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

Case Reference : **MAN/OOBN/LSC/2013/0054**

Property : **Flat 7, 51/53 Alness Road, Whalley
Range, Manchester M16 8HW**

Applicant : **Ms J. Greer**

Representative : **In Person**

Respondent : **Great Places Housing Group Limited**

Representative : **None**

Type of Application : **Application under section 27A (and
19) of the Landlord and Tenant Act
1985 and section 20C**

Tribunal Members : **Mr. G. C. Freeman
Mr I James MRICS**

**Date and venue of
Hearing** : **29 October 2013
Property Chamber Northern
Residential Property First Tier Tribunal
1st Floor, 5 New York Street,
Manchester M1 4JB**

Date of Decision : **20 November 2013**

DECISION

DECISION

- A. The reasonable service charge for the Property for the period from 1st April 2012 to 31st March 2013 is £14.34 per week and for the period 1st April 2012 to 31st March 2031 is £15.97 per week.**
- B. No order is made under section 20(C) of the Landlord and Tenant Act 1985.**

Application

1. By her application dated 25th March 2013, the Applicant seeks a determination of the liability to pay and reasonableness of service charges for the above property where costs have been incurred, or are about to be incurred, for the service charge years 2012 and 2013. The Applicant named the Respondent in her application as her landlord.
2. The Applicant also referred, on the same date, the rent payable under her tenancy to the Rent Assessment Committee, under section 13(4) of the Housing Act 1988 (as amended). This application has been dealt with by the Tribunal, under reference MAN/OOBN/MNR/2013/0055.
3. On 1 July 2013 the functions of leasehold valuation tribunals transferred to the First-tier Tribunal (Property Chamber) (“the Tribunal”) and so this matter now falls to be determined by the Tribunal.

Background

4. The Applicant is a tenant of the Respondents under an assured weekly tenancy which commenced on Monday 11th May 1998. The original tenancy was made between Community Relations Housing Association Limited of the one part and the Applicant of the other part. The Respondent is now the Applicant’s landlord.
5. The tenancy agreement provides that the Respondent will provide lighting and cleaning of the communal areas, a door entry system, floor coverings to the communal areas, a TV aerial system, and maintenance of the gardens and grounds, in return for payment of a service charge. The Respondent may change the rent payable, including the service charge, on 28 days’ written notice. The notice is to include the proposed service charge which is to be reviewed on the basis of actual costs incurred during the previous period and any known or anticipated increases in costs.
6. A Pre-trial Review took place on 14th May 2013 at the Tribunal’s office as above. The Tribunal identified the issue to be determined was whether the service charge for the period 1st April 2012 to 31st March 2013 is payable or is reasonable. The Tribunal issued directions on 23rd July 2013. Paragraph 6 of the directions required the Respondent

to provide accounts, budgets the method of apportionment and a statement identifying the relevant clauses of the lease under which the various items were recoverable. The Respondent failed to comply with the directions or engage with the Tribunal. The Applicant provided an undated statement which was mainly confined to the Applicant's medical condition. She also provided copies of a statement summarising the weekly service charge for the period on a weekly basis.

The Property

7. The Tribunal inspected the Property on the morning of the hearing. It consists of a top floor flat in a house which has been converted into nine flats in a quiet residential area south of Manchester city centre. The flat itself consists of a combined living room and kitchen area, with a separate bathroom and a bedroom. The entrance hall is very narrow. The Tribunal noted evidence of a roof leak but due to the current weather conditions they were unable to form an opinion of whether this was ongoing. The Applicant complained of cold drafts emanating from the kitchen units, but again due to the weather conditions, the Tribunal were unable to form an opinion on this. There is gas central heating from a wall mounted boiler in the kitchen area. The communal areas are carpeted with painted walls. Outside, there are lawned areas with a tarmac area for car parking and a bin store.

The Law

8. Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

(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.

9. Section 19 provides that

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.

10. Section 27A provides that

(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 date at or by which it is payable, and
- (d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3)....

(4) No application under subsection (1)...may be made in respect of a matter which –

- (a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

No guidance is given in the 1985 Act as to the meaning of the words “reasonably incurred”. Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].

Where a tenant disputes items, he 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.

The Hearing

11. A hearing was held at the Tribunal’s offices, as above, immediately following the application to fix a market rent. The Applicant attended in person. The Respondent did not attend and was not represented.

The Tribunal's Conclusions

12. The Tribunal considered the budgets for service charges, produced by the Applicant. They noted that as set out in the Appendix, it is for the Applicant to produce evidence that the service charge is unreasonable and the Respondent must then rebut that evidence. The Tribunal did not take into account, when deciding on a reasonable service charge, the Applicant's medical condition. This does not affect the services provided by the Respondent. They noted that the Applicant had not produced any evidence that the service charge was unreasonable.
13. The Tribunal therefore concluded that the reasonable service charge for the Property for the period in question was £14.34 per week for the period from 1st April 2012 to 31st March 2013 and £15.97 per week for the period 1st April 2013 to 31st March 2014.

Section 20(C) Application

14. Some leases allow a landlord to recover costs incurred in connection with proceedings before the LVT as part of the service charge. The Applicant has made an application under s20C of the Act to disallow the costs incurred by the Respondent of the application in calculating service charge payable for the Property, subject, of course, to such costs being properly recoverable under the provisions of the tenancy agreement.
15. The Tribunal determines that, as it has found that the service charges for the period in question are reasonable, it would not be reasonable to make such an order, and therefore no order is made.