



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

**Case Reference** : **MAN/ooBN/LSC/2018/0073**

**Property** : **6 Fortuneswell Court, 2 Moorland Road,  
Didsbury, Manchester, M20 6LS**

**Applicant** : **Keith Heywood**

**Respondent** : **Equity Housing Group Ltd.**

**Type of Application** : **s.27A of the Landlord and Tenant Act 1985**

**Date** : **18 June 2019**

**Tribunal Member** : **Judge P Forster  
Mrs A Rawlence MRICS**

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**DECISION**

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## Decision

1. We find that the service charge payable by the applicant for 2018/19 is £1,484.53.

## Introduction

2. This is an application by Keith Heywood (“the applicant”) under s.27A of the Landlord and Tenant Act 1985 to determine whether a service charge is payable, and the reasonableness of the charges that have been made for the year 2018/19 in respect of Flat 6, Fortuneswell Court, Moorland Road, Didsbury, M20 6BB (“the property”). The applicant holds the property under a shared ownership lease dated 5 September 2003 (“the lease”) made between Equity Housing Group Ltd. (“the respondent”) and Nigel Wilson. The respondent is a housing association, and the registered proprietor of the freehold property, registered at HM Land Registry under title number LA145939.
3. The Tribunal issued directions on 21 January 2019 that required the respondent to send to the applicant copies of all relevant service charge accounts and budgets for the year in dispute, 2018/19, together with all relevant notices and demands for payment. The respondent was also required to send the applicant a statement showing the total service charges it believes to be payable by the applicant for 2018/19, explaining by reference to the lease the basis on which those charges have been applied, calculated and apportioned. Within 21 days of receipt of that financial information the applicant was required to send to the respondent a statement of case setting out the grounds for the application, identifying the charges which are in dispute. That was to be done by means of a schedule or spreadsheet showing the disputed item, the reasons why it is disputed, the amount, if any which the applicant is willing to pay and providing a space for the respondent to comment on each item.
4. The Tribunal determined the application on 29 April 2019 after an inspection. Neither party requested a hearing.

## The respondent’s case

5. The respondent produced a copy of the service charge demand dated 21 February 2018 in respect of the accounting year starting on 1 April 2018. The monthly charge included the service charge of £150.42 and a levy “*for % not owned*” of £64.19, totaling £214.61. A summary of tenants’ rights and obligations was attached to the demand.

6. The respondent relied on a document headed “*service charge budget – 1 April 2018 to 31 March 2019*”. It itemizes the expenditure actually incurred plus the management charge and contribution to the sinking fund and surplus for 2017/18 and it shows the estimated sums to be incurred in 2018/19. The total annual expenditure in 2017/18 was £8,125.00 and the estimated amount for 2018/19 was £10,830.00. The charge per property was £1,354.00 in 2017/18 and £1,805.00 for 2018/19.
7. The respondent produced a copy of the minutes of a meeting with the “*customers from Fortuneswell Court*” held on 12 April 2018.

### The applicant’s case

8. The applicant stated that the service charge demand for 2018/19 showed “*a dramatic increase, several items increasing by 40% up to 364%, to prices far in excess of the expected market ‘going rates’ for the services provided*”. The applicant’s request for further information was refused by the landlord. A meeting was held with the respondent in April 2018. The applicant was told that no comparative quotes were obtained and the contractors, “*Assist*” and “*Glendale*”, had not been challenged when they raised their prices. Prompted by the appellant, the respondent asked Glendale why its charges had increased from £4-500 to £1,000 and obtained a reduction to £600. The appellant was offered a “*re-quoted ‘reduced’ rate for one small element of the service charge*” but all his other requests for comparable quotes were ignored. The applicant told the respondent that he would only pay the previous year’s amount of £174.43 per month.

### Items in dispute

9. We asked the parties to set out the items that make up the service charge in a schedule or spreadsheet but that was not done. That would have helped the parties to identify the issues in dispute and assisted us to determine the application. During the site inspection we asked the applicant to identify the items that are in dispute. Based on what he told us, and on the papers, the items in dispute are:

- 1) Communal cleaning
- 2) Grounds maintenance
- 3) Window cleaning
- 4) Tree works
- 5) Maintenance contract in connection with emergency lighting
- 6) Day to day repairs
- 7) Annual gutter clean

## The Law

10. S.18 of the Act defines “service charges” and “relevant costs”:
- (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
    - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
    - (b) the whole or part of which varies or may vary according to the relevant costs.
  - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
  - (3) For this purpose—
    - (a) “costs” includes overheads, and
    - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.
11. S.19 of the 1985 Act deals with limitation of service charges:
- (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 provision 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.
  - (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.
12. S.27A of the 1985 Act deals with the liability to pay service charges:

- (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.

S.18 of the Act defines “service charges” and “relevant costs”:

- (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose—
  - (a) “costs” includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

### Decision

13. Before we made our decision, we invited the parties to try to resolve the dispute by further discussion or by formal mediation. The applicant did not want to deal with matters in that way and the respondent did not reply. We have therefore proceeded to decide the application on the documents provided and the submissions made by each party. We have done our best on the evidence we that have, and we have considered the parties’ statements of case. There is a lack of clarity in how both parties have presented their cases. We have been

presented with undated letters and incomplete copies of emails, in an unstructured format.

14. We inspected the property on 29 May 2019. It is a purpose built brick and concrete tile three storey building situated in a cul-de-sac close to the centre of Didsbury. There is limited off-street parking with private grounds to the north and east (or on two sides of the building). The southern boundary is adjacent to a similar building and grass works for both properties are carried out together. In addition, there are garden hedges to clip and recently tree works to two trees have been carried out.
15. The property has external lighting, communal door with intercom and letterboxes in the Hall. Each floor provides access to either a one or two bedroom apartment. The common areas are heated by electric radiators with emergency lighting and signage on each floor. There is also a communal area.
16. The property was in good condition, albeit with evidence of moss on the roof tiles, and we understood that there had been no major repairs in the last eight years.
17. Under clause 3(2)(b) of the lease, the tenant covenants to pay by way of additional rent the service charge in accordance with clause 7:
  - a. under clause 7(1) the “account year” ends on 31<sup>st</sup> March. The tenant is liable to pay a “specified proportion” of the “service provision” as computed in accordance with sub-clauses 7(4), (5) and (6).
  - b. under clause 7(2) the service charge is payable by equal payments in advance. Sums paid in respect of the reserve are held in trust for the leaseholder until applied in accordance with clause 7(5).
  - c. under clause 7(3) the service provision shall be computed in advance of the account year.
  - d. under clause 7(4) the surveyor will estimate the sum likely to be incurred in the account year which will include an appropriate amount as a reserve to be reduced by any unexpended reserve from the previous year.
  - e. under clause 7(5) the relevant expenditure to be included in the service provision shall “*comprise all expenditure reasonably incurred by the Landlord in connection with the repair management maintenance and provision of services for the Building and the Estate including the Common Parts...*”

18. We considered each of the items in dispute:
19. In respect of communal cleaning, grounds maintenance and window cleaning the respondent stated that the cost has increased because of “*the re-procurement of a new service contract... The increase can be expected in line with the living wage costs. The service charge you [the applicant] paid in 2017/18 was based on an inflated figure from your previous supplier as we did not have actual costs for Assist when setting the service charges. You are now being charged the actual costs for providing this service*”. This explanation does not make a great deal of sense.

The respondent stated in a letter dated 4 March 2019 to the leaseholders that “*with regards to the procurement of services, all of the noted procurement processes have been complete at various times in accordance with procurement rules and were subject to the required consultation: at which time you were able to raise your queries and observations. At such time you were provided access to all the relevant documents*”. The applicant has not challenged this statement, but the information given about the consultation process is unclear. A formal consultation process appears to have been used for cleaning and grounds maintenance but not the other services (if required by legislation).

20. The cost of the communal cleaning in 2017/18 was £316.00 and the amount claimed for 2018/19 is £1,437.00. It covers cleaning communal corridors and stairwells in the block. In the respondent’s undated letter it is stated :“*...that from a review of the budget amounts set for communal cleaning and grounds maintenance the costs actually spent to date [this is before the end of the account year] represent a lower amount...as such the budget costs we were initially provided by contractors, were later challenged and corrected, therefore the costs attributed to the following are an estimated spend for the year*”. The unaudited expected spend for 2017/18 was £740.62 less than the estimated sum for the year. Doing the best we can, we find that it is reasonable without further explanation form the respondent to allow £696.38 for 2018/19 based on the previous year. This work appears to have been the subject of a tendering process.
21. The cost of the grounds maintenance in 2017/18 was £533.00 and the amount claimed for £2018/19 is £1,316.00. This covers grass, shrub and flower bed maintenance, moss removal, bin storage area checks and cleaning, leaf collection and hedge maintenance. It appears that after further negotiation between the respondent and the contractor a reduction was achieved. Again, relying the respondent’s undated letter the unaudited expected spend for 2017/18 was £702.56 less than the estimated sum of £1,316.00. We find it

reasonable to allow £613.44 for 2018/19 based on the previous year. Again, this work appears to have been subject to a tendering process.

22. The estimated cost of window cleaning has increased from £316.00 to £374.00. This covers cleaning the outside of the windows in the block. This is a limited increase and we find that it is reasonable based on the evidence we have. We allow £374.00.
23. The estimated cost of tree works has fallen from £1,000.00 in 2017/18 to £650.00 in 2018/19. It remains to be seen what works were required. It is reasonable to include this item in the service charge, but it will be open to scrutiny and possibly challenge when the respondent has the audited accounts which will be available in September 2019 and a balancing charge is made in 2019/20. We allow £650.00.
24. The estimated amount for the maintenance contract in connection with emergency lighting has increased from £321.00 to £785.00 which the respondent described as “*a slight increase*” but it does not explain why the charge has more than doubled. This covers the service and inspection to meet safety requirements. There is no adequate explanation for the increase, and we find that it is reasonable to allow £321.00 based on the previous year.

Day to day repairs: The Respondent, in a letter dated 25 February 2019 stated that these are “*reactive day to day repairs to the fabric and structure of the building and common areas*”. The amount in 2017/18 was £600.00 and this has increased to £800.00 in 2018/19. In the respondent’s undated letter it is stated that; “*...the 2017/18 budget [shows] an estimated spend of £800.00 [£600.00] for day to day repairs , however the actual spend totaled £3,657.08, which was outlined in the accounts you received September 2018*”. This is incomprehensible. Doing the best we can, we allow £800.00. The actual expenditure will be revealed in the accounts to be disclosed in September 2019 when a challenge may be made based on the actual figures.

25. The cost for the annual gutter clean: this has increased from £940.00 to £1,200.00. The respondent stated that the increased figure is based on an estimate and “*now we have the actual cost we are able to provide an accurate figure*” which appears to be £1,184.71 as evidenced in the 2019/20 budget. We allow £1,184.71.
26. The service charge claimed for 2018/19 is based on estimated expenditure. The accuracy of the estimated sums will become clear when audited accounts



are disclosed by the respondent in September 2019. The applicant will be entitled to see the relevant invoices and all supporting information relevant to the works. When a balancing exercise has been completed and reflected in the 2019/20 budget the applicant will have the opportunity to challenge any items of expenditure that he disagrees with based on actual rather than estimated figures.

27. In summary:

	claimed	allowed
communal cleaning	£1,437.00	£696.38
window cleaning	£374.00	£374.00
grounds maintenance	£1,316.00	£613.44
tree work	£650.00	£650.00
building insurance	£454.00	£454.00
communal electricity	£495.00	£495.00
maintenance – communal lights	£785.00	£321.00
accountancy fee	£63.00	£63.00
day to day repairs	£800.00	£800.00
annual gutter clean	£1,200.00	£1,184.71
ground rent	£40.00	£40.00
total cost of services	<u>£7,614.00</u>	<u>£5,691.53</u>
management charge	£1,200.00	£1,200.00
contribution to sinking fund	£2,259.76	£2,259.76
surplus/deficit 2017/18	(£244.11)	(£244.11)
total annual expenditure	£10,829.91	£8,907.18
charge per property	£1,804.98	£1,484.53

28. We find that the service charge payable for 2018/19 is £1,484.53.

**Dated 18 June 2019**  
**Judge P Forster**

