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

**Case Reference** : LON/00BC/LSC/2013/0410

**Property** : 14A Roman Road, Ilford,  
Essex IG1 2PA

**Applicants** : Victoria Olaku  
Viktor Olaku

**Respondent** : Gill Trust Homes Ltd, freeholder

**Representative** : Hexagon Property Group Ltd, agents

**Type of Application** : For the determination of the  
reasonableness of and the liability to  
pay a service charge

**Tribunal** : Judge Nicol

**Date of Decision** : 5<sup>th</sup> September 2013

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**DECISION**

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## **Decisions of the tribunal**

The Tribunal determines that all the service charges challenged in this application have been reasonably incurred and are payable, with the exception of the charge of £250 for the Inspection & Fire Risk Assessment on the sole basis of a lack of evidence.

## **Reasons**

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount payable in respect of service charges for the years 2012 and 2013. The Tribunal directed that the application should be dealt with on the papers, without a hearing, and neither party objected.
2. The relevant legal provisions are set out in the Second Appendix to this decision.
3. As directed, the parties set out their points of dispute in a Scott Schedule. This is replicated at the First Appendix to this decision with the addition of the Tribunal’s comments and reasoning on each item.
4. The main problem in determining this case has been the lack of supporting documentation. The Scott Schedule contained frequent references from both parties to documents and photos supposedly attached, enclosed or provided but the Tribunal had no such documents or photos. The Tribunal did phone Mr Olaku on 23<sup>rd</sup> August 2013 and he promised to send them in but the Tribunal only received the annual budgets and service charge demands from the Respondent’s agents.

**Name:** NK Nicol

**Date:** 5<sup>th</sup> September 2013

## First Appendix – Scott Schedule

ITEMS	COSTS	TENANTS' COMMENTS	AMOUNT TENANT WOULD PAY	LANDLORD'S COMMENTS	TENANTS' REPLY	TRIBUNAL'S COMMENTS
01/01/2012-31/12/2012 Inspection & Fire Risk Assessment	£250	No Fire & Risk Assessment inspection has ever been carried out – nor certificates presented.	Legitimate amount determined by tribunal.	This is denied. Inspection and assessment was carried out at the property on 03.04.12 by Amika Consultancy. Report and invoice enclosed. Leaseholders are being demanded to pay £125, this being half the contribution of the total cost which is £250. Clause 1.16 of the lease states the leaseholders contribution is 50% of the whole of the 'service charge' which is defined in clause 9 of the lease. With regards to this item of the service charge, we rely on clause 5.5.1.3 of the lease. This provides for the freeholders obligation to maintain the common parts of the building. This is <i>subject</i> to payment by the leaseholder as per clause 5.5.	The smoke alarm located in the property has not worked for the duration of time we have owned the property. No report has ever been provided for us even though we have requested copies in the past. Our tenants at the time stated no inspection was carried out when they were living	The lease terms are as claimed on behalf of the Respondent so it is within their power to have such an assessment carried out and to charge the Applicants 50% of the cost. Whether the smoke alarm works is a different question and so is irrelevant to the payability of this item. The Tribunal attaches no significance to the hearsay evidence of the tenants who could have been out or inside their flat when the inspection of the common parts was carried out without their knowledge. However, the report and invoice were not provided. It would have been easy to provide this evidence and, in its absence, the Tribunal cannot be satisfied that the expenditure was actually incurred.

			<p>Comply with the lease and statutory requirements</p> <p>Keep separate accounts for each property</p> <p>Account for money demanded from tenants</p> <p>Sometimes employ staff (e.g. porters, gardeners, security personnel) or arrange contracts for such matters</p> <p>Keep the tenants informed of relevant matters</p> <p>Set up and manage sinking funds and reserve funds</p> <p>Check standards and cost of work and services.</p> <p>The management fees are £200 plus VAT per year per flat. This is charged according to industry standards and is at the lower rate band. If you search the market you will find that our fees are reasonable. Please note that for this budget we only charged management fees for 10 months, this being the period covered by the budget. Each leaseholders contribution towards the sum is £190 – this being half of the total sum of £380. We rely on clause 5.5.6.1 of the lease for recovery of our fees as this clause provides for</p>	
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				the freeholder to appoint managing agents and for the fees in respect of the collection of ground rent and service charges be discharged by the leaseholders pursuant to clause 5.5 of the lease. We have enclosed a copy of our management fee invoice for your attention.		
01/01/2013-31/12/2013 Inspection & Fire Risk Assessment	£250	No Fire & Risk Assessment inspection has ever been carried out – nor certificates	Legitimate amount determined by tribunal	This item has not been charged again in the 2013 budget therefore is not applicable.	We will await reassessment of any future charges in this area.	The Tribunal does not understand the Tenants' Reply. They clearly made a mistake in seeking to challenge an item not actually being charged.
01/01/2013-31/12/2013 Communal Cleaning	£233	No communal cleaning has been carried out	£0 – as no cleaning has been carried out (photos provided)	Please see comment as made above. We have enclosed invoices for cleaning carried out to date specifically from January 2013 to July 2013. Cleaning for August has not yet been carried out.	We will await reassessment of any future charges in this area.	Again, neither the Applicants' photos nor the Respondent's invoices were provided. The Tribunal otherwise has the same comments as for the 2012 communal cleaning (above).
01/01/2013-31/12/2013 Accountancy Fees	£450	Not disputing	£450		We now wish to dispute the accountancy fees and will abide by any decision given by the	The Tribunal has the same comments as for the 2012 accountancy fees (above).

					tribunal.	
01/01/2013-31/12/2013 Management Fees	£380	Hexagon have carried out no management of the property. I would pay no more than £150.	£150	Please see comment as made above. Please also note that the cost inserted by the leaseholder for this item is incorrect. For 2013 budget, the cost of our management fees total to £480 and <i>not</i> £380. This is because this budget runs for a whole year therefore each leaseholder is being charged for 12 months. Each leaseholders contribution towards this is £240.	Although it is now agreed that Hexagon will carry out some management of the property (from an administrative perspective), we believe that this fee should be reassessed as Hexagon have shown that they have not provided full management of the property.	The Tribunal has the same comments as for the 2012 management fees (above). The higher charge for 2013 is still within the lower end of the range which would be expected for this work at this kind of property. The Tribunal does not understand the Applicants' assertion that the Respondent's agents have themselves shown that their management was not full management. On the contrary, the agents have firmly asserted that they have provided full management.

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (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.

#### **Section 19**

- (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 provisions 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.

#### **Section 27A**

- (1) 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified

description, a service charge would be payable for the costs and, if it would, as to -

- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration 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 any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.