



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

Case Reference : **LON/00BE/LSC/2018/0400**

Property : **1-47 Stevenson Crescent, London
SE16 3EN**

Applicant : **Various leaseholders**

Representative : **Ms Farina (Flat 13) & Ms Ryan
(Flat 1)**

Respondents : **Hyde Housing Association Ltd**

Representative : **Mr. R Egleton, counsel**

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

Tribunal Members : **Judge Tagliavini
Mr. M Cairns MCIEH
Mr. J E Francis**

**Date and venue of
Hearing** : **2 & 3 May 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **3 June 2019**

DECISION

Summary decisions of the tribunal

- I.** The service charges for 2010/11 are reasonable and payable by the Applicants (less any credits agreed by the Respondent).
 - II.** The service charges for 2011/12 are reasonable and payable by the Applicants (less any credits agreed by the Respondent).
 - III.** The service charges for 2011/12 are reasonable and payable by the Applicants (less any credits agreed by the Respondent).
 - IV.** The service charges for 2012/13 are reasonable and payable by the Applicants (less any credits agreed by the Respondent).
 - V.** The service charges for 2013/14 are reasonable and payable by the Applicants (less any credits agreed by the Respondent).
 - VI.** The service charges for 2014/15 are reasonable and payable by the Applicants (less any credits agreed by the Respondent) and less a further credit to the Applicants of £30 in respect of a gutter clean out.
 - VII.** The service charges for 2015/16 are reasonable and payable by the Applicants (less any credits agreed by the Respondent) and less further credits of £50.00 (item 36); £30.00 (item 72); £264.62 (items for bulb replacement/electrical works included in the responsive maintenance works) and £113.64 (item 56) on the Scott Schedule.
 - VIII.** The service charges for 2016/17 are reasonable and payable by the Applicants (less any credits agreed by the Respondent) and less further credits of £50.00 (item 67); £90.66. (item 91); £4,177.74. (item 98); 101, 102, 103, 104, 105 on the Scott Schedule in the sums of £288.71, £188.45, £28.55, £38.39 and £185,60 respectively.
 - IX.** The service charges for 2017/18 are reasonable and payable by the Applicants (less any credits agreed by the Respondent) and the further credit of £405.06 (inspection report- Legionella) on the Scott Schedule.
 - X.** The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and limits the Respondent to 90% of its costs incurred by this application, being added to the Applicants' service charge.
 - XI.** The Respondent is to refund the Applicants £150 representing 50% of the application and hearing fees.
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The application

1. This is an application made under the provisions of section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) seeking the tribunal’s determination as to liability to pay service charges. The Applicants asserted that the sum of £137,800.70 was in dispute. The Applicants also sought an order under section 20C of the 1985 Act, limiting the Respondent landlord’s costs in these proceedings an order to reduce or extinguish the Applicant tenants’ liability to pay an administration charge in respect of the litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”).

The premises

2. The subject premises comprise of two purpose built blocks of 12 flats each built circa 1992, with their own communal entrances. There are four flats on each of the three floors in each block with share internal and exterior communal areas.

The parties

3. The Applicants are the tenants of Flat 1 (Ms Ryan); Flat 5 (Mrs U J Von Arx); Flat 7 (Mr. S Burselm); Flat 9 (Mr. M Larbi); Flat 11 (Ms V Petrovska); Flat 13 (Ms S Farina); Flat 15 (Mr. S Dalton); Flat 17 (Ms J Baxter); Flat 19 (Mr. J Nemsdaze); Flat 21 (Ms A Steer); Flat 23 (Ms A Steer); Flat 23 (Ms F Killen); Flat 25 (Ms E Watts); Flat 29 (Mr. G Ocan); Flat 35 (Ms H O’Connor); Flat 25 (Mr. D Solis); Flat 41 (Mr. M McCrindle) and Flat 37 (Miss E R Gander).
4. The Respondent landlord is a registered charitable housing society.
5. The tribunal was provided with a sample lease in respect of Flat 1 dated 28 September 1995, which was said by the parties to contain the relevant terms and conditions for the purpose of determining this application.

Background and issues

6. In an application received by the tribunal on 25 October 2018 the Applicants challenged the liability to pay and the reasonableness of service charges for the service charge years 2010/11; 2011/12; 2012/13; 2014/15; 2015/16; 2016/17; 2017/2018 and the estimated costs for 2018/19. In directions dated 17 January 2019, the tribunal identified the issues to be determined for these service charge years are:
 - (i) How is the Respondent calculating the estimates?
 - (ii) Whether the sums are reasonable and payable?

- (iii) Why has the Respondent not issued promised credits to leaseholders?
 - (iv) In respect of the 2018/19 service charge year, how has the responsive maintenance been estimated?
 - (v) Issues in relation to the communal water supply?
 - (vi) What is the evidence that new costs are being incurred?
 - (vii) Have the electrical charges been reasonably incurred?
 - (viii) Why is the collection/expenditure of the reserve fund not manage in accordance with the leases?
 - (ix) The issue of the management fees?
7. The parties having agreed the service charges payable for the year 2013/14 these were no longer in dispute.

The hearing

8. The parties provided two lever arch files of documents to the tribunal containing the evidence on which both parties relied. Oral evidence was given by Ms Farina and Ms Ryan for the Applicants and Mr. S Lawrence, service charge manager for the Respondent.

The Applicant's evidence

9. With the written permission of the Applicant tenants, Ms Farina assisted by Ms Ryan presented the Applicants' case to the tribunal. Included in these documents were detailed 'Scott Schedules' detailing the heads of service charges in dispute for each of the service charge years in dispute. These were identified as:
- Cleaning costs
 - Communal electrical bills
 - Communal water charges
 - Controlled door entry
 - Grounds maintenance
 - Responsive maintenance
 - Buildings insurance
 - Management fees
 - Reserve (sinking) fund
10. In respect of each service charge year the tribunal was also provided with the service charge 'packs' provided by the Respondent and included in the files before the tribunal.

11. The tribunal heard detailed evidence in respect of the challenges to the first of the service charge years in dispute i.e. 2010/11. The tribunal were provided with a witness statement from Ms Farina dated 1 April 2019 in which she set out her concerns over the Respondent's management of the subject block and its failure to provide invoices to support the claims for services provided and actual accounts. In particular Ms Farina stated that the Respondent failed to carry out annual gutter cleaning; solar panels are not cleaned and maintained; the bins shed are not secure and lead to the dumping of bulky waste; claims on building's insurance have not been made; there are recurring problems of leaks to the roof; the carparking lines and numbers have faded and are not maintained and that the cleaning/gardening services are inadequate. Ms Farina also complained of the harassing and bullying treatment of the Respondent in seeking possession of her flat for rent arrears accrued under the shared ownership scheme while the service charge dispute was ongoing.
12. In her oral evidence to the tribunal Ms. Farina told the tribunal the following in respect of the heads of service charge set out above.

2010/11: Cleaning costs

13. Ms Farina disputed the entirety of the costs incurred for cleaning asserting that cleaning either had not been carried out at all or had been done to a poor standard. In support of these assertions Ms Farina sought to rely on a number of photographs which she asserted showed the poor level of cleaning provided.
14. Ms Farina also disputed the costs associated with the changing of light bulbs which also formed part of the cleaning costs, asserting that the number of bulbs changed was excessive as each block has 6 internal hallway lights and 2 external lights with each light fitting having two bulbs. Ms Farina said that the G23 bulbs had a timespan of 10,000 hours and the replacement of 24 bulbs was excessive and unnecessary.
15. Ms Farina also disputes charges incurred in respect of the removal of bulk waste asserting that Southwark Council collected all the bulk rubbish free of charge. The hire of paladin bins from Southwark Council was also unreasonable as the cost of buying bins outright was cheaper.

2010/11: Communal electrical bills

16. Ms Farina queried the lack of specific invoices relating to these charges and challenged the accuracy of the meter readings although conceded that some charges were reasonable and payable.

2010/11: Communal water charges

17. Ms Farina asserted that there was no water meter at the scheme and challenged the accuracy of the costs.

2010/11: Controlled door entry

18. Ms Farina challenged the cost of the repair to this system as the Respondent had not produced an invoice to support it. Further, a claim under the building's insurance could have been made (including malicious and accidental damage).

2010/11: Grounds maintenance

19. Ms Farina asserted that this service had either not been provided at all or the standard of service was unreasonable. In support of her claims Ms Farina relied upon photographs that purported to show a crisp packet that had remained uncollected from under a bush for over a month and a diary/blog in which she had recorded the gardener's attendances and activities. Ms Farina also challenged the regularity of outside window cleaning which, formed part of the grounds maintenance service as being irregular or non-existent.

2010/11: Responsive maintenance

20. Ms Farina challenged the items charged stating that items such as the repair of lead flashing should have been covered by the building's insurance. Ms Farina also asserted that some items were not supported by corresponding invoices or that certain items did not relate to the subject block.

2010/11: Buildings insurance

21. Ms Farina challenged the amount charged stating that it was not known if other policies were considered or the rationale for placing the insurance with the company chosen or the calculation of the apportionment disclosed.

2010/11: Management fees

22. Ms Farina asserted that the sum of 15% charged for management fees is unreasonable as the cleaners were left without keys to the building and there were a lack of invoices in respect of most of the responsive maintenance carried out and a failure to respond to tenant's concerns over 'unreasonable' costs.

2010/11: Reserve (sinking) fund

23. Ms Farina asserted that the use of this fund to pay for the payments made out of this fund and what works are planned to justify further

collection of sums. Ms Farina also challenged the level of interest paid on this account as being unreasonable.

The other service charge years

24. Ms. Farina repeated the same arguments for the majority of other service charge years in dispute and largely relied on her memory, conversations she had with other tenants, photographs she asserted showed a lack of cleaning or repair and her diary/blog recording the attendance of cleaning and gardening crew. Ms Farina repeated her assertions that as the cleaners often did not have keys to the block they would have been unable to gain access. Where there were any specific and individualised items of service charges that differed from those dealt with in 2010/11, the tribunal asked Ms Farina to address these expressly in her oral evidence. These items included the reasonableness of the Legionella Reports (2017/18); the water supply to the bin store; the replacement of locks and supply of excess keys; the repair/maintenance of the intercom system; the placing of two locks on loft hatch instead of one lock on each of the two loft hatches; the pruning of trees and the water bill. Ms Farina accepted that the quality of the cleaning had improved since the appointment of a new cleaning company but queried the subsequent rise in the cost.

The Respondent's evidence

25. Mr. Egleton, counsel for the Respondent relied upon a document entitled Respondent's Summary of Evidence dated 30 April 2019 and its detailed responses in the Scott Schedules for each of the service charge years in dispute. Mr. Egleton drew the tribunal's attention to the lack of a direct dispute raised by the Applicants in respect of some of the items included in the Scott Schedules and the lack of evidence brought by the Applicants to effectively challenge the items now said to be in dispute but which, had gone unchallenged previously for several years. Mr. Egleton submitted that the historic nature of some of the claims made by the Applicants and their failure to provide details of the basis for challenges made it difficult in parts to respond to the application.
26. Mr. Egleton drew the tribunal's attention to the Respondent's concessions to a number of items challenged by the Applicants over the service charge years. Mr. Egleton informed the tribunal that credits were in the process of being applied to the respective tenant's service charge account at the appropriate percentage rate.

The tribunal's decisions and reasons

27. The tribunal found it regrettable that the Applicants had chosen to dispute almost the entirety of certain service charge heads over a wide number of years, without giving apparent thought to making realistic

concessions for the cost of services received, albeit inadequate, or the evidence required to support their claims. The tribunal found the evidence of Ms Farina to be weak, vague and unsupported by documentary evidence and relied largely on vague memories from years past and conversations that may have taken place with other Applicants. The tribunal did not find the photographs relied upon by the Applicants to demonstrate a lack of cleaning or gardening but gained the impression that the lack of any provision of these services was minimal as the subject property appeared reasonably well cared for and maintained. The tribunal was also surprised by the categorical assertions made by Ms Farina of the cleaning not having taken place because of the lack of provision of keys to the cleaners, without giving any thought to the fact that individual lessees may have on any given day provided such access.

28. The tribunal finds that Ms Farina's assertions that the Respondent should have made multiple claims on the building's insurance policy for relatively minor sums, to be unrealistic and unreasonable. The tribunal also finds that there is provision in the (sample) lease for the collection of a reserve (sinking) fund (clause 7(4)(b) and that it is good management to do so, having regard to the very significant costs that are likely to be incurred at some future point in respect of the maintenance of the subject building. This clause provides that such charges are to be included and collected with the service charge estimated costs at the times provided for in the lease. The tribunal finds that service charges are the subject of estimated costs for the forthcoming service charge in accordance with clause 7(4)(a) of the (sample) lease.
29. The tribunal accepts the Respondent's evidence that the issue of water charges was being "looked at" and that any credits received from Thames Water will be reflected on the Applicants' 218/19 final statements.
30. The tribunal finds that the 15% of the cost of services, charged by the Respondent in respect of management fees to be modest, reasonable and payable.
31. The tribunal finds that the majority of the service charges claimed by the Respondent are reasonable and payable by the Applicants including the estimated service charges for 2018/19. However, the tribunal did find there were some items for which payment could not be claimed by the Respondent either in their entirety or at all. These items (which do not include the concessions made by the Respondent) are as follows:
 - (i) **2014/15:** Item 71 on the Scott Schedule – gutter clean and flush out - £30.

The tribunal accepts that this particular sum was not incurred and £30 should be credited to the appropriate service charge accounts.

- (ii) **2015/16:** Items 35 & 36 on the Scott Schedule – controlled door entry - £211.33 (x2).

The tribunal finds that the cost of one of these callouts is reasonable but reduces the second, which appears to include an element of duplication by £50 to £161.33

The tribunal disallows item 56 on the Scott Schedule in the sum of ££113.64 for key replacement as the tribunal is satisfied that this sum was not incurred by the Respondent at that time.

The tribunal disallows item 72 on the Scott Schedule in the sum of £30.00 as it finds the intercom buzzers were not properly relabelled as charged.

The tribunal reduces the charges for items for replacement of light bulbs/electrical works totalling £564.62 included in the responsive maintenance to £300, as the tribunal finds the cost of these works excessive and unreasonable.

- (iii) **2016/17:** The tribunal reduces item 67 on the Scott Schedule by £50.00 as it finds the sum of £190.80 claimed by the Respondent for the placing of two locks on one loft hatch to be excessive and unreasonable.

The tribunal finds item 91 on the Scott Schedule in the sum of £90.66 for the repair of a large hole to communal door to be unreasonable, as it finds that this work had not been carried out as claimed by the Respondent.

The tribunal finds that item 98 on the Scott Schedule in the sum of £4,177.74 for the repair of flood lights to both block of the subject property to be unreasonable and not payable by the Applicants. The tribunal finds that the Respondent failed to demonstrate that these works were carried out at the subject property and accepts the Applicants' evidence that these blocks do not have floodlights.

The tribunal finds that items 101, 102, 103, 104, 105 on the Scott Schedule in the sums of £288.71, £188.45, £28.55, £38.39 and £185.60 respectively are unreasonable and not payable by the Applicants. The tribunal is not satisfied that these works have either been carried out to the subject property or are not a duplication of works which fall within the responsibility of the cleaning contractors.

- (iv) **2017/18:** The Respondent conceded that the cost of the Legionella inspections/reports in the £405.06 should be credited to the Applicants' service charge accounts proportionally.

Section 20C and the reimbursement of application/hearing fees

32. In light of the findings made above, the tribunal considers that, the Applicants have been successful in challenging only a small proportion of the £137,800.70 originally disputed. Further, the tribunal considers that the Applicants sought to unreasonably widen their application for service charges years, in which evidence to support their claims was extremely limited and vague. In addition, the tribunal finds that the Applicants failed to make any realistic acknowledgement that a proportion of the sums claimed by the Respondent were likely to be payable, in light of the fact that services albeit allegedly inadequate, had been provided to them. Therefore, in order to reflect its findings, the tribunal permits the Respondent to seek to add 90% of its costs of this application to the Applicants' service charges, if it considers it is appropriate to do having regard to the terms of the lease(s).
33. Further, the tribunal considers it appropriate to direct that the Respondent reimburses 50% only of the Applicants application and the hearing fee.

Signed: Judge Tagliavini

Dated: 3 June 2019