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

Case Reference : CHI/00MR/LIS/2013/0117

Property : Whitehall Apartments, Kingston Road,  
Portsmouth, Hampshire PO2 7EG

Applicants : Mr McCord; Mr Galea; Mr May; Ms Welch & Mr  
Mead; Mr Newman; Mr Saunders; Mr Cassar;  
Mr Sykes & Mr Thorne (the Tenants)

Representative : Mr S McCord

Respondent : Freehold Services Limited  
(the Landlord)

Representative : Ms Tarnia Simmons of Bernards Estate Agents

Type of Applications: Application for determination as to reasonableness  
of service charges pursuant to Sections 19 and 27A  
Landlord and Tenant Act 1985

Tribunal Members : Judge P.J. Barber  
Mr K M Lyons FRICS Surveyor Member  
Miss J Dalal Lay member

Date and venue of Hearing : 30th June 2014 Tribunal Offices, 1<sup>st</sup> Floor,  
Midland House, 1 Market  
Avenue, Chichester PO19 1JU

Date of Decision: 17th July 2014

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**DECISION**

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each with an independent entrance, and which flats are known as Nos. 211 & 213 Kingston Road. The Building has a longer side frontage to Malthouse Road with two communal entrances; one entrance leads to Flats 1 & 2 (First Floor) and Flats 3 & 4 (Second Floor); the other entrance provides access to Flats 6 & 7 (Ground Floor); Flats 8 & 9 (First Floor) and Flats 10 & 11 (Second Floor). There is also an open bin & cycle store area accessible from the frontage to Malthouse Road, enclosed by a gate; the Tribunal were advised that the gate has only very recently been made lockable. A small house apparently constructed at or about the same time as the Building, adjoins and is attached to the Building at the rear; the Tribunal was advised that the freehold of this house, known as 26 Malthouse Road, has been separately disposed of and is not subject to the service charge arrangements affecting the 13 flats in the Building.

6. The Tribunal did not inspect any of the flats internally but viewed the two respective entrance hall, stairs and landing areas; each was laid with a blue carpet and the walls were plain emulsion painted; there were no lifts. There were individual water meters for 7 flats and electric supply in a cupboard leading off the bin store area which was in a generally untidy condition and the adjoining cycle store was unlit and also untidy. The Tribunal observed that the second communal entrance serving Flats 6,7,8,9,10 & 11 included at ground floor level a cupboard with a further 6 water meters and electric supply. Mr McCord also pointed out a log book hanging inside one of the communal entrance doors which he said showed evidence of six monthly testing of the fire alarm, but had not, he said, been completed to show any weekly checks.

### **THE LAW**

7. Section 19(1) of the 1985 Act provides that :

*“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;*
- and the amount payable shall be limited accordingly.”*

Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

*“(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 cost, 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.

“Service Charges” are defined in Section 18 of the 1985 Act as follows

(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, 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

18(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.

## **HEARING & REPRESENTATIONS**

8. Mr McCord, the lessee of Flat 8 Whitehall Apartments attended and spoke on behalf of all the Applicants. Also in attendance were Mr Adam McCord, Mr Ian Vaughan, Ms Annette Welch (Flat 11) and Mr Philip May (Flat 7). Ms Simmons attended for the Respondent. Mr Sealy, Mr Hawkins and Mr Tawse attended as observers.

### Duplicate Invoices

Mr McCord submitted that as a result of duplicate invoicing, the Applicants had been over-charged by £1251.06. Ms Simmons for the Respondent accepted that such over-charging had occurred and said that a refund should in due course be made. Mr McCord remained concerned that thus far no actual refund had been forthcoming and said that the duplication had only come to light as a result of his having arranged to inspect the invoices.

### Cleaning Costs

Mr McCord said that the cleaning costs of £50.00 (£60.00 including VAT) per fortnight pertaining until May 2012 were not unreasonable. However, Mr McCord submitted that the increase to £184.80 per month from May 2012 onwards was

## CONSIDERATION

13. The Tribunal have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.
14. The Tribunal notes that the Respondent accepts that none of the following amounts should in any event be payable by the Applicants; namely the £1251.06 in respect of duplicated invoices; the £270.12 for electricity; the £60.50 & VAT for Invoice No. 1614 and the £44.00 & VAT for Invoice No. 1635. Accordingly the Tribunal determines that such sums are not reasonable and not payable by the Applicants to the Respondent. In regard to cleaning charges, the Tribunal notes the evidence offered by both parties, but considers it implausible that no cleaning at all to the bin areas would have occurred within the cleaning contract specification prior to May 2012, given that at that time the area was openly accessible, including to passing members of the public. The Tribunal considers that a reasonably competent managing agent ought to have considered arranging for the bin store gate to be locked in the light of ongoing problems with rubbish being deposited, resulting in the necessity for repeated removals at cost to the lessees. Nevertheless Mr McCord had not sought to challenge each and every invoice in detail; consequently whilst the Tribunal considers the evidence of the agents to be somewhat implausible on this point, it is unable to determine that the charges were specifically unreasonable, given a lack of any clear and unequivocal evidence that the work was not in fact done.
15. In regard to Bernards charge of £1,475.00 as managing agent for the relevant period, the Tribunal considers there was evidence of a failure by Bernards properly to address, and economically deal with the problem of rubbish being deposited in the open bin store area. Similarly the Tribunal considers that it was less than competent for Bernards to have allowed £1251.06 in duplicated invoices to pass through their system unnoticed and similarly in regard to the excess electricity costs. The Tribunal also notes that two further invoices had been included erroneously by Bernards. The Tribunal notes the view of Mr McCord that the managing agents should only be entitled to a fee equating to 50% of that actually charged. Nevertheless the Tribunal notes that at least some management of the Building had occurred, albeit not entirely competently but considers that a 50% reduction would be excessive. Accordingly the view of the Tribunal on balance and after taking all matters into account, is that only 80% of the fee of £1,475.00, namely £1,180.00 should be payable by the Applicants in respect of the managing agents relevant charge.
16. We made our decisions accordingly.

Judge P J Barber

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.