



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

Case Reference : **CHI/45UG/LSC/2016/0019**

Property : **21 Kilbarn Court, Haywards Heath RH16 4SE**

Applicant : **Mr James Henry Perry**

Respondent : **Accent Foundation Limited**

Representative : **Simon Allison, counsel
Matthew Cobb, Housing Manager
Ida Horner, Housing Officer**

Type of Application : **Section 27A of the Landlord and Tenant Act 1987**

Tribunal Members : **Judge D. R. Whitney
A. Mackay FRICS**

Date of Hearing : **29th July 2016**

Date of Decision : **3rd August 2016**

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DECISION

1. This was an application by Mr Perry who is the long residential leaseholder of 21 Kilnarn Court, Haywards Heath, Sussex ("the Property") for a determination of the liability to pay and reasonableness of certain service charges. The Respondent is the freeholder of the building in which Mr Perry's flat is situate.
2. A telephone directions hearing was held on 29th April 2016 at which both parties were represented. It was agreed that the matters for determination were:

Management fees for the service charge years 2009 and 2010;
Electric and lighting charges for the years 2014 and 2015;
Gardening charges for the year 2015;
3. The directions were substantially complied with and a hearing bundle was supplied. An additional hearing bundle was also supplied shortly prior to the hearing. References to page numbers in this decision are to pages within these bundles.

THE LAW

4. In reaching its determination the Tribunal had regard to Sections 27A and 19 of the Landlord and Tenant Act 1985.

INSPECTION

5. On the morning immediately prior to the hearing the Tribunal inspected the site on which the Property is situate in the presence of those who attended the hearing.
6. The site in question consists of three blocks of flats known as Kilnarn Court which are part of a larger development which also includes a number of houses. Flats 1-15 are the first two blocks being Flats 1-6 and 7-15 (with no Flat 13) which are joined. The third block, 16-21 which includes the Property is separate.
7. The blocks appear to have been built in or around the late 1980's and are of brick construction with a pitched roof being part tile hung with some areas rendered. Adjacent to block 16-21 is a concrete parking area. Around the parking area are beds of shrubs which appear to be tended and maintained although there were some sycamore shoots growing through the shrubs. Running around the perimeter of the site containing the flats is a concrete pathway with grassed areas which appeared to be maintained. There were also some trees in the communal areas and at some points wooden post and rail fencing.
8. The main access to block 16-21 was accessed down a flight of stairs with metal rails through which some shrubs protruded. The block is accessed via a doorway with an electronic door entry system.
9. Attached to block 16-21 are two external lights which appear to light the car park. Internally in the communal hallway for 16-21 were two lights with motion sensors and two emergency lights and the Tribunal was told this was replicated on each landing.
10. The communal areas, both internally and externally, appeared to be maintained and generally in good order.

HEARING

11. At the start of the hearing Mr Allison looked to introduce an additional bundle. Mr Perry agreed to the same and the Tribunal accepted this bundle. Mr Perry had also sent an additional statement of 5th July 2016 and Mr Allison agreed that the Tribunal could have regard to the same.
12. The Tribunal noted that the Respondent had agreed in respect of the management fees to offer a credit totalling £97.06 for the two years in dispute (see page 147 of the bundle). Mr Perry confirmed he was happy to accept this credit and he was now content with the management fees for the years in dispute.
13. Mr Perry accepted in principle that the Respondent was entitled under the terms of his lease to make a charge for gardening and external maintenance to the communal areas and also for the cost of electricity and lighting within the block containing the Property.
14. Mr Perry explained in respect of the gardening his concerns were that the cost seemed to have risen substantially compared with previous years, over 40% he suggested. Also the invoices appeared to show that the same amount was charged each month although he did not believe there were any winter attendances. He was content with the previous level of charges for gardening but not the increased level.
15. Mr Perry referred to the accounts for 2014 at page 86 which showed the cost was £481.25 whereas in 2015 the cost was £713.30 (see page 87).
16. Mr Allison stated that the sums claimed for gardening had been essentially static for some years. By way of further example he referred to the charge in 2013 which was £478.47 at page 83. Whilst a copy of the contract was not within the bundle, he submitted that there was a contract with the service provider.
17. Mr Allison invited the Tribunal to hear from Mr Cobb but given there was no witness statement provided by him in accordance with the directions the Tribunal declined to hear from him.
18. Mr Allison submitted that the invoices were at page 127 onwards. These showed that the contractor billed the contract on a monthly basis for Kilnbarn Court as a whole. The contractor undertakes 26 visits a year taking approximately one to one and a half hours per visit. Their role is not just to do gardening but also to undertake litter picking and cleaning as required. Essentially the cost is about £25 per visit. Mr Allison invited the Tribunal to consider what they saw on the inspection and the fact that in his submission the grounds are plainly maintained and the cost charged is in his opinion reasonable as it is hard to see that a contractor would undertake the works for less. He submitted that the invoicing by equal monthly amounts is a matter of convenience for the contractor and is typical for these types of services.
19. Mr Perry contended that in his opinion the gardening was not well carried out. He referred to the incidence of sycamore shoots growing through the shrubs. He also felt the shrubs were not properly trimmed. He also would have preferred to see the actual contract and whilst he accepted that the actual amount of each visit of £25 was in his words "not too unreasonable" he did suggest that a local contractor may do cheaper

and referred to the fact his grandson undertakes gardening at £10 per hour in the locality.

20. The Tribunal then moved on to the question of electric and lighting charges. The total charges for the years, of which Mr Perry paid 1/6th, were for 2014 £27.96 and for 2015 £74.22.
21. Mr Perry contended that the various invoices and the usage they showed were not consistent. He submitted that he had requested copies of credit notes which only now by way of the additional bundle had been supplied. He suggested that still there were issues relating to the actual number of units referred to in these documents. He suggested the problem was that the invoices themselves were not properly checked.
22. Mr Perry also alleged that in 2014 for much of the time the lighting was not working at all.
23. Mr Allison explained that the Respondent used an external agent, Monarch, who administered the provision and supply of electricity. He explained that the meters are read every two years and in between estimates are taken and then reconciled once the readings are taken. He referred the Tribunal to page 152 onwards (which is in the additional bundle) which included all the credit notes. Mr Allison did explain on some occasions credits may be in different years thus causing some fluctuation.
24. Mr Allison referred to page 12 of the bundle which set out the Respondent's case. He confirmed that the Respondent had accepted the earlier Tribunal decision and adjusted the charges to not include the cost of lighting the car park.
25. Mr Allison submitted that there was only limited lighting. He explained as could be seen the charges were very low with Mr Perry's share being small particularly so for 2014 when Mr Perry complained of lack of lighting. He referred to the Respondents reply at page 148 and also various spreadsheets in the additional bundle at page 181 which showed, he submitted, that repairs had been undertaken.
26. In respect of the credits those at pages 152 to 165 were credits and then invoices for the earlier invoices copies of which were found at pages 117 to 126. In effect what happened were that the earlier invoices were all credited and new invoices issued. Mr Allison went through these by reference to each invoice to show the sequence and how they linked together.
27. Mr Perry confirmed he was satisfied with the explanation of the credits Mr Allison gave and that he understood how these tied in together. He confirmed this explanation dealt with any issue he may have had over the credits and the relationship with the invoicing.
28. Mr Perry accepted that the amounts he was being charged in each of the years was reasonable.
29. Mr Perry remained concerned that no adjustment was made for the car parking but again accepted the actual charges were reasonable.

30. Mr Perry remained concerned that the Respondent had not obtained a payment of interest on the amounts of the overcharge they had recovered from the electricity provider. The Respondent had recovered about £8,000 in total for the development of which an appropriate credit had been given to Mr Perry. He wanted the Tribunal to order that the Respondent should seek to recover interest on this money. He suggested that they should get interest of 1.5% on this sum.
31. In response Mr Allison submitted that whilst he did not have a copy of the calculation in respect of the car parking he submitted a reduction had been made and looking at the modest sums and the overriding objective this should be accepted.
32. As to the question of interest he suggested that Mr Perry had not advanced any legal reason why the Respondent should pursue this. Further in any event the Respondent had obtained the overpayment and he would suggest even on the interest figure Mr Perry contends for it was not economic to pursue further.
33. Mr Perry in closing remarked that this was the third time he had been to the Tribunal. He believes principally this is due to a failure on the Respondents part to communicate.
34. Mr Allison confirmed that the two representatives from the Respondent were happy after the hearing to discuss with Mr Perry any and all concerns he may have.
35. The Tribunal urged both sides to use this opportunity to discuss any matters and reminded them that coming to the Tribunal may not be constructive in resolving matters given they both have an ongoing relationship.

DECISION

36. The Tribunal records that Mr Perry accepted the offered reduction in respect of the management charges of £97.06 and that subject to this reduction he was content with the management charges. For the avoidance of doubt subject to the concession offered and accepted the Tribunal finds the management charge for the years 2009 and 2010 is reasonable.
37. In respect of the gardening the Tribunal finds that for the year 2015 the charge of £713.30 in total for Flats 16-21 of which Mr Perry's share is 1/6th is reasonable.
38. The Tribunal accepts that it is usual for the cost of such services to be billed on an equal monthly basis over a year despite the fact that the service provision may differ over the seasons.
39. Whilst sight of the contract may have been helpful the Tribunal relies on its inspection for the site as a whole. It was plain that maintenance was being undertaken. The shrubs, grass and car parking and pathways were all plainly maintained. The standard was reasonable in this Tribunal's determination.
40. The Tribunal accepts that 26 visits per annum is a reasonable number having regard to the site as a whole. Little evidence was available as to why the price had risen. Turning to the price the charge for block 16-21 Kilnbarn Court amounts to

approximately £27.50 per visit. Mr Perry's share of this charge is about £4.50 per visit.

41. In this Tribunal's determination, however one looks at this the price is modest. We remind ourselves that in determining what is reasonable it is not a question of finding the cheapest service. Looking at what is required, having inspected and having heard submissions as to the time allowed the Tribunal was satisfied that the service provision and the charge was reasonable.
42. The Tribunal notes that during the course of the hearing Mr Perry conceded that the electric and lighting charges for 2014 of £27.96 and for 2015 of £74.22 for block 16-21 as a whole were reasonable. For the avoidance of doubt the Tribunal confirms it also finds such charges are reasonable.
43. The charges are modest. The Tribunal on its inspection saw the various lights etc. which use electricity.
44. The Tribunal was satisfied as to the explanation of the various invoices and credit notes. The Tribunal records that Mr Perry was also satisfied having heard the explanation.
45. Mr Perry challenged that the lights were not working for much of 2014. This was not accepted by the Respondents who had exhibited spreadsheets showing works undertaken. In any event the actual charge in that year was negligible with Mr Perry's share for the whole year amounting to approximately £4.50.
46. Mr Allison confirmed that in view of the earlier Tribunal decision a reduction was made to exclude car park lighting. The Tribunal accepted this submission.
47. As to the question of interest as the Tribunal reminded Mr Perry during the hearing we have no powers to order the Respondents to pursue the energy supplier. We note that we are satisfied as to the explanation given by Mr Allison. This Tribunal accepts that it was reasonable for the Respondent to accept the refund offered and not to pursue further any interest which would have been modest if, which is far from certain, there was any legal right to the same.
48. The Tribunal has determined that all of the sums which Mr Perry looked to challenge are reasonable. The Tribunal notes that this is the third Tribunal hearing for very modest sums. The parties are urged to try and have a dialogue to resolve issues for the future.

Judge D. R. Whitney

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.