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

Case Reference : MAN/OOCL/LSC/2013/0037

Property : 14 GREENS PLACE, SOUTH SHIELDS
NE33 2AE

Applicant : HOME GROUP LIMITED

Represented by : MR CARL MAY

Respondent : MR JAMES CULLEY

Type of Application : LANDLORD AND TENANT ACT 1985 –
SECTION 27A(1)

Tribunal Members : MR W L BROWN
MR A ROBERTSON
MRS S ALDRED

Date of Decision : 20 August 2013

DECISION

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DECISION

The amounts determined by the Tribunal as reasonable for service charge years ended 31st March 2007 to 31st March 2012, inclusive are as set out in the attached schedule which shall form part of this Decision.

INTRODUCTION

2. By Order of South Shields County Court dated 3 December 2012 in Claim Number 2YK61424 the Tribunal was requested to make a determination under Section 27A of the Landlord & Tenant Act 1985 as to the reasonableness of service charges for the Property for the service charge years ended 31st March 2007 to 31st March 2012, inclusive.
3. The parties to these proceedings are respectively landlord and tenant of the Property, which is a second floor flat in the three storey building comprising 1-18 Greens Place, South Shields (the "Building"). There is a common staircase and shared walkways to the upper flats. There is a communal car park and landscaping for the Building.
4. Directions were made by the Tribunal on 13th March 2013 and at the end of the first hearing on 25th June 2013.
5. The Tribunal carried out on 25th June 2013 an external and internal inspection of the common areas of the Building in which the Property is located. Present was the Respondent and a number of officers of the Applicant.
6. Hearings took place at AIT Kings Court Royal Quays North Shields on 25th June and 20th August 2013. The Applicant was represented by Mr Carl May, Senior Housing Management Lawyer. The Respondent represented himself. The parties provided statements of their case and bundles of documents. In accordance with the Tribunal's directions the Applicant provided under cover of a letter of 8th August 2013 to the Tribunal and the Respondent a reconciliation statement of all expenditure for the service charges between 2006 and 2012.

THE LEASE

7. A copy of the Lease of the Property dated 26th January 1998 between the parties was before the Tribunal. It is for a term of 125 years from 7th March 1983 at a peppercorn ground rent. The Respondent purchased the Property through the Voluntary Purchase Scheme.
8. Relevant provisions within the Lease are:

"The Block" means the Property known as 1-18 Greens Place.

"The Flat" means the second floor flat forming part of the Block known as 14 Greens Place.

“The Communal Parts” means all external boundary walls (nor forming part of the structure of the Block) hedges, gates, gardens, grass or landscape areas, trees, plants, roads, driveways, yards, forecourts and other areas within the curtilage of the Block the use and enjoyment of which is common to all residents in the Block.

“The Services” means the services specified in the Fourth Schedule hereto.

“The Service Charge” has the meaning given to that expression in clauses 2 (b) and 4 hereof.

“The Block Expenditure” means the expenditure described in the Fifth Schedule hereto.”

The Applicant’s obligation to pay service charges is governed by Clause 2 (b).

The Service Charge year is from 1st April to 31st March.

The amount of the Service Charge is 5.5% of the Block Expenditure together with the Lessor’s reasonable costs of and incidental to the administration and management of the Block and the calculation of the Block Expenditure and the proportionate part thereof.

Clause 4(c) provides the Service Charge in any financial year may also include *“...such sum or sums that the Lessor in its absolute discretion considers reasonable by way of provision for anticipated future costs, expenses and outgoings...”*

Clause 4(h) provides *“if and in so far as any monies received by the Lessor from the Lessee during any financial year by way of Service Charge are not actually expended by the Lessor during that financial year, the monies shall not be regarded as surpluses and the Lessor shall hold those monies upon trust to expend in subsequent financial years and subject thereto upon trust for the Lessee absolutely”.*

The Fourth Schedule sets out obligations upon the Lessor, including for maintenance of the Block and effecting buildings insurance. There is recorded in the Fifth Schedule items forming part of the Block Expenditure, including the cost of Services.

THE ISSUE AND EVIDENCE

9. The issue for determination by the Tribunal was the reasonableness and payability of service charges claimed by the Applicant in respect of the Property for the service charge years referred to in paragraph 2.
10. Prior to the hearing on 25th June 2013 the Respondent disputed his responsibility to contribute to the cost of insurance of the Building. After the Tribunal stated after the first hearing its finding that he was responsible under the 4th Schedule at clause 5 of the Lease to make such a contribution the Respondent paid to the

Applicant before the second hearing the Buildings Insurance contributions outstanding, although indicated that he intended to retain in place his own buildings insurance cover.

11. The Respondent made specific representations as follows:

i) 2006 – 2007 cleaning of communal bins not done. Cleaning communal areas substandard, no improvement despite reporting, aerial system repairs outstanding.

ii) 2008 – the door entry system charge for repair should be one twelfth, i.e. not affecting those on the ground floor and cleaning communal bins had not been undertaken.

iii) 2009 – cleaning the communal areas substandard, cleaning of communal bins not done.

iv) 2010 – cleaning of communal areas substandard, cleaning of communal bins not done and the local authority has stated that it has responsibility for cutting of grass for the front of the property so he should not be charged for it, health and safety checks have not been undertaken.

v) 2011 – cleaning of communal areas substandard – cleaners spend on average 10 minutes on site, cleaning of communal bins not done.

vi) In addition, he stated that the costs of painting and decorating had not been explained and windows not cleaned.

vii) In respect of health and safety checks at the Building his oral evidence was that only in the last year had he been asked by an employee of the Applicant if there was a key for the electric cupboard on site, suggesting a lack of diligence in inspection work prior to then.

12. In his written statement of 23rd July 2014 (meaning 2013) the Respondent stated that over a period of 8 weeks he had timed the cleaners and observed them sweeping the two walkways and two stairwells but doing nothing more and that they were on site working only for between 10 and 15 minutes.

He queried whether apportionment of electric costs were being carried out properly or if he was being charged for more than the Block.

He objected to the Applicant's 15% management charge as the services were below standard and not properly supervised. He did not receive the service for which he was paying. In particular there was little or no cleaning of communal areas or windows or maintenance undertaken.

13. The Applicant stated that the invoices for service charges and the building fund contributions had been properly charged and issued in accordance with the terms of the Lease. In a letter dated 30th January 2012 the Applicant set out to the Respondent information concerning the service charge including advice that there is a communal TV aerial servicing 1-18 Greens Place. At the second hearing the

Applicant conceded that no charge would be rendered for the TV Aerial and the service charges were to be adjusted accordingly.

14. The Applicant stated in its letter of 30th January 2012 that Grounds Maintenance Charges are based on maintaining, *"Greens Place as a whole area. The areas that are maintained are the lawned area at the front of Block 1-18, pruning of the bushes around the top area of the scheme and any of the small areas of communal grass or planting beds or bushes etc..."*
15. The Applicant recently had begun careful management of the contract for the cleaning of communal areas of the Building. It stated that the health and safety inspections were carried out "in house" to check emergency lighting. It advised that there was a separate meter for communal electricity charges for the Building.
16. The Applicant justified the amount of all other service charges by reference to the invoices from contractors and suppliers.
17. It stated that its management fee was at a rate of 15% of the service charges and applied also to the sum collected into the Building Fund, which was the subject of a new 10 year plan following a housing stock condition survey.

THE TRIBUNAL'S FINDINGS AND DECISION ON THE SECTION 27A APPLICATION

18. The Tribunal first ascertained whether the sums which form the basis of the relevant service charges are properly provided for in the leases. The Tribunal noted the lease obligations and informed the parties after the first hearing that it found that the Lease contains at clause 4 (c) a right for the Applicant to recover from the Respondent *"future costs"*. The Tribunal noted that those *"future costs"* have to date been variously described by Applicant as *"Building Fund"* or *"Sink Fund"*.
19. The Tribunal's determination of the reasonable service charges for the years at issue is set out in the attached Schedule which shall form part of this Decision. In making its determination the Tribunal looked carefully at such information as was before it concerning works identified as carried out and which comprised the service charges. By reference to each element of expenditure appearing on the Schedule the Tribunal noted and determined as follows.
20. There was no evidence before the Tribunal to show that the costs of lighting of communal parts of the Building either related to other areas or were unreasonable as to amount. Therefore the invoiced charges were approved.
21. In respect of repair and depreciation of TV aerials at the Building it was noted that the Applicant conceded that no charges should be rendered.
22. There were before the Tribunal invoices for expenditure on cleaning of communal bins save for year 2011/12, but the Tribunal was satisfied that such works had been performed in each year at issue. Therefore the charges were approved.
23. Charges for repair of the door entry system appeared in service charge years 2008/09, 2010/11 and 2011/12. The Applicant's point concerning these expenses

was that they should be apportioned only between those flats on the upper floors, being 12. The Tribunal found that the overall cost had indeed been apportioned as to 1/12th between only the upper flats and therefore were reasonable.

24. Concerning the cost of cleaning of communal areas the Tribunal had regard to the Respondents concerns about standards of performance, value for money and how charges were apportioned to the Building when the contractor included charges for operations on other sites. However the Tribunal was satisfied on the evidence before it that the works which were the subject of the charges in each year had been undertaken and were properly apportioned as to the Building and were reasonable in amount.
25. In respect of grounds maintenance, the evidence presented to the Tribunal was that recharging did not occur until 2010/11, but that the local authority was undertaking cutting of grass in the years when costs were being passed on to leaseholders. It was noted that maintenance extended to cutting back of bushes on site. The Tribunal was persuaded that the costs recharged to the Applicant were not reasonably incurred because of the significant works that the local authority was undertaking, making the cost of work by the Applicant's contractors appearing in 2010/11 and 2011/12 unreasonable.
26. An invoice for lighting repairs in 2011/12 was presented to the Tribunal and was not challenged by the Respondent. The apportioned cost to the Respondent in that year therefore was determined as reasonable.
27. A sum of £1.07 understood by the Tribunal after hearing evidence to represent depreciation on replacement key fobs for the door entry system to spread out the cost appears only for 2011/12 and the Tribunal found that to be reasonable.
28. With regard to the Health and safety inspections the Tribunal found that the cost to the Respondent of £11.19 in 2010/11 and £16.70 in 2011/12 were reasonable.
29. The Tribunal established through enquiry that prior to 2010/11 the Applicant had included a sum for management charges within the account entry for grounds maintenance. That process changed in 2010/11 and the fee then was calculated as 15% of the total of the service charge elements. As a matter of principle the Tribunal was satisfied that this was a satisfactory basis of calculation and that the sum for 2009/10 of £15.40 was reasonable. As the cost of services in 2010/11 and 2011/12 have been altered by the Tribunal the amount showing for management charges in those years has been recalculated by the Tribunal and at the rate of 15%.
30. The Respondent did not dispute that collection of a building fund was both permitted by the Lease under clause 4(c) and a prudent action. The Tribunal noted with approval the reassessment exercise referred to in paragraph 19.
31. The Tribunal was persuaded by the Respondent's representations that the rate for calculation of the management fee for the building fund claimed by the Applicant (15%) was excessive. It was clear that the work involved in the relevant years had been limited to administration and maintenance of the fund. The Tribunal determined that a reasonable management charge for that work in the service charge years at issue would be 10%.

14 Greens Place, South Shields – Schedule to Tribunal Decision on service charges

Amounts in £s calculated in accordance with due apportionments

Previous sums appear in brackets

SERVICE CHARGE ELEMENT	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Lighting to common parts	16.67	16.67	14.58	21.88	16.63	17.21
Repair to TV aerial	Nil [3.38]	Nil [3.38]				
Clean & disinfect bins	24.02	24.02	30.67	27.44	30.84	28.00
Door entry system repair			4.96		10.60	25.92
Cleaning of communal areas	59.80	59.80	59.80	53.33	44.55	64.26
Ground maintenance					Nil [31.18]	Nil [43.95]
Lighting repairs						4.15
Door entry system depreciation						1.07
Health & safety checks					11.19	16.70
Management charge at 15% (of revised sum on which calculated)				15.40	17.07	23.60
<i>Sub-total</i>	<i>100.49</i>	<i>100.49</i>	<i>110.01</i>	<i>118.05</i>	<i>130.88</i>	<i>180.91</i>
Building Fund Contribution	377.47	392.74	396.46	405.96	425.33	425.33
Management fee on BF contribution at 10% - all sums revised by Tribunal	37.75	39.27	39.65	40.60	42.53	42.53
Grand total	515.71	532.50	546.12	564.61	598.74	648.77