



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

Case Reference : **CHI/24UP/LSC/2018/0067**

Property : **44 Alison Way, Winchester,
Hampshire, SO22 5BT**

Applicant : **Gina Bacciarella**

Respondent : **A2 Dominion**

Representative : **Mr Baron (in-house lawyer)**

Type of Application : **Liability to pay service charges**

Tribunal Members : **Judge D Dovar
Mr B Simms**

**Date and venue of
Hearing** : **14th December 2018, Havant**

Date of Decision : **17th December 2018**

DECISION

© CROWN COPYRIGHT 2018

1. This is an application for the determination of the payability of service charges for the years ending 2018 and 2019.
2. The application was made on 1st July 2018, directions were given that month and in August 2018, following a mediation between the parties which was partially successful. The remaining issues between the parties are now only in relation to the year end 2019, and in particular:
 - a. the Respondent's subsidy of £4,676;
 - b. an external agent's charge of £11,690; and
 - c. an administration fee of £136.55.
3. At the outset of the hearing, the Respondent conceded that administration fees should not have been charged and so that issue does not fall for our determination. Further, it was clarified that the subsidy of £4,676 was in fact a credit to the account in order to reduce the external agent's charge of £11,690.
4. Ms Bacciarelli lives in a three bedroom property under an assured tenancy. She has lived there for 17 years and complains that until the Respondent took over as landlord, she had never had to contribute to any service charge other than a contribution to gardening works. In that respect she says that that comprises 5 small areas in front of her house.
5. At the commencement of her tenancy in January 2001, the agreement records that she was paying £1.28 per month by way of contribution to the service charge. The tenancy does permit a change in the service charge at clause 1 f, in the following terms:

The Association may increase or decrease the service charge annually. The annual service charge review date is the first Monday following 1st July. The service charge will be based on the estimated cost of providing services for the following twelve months and any adjustment necessary from the previous twelve months. The tenant will be notified in writing one month before any changes in charges are made.

6. Clause 1 e provides

The Association shall provide the following services in connection with the premises for which the tenant shall pay the service charge: Grounds Maintenance.

7. The Respondent clarified what the charges in question are.
8. Firstly there is a block charge of £4.41 per month ('the Block Cost') which comprises the charge in looking after and maintaining the area directly around the Property. That relates to the charge that the Applicant has paid historically and to which there is no challenge; save for the inclusion of an administration fee of 15%.
9. Secondly an estate charge of £57.27 per month ('the Estate Cost') which is a sum paid to an external management company under the terms of a Transfer under which the Respondent's predecessor in title acquired its title. Finally, within both those figures is a 15% administration fee. As set out above, the Respondent has conceded that this sum is not payable.
10. Dealing with the second charge in a little more detail; that is said to arise in the following way. When the Respondent's predecessor in title acquired its title to the Property under a transfer dated 17th September 1999, it covenanted to pay the vendor or Kempthorne Management Company Limited an estate charge, being 30% of the costs of Kempthorne in providing Estate Services. Those are set out in the Transfer and comprise various obligations in relation to land falling outside of that owned by the Respondent, such as repairing and maintaining an access road, a retaining wall, a footpath, a main wall and other boundary walls and fences; keeping a play area and planted and landscaped areas in good repair and condition; maintaining the service installations; complying with the provisions of the Common Areas Agreement (which appears to be a s.106 agreement); and maintaining public liability insurance.
11. The Respondent contends that these all fall within the definition of 'grounds maintenance' in the Applicant's tenancy agreement. It is common ground that these sums were not passed onto the Applicant until last year. The Respondent contends that this was an oversight, the Applicant contends that that was because it was never intended that these would fall within 'grounds maintenance'.
12. The Respondent also submits that the charges are reasonable as: a.) they are the costs charged to it; and b.) in any event it does not pass on the full cost to the Applicant.
13. The main question for the tribunal is therefore whether 'grounds maintenance' has the narrower meaning contended for by the Applicant, being just the small areas immediately outside her property, or the wider meaning contended for by the Respondent, which would include land outside their ownership as well as access roads, boundary features and the Laundry Chimney.
14. As an issue of construction of the meaning of the words 'grounds maintenance', the tribunal takes the following factors into account:
 - a. The natural meaning of those words, which in the tribunal's view cannot cover many of the cost headings contained in the Transfer (indeed the Respondent candidly accepted that there were a number

- of cost headings that it would have difficulty justifying under this term);
- b. The other terms of the tenancy agreement including the obligations placed on the landlord which are not said to form part of the service charge, being:
 - i. repair and maintenance of the structure and installations of the property and which include 'pathways, steps or other means of access' and 'boundary walls and fences' – these are in the context of repairs to the Property; and
 - ii. repair of the common parts.
 - c. The absence in the tenancy agreement of any obligation to provide services outside of their own land;
 - d. The fact that at the time the tenancy was granted, the transfer had already been executed and so the obligation on the landlord to contribute to the wider estate was known and yet was not communicated to the tenant or more fundamentally the cost of the same was not passed onto the Applicant under the tenancy at that time;
 - e. A similar point, being that only £1.28 was the first charge by way of service charge under the tenancy and that that only covered the immediate areas around the property and that for the last 17 years the service charge had only covered the cost of that work;
 - f. That at the time of the tenancy agreement, the area around the property, including the wider estate, was still under construction;
 - g. The Transfer in 1999 was in order to provide affordable housing.
15. In the tribunal's view the words 'grounds maintenance' cannot bear the extended and heavy meaning that the Respondent contends. Any individual considering what these words would cover at the time the tenancy was granted, being an affordable housing tenancy, would understand them to be limited to those small areas within the landlord's estate and not to also relate to an obligation to contribute to the much wider and far reaching costs contained in the Transfer.
 16. It is notable that the words 'grounds maintenance' is not used in the Transfer, and many of the cost headings bear little or no relation in any event to that type of work. Further there is no obligation on the Respondent to provide those services to the Applicant.
 17. The tribunal is reinforced in its view by the fact that not only was the original charge set on the narrower basis, but that for 17 years that was all that was charged. Whilst care has to be taken relying on subsequent events to determine what was meant at the time the tenancy was entered into, it remains an indication that that is what any objective observer

would have understood as to the limit of those words. There was ample scope to include those costs in agreement, but they were not.

18. Accordingly, the tribunal determines that the Applicant's service charge for the year in question is £44.98 per annum or £3.75 per month, being the Block Cost less the 15% administration charge.
19. At the conclusion of the hearing, the Applicant requested her costs and the tribunal indicated that if she wished to recover those then she would have to make an application under Rule 13 of the Tribunal Procedure Rules 2013 and pointed out that it would only make an award of costs if it considered the Respondent had acted unreasonably in its conduct of these proceedings. She also requested reimbursement of her fees for the application and the hearing. The Respondent did not resist that application, contending that, without prejudice, it was prepared to reimburse that sum as a gesture of goodwill. It also voluntarily conceded an order under s.20C of the Landlord and Tenant Act 1985 preventing any recovery of its costs of the application through the service charge. The tribunal therefore makes an order for reimbursement of the total for the application and hearing fee of £300 within 28 days and hereby makes an order preventing cost recovery through the service charge.

A handwritten signature in black ink, appearing to read 'D. Dovar', with a long, sweeping flourish extending to the right.

Judge D Dovar

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.