

10796



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

Case Reference : BIR/00FN/LSC/2014/0001

Property : 10 Franklin House, Ockbrook Drive,
City Heights, Nottingham NG3 6DD

Applicants : City Heights RTM Company
Limited

Respondent : Babek Sadeghian Naini

Type of Application : To determine whether service
charges are payable and if so as to
their reasonableness under section
27A of the Landlord and Tenant Act
1985 ('the Act')

Tribunal Members : Judge W J Martin
J E Ravenhill F.R.I.C.S

Date and venue of Hearing : Determined on the basis of
written submissions.

Date of Decision : - 1 MAY 2014

DECISION

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DETERMINATION: The estimated service charge for the year 01.04.2013 to 31.03.2014 in respect of the Estate Charge and the charges relating to 10 Franklin House are reasonable.

Reasons for the Tribunal's Decision

Preliminary

- 1 On 7th January 2014 City Heights RTM Company Limited ('the Applicant') acting by its Management Agent MPM Limited ('MPM') made an application ('the Application') to the First-tier Tribunal (Property Chamber) ('the Tribunal') for a determination under sections 27A and 19 of the Landlord and Tenant Act 1985 ('the Act') as to whether estimated service charges in respect of 10 Franklin House, City Heights, Ockbrook Drive, Nottingham NG3 6DD are payable and as to their reasonableness. The service charge year in respect of which a determination is required is 1st April 2013 to 31st March 2014. The Respondent is Babak Sadeghian Naini.
- 2 The Application requested a paper determination and the Tribunal agreed that this was appropriate, subject to either party having the right to an oral hearing upon request. The Tribunal issued an appropriate timetable for submissions.

The Service Charge Provisions of the Leases

- 3 The Leases are in standard form. The Respondent is required to pay, by two equal instalments, the 'Annual Maintenance Provision' which is, in effect, the estimate provided by the Applicant of the service costs for the year ahead. The Respondent is then to pay any adjustment resulting from the provision of the accounts at the end of the service charge year, if the Annual Maintenance Provision is less than the actual costs for the year. Credit is given if the Annual Maintenance Provision exceeds the actual costs.
- 4 Franklin House is the smallest of six Blocks (within the City Heights development. Nightingale House, which was formerly the Mapperley Hospital, is the largest of these. The other five Blocks (of which Franklin House is one) are 'New Build' Blocks of apartments of varying size, constructed in the grounds of the former hospital. The Lease in respect of the Property provides that each leaseholder pays a proportion of the 'Estate Charge', which is in respect of the maintenance of the roads, footpaths and the grounds, and a separate Block Service charge in respect of those services attributable to the Block in question. There are 165 apartments within the Development. In Franklin House there are 11. The Estate Charge is divided among the Blocks according to the number of apartments as a proportion of the whole, so that Franklin House is charged 11/165ths of the Estate Charge.

The relevant statutory provisions

- 5 **LANDLORD AND TENANT ACT 1985**
19 Limitation of service charges: reasonableness

- (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 of subsequent charges or otherwise.*

27A Liability to pay service charges: jurisdiction

- (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*
- (2) *Subsection (1) applies whether or not any payment has been made*
- (3) *An application may also be made to a leasehold valuation 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 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*

(4) - (7) not relevant to this application

Inspection and Submissions

- 6 The Tribunal inspected the properties on 9th April 2014. Mr Healey of MPM Limited and the Respondent accompanied the Tribunal. MPM Limited operates from within Nightingale House and accordingly Mr Healey was able to make available to the Tribunal all of the invoices and financial records relevant to the service charges.
- 7 The Tribunal viewed the internal and external common parts of Franklin House, and the external areas of garden and walkways etc, which form the subject matter of the Estate Charge. Subject to the matter referred to below, The Tribunal found the Blocks in good decorative order and well maintained. The external areas of the Estate were also well maintained.
- 8 Mr Healey pointed out that there was some staining to the exterior of Franklin House, and also damage to the balcony tiles of the Respondent's apartment. He explained that all of the new build Blocks at City Heights suffered from building defects, one of which was that the roof plates were not properly waterproofed, so that all of the Blocks suffered damage. However, following litigation with David Wilson Homes Limited, who had constructed the new build Blocks, all of the defects were being remedied. The roof plate at Franklin House, however, has not yet been attended to. It will be repaired in the near future and the damaged tiles replaced as necessary.
- 9 Mr Naini, by letter dated 28th March 2014, said that he thought the service charge estimate for 2014/2015 was too high at £999.44 (although in fact the estimate is for £1,097.53). At the inspection, with the consent of Mr Healey and the Tribunal, he made specific mention of the cost of the emergency lighting. Mr Healey explained that the systems that were originally installed at City Heights had come to the end of their lives, and have been changed recently to one using a microwave sensor with LED lights. This has proved far more efficient than the old system, and has also resulted in a reduction in the electricity charge of 60%. Mr Naini complained that the lights come on in the daytime, although Mr Healey said that they are programmed only to come on when people are present, and at low light levels. The Tribunal noted that the light near to them in the lobby of Franklin House was on whilst the discussion took place. Mr Healey said that as soon as the lobby was empty the light would go off.

Determination

- 10 The Tribunal noted the challenges put forward by Mr Naini, but was satisfied with the explanation put forward by Mr Healey. The issues with the deterioration of the tiles is not a matter which impacts upon the service charge estimate, because there is no contribution required from the leaseholders in respect of the remedial works. The Tribunal was impressed by the new emergency lighting system and was satisfied that the costs in respect of the new system as estimated are reasonable.

- 11 Mr Naini did not make any further challenges to any of the items in the service charge estimate. Accordingly the Tribunal confined its investigation to a general overview of the items of the service charges shown in the service charge estimate for the year 2013 – 2014 and, also compared the estimated service charges on an item by item basis with the actual costs incurred during the previous year.
- 10 The Tribunal was impressed with the overall standard of the maintenance at City Heights, and considered that, in general the service charge represented good value for money. There were one or two apparent (fairly minor) anomalies arising from its comparison between the estimate and previous year's actual accounts, but the Tribunal was satisfied with the Applicant's explanations for these.
- 11 The Tribunal's conclusion, therefore is that the Statements of Anticipated Service Charge Expenditure are reasonable. The Tribunal determines that the amounts of the estimated service charges in respect of the service charge year 2014 – 2015 in respect of the Property is **£1,097.53** in accordance with the Applicant's estimate.
- 12 The Tribunal emphasises that the determination is respect of estimated expenditure, and as such does not preclude an application under section 27A by the either party in respect of the actual expenditure for the year when the final accounts have been prepared.
- 13 In reaching its decisions the Tribunal took account of its inspection, the submissions of the parties, the relevant law and its knowledge and experience as an expert Tribunal, but not any special or secret knowledge.
- 14 If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2)) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge W J Martin

- 1 MAY 2014