



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

Case Reference : CHI/00LC/LSC/2017/0022

Property : Flats 2-8, Bayeux Gardens, Gillingham
ME7 2WD

Applicant : Kay Turner

Representative : Mr Faulkner (Surveyor)

Respondent : Sovereign Quarter Management
Company Limited

Representative : Melanie McIntosh (Counsel)

Type of Application : Section 27A

Tribunal Members : Judge D Dovar
Mr R Athow

**Date and venue of
Hearing** : 20th July 2017, Chatham

Date of Decision : 22nd August 2017

DECISION

1. This an application under section 27A of the Landlord and Tenant Act 1985 for the determination of service charges payable for the years ending 2014 to 2017.
2. On the morning of the hearing, the Tribunal inspected the Property and the surrounding estate in which it was located. The Property is one of four flats in a block within an estate of 325 units of mixed tenure and various amenity areas.
3. The dispute related to the costs claimed for cleaning and management fees.

Cleaning

4. In relation to cleaning, the original cleaning costs claimed were £34 per week. The invoices provided for these costs showed that there was a charge each month to change the lightbulbs. This seemed a little excessive, particularly for the small communal space in this four unit block which had four internal lights. The Respondent said that they had raised this with the contractor and it was when they failed to give an adequate response, that they were dismissed and a new contractor employed. That occurred in July 2016 and the cost per clean reduced to £20 per week. This was in line with an alternative quote obtained by the Applicant.
5. The Applicant contended that the cost should be £1040 per annum on the basis that: a.) that was the current cost and it would be expected that costs

would rise not fall over time; and b.) the extra costs for light bulbs was excessive.

6. The Tribunal agrees with the Applicant's points and determines that for all the years in question the cleaning costs that are recoverable are £1,040 per annum.

Management Fees

7. The management fees are broken down by the Respondent into fixed Block fees, additional Block fees, fixed Estate fees and a variety of additional Estate fees. The Block fees relate to the physical block containing the Applicant's flat along with three other units. The Estate fees are for the rest of the estate comprising 325 units and various amenity spaces.
8. The Applicant raised two issues in respect of the management fees claimed. The first was the scope of the work covered by the fixed fee; she maintained that it was too narrow and there were too many 'extras' that she had to pay for. The second was the amount of the fixed fee, which she contended was too high in any event.
9. For 2014, the demands contain sums for: Estate Management fees of £20,557; Estate Management other fees of £1,863; Estate Professional fees of £762; Estate Legal fees of £1,010; Estate Postage and Copying of £511.
10. For 2015: Estate Management fees of £21,790; Estate Management other fees of £2,683; Estate Legal and Professional fees of £605; Estate Postage

and Copying of £2,492. There were also Block Management Fees of £753; and Block Other Management fees of £203.

11. For 2016: Directors and Officers Insurance of £400; Estate Budget Management fees of £23,010; Estate Management Budget other fees of £500; Estate Budget Meetings and Inspection of £1,500; Estate Budget Professional fees / CoSec of £1,600; Estate Budget Admin fees of £1,000; Estate Budget Postage and Copying of £2,000. There were also Block Management Fees of £800; and Block Meeting and Inspection Fee of £265.
12. For 2017: Directors & Officers Insurance £400; Estate Management fees of £23,700; Estate Management Budget other fees of £1000; Estate Budget Meetings and Inspection of £1,500; Estate Budget Professional fees / CoSec of £1,075; Estate Budget Admin fees of £2,000; Estate Budget Postage and Copying of £2,000; Document Store/Archive of £175; and Bank Charges £60. There were also Block Management Fees of £825 and Block Other Management fees of £450.
13. The Applicant provided an alternative quotation for management fees from the Alexander Faulkner Partnership Ltd, which for a total of £17,430 would deal with both the items within the fixed fee and all the items set out under the various additional charges. Further, for £600 they would cover all of the 'Block' matters set out above.
14. The Tribunal referred the parties to the RICS Code of Practice: Service Charge Residential Management Code (3rd Ed) ('the Code') and the

suggestion of what should be included as part of the fixed fee as a matter of good practice.

15. The Tribunal were taken through a number of the invoices relating to the additional 'Estate' and 'Block' fees charged by the Respondent. They included additional fees for estate inspection, meeting and travel.
16. The Respondent confirmed that the fixed fee only allowed for 1 annual inspection. The Tribunal considered that this was far too few on an estate of this size. The fact that each year additional inspections were necessary confirmed that view. The Code recommended an appropriate number of inspections should be included in the fixed fee. In addition, travel costs to the site were added on top of the inspection fee. Finally, the fact that additional fees for 3 further inspections were included in the budget for the years 2016 and 2017 meant that the Respondent plainly considered that 1 inspection a year was not appropriate for this estate; something that the Respondent conceded when questioned.
17. The Tribunal was concerned that the Respondent had set the services provided within the fixed fee at too low a level; with the result that too many additional items were then charged. Postage was another item that should have been included within the fixed fee. It was foreseeable that the copying and circulation of year end accounts would be necessary and should be part of the standard management fee.
18. Whilst the Respondent's fixed management fees were higher than the quote obtained by the Applicant, for both estate and block, the Tribunal did not consider that this alone warranted reducing the management fees.

There was not such a significant difference to suggest that the fixed fees were ones that were unreasonably incurred. Further, given the deductions made below in respect of the additional charges, the management fees now essentially covers more work.

19. In light of the current level of the fixed management fee, the alternative quotation (and what work that would have covered) and the failure by the Respondents to properly assess what should be in the fixed fee, the Tribunal considers that the 'extras' are on the whole too much and many should not be permitted in addition to the management fee claimed. They are regularly recurring items that should be in the fixed fee.
20. On that basis, the following figures are determined as payable:
 - a. For 2014: the Estate Management fee of £20,557, the Estate Legal Fees of £1,010;
 - b. For 2015: the Block Management Fee of £600, the Estate Management fee of £21,790, the Estate Legal and Professional Fees of 605;
 - c. For 2016: the Block Management Fee of £800, the Estate Budget Management fee of £23,010, the Estate Budget Professional Fees / CoSec of £1,600;
 - d. For 2017: the Block Management Fee of £825, the Estate Budget Management Fee of £23,700 and the Estate Budget Professional Fees / CoSec of £1,075.

21. The last two years are budgeted amount and so are subject to adjustment once the year end accounts have been produced.

Section 20C

22. The Applicant made an application under section 20C of the 1985 Act to limit the Respondent's costs of the application from being recovered through the service charge.
23. The Respondent confirmed that they only intended to put the cost of their counsel's attendance at the hearing through the service charge. They were unable to point to any specific clause in the lease which entitled them to recover such costs by way of service charge, but relied on paragraph 5.1 of the Fifth Schedule which permitted the Respondent to charge a service charge for the 'payment of all costs and expenses incurred by the Company or its appointed agents: 5.1 in the running and management of the Estate Management Areas and the collection of the Estate Service Charges and in the enforcement of covenants ...'
24. The Tribunal does not consider that legal costs for an application brought by a tenant to challenge the reasonableness of items claimed falls within that clause. It is not sufficiently clearly set out.
25. In any event, the Tribunal does make an order under section 20C preventing any cost in relation to these proceedings from being recovered through the service charge as: a.) the Applicant has been on the whole successful in her application and b.) the Tribunal was concerned at the manner in which the fixed fee had been used by the Respondent.

A handwritten signature in black ink, appearing to read "J. D. Dovar". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Judge D Dovar

Appeals

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.

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.

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.

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.