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

Case Reference : **LON/00AP/LSC/2013/0533**

Property : **249 Reedham Close, N17 9PZ**

Applicant : **Mr J Wilson**

Representative : **None**

Respondent : **Shian Housing Association
Limited**

Representative : **None**

Type of Application : **Transfer from the County Court
on the question of the payabilty of
Service Charges**

Tribunal Judge : **Mr M Martynski**

Date of Decision : **7 October 2013**

DECISION

Decision summary

1. Service Charges totalling £201.60 in respect of Communal Pest Control are not payable by the Applicant.
2. The Respondent must pay to the Applicant the sum of £40 (being the application fee that the Applicant paid to the Tribunal) within 28 days of the date of this decision.
3. An order is made pursuant to section 20C Landlord & Tenant Act that none of the costs incurred by the Respondent in the proceedings before the Tribunal can be claimed as part of any Service Charge from the Applicant.

Background

4. The Applicant issued proceedings against the Respondent in the Edmonton County Court claiming the sum of £201.60¹ for Service Charges paid in the period 22nd of February 2010 to 12th of April 2012 in respect of communal pest control.
5. By order dated 20 July 2013 Deputy Circuit Judge Silverman transferred the claim to this Tribunal “for report”.
6. Directions were given by this Tribunal on 9 September 2013. Those directions set the matter down to be decided without a hearing. Neither party subsequently requested a hearing and therefore this decision has been made on consideration of the following papers only: –
 - (a) the County Court file
 - (b) each party’s Statements of Case made to this Tribunal
 - (c) the bundle of documents provided by the Applicant

The parties’ cases

7. The Applicant’s case is that he has an Assured Shorthold tenancy issued by the Respondent. That tenancy began on 22 February 2010 and is a weekly tenancy. Under the terms of the tenancy the Applicant has to pay a rent and a Service Charge. One of the services provided and paid for by the Service Charge is communal pest control. The Applicant says that there was no pest control service from 22 February 2010, that is from the start of his tenancy, until 12 April 2012.

¹There is also a claim for interest and costs but these are not matters to this Tribunal, they are matters for the County court

8. The Applicant says that he was paying £1.80 per week in respect of the pest control service. The period of no pest control therefore amounts to 112 weeks which at £1.80 per week amounts to the sum claimed of £201.60.
9. The Respondent's case is not entirely clear. It appears that the Respondent argues that the Service Charge provided for in the Applicant's tenancy is a fixed charge and that accordingly it is not caught by the provisions of sections 18, 19 and 27A Landlord and Tenant Act 1985.
10. The Respondent admits that there was no communal pest control in place prior to April 2012. The Respondent goes on to say in its Statement of Case; "Shian therefore confirms that it did not incur costs relating to the provision of pest control services until April 2012.....".

The relevant documents

11. The Applicant's tenancy agreement contains the following relevant provisions.

The weekly payment for the Premises at the date of this agreement is:

Net Rent:	£128.00
Service Charge:	£10.00

The landlord shall provide the services as set out in the attached Appendix 1 (not provided)

The landlord may charge for services on the basis of either:
Reasonable costs incurred during the previous accounting period or
Estimates for the current or next accounting period. An accounting period shall be the year for the period 1st April to 31st of March. Any difference between the estimate and the actual cost may be carried forward at the landlord's absolute discretion.

The cost of services shall be apportioned in a fair and reasonable way between the number of properties concerned

The service charge may be being varied not more than twice in any one year. The landlord shall give the tenant 28 days written notice of any change in the service charge to be paid.

The tenant shall pay any increases in other charges of which 28 days notice has been given.

12. The Tribunal was provided with copies of two letters sent by the Respondent to the Applicant regarding increase in accommodation charges. The letters are dated 3 June 2011 and 1 June 2012. Both letters contain a table showing the current charge and the new proposed charge to be levied from the following July.

13. Each letter contains the rent charges and then various smaller charges for the services. One of those services is communal pest control. The figure in both of these letters for the years in question is the same, that figure being £1.80.

Decision

14. It appears to me from the wording of the tenancy agreement that there is a variable charge for Service Charges, not a fixed charge as alleged in the Respondent's Statement of Case. The tenancy agreement makes it clear that the Service Charges are can vary according to the actual cost of those services to the Respondent and that the Respondent can vary those Service Charges to bring them in line with the actual cost of them².
15. It follows therefore that these Service Charges are caught by the various provisions of the Landlord and Tenant Act 1985 mentioned above.
16. It is clear from the rent increase letters that a Service Charge was being levied on the Applicant in the sum of £1.80 per week in respect of communal pest control services.
17. The Respondent has admitted in its Statement of Case that no communal pest control services were provided until April 2012.
18. It must therefore follow that the Service Charges levied for pest control services are not payable and that the Applicant is entitled to the return of the sum claimed.
19. The Applicant has been entirely successful in this application. Accordingly the Respondent must pay to him the sum of £40.00, that being the fee that the Applicant has paid to this Tribunal for the case to be considered. That payment must be made within 28 days of the date of this decision.
20. It must also follow that any costs incurred by the Respondent in connection with these proceedings before the Tribunal must not be added to any Service Charge payable by the Applicant.

Name: Mark Martynski,
Tribunal Judge

Date: 7 October
2013

²See the decision in Southern Housing Group Limited v Joanne Hall and Family Housing Association (Wales) Ltd v Diane O'Grady [2010] UKUT 237 (LC) which reached a similar conclusion on very similar assured tenancy terms

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.