



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

**Case Reference** : **MAN/00FC/LSC/2017/0058**

**Property** : **26 Limber Court, Grimsby, DN34 4EL**

**Applicant** : **Mr Robert Dalby**

**Respondent** : **R G Reversions 2014 Limited**

**Represented by** : **Inspired Property Management Limited**

**Type of Application** : **Service charges, Section 27A of the Landlord and Tenant Act 1985.**

**Tribunal Members** : **Judge C. P. Tonge, LLB, BA.  
Mr P. E. Mountain, FRICS.**

**Date** : **30 November 2017**

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**DECISION**

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## **The background to the application**

1. This case comes before the Tribunal by way of an application received on 5 July 2017 from the Applicant, Mr Robert Dalby, the long leaseholder of flat 26 Limber Court, Grimsby, DN34 4EL, the property. In that application Mr Dalby indicated that he would not be content with the case being decided by means of a paper determination. The Application form requires the Applicant to choose whether or not he requires the Tribunal to consider making an order pursuant to section 20C of the Landlord and Tenant Act 1985 and the Applicant chose to not make such an application. This application form was copied and sent to the Respondent.
2. The application purports also to be made on behalf of a second Applicant, the long leaseholder of flat 27 Limber Court, Grimsby, DN34 4EL, Ms Magdalena Andrearczyk. Each Applicant must make their own application (which might then be joined) but a separate application is required. It is clear from correspondence within the file papers that Ms Magdalena Andrearczyk did not want to make such an application and this Tribunal makes it clear that at no time has Ms Magdalena Andrearczyk been an Applicant.
3. The freeholder of the property is R G Reversions 2014 Limited who are represented by their management agent Inspired Property Management Limited.
4. A procedural Judge issued Directions on 25 September 2017 and in the second paragraph of the preliminary section of the Directions the parties are informed that the Tribunal considered this to be an appropriate case to be dealt with without holding a hearing, unless either party requests a hearing. Subsequent to the issue of these Directions neither party requested a hearing. Unusually these Directions do not require a paginated joint evidential bundle to be prepared and as such each party has, quite properly, served its own evidence without pagination. As a result the Tribunal can only refer to written evidence by reference to the document in which it is contained.
5. Direction 5 requires a Scott Schedule style document to be used to briefly set out the issues in the case. This has not been properly done because it omits two issues raised in the application, service charge costs for health and safety and accountancy. Further, where the Scott Schedule style document states a figure that is in issue it states the figure that was budgeted for in the estimated costs. When that is compared to the accounts that show the actual expenditure for that service charge year to show the same area of service charge, the figures often change.

Where this happens the Tribunal will use the figure recorded in the accounts as being the actual expenditure.

6. The application relates to service charges for service charge years 2015, 2016 and 2017.

### **The inspection**

7. The Tribunal inspected the property at 9.45 am on 30 November 2017 in the presence of the Applicant and Ms Andrea Barnard, a property manager for the management agent Inspired Property Management Limited.
8. The property is situated within a purpose built block containing six flats, two on each of the three floors. The common entrance door has a door entry intercom system that is inoperative and in need of repair or replacement. This leads into the entrance hallway and provides access to the applicants flat and a second ground floor flat, both of which have one bedroom. Stairs lead up to the first floor, giving access to a further two flats, these have two bedrooms. Stairs lead up to the second floor giving access to a further two flats that have one bedroom.
9. The interior common areas have timed lighting and tiled floors. There is no heating or electricity sockets or water supply in the interior common areas. There is no fire alarm. There is a notice board on the ground floor hall wall and there is a document pinned to this board entitled "At Home Cleaning Services Limited" this has been initialled by J. S. on four dates, namely 6 September 2017, 11 October 2017, 14 November 2017 and 28 November 2017. This clearly indicates that a cleaner has attended at these flats on these dates. The Tribunal noted that the ground floor under the stairs, where there would be constant foot fall, was dirty.
10. There is a rear common exterior door, secured by means of a mortise lock, giving access to a drying area and bin storage. Private occupiers car parking is provided off an adopted road and there are common grassed areas with trees. The Tribunal noted the location of one such tree having already loped branches that overhang the parking space provided for the occupant of flat 29, which is situated within the block of flats occupied by the applicant.

### **THE LAW**

Landlord and Tenant Act 1985

Section 18, meaning of service charge and relevant costs.

Briefly this defines a service charge and associated costs as the variable cost of providing the service.

**Section 27A, Liability to pay service charges: jurisdiction**

- (1) An application may be made to the appropriate 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 the appropriate 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.

**Section 19, Limitation of service charges: reasonableness.**

- (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 provisions 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.

**Relevant provisions of the lease**

11. The lease to the property is does not contain the name of either of the parties to the case and no assignments have been provided, but the lease is accepted by the parties as a document binding upon both parties.
12. The Applicant holds the remainder of a lease for 125 years, commencing 1 January 1993 and is required to pay as additional rent a proportion of the service charges management costs and other expenses as defined in the fourth schedule. (Clause 1 (b)). The requirement to pay service charges is again repeated in clause 3 (a) and 3 (o).

13. The applicants contribution for each year shall be estimated as soon as practicable after the beginning of the year and must be paid on the first of April of each year. (Clause 1 (b) (i)).
14. At the end of each year the actual cost of services for each year must be calculated with a balancing of the costs against the estimate amount already paid must take place with an additional demand for payment or a credit to the service charge account. (Clause 1 (b) (ii)). This may be established by an auditor. (Clause 1 (b) (iii)).
15. At clause 4 (4) the lessor covenants to maintain and keep in good repair the block of flats, the estate, the gardens and other common areas.
16. Common areas are defined at clause 6 (3) as including entrance halls, stairways, corridors, bin stores, car parks, paths, gardens, grassed areas etcetera.
17. Schedule four covers all the service charges that feature in this case.

### **Written evidence**

#### **Summary of the written case on behalf of the Applicant**

18. The Applicant sets out his case in three bundles.
19. The first bundle includes a letter from Jo Robinson a property executive of Wilkin Chapman LLP, solicitors, providing advice to the Applicant. There is also a manuscript document that serves as a statement of the Applicant's case. The relevant parts of this are that management costs are in the applicant's opinion too high service charges are too high and (when read in conjunction with the application form) specifically raises the following points:
  - In the past, prior to this management agent being involved, the residents had been permitted to clean the interior common areas, clean the windows and cut the grass. The residents want to be permitted do this again, thereby reducing the service charge costs. Further, the cleaning is not done to a proper standard at present and the management agent does not check to see whether the cleaning is done properly.
  - The Applicant does not believe that any repairs have been carried out and has not seen any bills to establish that they have.
  - The resident of flat 29 has in the past complained about sap from a tree falling on to his car, resulting in a plan being made to

remove the tree concerned. That complaint has since been withdrawn.

- Lack of communication relating to the sinking fund.
  - That none of the residents want to pay for the communal intercom door entry system to be repaired or replaced.
  - That the applicant cannot afford to pay these service charges and the value of the flats generally is being reduced by would be purchasers having to be warned that they will be liable for these service charges.
20. The second bundle draws attention to the fact that the estimated service charge for year 2016 was £666.67, whereas the estimated service charge for year 2017 is £1,004.17
21. The third bundle exhibits two letters that are of no assistance in determining whether service charges are payable and reasonable.

#### **Summary of the written case on behalf of the Respondent**

22. The Respondents' case is set out in column four of the Scott Schedule, but generally all service charge costs are payable and reasonable.
23. In relation to cleaning of the internal common areas. The Respondent states that cleaning takes place once per month at £35 per clean, with an additional expense for an initial deep clean in 2015.
24. In relation to window cleaning, they are cleaned three times per year at a cost of £35 per clean.
25. In relation to general repairs these are based n anticipated expenditure and not a contract sum. The Tribunal notes that no invoices have been provided at all for any repair costs.
26. In relation to bank costs and management charges, the respondent submits that they are reasonable.
27. The sinking fund is described as being at a very low level.
28. In relation to the landscaping costs and in particular the plan to remove the tree. This has been estimated at a likely cost of £600. The resident who complained about the tree has withdrawn his complaint so the tree will not be removed, but it will be pruned.

29. In relation to the intercom replacement, the Respondent has a responsibility to repair this pursuant to the lease. The system will in fact have to be replaced and Section 20 consultation is underway.
30. In addition the relevant service charge demands are exhibited along with audit accounts for service charge years 2015 and 2016.
31. The estimate of service charge costs for 2017 is based on expenditure during 2016 plus the need to replace the intercom door entry system and remove the tree.
32. There are six flats and two of them have two bedrooms whereas the remainder, which include the property have one bedroom, however the square footage of each flat is approximately the same and therefore service charge costs are apportioned in six equal shares.

### **The deliberations**

33. The lease requires the Respondent to maintain and keep the estate and block of flats in good order. The Tribunal notes that the Applicant refers to an earlier period of time in which the then freeholder permitted the occupiers to carry out some of the work now paid for in service charges. The result being that services charges were avoided for these works. It is for the Respondent to decide how to comply with the requirements of the lease and the Respondent's approach is reasonable.
34. The applicant also points out that he occupies a flat with one bedroom, whereas there are two flats that have two bedrooms and all flats pay the same proportion of service charges. The Tribunal accepts the Respondent's evidence that all flats are approximately the same size and determines that it a reasonable decision to apportion service charges in this way.
35. Service charge year 2015.
36. In service charge year 2015 the Respondent estimated that the service charges payable by the Applicant would be £600.82 and that sum was demanded. In fact service charge costs payable by the Applicant were found to be £652.94, which lead to a further demand for a balancing service charge payment from the Applicant of £52.11.
37. Cleaning common areas. The accounts actual expenditure is shown as £340. The Applicant does not dispute the fact that a cleaner attends. The Tribunal has seen a document on the notice board of the block of flats that confirms that this is the case. The Tribunal has also noted that although the flats were cleaned 2 days prior to the Tribunal inspecting the building, it was dirty under the stairs. As a result of that observation

the Tribunal concludes that the management agent should check the cleanliness of the building from time to time.

38. The cleaner is attending to clean and the management agent pays for that service. It is a cost that is chargeable as a service charge cost under the terms of the lease. The Tribunal concludes that this is chargeable and has been charged at a reasonable level.
39. Window cleaning. The accounts actual expenditure is shown as £135. The applicant does not dispute that the window cleaner is attending. It is a cost that is chargeable as a service charge cost under the terms of the lease. The Tribunal concludes that this is chargeable and has been charged at a reasonable level.
40. Repairs. The accounts actual expenditure is shown as £711. The Applicant challenges this on the basis that no repairs have been done. The Tribunal decides that this puts the onus on the Respondent to produce proof that this money was spent on repairs to common property at this building. The usual proof would be invoices that state the cost and details the work done. The Respondent has not provided any evidence at all to establish that service charge work was done. The Tribunal disallows £711.
41. Sinking fund £500. The lease provides for this to be demanded as part of the service charge and finds that bearing in mind the size of the building and estate £500 is a reasonable sum to demand.
42. Bank charges. The accounts actual expenditure is shown as £85. There is no evidence from the bank to establish what charges were demanded and what service was provided for the management agent in relation to this estate. The Tribunal disallows £85.
43. Accountancy fees £420. The Tribunal has the accounts as drawn up by the accountant. The fee of £420 is chargeable as a service charge cost and is a reasonable fee to demand for these accounts.
44. Management fees £1,080. These are chargeable as a service charge cost and are reasonable.
45. Health and safety £569. The management agent was dealing with a property that had changed hands and clearly felt that a full report was required. This is chargeable as a service charge cost and the cost, although at the very top of the scale of reasonable costs are reasonable.
46. Service charge year 2016.
47. In service charge year 2016 the Respondent estimated that the service charges payable by the Applicant would be £666.67 and that sum was



demanded. In fact service charge costs payable by the Applicant were found to be £652.03, which lead to a balancing credit of £14.64 paid into the Applicant's service charge account.

48. Cleaning common areas £455, window cleaning £180, accountancy fees £420 and management fees £1,100. These figures are all taken from the actual expenditure accounts. For the reasons given above these are all payable and reasonable.
49. Repairs, actual cost in the accounts £679 without any invoices or other acceptable proof that this work was carried out at this estate on common property, the Tribunal disallows this figure.
50. Health and safety, actual cost from accounts £228. There is no health and safety report within the case papers. There is no invoice to establish what work was done or why this fee had to be paid. The Tribunal refers to the Service Charge Residential Management Code, the RICS Code of Practice, third edition, effective from 1 June 2016. Paragraph 8.3 deals with risk assessments and states, "First Tier Tribunals have been critical of some managers incurring costs on a regular basis by frequently procuring new risk assessments. Regular reviews do not necessarily entail producing a completely new risk assessment document. The extent of any review should be proportional to the risks identified and the complexity of the installations at each scheme"
51. The Tribunal notes that in service charge year 2015 £569 was spent on health and safety. Further, the Tribunal notes that this is a small estate with very little for a health and safety expert to consider especially after such an expensive exercise in 2015. In light of the guidance referred to above, based on decisions that pre date the code being brought into formal existence on 1 January 2016, the Tribunal concludes that this cost is out of proportion for this estate. There is nothing for the Tribunal to look at to consider if it was reasonable to obtain it and whether or not the cost was reasonable. The Tribunal disallows this cost.
52. Bank charges of £84. For the reasons given above the Tribunal disallows this cost.
53. Sinking fund £605. The Tribunal notes that the sinking fund has been allotted £500 in 2015 and 2017. There is no reasonable justification in the light of the features of this small estate to charge £605 in 2016. This is unreasonably high, the Tribunal reduces this to the normal figure of £500, disallowing £105.
54. Service charge year 2017. This year is of course still current and so is based only on the statement of anticipated service charge expenditure, as calculated by the management agent at £1,004.17 and as demanded

from the Applicant on 16 March 2017. There are therefore no actual expenditure figures and the Tribunal cannot expect invoices to be produced because they may not yet be in existence. As such, the estimated figures for all heads of service charge except Landscaping are chargeable and are within a scale of costs that are reasonable. The Tribunal therefore approves such service costs on a preliminary estimate basis. This includes health and safety on the basis that service charge costs have been denied for the previous year, it will now be appropriate for these matters to be considered again. It also includes the intercom work that is clearly a service charge cost and is being made subject to statutory consultation.

55. Landscaping, £800. This is made up of £198 for gardening and £602 for the removal of a tree from the car park area as a result of a complaint from the occupier of flat 29. It is common ground that the complaint has been withdrawn and that as a result the tree will not now be removed. The management agent states that the tree will be pruned and does not provide an estimate as to how much that will cost. The Tribunal does not think that this is a reasonable approach to a withdrawn complain. The tree has been inspected by the Tribunal and it has already been subject to extensive lopping of braches. It is entirely unreasonable in responding to a withdraw complaint to spend any money at all. The Tribunal disallows £602.
56. It has not been made entirely clear how much of the service charges from these three years have been paid already. The Tribunal notes that as of 5 October 2017 the Respondent sent a statement of account to the Applicant indicating that £1,300.31 remains to be paid. The Tribunal assumes that this is the up to date position and it has not been challenged by the Applicant.
57. As a result of the Tribunal's determinations in this case credits must be made to the Applicant's service charge account forthwith, calculated as follows. In 2015 the Tribunal has disallowed £711 for repairs and £85 for bank charges. In 2016 the Tribunal has disallowed £679 for repairs, and £84 for bank charges, £228 for health and safety and £105 for the sinking fund. In 2017 the Tribunal has disallowed £602 for the removal of a tree. That is a total of £2,494, for which the Applicant will be responsible for a one sixth share, making £415.67 to credit to the Applicants service charge account. Assuming that the figure outstanding is £1,300.31 after that credit is applied that leaves £884.64 that the Applicant must pay to the Respondent forthwith.
58. From the very outset of this case the Applicant has made it clear that he does not want an order to be made under section 20C of the Landlord and Tenant Act 1985. The application form making this clear was served upon the Respondent at the commencement of the case and this has

remained the Applicant's approach to case throughout. No order is made.

### **The Decision**

59. The Respondent shall forthwith apply a credit of £415.67 to the Applicant's service charge account. The Applicant shall forthwith pay the remainder of the outstanding service charges to the Respondent. Assuming that the figure of £1,300.31 has been correctly calculated then the Applicant must pay the sum of £884.64.
60. No order is made under section 20C of the Landlord and Tenant Act 1985.