



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

Case Reference : CHI/00HY/LSC/2019/0093

Property : 121 Victoria Road
Devizes, Wiltshire, SN10 1EZ

Applicants : Mr Daniel James Bird

Representative : None

Respondent : Aster Communities

Representative : Capsticks LLP

Type of Application : Liability to pay and reasonableness of service charges

Tribunal Member : Mr I R Perry FRICS

Date and venue of hearing : 27th December 2019, Paper Case

Date of Decision : 8th January 2020

DETERMINATION

Background

1. By an application dated 16th September 2019 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 121 Victoria Road, Devizes, Wiltshire SN10 1EZ (“the Property”).
2. The Applicant is the Tenant of the Property under a Lease for 125 years from 18th April 1988, originally granted by Kennett District Council. Aster Group (“the Respondent”) is responsible for the management of the property including the assessment and collection of service charges.
3. The elements of the service charges in dispute were for a total of £449.77 for the year 2016/17 and £199.55 for the year 2018/19.
3. A case management hearing was held by telephone on 24th October 2019. Directions were then issued by the Tribunal office that the matter could be dealt with on the papers without an oral hearing.
4. The case was first considered on 27th December 2019. The Tribunal wrote to the Respondent on 30th December 2019 for clarification of some figures for repair and decoration. The Respondent’s representative replied on 6th January 2020.

The Property

5. A plan shows the Property to be a two-bedroom flat within a purpose-built block of some 12 flats. There are common areas including hallway and staircases.
6. There are several similar blocks in the road also managed by the Aster Group. A contract for repair and decoration of several blocks at once had been awarded in the past and the appropriate costs allocated between the blocks.

The Applicant’s case

7. Following the case management hearing the Applicants case was set out in a letter to the Respondent dated 26th October 2019. In its reply dated 26th November 2019 the Respondent commented on the detailed elements of the claim and the Applicant responded with a further letter dated 3rd December 2019. There were 12 items in dispute or questioned.
8. For the year 2016-2017
 - 1) External redecorations. The Applicant asks what works were carried out to his building to support the charge of £423.35. A composite invoice covering several blocks was provided by the Respondent in the total sum of £86,086.27 including VAT.

The Respondent has quoted the repair costs for the block containing the Property as £2,866.22 and the painting costs as £4,428.00, a total of £7,294.22. The Respondent says that the Applicant had been undercharged by £184.50 for painting and repair costs.
 - 2) Estate cleaning £99. The Respondent confirmed that a charge for Estate cleaning had been made in error and the Applicant was to be credited with £16.50 plus £2.48 for the associated management fee. The Applicant had raised no further issue with this matter.

- 3) Landlord's electricity £70.99. The Respondent confirmed they had overcharged for Landlord's electricity and would credit the Applicant with £17.95 plus £2.69 for the associated management fee. The Applicant had raised no further issue with this matter.
- 4) Renewal of equipment £40.93. The Respondent had explained that the sum of £40.93 for Renewal of Equipment was in fact a misdescribed payment to a Sinking Fund in accordance with paragraph 3 (e) of the Fifth schedule of the Lease. The Applicant had raised no further issue with this matter.
- 5) External lighting £32.28. The Respondent confirmed that the External lighting in the sum of £32.28 had been incorrectly charged to the block containing the Property. A credit of £5.38 would be made plus £0.81 pence for the associated management fee. The Applicant had raised no further issue with this matter.

For the year 2018-2019

- 6) Renewal of equipment in the sum of £19.61. The Respondent confirmed that this had been charged in error and is to be credited to the Applicant's account. This heading had been used historically to collect monies for the Sinking Fund but in 2018-2019 a separate heading within the accounts had been introduced for contributions to the Sinking Fund. The Applicant asks the question why both headings appear in the current years accounts but does not challenge any amounts.
- 7) Landlord's electric £42.98. The Respondent confirmed that this had been overcharged in the sum of £20.79 plus £3.12 for the associated management fee. The Respondent also commits to reviewing previous years where electricity may have been charged in error. The Applicant had raised no further issue with this matter.
- 8) External lighting £6.69. The Respondent confirmed that this has been charged in error and the Applicant is to be credited with £6.69 for supply plus £1.00 for the associated management fee. The Respondent had realized that further errors had been made in previous years and credits totaling £14.06 will be made for the years 2015-2016 and 2017-2018. The Applicant had raised no further issue with this matter.
- 9) Management fees £31.27. The Respondent states that Management fees of 15% are charged by Aster Group in accordance with Clause 4 of the seventh schedule within the Lease. The Applicant raised no further questions on this issue.
- 10) Sinking Fund £99.00. The Respondents state that they have applied a figure of £99.00 as a prudent contribution to a Sinking Fund. However, they state that they had made further errors in the historic calculation of the balance of Sinking Fund for the Property but had agreed to 'honour the balance of £1964.48' as stated to the Applicant in 2015. The Applicant had raised no further issue with this matter.
- 11) The service charge statement. The Respondent had clarified that the service charge statement covers the odd numbers 109-131 Victoria Road, 12 properties in total, which is consistent with the Building as described in the Lease. The Applicant had raised no further issue with this matter.

- 12) Costs of adopting the highway. The Respondent confirmed that Victoria Road has been adopted by the Local Authority at no cost to the Applicant. The Applicant had raised no further issue with this matter.
9. Accordingly the only matter still in dispute is the External redecorating and repair costs in the year 2016-2017.
10. In his letter of 26th October 2019, the Applicant had asked for evidence of works carried out, where, when and what had been repaired and decorated to support the charge of £423.35.
11. In its letter dated 26th November 2019 the Respondent explained that internal and external decoration had been undertaken to the block 109-131 Victoria Road including provision of scaffolding, several repairs, painting to the internal and external areas of the block including external storage sheds and the washing down to UPVC gutters, fascias and soffits.
12. The Respondent writes that the total cost set against the block 109-131 Victoria Road was £7294.22 comprised of painting costs £4,428.00 and repair costs £2,866.22. In its letter of 6th January, the Respondents representative states that this includes VAT of £477.77.
13. The supporting schedule provided by the Respondent from its own accounts shows the repair costs for the block as a total of only £2,388.52, but this does not include VAT.
14. The supporting schedule includes further costs of £593.69 from July 2016 and £2658.49 from September 2016 together with a credit for pre-painting repairs of £385.95 in October 2016.
15. The Applicant does not dispute that he is responsible for various charges specified within the Lease but has sought an explanation for some of the costs and greater transparency of how costs are allocated to the Property.

The relevant law

16. 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 Lease

17. The Lease for the property is dated 5th February 1990 and commenced on 18th April 1988 for a period of 125 years at a Ground rent of £10 per annum.
18. Within the Fifth schedule of the lease the Lessee covenants to pay a proportionate part of the expenses and outgoings incurred by the Council,

the lessor at the time, in the repair and maintenance renewal and insurance of the Site and the Building and the provision of the services therein.

The Tribunal's consideration

18. The Application to the Tribunal appears to have been well founded as several accounting errors have come to light for the Service charges in question and for previous years. The Respondent has apologised to the Applicant for these.
19. The exchange of correspondence has answered questions raised by the Applicant and the parties have reached agreement or resolution on the matters raised as detailed in the decision below.
20. The Respondent has provided sufficient evidence for the costs levied within the service charge for external repairs and decoration in 2016-2017.
21. In addition to these the Respondent has undertaken to review Landlord's electricity charges for years prior to 2016-2017 and will refund a total of £14.06 for external lighting charges 2015-2016 and 2017-2018 and will honour the Sinking Fund opening balance of £1964.48 as at April 2015.

Decision

22. The service charge payable by the Applicant for the year 2016-2017 is to be reduced by.

Estate Cleaning	£18.98
Landlord's electricity	£20.64
External lighting	<u>£6.19</u>
Total	£45.81

23. The service charge payable by the Applicant for the year 2018-2019 is to be reduced by

Renewal of equipment	£19.61
Landlord's electricity	£23.91
External lighting	<u>£7.69</u>
Total	£51.21

Dated the 8th January 2020

I R Perry FRICS (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.