



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : **MAN/OOBR/LSC/2015/0094**

Property : **The Quadrant, 290 Camp Street, Salford, M7
1ZN**

Applicant : **Krishna Wilson**

Respondent : **Contour Property Services Ltd**

Type of Application : **S27A Landlord and Tenant Act 1985
S20 Landlord and Tenant Act 1985**

Tribunal Members : **Judge J Murray LLB
Mr M C W Bennett**

Date of Decision : **5 April 2016**

REASONS FOR DECISION

DECISION

1. All service charges sought by the Respondent from the Applicant for the years under review are payable by the Applicant to the Respondent.

INTRODUCTION

2. The Applicant submitted an application dated 4 September 2015 seeking a determination as to her liability to pay and the reasonableness of service charges under s27A Landlord and Tenant Act 1985 in respect of Flat 290, The Quadrant Camp Street Salford M7 1ZN (“the Property”), and limitation of costs under s20C of the same Act for the years 2011 - 2016.
3. By her statement dated 29 January 2016 the Applicant confirmed she was disputing only the years 2012 - 2016, the years to 2011 having been the subject of earlier Tribunal proceedings.

THE PROCEEDINGS

4. Directions were made on the 6th November 2015 by Judge Holbrook.
5. The Respondent was to send to the Applicant copies of all relevant service charges and budgets by 20th November 2015, along with a statement showing total service charges payable for each year in dispute, and explaining by reference to the lease the basis on which charges were calculated, applied and apportioned.
6. Within 21 days of receiving that information the Applicant was to send to the Respondent a statement of case setting out the basis of her application, which must identify in respect of each year in dispute, the service charge its in dispute. The statement had to be accompanied by any documents the Applicant wished to rely on at the hearing.
7. Within 21 days of receiving the Applicant’s statement of case the Respondent was to send the Applicant a statement setting out its reasons for opposing the application.
8. Within 7 days of receiving the Respondent’s statement of case the Applicant was entitled to may a short supplementary statement in reply.
9. The Parties were to try to agree a single bundle of documents for use at the hearing, in a file, with numbered pages and a list of contents, which should include a number of documents, listed in the directions.

10. There had been some delay with compliance with the directions, but by the time of the hearing the Applicant had filed a statement and the Respondent had filed a response, and put together a bundle, although it did not contain all the documentation required by the Directions, and was not indexed and paginated.
11. A Tribunal was appointed and an inspection of the Property took place on 11 March 2016 at 10am. The Applicant attended along with a friend Dora Blake, a Housing Officer who attended in a supportive role. Leasehold Officer Mike Johnston and Michelle Howard, Leasehold Manager attended the Inspection for the Respondent.
12. The substantive hearing of the application was held at the Manchester on 11 March 2016 at the Tribunal Service office at 11.30am. At the hearing, the Applicant appeared in person, accompanied once more by Dora Blake. The Respondent was represented by Mike Johnstone Leasehold Officer and Michelle Howard Leasehold Manager.

THE PROPERTY

13. The Property is a second floor apartment in a self contained development in New Broughton, Salford known as the Quadrant. The Quadrant is mixed privately owned and social rented apartments. The development consists of Building L1, which has 99 apartments, (including the Property) and a smaller building L2, which has 40 apartments, and 9 houses. L2 and the houses are owned and let on residential tenancies by Contour Homes, a Housing Association. L1 is almost equally split between privately owned apartments, and apartments are again owned and let by Contour Homes. Contour Property Services are managers for the leasehold properties on the scheme, and are themselves a "sister" organisation of Contour Homes, and a subsidiary of Symphony Housing Group, a major Housing Association.
14. New Broughton was described in the Respondent's submissions as part of a major housing regeneration programme within the Government's Housing Market Renewal "Pathfinder" programme, with a mixture of family housing and apartment blocks, developed for sale and rent.
15. Leaseholders pay towards a block service charge and environmental service charge which covers external maintenance of the estate. The block service charge the Applicant pays for relates to her block, L1. All residents pay for the environmental service charge.

16. The Tribunal found the building and the external aspects of the estate to be in good condition. Externally it presented well, with some evidence of the need to redecorate parts of the render. Common parts were reasonably clean tidy, and decorated to a reasonable standard. The lift was serviceable, and the stairs clean and tidy. There was no evidence of a litter problem on the car park, the bin store was found to be clean and tidy. The Applicant stated that it was not in this condition when she had visited the week before. The Tribunal was shown the ground floor flat which had been particularly badly affected by the leaks to the building which commenced in 2014. It was in the process of being reinstated after major works of rectification.

THE LEGISLATION

17. The relevant legislation is contained in s27A and s20C Landlord and Tenant Act 1985 which read as follows:

s27A Liability to pay service charges: jurisdiction.

(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 costs 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.

(4)No application under subsection (1) or (3) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant, .
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party, .
- (c) has been the subject of determination by a court, or .
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

s20C Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, [residential property tribunal] or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

THE LEASE

- 18. The lease, dated 30 September 2008 was granted for a term of 250 years from 1st January 2007, by the Landlord Countryside Properties Land (One) Limited and Countryside Properties Land (Two) Limited to the Applicant. The Respondent is a party to the lease as Managing Agent.
- 19. In the recitals, the lease records that it is intended subject to contract that the Headlease will be assigned to the managing agents.
- 20. The Service charge is computed in accordance with Paragraph 2 of the Fourth Schedule.

21. Under the terms of the Lease, the Respondent is obliged to carry out services specified in the Fifth Schedule

THE EVIDENCE AND SUBMISSIONS

22. In her application, and accompanying statement, the Applicant indicated that the service charges she was asked to pay did not reflect the services provided. The Respondent prepared a Scott Schedule listing the Applicant's concerns, and setting out their response.
23. The Tribunal invited the Parties to make oral submissions in respect of each disputed item of the service charges, adopting the sequence as set out in the Scott Schedule. The Tribunal's subsequent determination is set out below each item
24. **Door Entry System:** the Applicant said that Anti Social Behaviour (ASB) had not been dealt with effectively, that the door had been repeatedly vandalised and jammed open by other residents. The Respondent said that between 2012 and 2015 there had been 6 reported incidents of faults to the door entry system. It has since been replaced by an aluminium door (using money from the sinking fund) which is more robust, and call outs have been less frequent. The Respondent said that not all of the call outs were as a result of vandalism; doors would often need adjusting, or furniture/locks attending too. The Applicant said that the door should have been replaced earlier, and then less repairs would have been necessary.
25. **Determination:** the Tribunal found that the repairs had been carried out at a reasonable cost. The Respondent could not have been expected to improve the door at the first or even the second repair. They had been prudent with leaseholder's monies. The service charges here were reasonable and payable.
26. **Window cleaning:** the Applicant disputed these charges, saying she cleaned her own windows, and that she had been told by the Respondent that her windows could not be reached. The Respondent pointed out that the lease obliged it to clean external windows on a regular basis. Access was gained by a cherry picker, but a pole system was also used. The Respondent said that they did not clean patio doors on balconies, or the internal glass of balconies, and that their contractors had instructions to clean three times a year, reduced from five times a year following consultation with leaseholders.

27. **Determination:** The Applicant told the Tribunal that she had not lived in her flat for twelve months, having moved out and subsequently sublet it. She had not asked her sub - tenant whether he was satisfied with services or not. The Tribunal was satisfied that the Respondent had contracted for a service and there was no reason to believe that all flats were not having their windows cleaned under that contract. The Respondent said that no other leaseholder was complaining. They had behaved responsibly by consulting with leaseholders and reducing frequency of cleaning in accordance with leaseholders' wishes. The service charges here were reasonable and payable.
28. **Block management charges:** the Applicant felt that her flat was badly managed and the charge of £20 per month did not reflect the service she received. She pointed to a number of issues as evidence of this, and the Respondent responded to those issues in turn.
29. She submitted that cleaning had been poor, cannabis could be smelt on the second floor, and there were reports of mice and cockroaches in flats. She said that there had been no leasehold officer for the flat, and that there had been a drugs raid on 300 Camp Street. She said she had been forced to leave the flat as allegations made by another occupant against her had been accepted by the Respondent, when she herself had been suffering ASB.
30. A further issue that had caused her to leave her home was dampness caused by leaking, which she said had affected her health. Mr. Johnstone told the Tribunal that the Respondent was first aware of water ingress in August of 2014. It had resulted from design problems, being an issue with flat roof and plumbing installations in bathrooms, and affected nine separate flats, seven severely. Getting access to privately owned apartments was complex; one particular leaseholder had no problems in his flat and was reluctant to allow his flat to be interfered with for investigative works, but this was necessary. The Respondent did not have details of all occupants; ascertaining this information involved contacting three different lettings agents, leaseholders, and other residents. Bathrooms had to be completely removed to get to the roof of the problem. All of this he said, took time.
31. Repairs to the communal soil stack (which went through all floors of the block) took place in September/October. They had thought it was repaired, but then there were then further leaks in the flat roof, which had a rubberised membrane which could easily become punctured, in September 2014. It took some time for experts to identify where the leak was coming from.

32. The Respondent engaged with the original developer who were reluctant to get involved, but ultimately they did do so and got the sub contracting rooers involved, alongside a specialist diagnostic company. The Respondent used all the available “tools” to find out where the leaks were coming from and ascertain the correct solution. It was a process of elimination, resulting in and the damage was considerable. This was concealed behind a stud wall in all the bathrooms. At the same time, some seals were gone in showers, which took time to eliminate. Repairs were completed September 2015, bathrooms fitted etc, but the situation had to monitor for a period.
33. The overall cost of repairs in region of £35,000 - 40,000. The Respondent was able to get a substantial amount of the work paid for/underwritten by the Developer, partially by insurance, and a smaller portion from the service charge. Despite the extensive amount of management time, negotiations on behalf of the leaseholders, no additional management charges were made for this work; Management charges for block for 14/15 period £17.54 and £2.24.
34. The Respondent told the Tribunal that Management fees are reviewed annually. They benchmark against other organisations and look at the level of service provided. The Applicant did not have evidence of other service charges for management of a comparable development.
35. The Applicant also stated that ASB was not managed effectively. New residents were placed above Ms. Wilson by Contour Homes. There was noise nuisance and abuse. The Police were called three times by the Applicant. However they were also called to her door, and her friend was accused of punching someone. The Respondent said that they had a process they followed to deal with anti social behaviour, and they signposted complainants to other services (local authority, police, Contour Homes). They said that the Applicant had been offered mediation. There had been counter allegations against her by neighbours, and they were told that Contour Homes was actually on the verge of obtaining an injunction against the Applicant, who had made 25 separate complaints relating to eight separate households, but she left her flat before the application was made, so it was abandoned.
36. **Determination:** The Tribunal determined that the management charges were entirely reasonable and payable. The Respondent had dealt with the complex water ingress situation well in the circumstances, and had not sought any additional fee for this time spent, which went above and beyond the normal management activity expected (and budgeted for) for an apartment block. They had been prudent with leaseholders monies and had sought redress appropriately. The ASB was difficult for them to determine who was responsible given allegations were met with 29 separate counter allegations accusing the Applicant/her visitors of ASB.

They had been neutral as a management company should be, and made appropriate referrals, which had resulted in offers of mediation and noise monitoring equipment.

37. **Bins in and out charge:** The Respondent had charged for contractors to move the 1100 Litre bins from the bin chute room to the car park at an annual cost of £4300. The Applicant felt that this was duplication, given there was a caretaker and the Council collected waste. The Respondent said that from a health and safety perspective, the caretaker could not do this alone, and the Council would not collect the bins from the bin chute room. This involved two journeys, by two men, twice a week, to take the bins out, and then put them away again. They would also cover the caretaker's holidays. The cost was around £15 per visit, for two men.
38. **Determination:** the Tribunal found that this charge was reasonable, and payable.
39. **Fly tipping:** the Applicant objected to paying for removal of flytipping; which she put down to the turnover of occupants in the Contour Hoes properties. The Respondent stated that their contractors took photographs of flytipping (some sample photographs were included in the bundle). They had no evidence of who was responsible; had they obtained this they could pursue the "polluter" for payment.
40. **Determination:** the charge was reasonable, and payable.
41. **Electricity:** The Applicant in her submissions said that there seemed to be two separate fees; the Tribunal pointed out that this was for block charge and estate charge, as per the lease. The Respondent gave submissions as to how they had ensured they had a competitive supply of electricity by testing the market; they had a stock of bulbs, which the caretaker would replace when necessary. They had arranged for all heaters to be turned down in the summer. They may have a switched circuit in future, but that will depend upon gathering surpluses in reserve funds.
42. **Determination:** in the absence of any comparison evidence from the Applicant, the fees were reasonable and payable.
43. **Caretaker Fees:** The Applicant said that there had been a police raid on the caretaker's flat, (number 300, just along the corridor from the Property) during February of 2015. The Applicant said that this was a drugs raid, and that the scheme was without a caretaker for a year, but she was still charged for the service. The Respondent said that this information was inaccurate, and hearsay, and that although the caretaker was away for seven months (not a year) for personal reasons, an alternative caretaking service was provided by the preferred cleaning

contractors, at no additional cost to the scheme. This service covered the normal service Health and Safety checks, litter picking, waste management, repair reporting, lightbulb changing, customer queries and major works liaison etc. The Tribunal were shown a letter sent by the Respondent to Lessees confirming that the service would continue to be provided.

44. **Determination:** the Tribunal found that a service had been provided, and the charges were reasonable and payable.
45. **Gates:** The Applicant said that the gates had been wide open for two years, but she was being charged £5,900 per annum for servicing etc. The Respondent told the Tribunal that the gates, which had been installed by the developers, served 140 properties, but as fitted were more suitable for domestic properties with one or two users. This had resulted in people pushing the gates open, and that resulted in the motors being damaged. In 2010, two years after development, maintenance costs were causing concerns for CPS and leaseholders. This has been a problem estate wide, with a number of schemes having the same problem. The Respondent had fitted a pins system, so that if the gates were pushed, a pin (easily replaced) would be snapped, rather than the gears and motors damaged. The turnover of tenancies and loss of key fobs, also led to problems, as replacement fobs cost £50 even at cost.
46. In October of 2013 the gates were taken out of service. The Respondent has been consulting with residents across a number of schemes whether the preference is to decommission permanently or to devise a plan to bring them back into service. In the interim, whilst there was a figure of £5900, in the 2016 budget, this was only for if they were brought back into use. Actual spend on gates (which included the pedestrian gate and annual Health and Safety Checks) was in the region of £800 - 1000 per annum.
47. **Determination:** the Charges were reasonable and payable, including the charge on account, should the gates be brought back into service. Should they not be, the Respondent will account to the Applicant for the difference.
48. **Sinking Fund:** The Applicant queried monies used for the sinking and cyclical fund and repair funds, stating there was no difference between then, but fees had doubled in two years. The Respondent confirmed that a number of improvements had been carried out in 2013/14 which depleted the sinking fund. These included health and safety works to the lift, upgrading of the rear car park entrance door and building of water pump room in the car parking area. The Respondent explained that after the pump failed, the pump room building had water ingress, and as an improvement the flat roof was changed to a pitched roof. The sinking

fund contributions were increased, but the cyclical contributions reduced as that fund was on track for future obligations.

49. **Determination:** The Tribunal was satisfied that the Respondent was managing its sinking funds responsibly and prudently, and the sinking fund contributions were reasonable and payable.
50. **Insurance:** The Applicant queried why the insurance had been used for water ingress. She said that Demands had increased by £2,000 and questioned whether the Respondent had enjoyed a loyalty bonus from insurers. The Respondent said that all roofing costs recoverable under the insurance were claimed, and the costs would be in the region of £10,000. They confirmed that those costs which were latent defects were recoverable from Countryside Properties (around £20,000). They confirmed that they received no "loyalty bonus" but charged a 15% administration fee which to leaseholders to cover the costs of handling insurance and claims. The Respondent had a block insurance policy which was tendered and the Respondent had used independent insurance consultants to test the market.
51. **Determination:** In the absence of any evidence of alternative insurance costs the Tribunal found the insurance reasonable and payable.
52. **Complaints/Photos/Medical Reports/Supporting information:** No other information or evidence was provided by the Applicant, so the Tribunal discounted this aspect of the Applicant's dispute. The Tribunal did point out to the Applicant that in this case they were unable to be able to find a nexus between the dampness in the building, which was some way from her flat, and her respiratory problems. There was no medical evidence to support her claim, only a letter from her GP prepared for separate purposes in May 2015 which said she was under investigation for a condition. It did not link this to her living conditions, and in any event the Tribunal had determined that rectification of the water ingress had been well managed by the Respondent.
53. **s20C application:** The Respondent confirmed that they were not looking to recover legal costs from the Applicant. The Tribunal having found in favour of the Respondent on all counts would not make such an order in the circumstances.