FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/45UG/LSC/2018/0113
Property	**:**	21 Kilnbarn Court, Haywards Heath, West Sussex RH16 4SE
Applicants	**:**	Mr James Henry Parry
Representative	**:**	
Respondent	**:**	Accent Housing Limited
Representative	**:**	Towers and Hamlin LLP, solicitors and Mr Simon Allison, counsel
Type of Application	**:**	Service charges
Tribunal Member(s)	**:**	Judge D. Agnew Mr BHR Simms FRICS Miss J Dalal
Date and venue of hearing	**:**	18th July 2019 at The Hickstead Hotel, Jobs Lane, Burgess Hill
Date of Decision	**:**	14th August 2019

DETERMINATION

Background

1. By an application dated 5th November 2018 the Applicant applied to the Tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the payability and reasonableness of service charges levied by the Respondent in respect of 21 Kilnbarn Court, Haywards Heath RH16 4SE ("the Property"). The Applicant is the lessee of the Property under a lease for 99 years from 18th August 1992 under a shared ownership scheme. The Respondent is the landlord.

2. The service charges in question were initially the on-account charges for the years 2016/17 and 2017/18 but by the time the matter came before the Tribunal for a hearing the year end accounts for those years had been produced and the parties agreed, therefore, that it was those accounts that the Tribunal would consider. The charges sought from the Applicant were £726.09 for 2016/17 and £1148.77 for 2017/18.

3. Directions were issued on various dates and the matter was listed for hearing on 18th July 2019. The Applicant appeared in person. The Respondent was represented by Mr Simon Allison of counsel.

Inspection

4. The Tribunal inspected the property in he presence of the parties immediately prior to the hearing. Kilnbarn Court is part of a development which includes three blocks of flats and some houses. The total number of flats is 20. The Applicant's block itself contains 6 flats, as does one other block; the third block containing eight flats. The development also includes 18 houses on Kilbarn Way (14 of which have been disposed of by the the Respondent) and 5 houses on nearby Pinewood Way (2 of which have been disposed of). The blocks of flats each have their own entrances and communal staircase leading to the individual flats. The external common areas consist of landscaped areas of grass, small trees and shrubs and a car park. On the far side of the access road to the flats' car park is a strip of dense mature woodland.

5. The three blocks of flats and communal grounds all appeared to be well maintained. The grass at the time of inspection was neatly cut, shrubs had been pruned and were in the process, in parts, of being replaced by more grass. The internal common parts were well decorated and carpeted. Everything was clean, neat and tidy. The two windows in the stairway on the first floor of the applicant's block were small and clean.

6. The Tribunal noticed two large globe lights on the external walls of Kiln Barn Court which face the car park area. Similar lighting illuminated the concrete steps on the opposite side of the building.

7. The Tribunal was shown a significant crack in a retaining wall which would require attention shortly but this was not part of the case with which the Tribunal were concerned on this occasion.

The Applicant's case

8. During the course of the hearing the Applicant accepted the following items that he had originally challenged, namely;
   a) Grounds maintenance: the figure of £86.21 for 2016/17
   b) Cleaning contract for 2016/17 of £44.71
   c) The contribution towards cyclical maintenance of £63.16 for 2016/17 and £62.50 for 2017/18
   d) £9.42 for door entry repair in 2016/17.
   e) Management fee for 2016/17 of £151.20

   The Applicant pointed out that electricity charges contained an element for "car park lighting". This had been disallowed by a previous Tribunal but it was not a point he was pursuing himself but he would leave it up to the Tribunal to decide.

9. The Applicant challenged the following items;
   2017/18
   a) Grounds maintenance: £233.70
   b) Cleaning contract: £111.26
   c) Window cleaning: £6.83
   d) Emergency lighting: £30.83
   e) Management fee: £300

   There was a challenge to a TV aerial repair cost of £346.80 but it transpired that this was an expense in 2015/16 year and therefore not the subject of this application. The same applies to a complaint about a one-off charge to clean the carpet following dirt being trodden into the carpet from an overflowing foul drain. As this was a cost incurred in 2015/16 this was not the subject of this determination.

10. The Applicant raised a general challenge as to the way the costs were being apportioned by the Respondent. He maintained that all costs incurred by the landlord for the three blocks of flats should be divided into 20 equal parts as there are 20 flats. The Respondent has, however, been including in the overall costs charges which apply not only to the flats but to other areas of the development and then dividing those costs by the number of properties in the development which the Respondent retains. This is particularly the case with Grounds Maintenance. When it comes to repairs carried out to a block it may not be "equitable" for the lessees of a block not requiring repair to be required to contribute towards the repair in another block. Whilst that may not be "equitable" the lease provisions will prevail. It was going to be necessary, therefore, for the Tribunal to construe the lease in order to determine the correct method of apportionment of the costs.

The lease

11. It is fair to say that the lease is flawed and unclear in several respects. First, although the backsheet shows that the Property is "Plot 31 Haywards Heath" with a postal address of 21 Kilnbarn Court, Particulars on page 1 of the lease describe the premises as "Flat No 31 on the First Floor of the Building". This is evidently a mistake as there is no flat 31 and it seems that the plot number has

erroneously been given. Then, again under particulars, "Building" is stated to be "The property known as Plot 31 No 21 Kilnbarn Court". The Building cannot possibly be No 21.

12. Still in the Particulars, " Proportion of Service Provision (Clause 7)" is stated to be "1/20th (1 bed flat) 1/6th (2 Bed Flat)". As there are 6 flats in the Applicant's block all of which are 2 bedroom, the intention of the lease as set out in the Particulars would appear to be for the landlord's costs incurred in respect of that block to be divided by 6. In other words "the Building" is the block and not the whole of Kilnbarn Close comprising flats 1-21 (there being no Flat 13). The Building cannot, in the Tribunal's view, refer to anything other than the separate block containing Flats 16-21. Although the flats are numbered 1-21 as if they are part of one building, there would be no point in referring to a divisor of 1/6th if all three blocks were to be treated as the Building. A lessee of a two bedroom flat cannot possibly contribute 1/6th of the total cost for the three blocks. If, contrary to the Tribunal's view, the Building is the three blocks taken as a whole the divisor should then be 1/20 or some other fraction adjusted slightly to take into account the fact that some of the flats are one bedroom. The Tribunal understands that all the one bedroom flats are in the same block. Thus, in their case, the divisor for the costs incurred in respect of that block will be 1/20th. The Tribunal would have been confirmed in its view if there are three one bedroom flats in that one block, all other flats being two bedroom. If that is the case the total apportionments for the three blocks would add up to 100% (i.e 6/20ths plus 6/20th plus 8/20ths respectively) Unfortunately, the Tribunal did not have that information before it.

13. There will be some services which the landlord provides covering all three blocks. If the Tribunal's construction of the lease is correct, it would require the landlord first of all to apportion the costs to a particular block if the service provider has not already done that. Having done that, each lessee's proportion, as far as the Applicant's block is concerned, will be 1/6th of the costs apportioned to his block. Thus, if the landlord's reasonable approach is to say that each flat benefits equally from the service such as gardening, then the Applicant's block will bear 6/20ths of the charge and each lessee in the block will bear 1/6th of the block charge. This produces the same result as dividing the total cost by 20. If, however, the costs are to the benefit of one block only, then the Tribunal's construction of the lease is that such costs will be borne by the lessees in that block as to 1/6th of the costs or 1/20th depending on whether they have a one or two bedroom flat.

14. The main difference between the landlord's approach to apportionment hitherto and the Tribunal's construction of the lease is likely to be in the area of repairs. If a repair is needed, say to the roof of one block, instead of that cost being divided by 20 and all lessees being required to contribute, only the lessees in the affected block would be required to pay (either 1/6th of the cost or 1/20th of the cost depending on whether they have a one or two bedroom flat). The lessees may or may not like this construction of the lease. The Tribunal suggests that the landlord convenes a meeting to discuss this with the lessees. In any event, it would be advisable, if agreement can be reached

for variations of the leases to be effected to eradicate the obvious errors and to clarify the position with regard to apportionment.

The Applicant's case regarding the disputed charges

12. Grounds Maintenance 2017/18
    There has been a huge increase in cost compared with previous years. Further, he complains that the gardening contract includes areas not within Kilnbarn Court and that there have been times when the gardeners have not visited resulting in overgrown grass areas. The service is therefore far too expensive and not satisfactory.

13. Cleaning contract for both 2016/17 and 2017/18
    Again, the Applicant's complaint is that the increase in cost is unreasonable, the frequency of visits is too high and the cost for the work required is unreasonable.

14. Management costs for 2016/17 and 2017/18.
    Again the Applicant complains that there has been a significant increase in costs over previous years and the service has deteriorated. The number of visits to the property have decreased and he has unsatisfactory responses to letters of complaint or requests for information.

15. Window cleaning for 2017/18
    This used to be included in the cleaning contract cost but is now a separate additional item. The requirement for window cleaning is minimal. There are only two very small windows in his block which would take a very short time to clean. This should be part and parcel of the cleaning contract.

16. Car park lighting.
    Mr Perry did not pursue this item but left it to the Tribunal to determine whether it agreed with a previous tribunal ruling that the costs of electricity to run these lights was not recoverable from the lessees.

17. Emergency lighting
    The cost is for servicing the fire detection and precaution system. In 2016/17 this cost appeared for the first time. The Applicant's apportioned cost was £41.08 for 2016/17 and £30.83 in 2017/18. The Applicant thought that the contractor was making unnecessary visits to the property.

The Respondent's response to the challenged items

18. Unsurprisingly, the Respondent considered that all the charges claimed were reasonable. With regard to the Grounds maintenance, this had gone through the section 20 consultation process. The Respondent wished to reduce the number of contractors in respect of all its properties nationwide. The contract that was let in August 2017 was as a result of a competitive tendering process. The Respondent has taken on board, however, the fact that the contract for Kilnbarn Court was not sufficiently targeted as far as the work required and therefore the apportionment of costs between the different parts of the development containing Kilnbarn Court. The Respondent has therefore

divided up the development into zones and each zone has been costed separately. This will result in a reduction in Mr Perry's case of £67.06.

19. The cleaning contract was subject to the consultation procedure and went out to tender. It includes a visit once per week and one deep clean per year.

20. The management charge was subject to a detailed review for 2017/18 as it was found that the charges were not covering the costs of the operation. A tiered system of charges was introduced to reflect the services provided to the different types of property within the scheme. Kilnbarn Close was allocated a tier 3 charge resulting in a fee to the Applicant of £300.

21. With regard to car park lighting, this was clearly part of the landlord's obligation under Clause 5(4) of the lease to keep the Common Parts of the Building adequately cleaned and lighted.

The relevant law

22. By Section 27A of the 1985 Act it is provided that:-
(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.

The Tribunal's decision

23. (a) Grounds maintenance 2017/18
It is understandable that from the Respondent's point of view they would wish to reduce the number of contractors for their properties nationwide. However, in this case it has meant that the cost to the lessees has risen by an unreasonable amount. The effect of such an exercise on the people who are liable to pay the bill must be considered when such exercises are undertaken by landlords. The Tribunal has no doubt that comparable if not superior services could be provided by a more local contractor. The Tribunal considers that a reasonable cost for the Applicant to pay for grounds maintenance, bearing in mind the type and limited extent of the landscaping in this case is £100 for 2017/18

(b) The same comments apply to cleaning services. The amount of cleaning required in the Applicant's block is minimal. A reasonable amount for the applicant to pay for cleaning to include the small amount of cleaning to the windows in his block is £50 for 2017/18.

(c) The management costs for 2017/18 at £300 appear on the face of it to be high. However, in answer to questions from the Tribunal, the Respondent confirmed that the fee includes all statutory checks an, an AGM and two sets of meetings per year, once when the budget is set and one prior to issuing final accounts. They also hold meetings as and when required. Much of this would normally be charged as extras on top of a basic management fee charged by an

independent managing agent. Accordingly, the Tribunal finds that this fee is reasonable and payable.

(d) the Tribunal finds that the cost of running the exterenal lighting, sometimeas referred to as car park lighting in the hearing bundle, is recoverable by the landlord under the service charge.

(e) The Tribunal finds that the servicing of the fire alarm and emergency lighting system is a necessary expenditure and, as charged, is reasonable.

Conclusion

24. The Tribunal proceedings have resulted in there being no challenges, in the end, to the service charges levied for 2016/17 save for the agreed figure of £9.42 for the door entry repair. This results in a total charge for that year to the Applicant of £695.61 (i.e. £513.06 plus £182.55). For 2017/18 the total service charge for which the applicant is liable to pay is as follows:-

Grounds maintenance	£100.00
Cleaning	£50.00
Landlord lighting	£20.81
Door entry repairs	£16.65
Emergency lighting servicing	£30.83
Accountant's fee	£13.29
Contribution to cyclical maintenance	£62.50
Contribution to major repairs	£165.00
Home owner communal repairs	£155.70
Buildings insurance	£32.20
Management fee	£300.00
Total	£946.98

Costs

25. The applicant had indicated on his application form that he did not wish to make an application under section 20C of the Act. However, when questioned by the Tribunal about this it was evident that he had not understood what this meant and stated that he did in fact wish to make an application under that section. Mr Allison said that the Respondents had no intention of adding the costs of the proceedings onto any future service charge. He also volunteered that there was no provision in the lease enabling the landlord to seek its costs from the Applicant as a contractual liability. The Tribunal is grateful to Mr Allison for that indication but nevertheless, for the avoidance of dobt it does consider it just and equitable to make an order under section 20C. Although the Applicant has not succedded on all points raised he has been successful in reducing the charges for 2017/18 quite significantly and the Tribunal considers it would be wrong, therefore, for the Respondent to be able to recoup its costs through the service charge. The Tribunal agrees that there is no provision in the lease for the landlord to recover contractual costs of the proceedings from the Applicant, but, again for the avoidance of doubt, and for the same reaons as for section 20C of the Act the Tribunal does make an order

under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform act 2002 extinguishing any liability for such costs.

Dated the 14th day of August 2019

Judge D. Agnew (Chairman)

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.