

9759



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

Case Reference : LON/00BJ/LSC/2013/0345

Property : 4 Hanover Court, Priory Lane,
London SW15 5JQ

Applicant : Mrs T Clyne

Representative : In person

Respondent : Hanover Housing Association

Representative : Mr Nick Hodgskin – Project
Manager

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

Tribunal Members : Ms N Haria LLB Hons – Judge
Mr T Sennett MA FCIEH –
Professional member
Mr P Clabburn- Lay member

Date and venue of Hearing : 25 September & 20 November
2013 at 10 Alfred Place, London
WC1E 7LR

Date of Decision : 24 February 2014

DECISION

Decisions of the tribunal

- (1) The tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) The tribunal determines that the Respondent shall pay the Applicant £260.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount in relation to certain items of service charges payable by the Applicant in respect of the service charge years 2011/12, 2012/13 and 2013/14 as detailed in the application and set out in the Directions dated 5 July 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person supported by Mrs Gallagher at the hearing. The Respondent was represented by Mr Nick Hodgskin a Project Manager employed by the Respondent.
4. The following people attended as witnesses on behalf of the Respondent:
 - 4.1. Mr Luke Jackson – Energy efficiency manager
 - 4.2. Ms Helen Bowerbank – Assistant Director
 - 4.3. Ms Sharon Teape – Housing Manager
 - 4.4. Ms Reese Perkins – Senior Technical Manager.
5. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The background

6. The property which is the subject of this application is a one bedroom self contained flat in a purpose built block of 31 residential apartments with communal gardens. The block was constructed in 1984. The flats in the block are let on assured tenancies and provide sheltered housing.
7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The Applicant occupies under an assured tenancy agreement, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the agreement and will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified that they had reached agreement on the following matters:
 - 9.1. Estate managers costs,
 - 9.2. Cleaning,
 - 9.3. Window cleaning,
 - 9.4. Gardening,
 - 9.5. Common parts miscellaneous,
 - 9.6. Insurance,
 - 9.7. Central control, and
 - 9.8. Maintenance.
10. The parties confirmed that the relevant issues for determination to be the payability and/or reasonableness of service charges for the years 2011/12, 2012/13 and 2013/14 relating to:
 - 10.1. Communal water,
 - 10.2. Management fee,
 - 10.3. Heating management fee,

- 10.4. Contribution to renewals/reserve,
- 10.5. Electricity,
- 10.6. Gas,
- 10.7. Refuse collections,
- 10.8. Repairs,
- 10.9. Annual contracts, and
- 10.10. Communal TV licence.

The Tenancy

11. The Respondent granted the Applicant an assured tenancy on the 26 May 2009. Under the Tenancy the Respondent agrees to provide various services set out under clause 1.3 of the Tenancy and under clauses 2.3, 2.4 and 2.5 to keep in repair the structure and exterior of the premises as well as the installations and also the common parts. The Applicant agrees under clauses 1.1 and 4.4 to pay a service charge for the services and repairs. Clause 1.1 of the Tenancy provides for the payment of the service charge in advance on the first day of the month.
12. The service charge is split equally between the flats, each paying 1/31 of the total service charge cost.

Communal Water

13. The Applicant had challenged the communal water charges on the basis that the Respondent was charging more than they were being charged for the communal water by the water company. Mr Hodgskin on behalf of the Respondent confirmed that there was a discrepancy in the 2012/13 service charge account which has now been corrected. He referred to the service charge account [266] which showed a charge of £156 when the invoice from Thames Water [296] was for £108.10. On the basis that the discrepancy is corrected, the Applicant confirmed that she accepted liability to pay her proportion of the charge of £108.10, and she no longer challenged this sum. The tribunal makes no determination on this item as it was agreed by the parties.

Management fee

14. The Respondent's statement of case [36-38] and further response [44-48] explains the basis on which the management fee is calculated. The charges in issue are as follows;

- 14.1. 2011/12 - £4212.00 for the block -£135.87 per unit [50],
 - 14.2. 2012/13- £4338.00 for the block - £139.94 per unit [266],
 - 14.3. 2013/14 - £4476 for the block - £144.13 per unit [497].
15. Mr Hodgskin explained that the Respondent has a housing stock of 17,000 properties and in 2009/10 they decided to set a base level management fee of £85.00 for all their properties with an additional charge for each property depending on the level of services delivered to the estate in which a property is situated. The Respondent's further response [44-48] set out the additional charges which are divided into three bands and explains the basis of the additional charge. The Respondent states that as level of services provided at Hanover Court are quite high, the property falls into band C and so an additional charge applies raising the fixed fee to £132. The management fee is reviewed annually, increasing by RPI but capped to a maximum of 3%.
16. The Applicant stated that she challenged the management fee as there was a lack of diligence in managing the lighting, gas and electricity contracts and she does not feel the block is properly managed. She stated that if a management fee is charged things should be efficient and they are not. She stated that she did not know what amount would be reasonable for the level of service provided but she thought the Respondent ought to knock off 50% of the management fee from the amount charged in 2012/13.
17. The tribunal allowed a short recess for the parties to discuss matters and as a result the parties confirmed they had agreed the following:
- 17.1. 2011/12 – the Respondent agreed to refund the management fee of £135.87 to the Applicant,
 - 17.2. 2012/13 – the Applicant accepted the amount charged was reasonable and Mr Hodgskin promised to address the Applicant's concerns, and
 - 17.3. 2013/14 – the Applicant accepted the budgeted management fee.
18. Accordingly the tribunal makes no determination in respect of the management fee.

Heating management fee

19. The Respondent's statement of case and further response explains the charge covers the procurement, account management and invoice payment and it is not a charge for broker fees. The Applicant confirmed that on the

basis of the explanation given, she considered the charges to be reasonable and accepted the charges.

20. Accordingly the tribunal makes no determination in respect of the heating management fee.

Contributions to renewal/reserves

21. The Respondent's statement of case explains that the reserve fund is collected to provide for the replacement of the items listed in the schedule provided [504]. The amount held in reserve in 2012/23 is £17,193.00. The amounts are estimated by the Housing manager and the Technical manager based on the current cost of the items and the life expectancy of the items. The current replacement cost is pre-set by Promaster which is an industry standard housing computer system used to manage assets. The current system was put in place three and a half years ago and is regularly updated.
22. Mr Hodgskin stated that the lift was at the end of its life expectancy and so there is a huge increase shown for its replacement. He stated that the main increases were for the lift, the lift motor and the door entry system. There is also a collection for the renewal of the fire alarm equipment if it is beyond repair, the service charge for this is for providing a fire alarm service but there is also a separate charge for the renewal of the equipment.
23. The Applicant queried the amounts for the main entrance barrier and the door entry system. Mr Hodgskin explained that the main entrance barrier is an automated gate for the car park and is operated by a fob system. In relation to the door entry system although there was a new door installed in January the charge is for a door entry system not the door, as there have been a number of repairs required to the door entry system so the Respondent has decided that it is due for replacement this year. The door entry system is also linked to the Telecare warden alarm system.
24. Mr Jackson agreed to produce the invoices requested by the Applicant.
25. The Applicant stated that she had never had an explanation as to what the renewals/reserve fund was and now that it has been fully explained, she accepted the sum subject to the Respondent producing to her the invoices.
26. The tribunal was not required to make a determination in respect of the renewals /reserve fund as it had been accepted.

Electricity

27. The Tribunal heard from the Applicant that the provision in the budget for electricity costs was unreasonably low. The Applicant complained that this resulted in a deficit which made it difficult for her and the other residents to plan.
28. Ms Teape attempted to provide an explanation for the failure to budget properly for the electricity costs, stating that the budget was set by a Housing manager who was providing maternity cover. Ms Teape stated that she presumed the budget had been set by reference to actual bills but without taking into account any accruals and as a result the actual charges incurred were much higher than had been budgeted.
29. Ms Teape stated that the Respondent had been using Monarch, a procurement company to try to ensure they obtained the lowest price for the electricity but it became apparent that although the Estate Managers were providing Monarch with readings from the meters the bills were estimated bills so in July 2012 the procurement contract was awarded to STC Energy.
30. Mr Hodgskin confirmed that in recognition of the problem created by the poor budgets the Respondent will waive £90.65 being the Applicant's proportion of the difference between the budgeted electricity costs and actual costs for 2011/12. The Applicant accepted the offer and so the tribunal was not required to make a determination in relation to the electricity charges for 2011/12.
31. Similarly the Respondent agreed to waive the sum of £90.16 being the Applicant's proportion of the difference between the budgeted electricity costs and the actual costs for 2012/13. The Applicant accepted the offer and so the tribunal was not required to make a determination in relation to the electricity charges for 2012/13.
32. The electricity cost budgeted for 2013/14 is £3553.00 when the actual cost for 2012/13 is £4295.00 and the actual cost for 2011/12 is £4264.15. The explanation given in the service charge budget [493] of the budgeted figure of £3553 is that it is set using 18 months cost based on the year to date figures plus a 10% uplift.
33. Ms Bowerbank took on board the comments made by the Applicant and the tribunal and agreed that the Respondent needs to look at setting more realistic budgets in the future.

The tribunal's decision

34. The tribunal determines that the amount budgeted for electricity costs for 2013/14 is unreasonably low and a more realistic sum based on the previous two years actual costs would be £4200.00 and the Applicant's proportion would be £135.48.

Reasons for the tribunal's decision

35. It was clear that the budgets for the electricity costs for 2011/12 and 2012/13 were set at too low an amount and although there was some explanation offered for the difference, it seemed to the tribunal that there should have been some checks in place for scrutinising the accounts and checking that the budgets were realistic and set using previous years actual costs. The explanation offered for the unreasonably low provision in the 2011/12 budget did not explain why the same problem arose again in 2012/13. The budgeted figure should have been based on the previous year's actual costs but it clearly was not.
36. It was clear to the Tribunal that the Respondent was trying to keep the electricity costs down. They had installed low energy bulbs and sensors to the corridors and they anticipated lower costs in the future. The Respondent has employed Mr Jackson as an energy efficiency manager in an effort to ensure that they get the best value for money and also to try to keep the energy costs down, this shows good management on the part of the Respondent. Once the discrepancy between the budgeted amount and the actual amount was pointed out the Respondent has agreed to write off the difference. It was clear to the tribunal that the Respondent was trying to balance the potential hardship to its residents as a result of the actual costs being high with the obligation to produce as accurate a budget as possible.

Gas

37. The table below shows the charges for gas:

Service charge year	Budget Communal	Actual Communal	Budget Individual	Actual Individual
2011/12	800.00	3,294.00	3,201.00	9,046.00
2012/13	2300.00	3,030.00	9,000.00	11,627.00
2013/14	2,400.00	n/a	9,800.00	n/a

38. Ms Bowerbank explained that there is a communal boiler system providing heating and hot water for the individual flats and the communal areas. They receive one bill which is split so that 80% is charged to the residents and 20% to the communal heating. The actual costs are based on invoices [72-82]. Ms Bowerbank stated that one of the reasons they had conceded on the management fee was that they appreciated that their budgeting was not of an acceptable standard but she stated that they believed the actual charges for the gas to be very reasonable compared to domestic rates and relied on the comparison of the cost of gas of similar sized estates under its management [506-507].

39. Ms Bowerbank was not able to explain why there was such a large difference between the budget for 2011/12 compared to the actual cost but stated that it may be due to the same issue as the budget for the electricity costs i.e. due to the budget being set by the temporary housing manager providing maternity cover.
40. Ms Teape explained that the budget for 2012/13 was set in November 2012 and based on the costs for gas for the period from April to September; the figures was doubled and uplifted by 8%. Ms Bowerbank stated that the Respondent does recognise that the budgets could have been dealt with a bit better.
41. Ms Teape stated that the 2013/14 budget was set on the same basis at the 2012/13 budget. Once the budget had been prepared in draft, a meeting was held with the resident's representative before the charges were put to the residents. It was agreed that because of the new system a reduction in the charge would be achieved. The resident's representative was concerned that the charges for individual heating expenditure were too high and complained about an increase in the charge from about £6 per month in 2011/12 to £36 per month in 2012/13 and £41 per month in 2013/14. Ms Teape stated that they acknowledged that this may cause financial hardship for some of the residents and in an effort to try to reduce the burden for the residents the budget was set at £36 per month for both 2012/2013 and 2013/2014. Ms Bowerbank stated that they were aware that setting the budget at this level would result in a deficit but they thought it necessary to try to alleviate any potential hardship to the residents.
42. The Applicant stated that she was not challenging the cost of the gas but the inefficiency in the provision of gas. She referred to comments in the Respondent's further response in support of her case, in particular the statement that the boiler was installed in 1984 and the thermostats that were installed in 2012 are now being replaced with digital display units.
43. Mr Jackson clarified that the original boiler that had been installed when the property was constructed in 1984 had been replaced in 1997 and this boiler has now reached the end of its life so it will be replaced. Ms Perkins stated that in 1997 the replacement boiler had an A energy efficiency rating and they are now looking to replace it with a AA or AAA rated boiler so that there is a more efficient system. She stated that the thermostats are not being replaced because they are faulty but in order to allow them to be set more precisely. She confirmed that the Respondent will underwrite the whole capital cost. She also explained that they will install tamper proof thermostatic radiator control valves in the communal areas so that the heat cannot drop or rise above or below 18°C. The temperature chosen is recommended as the correct temperature by Age Concern.

The tribunal's decision and reasons for the tribunal's decision

44. The residents at Hanover court had been faced with a huge increase in the cost of gas as it went up from £6 per month to £36 per month over the course of a year but it was clear that this was due mostly to poor budgeting as the actual cost of the gas was around £36 per month. The tribunal noted that the Respondent had accepted that they had not produced accurate budgets, this had been addressed in the concessions they made in the management fee. The Applicant's main concern was the inefficiencies with the current heating system and the tribunal noted that the Respondent is making efforts to upgrade the system and address the problems with the current system. The tribunal was persuaded by the comparison [506-507] of the cost of gas that the charges were reasonable as they were amongst the lowest for similar sized estates within the Respondent's housing stock.
45. The tribunal finds the charges for the gas to be reasonable and payable by the Applicant to the Respondent.

Refuse collections

46. The Respondent confirmed that the charges for 2013/14 will be for the hire of a reduced number of paladin bins and recycling bins, the Applicant accepted the charges and accordingly the tribunal makes no determination on this item.

Repairs

47. The Respondent stated that external malfunctions at the local electricity substation caused several voltage "spikes" and these adversely affected some of the sensitive electronic equipment in the communal areas of the estate. The repair costs attributed to these voltage "spikes" are set out in the papers [501], in total the Respondent is seeking compensation in the sum of £17,556.24 from UK Power Networks.
48. Mr Jackson stated that the Respondent has submitted a claim for compensation to UK Power Networks for electricity spiking, the table [48] gives a summary of the steps taken to obtain the compensation. He explained that they were not aware of any spiking until December 2012. He stated that UK Power Networks have a set procedure for dealing with claims and he intends to pursue the claim and if he does not get a satisfactory response he will take the matter to the Energy Ombudsman. He states that the Respondent is concerned about spiking and is investing in a large industrial size energy surge protector at a cost of £11,256.50 which the Respondent will not be putting onto the service charge. Mr Jackson stated that in addition the Respondent is also installing monitoring equipment which is capable of reading the voltage supply a 100 times per second and keeps a record of the readings.
49. During the course of the second day of the hearing Mr Jackson stated that the Respondent had received a letter from UK Power Networks offering to

reimburse £2000 in respect of the original claim which was in excess of £16,000 which includes repair costs of £4117.74. It became clear that the offer of £2000.00 was a without prejudice offer that may be withdrawn by UK Power Networks. Ms Bowerbank confirmed that the Respondent is prepared to commit to the sum of £2000 being credited to the service charge account whether or not they actually receive the compensation.

50. **2011/12:** Mr Jackson stated that they had undertaken a further review of the charges for repairs and had found that some invoices had been incorrectly allocated to repairs when they should have been allocated to the renewals fund. He stated that as a result the total due for repairs for 2011/12 would be reduced to £764.00 from £2,120.00 as £1,356.00 [149-151] had been incorrectly allocated. The budget for repairs for 2011/12 was £489.00 and the actual cost of repairs was £764.00. The resident's apportionment amounts to £24.65 each.
51. The Applicant queried the invoices for a multi switch as she thought they may have been charged twice for the same item [150-151], Ms Perkins stated that there would be more than one multi switch and more than one amplifier for the TV. The Applicant accepted the explanation. The Applicant also queried the sum of £84 charged for the engineer attending the site and, finding no access, requiring a return visit. The Applicant stated that the contractor, who is a regular contractor, should have known that there would be no one on site to allow access at 6pm. Ms Perkins stated that the Respondent employed Apollo for 18 months only, and the relationship was strained with Apollo so the contract with them was terminated and the contract awarded to Apex. Ms Bowerbank agreed to concede the amount and so the Applicant would not be liable to pay her proportion of the £84.00 i.e £2.71.
52. **2012/13:** The Respondent agreed to refund the sum of £87.73 in respect of the repairs for 2012/13 and the applicant accepted the refund and agreed the cost of the repairs.
53. **2013/14:** The budgeted sum for repairs was agreed by the parties.

The tribunal's decision and reasons

54. The tribunal was required to determine the reasonableness of the repairs for 2011/12 only as the remaining year's charges had been agreed. The tribunal noted that some of the repairs had been attributed to malfunctions at the local electricity substation and that the Respondent was actively engaged in seeking compensation. The tribunal also noted the commitment by the Respondent to credit any compensation received (and in the event that the amount received is less than £2000, a minimum £2000) to the service charge account in the service charge year 2013/14. The Respondent had produced invoices in support of the charges and where the Applicant had raised specific issues with the repairs the Respondent had conceded the amounts.

55. The total refund agreed in respect of the repairs for 2011/12 is therefore £43.74 + £2.71 = £46.45. The Applicant is liable for £24.65 in respect of the repairs for 2011/12 and so the Respondent must credit the Applicant with £21.80.

56. Subject to the refund agreed by the Respondent the Tribunal considers the sum for repairs to be reasonable.

Annual contracts

57. The Applicant accepted the charge to be reasonable and so the tribunal is not required to make a determination in respect of this item.

Communal TV Licence

58. The Applicant having heard the explanation for the charge accepted the charge was reasonable, and so the tribunal is not required to make a determination in respect of this item.

Application under s.20C and refund of fees

59. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application and hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

60. In the application form at the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Although the Respondent indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Name: N Haria

Date: 24 February 2014

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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 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.