reached on examination of the papers is that the arrangement with a contractor to do that testing has been in existence for more than one year. The Tribunal finds that the arrangement for testing is a Qualifying Long-term ("QLT") agreement. A QLT agreement is an agreement entered into by the landlord with a wholly independent organisation or contractor for a period of more than 12 months after 31 October 2003 where the amount payable by any one contributing leaseholder exceeds £100 in any one year. No evidence was presented of consultation under Section 20 of the Act before the agreement was entered into. If there was a failure of Section 20 consultation and in the absence of any application for exemption under Section 20ZA from the consultation requirement (nor was there before the Tribunal such an application or to adjourn these proceedings to permit one to be made) the most that the Applicant is able to recover from the Respondent is £250 per year in 2017 and 2018.

iii. The management charge in each year is expressed by the Applicant as being £2,400 plus VAT. The Tribunal found that in reality it is £2,500 plus VAT - £750 per year per flat. No copy of a management agreement was provided to the Tribunal. It was apparent to the Tribunal that previous management was poor, before Robertson Simpson took over. That poor service would justify additional workload by Robertson Simpson and this will remain ongoing until the building condition is improved. That justifies a management fee exceeding the market average, but not to the level charged. For the years at issue the Tribunal determined that a reasonable management charge would be £350 plus VAT per flat for a building of this nature in its current condition.

iv. There is no evidence of costs associated with the works described in paragraph 16, therefore the Tribunal makes no finding.

v. The issue was that works had not been done for the Respondent. This matters appears to have been resolved between the parties as the Tribunal



was informed by the parties at the inspection that the Applicant has agreed to undertake installation for the Respondent when convenient.

vi. There was an absence of evidence to corroborate the Respondent's allegation regarding use of water or any consequential cost to him. The Tribunal was presented with no evidence of complaints by residents at the time of the works. Therefore the Tribunal finds that the cost of the works was reasonably incurred. The Respondent presented no evidence to corroborate his allegation of insufficient cleaning of internal areas. Given that there are only 2 households using the stairs the Tribunal found that a cleaning regime of once a month was satisfactory. In addition, while the Tribunal noted at inspection weeds in the drive blockwork, maintenance of the external shrubbery and trees appears as a charge described in the Applicant's documents as "external repairs and maintenance" – Nil in 2016, £67.50 in 2017 and £200 in 2018. The Tribunal found those sums to be reasonable. While the Respondent may wish to have additional maintenance – at more cost - the point for the Tribunal was whether the particular works and associated costs in the years at issue were unreasonable. Given the sums involved the Tribunal determined that they were reasonable.

#### **As to Costs**

39. There was no application under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Applicant in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Respondent for a future year or years.
40. The Applicant requested an order for costs against the Respondent on the basis that the Application had been caused by the Respondent's failure to communicate appropriately with the Applicant to express any specific items of dispute with the service charges claimed, thereby allowing the Applicant the opportunity to resolve the dispute without the need to involve the Tribunal. The Applicant made no specific rebuttal of that request, but explained his conduct in the context set out in paragraph 22. The Tribunal found that the Applicant had made reasonable efforts to engage the Respondent in dialogue about the unpaid service charges before issuing the Application. The Tribunal found that there were legitimate points of dispute, however and that the Respondent should not bear the Applicant's costs of the Application other than the Tribunal fee of £100. Therefore the Tribunal orders the Respondent to pay the sum of £100 to the Applicant in reimbursement of its Tribunal fee.

Judge Leslie Brown  
07 December 2018