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

Case Reference : **CHI/00HN/LSC/2014/0070**

Property : **Redlands Court, 1b Foxholes Road,
Southbourne, Bournemouth BH6
3AS**

Applicant : **Ms E Hutton (flat 4)
Mr D Smith (12)
Mr T Price (9)
Mr S Pitt (13)
Mrs E Attwood (1)
Mrs P Richardson (15)**

Representative : **Ms E Hutton**

Respondent : **Bournemouth Housing Society for
the Elderly (now Sandbourne
Housing Association)**

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

Tribunal Members : **Mr D Banfield FRICS
Mrs J Herrington**

**Date and venue of
hearing** : **Determination on the Papers
without an oral hearing 10
December 2014 at Court 3
Chichester Magistrates' Court &
Tribunal Centre**

Date of Decision : **15 December 2014**

DECISION

Decisions of the Tribunal

- 1. The Tribunal determines that the amount demanded for the period 9/6/2014 to 8/6/2015 is both reasonable and payable.**
- 2. Not to make an order under Section 20C of the Landlord and Tenant Act 1985**

The Application

3. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Applicant for the year 9/6/2014 to 8/6/2015.
4. In Directions made on 21 August 2014 it was identified that the only issue for determination was whether the new apportionment of the heating costs between the communal and internal areas is a reasonable one.
5. The matter was deemed suitable for Determination on the basis of written submissions unless a party objected in writing within 28 days. No objections have been received and the Tribunal has therefore proceeded to make a decision on the documents attached to Sandbourne Housing Association’s letter of 21 October 2014.

Background

6. This development comprises a number of flats occupied on similar terms and of particular suitability for the elderly. The tenancy agreement indicates that the weekly payments for the premises comprise the sum of Net rent, Service charge, Supporting People charge and Water & sewerage charge.
7. Until 2014 80% of the cost of Heating, lighting and hot water had been allocated to communal areas, the remainder to individual flats. From 2014 the allocation was reversed and 80% was allocated to individual flats.
8. The significance of this change to some of the tenants is that whilst charges relating to communal areas are eligible for Housing Benefit the remainder is not. In the “before and after information” provide by the Respondent (page 113 of the bundle) the amount of ineligible service charge increased from £3.11 in 2013 to £13.00 in 2014.

The Tenancy Agreement

9. The agreement contains the following clauses relevant to this dispute;
 - *Section 1.3 The Society shall provide the following services in connection with the Premises ***for which the Tenant shall pay a Service charge:** Support Officer services/emergency call system, electricity, central heating, hot water, laundry facilities, lift, door entry telephone, general maintenance, firefighting equipment and fire alarms, cleaning/carpeting/lighting of common parts, external window cleaning, upkeep of garden and grounds, refuse disposal.*
(*the Tribunal's emphasis)
10. In a letter dated 12 June 2014 from Mr S Hayes, Chief Executive of the Respondents it was asserted that the tenancy provides for a variable service charge and attached a copy of the policy on rent and service charge setting.

Evidence

11. In her application and later submission the Applicant refers to the lack of consultation before imposing a significant increase in the apportionment of charges the basis of which had been in place for many years. She refers to the financial hardship created and suggested that phasing in the increase would have been fairer.
12. In a witness statement from Cheryl Veal, a former resident and Board member the background to the review was given and it was said that whilst the Chief Executive may have criticised the previous allocation as "arbitrary" the new version was no better. The only accurate method was to identify the communal element of the fuel and water charges and then allocating them on an equitable basis by floor area and occupation. It had been agreed however that this was too big a piece of work for the current year's revision.
13. On behalf of the Respondent, Mr S Hayes, Chief Executive provided a written statement with various attachments. In his statement he says that the cost of all domestic and communal electricity etc. is billed at cost plus 15% administration. He rejects the claim that the tenants had not been consulted.
14. The attachments mainly relate to how the decision to change the allocation was arrived at and how this was communicated to the tenants.
15. At page 16 is a service charge account for 2014/15 showing that the Individual Heating, lighting and hot water would cost £12.35 per week.
16. At page 50 the key assumptions for the proposed service charges for 2014/15 are set out.

Decision

17. This is an application under S. 27A of the Landlord and Tenant Act 1985 and the Tribunal and the test the Tribunal are obliged to apply is whether the service charge as demanded is properly payable under the terms of the tenancy agreement.
18. The complaint appears to cover two areas;
 - The change of allocation of the heating charges between eligible and non- eligible for Housing Benefit and:
 - The manner in which the change was implemented.
19. Turning now to the tenancy agreement which governs the relationship between landlord and tenant we note that in section 1.1 there is a separate amount noted for "Service charge".
20. There has been discussion in the bundle as to whether the tenancy contains a fixed or variable service charge. The Respondent asserts that it is variable and in the absence of any challenge from the Applicant the Tribunal makes no findings one way or the other but is content to proceed on this basis.
21. Section 1.3 lists the various services that are to be provided by the landlord and for which the "Tenant shall pay a service charge" There is no division between those services provided for the individual flats and those relating to the building and common parts. It seems clear therefore that the charge referred to in Section 1.1 is intended to defray the costs incurred in providing all of the services listed in Section 1.3
22. There is nothing in the tenancy agreement that requires the costs of services provided solely for individual flats to be separately determined and in the absence of any challenge to the overall cost of heating the Tribunal determines that the amount demanded **for the period 9/6/2014 to 8/6/2015** is both reasonable and payable.

THE COST OF THE CURRENT PROCEEDINGS

23. Although the Applicant indicated on the application form that she wished to make a section 20C application neither party have made any substantive submissions on this matter. On the evidence before the Tribunal however and on the basis that the Respondent is entirely successful the application is declined

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application

to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

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 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 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 that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.

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.