

9692



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

Case Reference : **MAN/00DA/LSC/2013/0117**

Property : **1105 The Gateway North, Marsh Lane, Leeds,
West Yorkshire, LS9 8BY**

Applicant : **The Gateway (Leeds) Management Limited**

Respondent : **Mr I Shamsizadeh**

Type of Application : **Landlord & Tenant Act 1985 – S27A**

Tribunal Members : **K M Southby (Judge)
M Bennett (Expert Valuer Member)**

Date of Decision : **13 December 2013**

DECISION

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DECISION

1. The amount of service charge for the period 31 January 2011 to 7 February 2012 is to be reduced only as follows:
 - a. the sum attributable to the gym is to be reduced by 50%
 - b. the sum attributable to the CCTV is to be reduced by 20%
 - c. the sum attributable to the office rent is to be reduced by 50%
 - d. the proportion of the duplicated invoice for £280.80 previously apportioned to the Respondent should be credited back.
 - e. the amount in respect of the room rental and chair hire is to be reduced from £750 plus VAT to £250 plus VAT, and apportioned accordingly.
 - f. the amount in respect of additional management fees in respect VAT recovery is to be reduced by 50% from £2850 to £2425 and apportioned accordingly.
 - g. All other elements of the service charge for the period in question including the costs of enforcing the terms of the lease are payable by the Respondent.
2. No order is made under s20C Landlord and Tenant Act 1985

PRELIMINARY

3. This matter originated through a claim made by the Applicant on 5 March 2012 against the Respondent in the sum of £1574.54 in respect of unpaid ground rent and service charges for the period 31/1/2011 to 7/2/2012. The claim also included an administration fee and "claimant's solicitors legal costs incurred in enforcing the terms of the lease" in the sum of £496.00.
4. The case was transferred from the County Court to the Tribunal by an order dated 9 May 2013. The Tribunal's jurisdiction is limited to those issues in the original court case, namely payability and reasonableness of the service charge.

THE PROPERTY

5. The Property is within the North block of a large mixed use development occupying a triangular-shaped plot in central Leeds. There are substantial internal and external communal areas, including paved courtyard areas, planted containers, a water feature and a large car park.
6. The Tribunal inspected the property on 12 November 2013 in the presence of Mr I Shamsizadeh and Mr E Shamsizadeh. There was no attendance by the Applicant. At the time of the inspection the property was observed to be clean and well maintained, and the 'waterfall' water feature was fully operational. Windows were observed to be clean and the building was observed to be in a generally good state of repair. It was observed that the nature of the Property is such that such repair and maintenance that was required would necessarily be relatively costly

by virtue of the nature of the materials used in the buildings and issues of accessibility in reaching parts of the buildings.

THE LEASE

7. The Tribunal was shown a copy of the Respondent's lease, the relevant terms of which are as follows:

3. The Tenant covenants with the Landlord and the Company:

3.1 to pay the Rents on the days and in the manner set out in this lease and not to exercise or seek to exercise any right or claim to withhold the Rents or any of them and for the avoidance of doubt it is agreed and declared that the rents shall continue to be due and owing in respect of any periods during which the Premises are vacant.

3.2 to pay to the Landlord and the Company on demand interest accruing in respect of any of the sums due from the tenant to the Landlord and the Company under this Lease (whether or not lawfully demanded) which remain unpaid for more than 14 days whether or not any such sums have been refused by the Landlord or the Company so as not to waive any breach of covenant

.....

3.19 to pay to the landlord and the Company on an indemnity basis all costs fees charges disbursements and expenses (including without prejudice to the generality of the above those payable to counsel solicitors and surveyors) incurred by the Landlord and the Company in relation to or incidental to or in reasonable contemplation of:

.....

3.19.2 the preparation and service of a notice under the Law of Property Act 1925 section 146 or incurred in reason of or in contemplation of proceedings under the Law of Property Act 1925 Section 146 or 147 notwithstanding that forfeiture is avoided otherwise than by relief granted by the court

3.19.3 any other action taken in consequence of any breach of covenant by the Tenant

3.20 to be responsible for and to keep the Landlord and Company fully indemnified against all damage damages losses costs expenses action demands proceedings claims and liabilities made against or suffered it incurred by the Landlord arising directly or indirectly out of:

3.20.2 any breach or non-observance by the Tenant of the covenants or other provisions of this lease or any of the matters to which this demise is subject

THE HEARING

8. At the hearing the Applicant was represented by Miss Phillipson of Counsel and Mr Dean of Braemar Estates, the management company. Also in attendance at the hearing were the Respondent, Mr M Jalali (friend and representative of the Respondent) and Mr Ebrahim Shamsizadeh (brother of the Respondent).
9. The hearing followed a previous hearing with case reference **MAN/00DA/LSC/2013/0024** before the Tribunal some four weeks earlier which involved a different tenant as the Respondent but nevertheless at which the same parties and representatives had attended and at which the same issues had been raised. It was agreed by all parties that the issues in this case were the same as in the preceding case and were relatively narrow and limited to:
 - a. Cost of the Gym
 - b. Window Cleaning
 - c. CCTV
 - d. Cleaning of communal areas including car park
 - e. Security
10. The decision in respect of the previous hearing having been made but not issued, all parties agreed that the previous submissions and findings of the Tribunal would stand in relation to this application. The only exception being that an additional three lever arch files of supporting invoices had been provided by the Applicant, which were not available to the parties at the previous hearing. It was therefore determined that the Tribunal would hear submissions in respect of the new documentation only. This decision is therefore to be read in conjunction with the full reasons in **MAN/00DA/LSC/2013/0024**.
11. Despite the documentation being received from the Applicant relatively shortly before the hearing the Respondent informed the Tribunal that they were happy to proceed and deal with the contents. The Tribunal therefore deals with the following items (bundle page references in brackets) from the new bundles raised by the Respondent in addition to restating below its finding in respect of items previously heard:
 - a. Previous account balance
 - b. Cleaning and Cleaning Supplies (24-25 and 257; 816)
 - c. Grounds Maintenance (34-35)
 - d. Security (141-154)
 - e. Concierge Office Rent (182)
 - f. Duplicated invoice (299-300)
 - g. Fire Risk Assessment (307)
 - h. Alarm system (308-319)

- i. Emergency Lighting repairs (310, 311, 312, 318)
- j. Residents meeting room hire (321 and 322)
- k. VAT recovery (739)
- l. Solicitors costs and court fees for late payment (776)
- m. Disputed lift invoice (784)
- n. Re-lamping (801)
- o. Refuse removal (819)
- p. 'not previously invoiced' (839)
- q. Lift consultants (875-877)
- r. Car park shutters (938, 939 and 941)

PREVIOUS ACCOUNT BALANCE

12. The Respondent stated that he disputed the transferred account balance from Accent Property Management which forms the first entry on the Braemar Estates statement of account. This issue had not previously formed part of the Respondents defence. The Respondent at various points suggested he queried the amount because he had already paid it, and conflictingly that he queried the amount because he felt the service charge costs for that period to be unreasonable.
13. The Tribunal did not find the Respondent's evidence credible on this point and considered the correspondence between the Respondent and Accent provided by the Respondent, and concluded that the amount had not been paid. The Tribunal has not got jurisdiction within the scope of the County Court referral to examine the reasonableness of service charges which predate 31 January 2011, that being the date when the opening balance from the previous agent was transferred and therefore form the first entry on the Tenant Statement forming the basis of the Applicant's claim. The Tribunal therefore makes no ruling on the reasonableness of these charges.

CLEANING AND CLEANING SUPPLIES

14. The Respondent queried why there were separate charges for cleaning supplies bought by the management company, when cleaning services were provided for the property under a contract. The Applicant provided evidence that at the time that these invoices were raised Braemar Estates were still employing the cleaners directly. A separate contract came into place in March 2012 and until that point Braemar Estates were responsible for provision of cleaning materials and uniforms to their staff and also for the direct cost of those staff. The Tribunal accepts this and upon consideration of the invoices finds the charges applied to the service charge account to be reasonable.

GROUNDS MAINTENANCE

15. The Respondent queried the invoices as being excessive in value and frequency. No alternative quotation was provided. The Tribunal heard from the Applicant that the site has over one and a half acres of landscaped grounds. Grounds maintenance visits fluctuate in frequency according to the time of year, in addition to specific call-outs if need arises. The Tribunal examined the invoices and concluded on the basis of the evidence at the hearing and from its own inspection that the service charge in respect of grounds maintenance was reasonable.

SECURITY

16. The Respondent queried why if there was a contract for security there were additional charges for the same. The Applicant confirmed that the invoices were in respect of the manned guarding dealt with by the Tribunal previously. The Tribunal's conclusions are therefore dealt with below under that heading.

CONCIERGE OFFICE RENT

17. The Respondents queried the rental charge being levied in respect of the Concierge Office which is being charged to the service charge account at £2000/month. The Applicant argued that this is a facility of which all occupants have the benefit. The Tribunal accepts that all residents benefit from the provision but the Tribunal is tasked with establishing whether the cost is reasonable. The Tribunal was informed that the arrangement in respect of the Office rent was similar to that in respect of the gym, but that once again no copy of the agreement, or detail as to its terms or parties could be provided. The Tribunal concluded that the amount being charged to the service charge account by way of rent for this item was unreasonably high and concluded that it should be reduced by 50%.

DUPLICATED INVOICE

18. The Respondent had identified two invoices within the bundle which although paid on different dates appear to refer to the same docket number and therefore the same work being done. The Applicant argued that this was a typographical error by ADT who had simply transposed the same information from the June invoice in to the July invoice. Whilst the Tribunal observes that the typeface differs between the two documents, the Tribunal finds this difficult to accept for a series of invoices which were sporadic call-outs rather than a regular monthly contract. The Tribunal concludes that the invoice was duplicated and paid in error and therefore the proportion of £280.80 which was apportioned to the Respondent's service charge account should be credited back.

FIRE RISK ASSESSMENT

19. The Respondent accepted that a fire risk assessment had to be carried out but argued that the cost was excessive, although provided no alternative quotations. The Applicant informed the Tribunal that the particular provider was chosen to provide the assessment for this development due to its size and complexity. The Applicant acknowledged that the service provided was not necessarily the cheapest available but stated that it was the most appropriate for the property. It was explained that a full fire risk assessment of this nature was carried out every 3 years, with in house assessment in between. The Tribunal accepts the complexity of the development and also notes that it is not incumbent upon the Applicant to use the cheapest possible provider, instead the requirement is that the charges should be reasonable and reasonably incurred. The Tribunal concludes that the costs in this case are commensurate with the difficulty and complexity of the task being undertaken and are reasonable.

ALARM SYSTEM

20. The Respondent queried why there were additional invoices over and above the alarm contract. The Applicant informed the Tribunal that these invoices related to call outs for the interlinked alarm system which covers all 4 buildings and has a main panel in the concierge office. If a false alarm is triggered a call-out is required to address the fault showing on the main panel. These costs are not included in the overall maintenance contract as to do so would be, the Applicant suggested, prohibitively expensive. The Tribunal examined the invoices and considered the evidence before it and concluded that these charges were reasonable.

EMERGENCY LIGHTING REPAIRS

21. The Respondent queried the value and number of invoices which he argued should have been covered under the Security contract. The Applicant informed the Tribunal that these invoices were for emergency repairs to the emergency lighting system on staircases which in the absence of immediate action could have created a health and safety hazard. The Tribunal were informed that this work falls outside the scope of the security or any other contract. The Tribunal accept this assertion and having considered the invoices and all the evidence presented to it conclude that the charges applied to the service charge account are reasonable.

RESIDENTS MEETING ROOM HIRE

22. The Respondent stated that the managing agent had informed them that they would 'let them have a room' for a resident's meeting. The Respondent understood this to mean that the room within the Gateway complex would be made available free of charge. The meeting took place in an unused office area of the complex and chairs were provided. An invoice of £750 plus VAT, including £108 of chair hire was charged to the service charge account for the use of this

room. The Respondent stated that hotel meeting room could have been hired for approximately £250 and would have provided better facilities than the disused office space. The Applicant informed the Tribunal that the space was carpeted and lit, but did not have other facilities save for the chairs which were brought in. Mr Dean informed the Tribunal that an estimated £500 of the cost was management time in attending the meeting and £250 was for the room and chairs. The Tribunal accepts that it might be appropriate for a reasonable charge to be levied for use of a meeting room, and that the convenience of having the meeting within the complex might have a value which counterbalanced the more limited facilities. The Tribunal considers £250 plus VAT to be a reasonable charge for this. The Tribunal considers that attendance at a management meeting ought reasonably to be included within the management fee already charged to the Respondent and therefore disallows the sum of £500 plus VAT for management time.

MANAGEMENT FEE FOR VAT RECOVERY

23. The Respondent queried why they were paying an additional management fee. The Applicant informed the Tribunal that this was in respect of electricity bills which upon taking over management of the property Braemar Estates had discovered had been invoiced at the incorrect VAT rate under the auspices of their predecessor Accent Properties. Mr Dean informed the tribunal that liaising with the two energy suppliers to obtain the refund was outside the scope of the management agreement and had saved the Tenants £28500, of which the managing agents had deducted a 10% fee and applied the remainder as a credit against the service charge account. The tribunal were able to see fluctuations in the electricity account consistent with credits being applied.
24. The Tribunal accepts the Applicant's evidence that this is work which is outside the scope of the management agreement, and also that the leaseholders received the majority of the benefit of this work. The Tribunal however is of the view that a percentage fee is less appropriate than charging for managing agent time on an hourly basis. Mr Dean was unable to provide the Tribunal with an estimate of how many hours work had been incurred in obtaining this refund however the Tribunal notes that at an estimated hourly rate of £15/hour for office administration 190 hours, or 5 weeks full time work would have to have been spent attempting to recover this VAT reimbursement. Whilst the Tribunal appreciates that such a process may be protracted in the absence of timesheets the Tribunal considers this to be unreasonable and reduces the management fee for VAT recovery by half to £1425 to be apportioned accordingly.

SOLICITORS COSTS AND COURT FEES FOR LATE PAYMENT

25. The Respondent queried why fees for late payment of invoices were being charged back to the service charge account. The Applicant informed the Tribunal that although there was a letter referring to such fees within the bundle the invoice had been paid before the fees had been incurred and so no such charges had been

added to the service charge account. Upon being informed of this the Respondent withdrew their query on this issue.

DISPUTED LIFT INVOICE

26. The Respondent queried charges for late payment in respect of a lift invoice. The Applicant informed the Tribunal that this invoice was in dispute currently and no such charges had been applied to the service charge account. The Tribunal accepts the Applicants evidence and accordingly the Tribunal did not make any further determination on this invoice.

RE-LAMPING

27. The Respondent argued that the cost and frequency of re-lamping charges were unreasonable. The Applicant informed the tribunal that there were over 2000 lamps throughout the complex and that whilst efforts were made to combine work into sizeable portions, if lamps needed replacing on staircases the managing agents considered this to be a matter of priority and would request an immediate attendance. The Tribunal considered the documentation, submissions and its own knowledge of the property from inspection and concluded that the frequency and cost of re-lamping of the four high-rise blocks across the complex was reasonable.

REFUSE REMOVAL

28. The Respondent queried why there were additional charges being applied to the service charge account in respect of waste removal over and above the existing waste contract. The Applicant informed the Tribunal that the previous contract (now terminated) did not cover removal of waste which was not placed within the bins. Therefore if bins became full and bags of waste were placed alongside the was a need for these to be removed by an appropriate contractor, and these were the costs referred to in these invoices. The Tribunal rejects the Respondent's suggestion that this work could have been done by other staff on site, accepting that waste of unknown type needs to be removed from the site safely. Having considered the cost associated with these visits the Tribunal considers these charges to be reasonable.

NOT PREVIOUSLY INVOICED

29. The Respondents queried an invoice which had been raised which referred to cleaning almost 18 months prior to the date of invoice marked as 'not previously invoiced'. The Applicant had no explanation but undertook to provide such explanation as there was by correspondence to all parties following the hearing.

LIFT CONSULTANT

30. The Respondent argued that the cost of a lift consultant was excessive and unnecessary and therefore not a reasonable charge which should be applied to the

service charge account. The Applicant submitted that lift contracts are inherently complex and that the use of consultants to assist in renegotiating these contracts in fact led to an overall saving from which the Tenants benefited. The Applicant provided evidence that the lift consultant had led to new bespoke lift maintenance contracts being negotiated with reduced periodic maintenance costs and decreased costs of call outs compared to the previous contract. The Tribunal accepted the evidence that there appeared to be an overall decrease in lift costs following the consultants involvement, and whilst noting that use of a consultant in this way may not be necessary, that does not mean it is unreasonable, particularly in the context of a complex development, and when considered against the savings achieved. Accordingly the Tribunal considers the costs in respect of the lift consultant to be reasonable.

CAR PARK SHUTTERS

31. The Respondent queried these invoices for the car park roller shutters because he argues that they are unreasonably high, although no alternative quotations have been provided. The Tribunal considered the documentation provided and its knowledge of the property from its inspection and considers these costs to be reasonable.

GYM

32. The Tribunal adopts its previous findings that the costs attributed to the service charge in respect of the gym were unreasonably high, due in large part to the rent being charged by the freeholder.
33. Once again, despite the Tribunal having requested sight of the document at the previous hearing the Applicant was unable to inform the Tribunal whether or not there was a break clause in the lease, the identities of the parties to the lease, any cost associated with renegotiation and no copy of this lease was provided for the Tribunal's benefit.
34. The Tribunal endorses its previous decision that the overall amount charged to the service charge account for the gym was unreasonably high for what was being obtained. The Tribunal considered that the sum charged to the service charge account was approximately twice as high as was reasonable and therefore orders that it should be reduced by 50%.

WINDOW CLEANING

35. The Respondent made additional representations in respect of window cleaning suggesting that it had been confirmed to the Respondent by the managing agent that there was no window cleaning contract in place until March 2012. It was suggested by the Respondent that for invoices for window cleaning for this period to have been provided was evidence of fraud on the part of the Applicant or its representative. The Tribunal heard from the managing agents that whilst there may have been no formal contract in place nevertheless cleaning was taking place

and was being invoiced, prior to a formal contract tender process being undertaken. The Tribunal having considered all the evidence provided to it prefers the evidence of Mr Dean on this point and concludes that it is likely that window cleaning was taking place as supported by the invoices provided to the Tribunal. The Tribunal endorses its previous finding that the charges for window cleaning are reasonable and are therefore payable by the Respondent.

CCTV

36. The Tribunal notes that no copy of any documentation to explain or support the lease agreement in respect of CCTV was provided to the Tribunal, or any evidence of costs to break or renegotiate that agreement. The Tribunal endorses its previous finding that the sum being charged to the service charge account was 20% higher than was reasonable and therefore orders that the Respondent's service charge account for the relevant period be reduced by 20% in respect of CCTV.

CLEANING (including CAR PARK)

37. The Tribunal restates its previous conclusion that the charges for cleaning are reasonable and reasonably incurred, and it therefore follows that they are payable by the Respondent.

SECURITY

38. For the reasons set out in **MAN/00DA/LSC/2013/0024** the Tribunal finds the figure in respect of security to be reasonable and therefore orders that the service charge element attributable to security is payable by the Respondent in full.

COSTS

39. The Tribunal heard an application without notice from the Respondent's representative under s20C of the Landlord and Tenant Act 1985 seeking an order that costs of the Tribunal proceedings should not be added to the Service charge account. The Tribunal declines to make such an order observing that it was only through the Applicant bringing proceedings that the Respondent narrowed their position from non payment of any service charge at all. The Applicant was entitled to bring proceedings and no order under s20C is appropriate.