FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**MAN/00BN/LSC/2020/0020**
Property	**Apartment 203, 90, Princess Street, Manchester M1 6NG**
Applicant	**Mr. Kamru Zaman**
Respondent **Represented by**	**Princess Street Limited** **Northern Block Management**
Type of Application	**Landlord and Tenant Act 1985 – section 27A and section 20C**
Tribunal Members	**Tribunal Judge C.Wood** **Tribunal Member P. Mountain** **Tribunal Member A.Hossain**
Date of Decision	**23 March 2021**

DECISION

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Order

1. The Tribunal determined that the following costs had been reasonably incurred as service charge in respect of each of the service charge years 2018/19 and 2019/20 and that the Applicant was liable to pay his contribution in accordance with the terms of his lease in full:

		£	
		2018/19	2019/20
1.1	fire alarm & emergency lighting tests/maintenance:	4620.00	2950.00
1.2	insurance:	8665.43	8790.12
1.3	general costs: (i) internal cleaning:	9360.00	9360.00
	(ii) internal repair and maintenance:	4591.35	4302.61

2. The Tribunal determined that the apportionment of service charge expenditure between "Schedule 1" and "Schedule 2" costs was reasonable and in accordance with the terms of the Applicant's lease.

3. The Tribunal determined that it was just and equitable in the circumstances to make no order in favour of the Applicant under section 20C of the Landlord and Tenant Act 1985, ("the 1985 Act").

Background

4. By an application received on 17 February 2020, the Applicant sought a determination under s27A of the Act of the reasonableness of, and liability to pay, certain service charges for the service charge years 2018/19 and 2019/20.

5. Directions dated 22 October 2020 were issued pursuant to which both parties made written representations.

6. The Applicant requested a hearing and this was held via a remote hearing on 12 March 2021 at which Mr.Zaman attended in person and the Respondent was represented by Mr.Schwarz from the Respondent's managing agents, Northern Block Management.

7. Due to covid-19 regulations, the Tribunal did not inspect the Property.

Law

8. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

An application may be made to the appropriate 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.*

9. The Tribunal is "the appropriate tribunal" for this purpose, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

10. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.*

11. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

    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.

12. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

    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.

13. There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, he will need to specify the item complained of and the general nature of his case. However, the tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

14. Section 20C of the 1985 Act permits the Tribunal to order that the costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or by any other person specified in the application for the order. The Tribunal may make such order as it considers just and equitable in the circumstances.

Evidence

15. At the outset of the hearing, the Tribunal confirmed with the Applicant that the items in dispute for each of the service charge years were as set out in his written representations and were as follows:

    15.1 the allocation of costs between Schedule 1 and Schedule 2;

    15.2 management fee;

    15.3 fire alarm/water risk assessment etc;

    15.4 insurance cover;

    15.5 general costs: specifically: (i) internal cleaning; (ii) life safety system; (iii) internal repair and maintenance and forward funding; (iv) telephone and internet.

16. The Applicant's oral representations are summarised as follows:

    16.1 there has been a substantial increase in the service charge from £660 pa during the guaranteed period to c£4000 pa now. At the time of acquisition of the Property, the forecasted service charge after the guaranteed period was £1300 – 1600 pa;

    16.2 the comparison with the other development in which the Applicant owns apartments is evidence of the unreasonableness of the charges in respect of the Property. In response to questions from the Tribunal, the Applicant confirmed that the comparator building was a new build comprising 45 apartments over 6 floors, with a commercial unit on the ground floor. 90, Princess Street, in which the Property is situate, is a conversion over 6 floors, comprising 35 residential apartments over 4 floors, and 2 commercial units on the ground floor;

    16.3 with regard to the individual items of expenditure:

        (1) allocation of costs between Schedule 1 and Schedule 2: whilst acknowledging the reason for distinguishing between internal and external expenditure, the Applicant considered that it was being used to increase/duplicate costs;

        (2) management fee: the Applicant conceded that this was reasonable;

        (3) fire alarm/water risk assessment etc: the Applicant considered that £2-300 was a reasonable cost to carry out the lighting tests instead of the £2600 which had been charged;

        (4) insurance: the Applicant considered that the premiums of £8665.43 (2018/19) and £8790.12 (2019/20) were not reasonable;

        (5) general costs:

            (i) internal cleaning: a reasonable cost would be £5000 instead of the £9360 charged in respect of each of the service charge years, and that the hourly rate of £22.50 for the cleaners appeared high;

(ii) life safety system: the Applicant conceded that these costs are reasonable;

(iii) internal repair and maintenance and forward funding: the costs of £4591.35 (2018/19) and £4302.61 (2019/20) appeared high. In view of the Respondent's agent's comments, the Applicant acknowledged that, in the event, no charge had been made for forward funding;

(iv) telephone and internet charges: whilst the Applicant initially stated that there appeared to be some element of double-counting as these costs were also deducted from the rent, he subsequently acknowledged that this was incorrect and conceded the reasonableness of the charges.

17. The Respondent's oral submissions are summarised as follows:

17.1 during the 1st 3 years of the development, the service charge was "capped" at £600 pa. Mr.Schwarz was not aware of any forecast of future service charge as referred to by the Applicant but, in any event, was not something to which the Respondent should be held;

17.2 Mr.Schwarz challenged the relevance of the comparator development. It was clearly a significantly larger development with total service charge expenditure of £405,000, and an apportioned liability for the Applicant of 0.43%. By contrast, the total service charge expenditure in this development was c£100,000 with apportioned liability for the Applicant of 3.5% (Schedule 1) and 4.5% (Schedule 2);

17.3 Costs are divided into Schedule 1 and Schedule 2 costs to distinguish between internal communal areas (for which only leaseholders of the residential apartments are liable to contribute) and the external/structural areas (for which all leaseholders, including those of the commercial units, are liable to contribute). There is no duplication of costs between Schedules 1 and 2;

17.4 Management fees: it was noted that these had been agreed by the Applicant;

17.5 Fire alarm testing/maintenance: Mr.Schwarz reiterated the information provided in the written representations, namely, that, in the absence of a caretaker at the development, it was necessary to engage 3rd parties to undertake these tests. Twice-weekly tests of the fire alarm equipment were carried out, together with separate regular testing of the emergency lighting. The cost was £50 per week. Mr.Schwarz was unable to clarify to what the £2020 charge for fire alarm maintenance related;

17.6 Insurance: the comparator premium of £75346 was of limited relevance to the charges of £8665.43 (2018/19) and £8790.12 (2019/20). In response to the Tribunal's questions, Mr.Schwarz confirmed that the insurance included EL and PL cover. He explained that the insurance was arranged through a broker and reflected the lack of claims to date;

17.7 Internal cleaning: Mr.Schwarz confirmed that 1 cleaner was engaged for 1 hour 5 days a week, and a 2nd cleaner for 1 hour 3 days a week, a total of 8 hours per week at an hourly cost of £22.50. The cost included labour and materials.

17.8 Internal repairs: Mr.Schwarz had not provided any detailed breakdown of these costs. The development was now 5 years old and he explained that there had been some quite extensive re-decoration of the internal communal areas last year. Further, Mr.Schwarz explained that there was quite a lot of technology in the communal areas relating to the airsource heat pumps, as well as the more usual fixtures/fittings eg water tank, doors, carpets, door entry system, light bulbs;

17.9 Telephone and internet: this relates to the communal high-speed internet provided to all apartments in the development, together with the lift telephones, and was charged at £20 per apartment per month. Mr.Schwarz denied that this charge was also deducted from the rent paid to the leaseholders;

17.10 In response to questions from the Tribunal, Mr.Schwarz confirmed that :

(1) he had introduced the change to the basis of apportionment of service charge in the 2019/20 service charge year, from an apportionment based on number of beds per apartment to one based on square footage, and that this had been applied retrospectively to the 2018/19 service charge year. He considered that this was a more appropriate apportionment basis;

(2) in accordance with RICS guidelines, as a general rule, competitive quotes were obtained in relation to the engagement of 3rd party contractors.

17.11 Finally, Mr.Schwarz explained that the development provided high-quality residential accommodation primarily for overseas students; this was reflected in the rental yield which he claimed was 40% higher per square foot than other similar developments in the same area. This required a high level of services and attention to detail and this was reflected in the service charge costs.

Reasons

18. As a general comment, whilst the Tribunal acknowledged that the burden of proof on the Applicant was limited to putting forward sufficient evidence to show that the question of reasonableness is arguable, in this case, it was not satisfied that the Applicant had provided such “sufficient” evidence. Specifically, the evidence provided by the Applicant of service charges levied in respect of another development of which he was a leaseholder was of limited or no value as it appeared to the Tribunal that the differences between the two developments were substantial.

19. The Tribunal noted that, in the course of the hearing, the Applicant had conceded that the following items of expenditure were reasonable and so no determination was required in respect of them: (i) management fees; (ii) life safety system; (iii) telephone and internet.

20. In addition, the Tribunal noted the Applicant's acknowledgment that, whilst an item had appeared in the 2018/19 budget for "forward funding", there had been no actual charge made, and accordingly, no charge in respect of which to make a determination.

21. With regard to the following items, the Tribunal comments as follows:

    (1) Schedule 1 and Schedule 2 costs: the Tribunal considered that it was reasonable and proper for the Respondent to make this distinction and that it was consistent with the terms of the Applicant's lease, (a copy of which had been provided to the Tribunal);

    (2) Fire alarm testing/maintenance: whilst the Tribunal considered that the Respondent was carrying out more regular testing of the fire alarm/emergency lighting than may be the case in other buildings, the Tribunal did not consider that it was so extensive as to be considered unreasonable;

    (3) Insurance: relying on its knowledge and experience, the Tribunal considered that the insurance premium charged in respect of each of the service charge years was reasonable in all the circumstances;

    (4) General costs:

        (i) internal cleaning: having regard to the evidence provided by the Respondent as to the number of cleaning hours per week, the Tribunal considered that the costs were reasonable;

        (ii) internal repair and maintenance: the Tribunal considered that it was disappointing that the Respondent had failed to provide any breakdown of this expenditure. However, it accepted Mr.Schwarz's oral evidence and relied on its knowledge and experience of the kind of repairs and maintenance required to the internal communal areas in order to maintain the development as a high-quality residential development, and concluded that the costs were reasonable.

22. Finally, the Tribunal considered whether it was fair and just in all the circumstances to grant the Applicant's application under s20C of the 1985 Act. In view of the Tribunal's determinations, and, in particular, that the Tribunal had not upheld any of the Applicant's challenges to the reasonableness of the various costs, the Tribunal considered that it would not be fair and just to grant the Applicant's application and it was refused accordingly.

C Wood
Tribunal Judge
23 March 2021