



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

Case Reference : **MAN/00BN/LIS/2014/0005**

Property : **12, The Sanctuary, Park Mews, Hulme,
Manchester M15 5TR**

Applicant : **The Riverside Group Limited**

Respondent : **Mr. A. J. Andrzejczuk**

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

Tribunal Members : **Mrs. C. Wood
Mr. D. Pritchard**

Date of Decision : **8 September 2014**

DECISION

Decision

1. The Tribunal determines as follows:
 - 1.1 that the amounts included in the service charge for insurance and for cyclical costs contributions for the service charge years 2009/10 to 2013/14 are reasonable but the Respondent's liability to pay these amounts as part of the service charge is limited as set out in paragraphs 1.2 – 1.4 below;
 - 1.2 in accordance with the terms of the lease dated 17 March 2000 and made between Riverside Housing Association Limited (1) and the Respondent (2) ("the Lease"), the Respondent is liable to pay as service charge the amount determined in accordance with clause 7 of the Lease, specifically, the Specified Proportion of the Service Provision, (as those terms are defined in the Lease), which, in the absence of any evidence as to amendment in accordance with clause 7(7) of the Lease, is limited to the sum of £20.05 per month together with the Service Charge referred to in clause 7(2)(b) of the Lease;
 - 1.3 as a result, in respect of the monthly service charges levied for the past service charge years 2009/10 – 2013/14 (inclusive) the Respondent's liability to pay service charge is limited to the amount of £20.05 per month;
 - 1.4 with respect to any future service charge year, unless and until the Specified Proportion has been amended in accordance with clause 7(7) of the Lease, the Respondent's liability to pay service charge is limited to the amount of £20.05 per month; and,
 - 1.5 in view of the decision in paragraphs 1.1-1.3 above, it is just and equitable to make an order under section 20C that none of the Applicant's costs incurred in connection with this application are to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the Respondent.

Application

2. By an application dated 28 March 2014, ("the Application"), the Applicant sought a determination pursuant to s27A of the Landlord and Tenant Act 1985, ("the Act"), of the liability of the Respondent to pay, and the reasonableness of service charges for the past years 2009/10, 2010/11, 2011/12, 2012/13 and for the current/future years 2013/14 and 2014/15.
3. Directions dated 7 April 2014 were issued in pursuance of which both parties made written representations to the Tribunal.
4. It is clear from the Respondent's representations that there were only two matters in issue within the service charge accounts, namely, the insurance and the cyclical repairs contribution.

5. The Applicant's representations included the following documentation:
 - 5.1 a copy of the Lease; and,
 - 5.2 a copy of the service charge budget for each of the service charge years from 2007/08 – 2014, and the service charge accounts for each of the service charge years 2008/09 – 2012/13.

Inspection

6. An inspection of the exterior of the Property and the external communal areas took place on Friday 15 August 2014 at 10am. The Applicant was represented at the inspection by Ms. M. Kearns, Ms. A. O'Brien and Ms. N. Brassington. The Respondent attended in person.
7. The Property forms part of a development comprising 48 flats, 3 houses with drives and 27 houses without drives, ("the Development"); the Property is a house without a drive.
8. The inspection focussed on the works carried out at the Development in previous years, the funds for which were collected from the leaseholders as the cyclical repairs contribution. It was established that:
 - 8.1 external and internal redecoration was carried out every 4 years following a report from an external surveyor as to the extent of works required;
 - 8.2 separate costings were obtained for the internal and external redecoration works;
 - 8.3 the costs of external redecoration was split equally between all units at the Development;
 - 8.4 it was asserted by one of the Applicant's representatives that all of the leases for the houses without drives are in standard form and are silent as to a percentage contribution to the service charge expenditure.
9. With regard to the insurance, the Applicant's representative reiterated the evidence contained in the written representations that:
 - 9.1 although the Development was insured under a group policy, each development has a premium which is referenced to its particular claims' history;
 - 9.2 the erroneous practice of charging separately for the insurance costs has since been rectified and it now forms part of the service charge.

The Lease

10. The relevant provisions of the Lease are as follows:

- 10.1 under clause 7(2), the Leaseholder covenants to pay the Service Charge in equal monthly instalments;
- 10.2 "The Service Charge" is defined in clause 7 (1)(d) as:
"...the amount payable in accordance with the Specified Proportion of the Service Provision";
- 10.3 "Specified Proportion" is defined in clause 7(1)(b) as:
"...the proportion specified in the Particulars as amended from time to time under sub-clause 7(7)...";
- 10.4 "Specified Proportion" in the Particulars reads:
" £20.05 per month (being the Service Charge) together with the Service Charge referred to in clause 7(2)(b)";
- 10.5 clause 7(2)(b) provides for the payment of a sum equal to 0.25% of either the sale price or the open market value of the Property on a sale or other disposition of the Property;
- 10.6 clause 7(7) provides as follows:
" (a) If in the reasonable opinion of the Surveyor it shall at any time become necessary or equitable to do so he may increase or decrease the Specified Proportion
(b) The Specified Proportion increased or decreased in accordance with sub-clause 7(6) (sic) hereof shall be endorsed on this Underlease and shall hereafter be substituted for the Specified Proportion set out in the Particulars of this Underlease"

The Law

- 11.1 Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:
- (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.

11.2 Section 19 provides that –

(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 if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

11.3 Section 27A provides 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 date at or by which it is payable, and

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3)

(4) No application under subsection (1)...may be made in respect of a matter which -

(a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

11.4. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

Tribunal’s Deliberations

12. In reaching its decision, the Tribunal noted as follows:

12.1 that the methodologies adopted by the Applicant for determining the amounts to be charged within the service charge as the cyclical costs’ contribution and for insurance are reasonable;

12.2 specifically, the Tribunal considered that it was reasonable for:

- (i) the expenditure on external redecoration to be shared equally between all 78 units at the Development; and,
- (ii) for the insurance to be effected under a group policy which referenced the claims’ history of the Development as a whole;

12.3 because the total monthly amount of the service charge was limited by the terms of the Lease to £20.05 per month, it was not possible to make a determination of the amounts to be included within the service charge for these items of expenditure.