

10330



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

Case Reference : **MAN/00BS/LSC/2014/0023**

Property : **Various Apartments at Mac Court, St. Thomas Place, Stockport SK1 3TY**

Applicants Schedule : **As listed on the attached**

First Respondent : **FSL Properties St Thomas Limited**

Second Respondent : **FSL Management St Thomas Limited**

Type of Application : **Sections 27A and 20C, Landlord and Tenant Act 1985**

Tribunal Members : **Mrs.C.Wood
Mr.D.Bailey
Mr.L.Bottomley**

Date of Decision : **3 December 2014**

DECISION

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Decision

1. The Tribunal determines as follows:
 - 1.1 that the expenditure on electricity of £13,479.08 for the period from 1 December 2011 to 9 January 2014 was reasonably incurred;
 - 1.2 that the expenditure of £110.10 in respect of the BT invoice dated 21 May 2013 was not reasonably incurred;
 - 1.3 that expenditure of £1720 in respect of the cleaning of internal communal areas at the Property was reasonably incurred;
 - 1.4 that the expenditure of £1836 in respect of security at the Property during the period 1 – 30 April 2013 was not reasonably incurred;
 - 1.5 that the expenditure of £500 in respect of annual fire maintenance was either not reasonably incurred and/or the service provided was not to a reasonable standard;
 - 1.6 that the expenditure of £1489.99 in respect of insurance for the period from 4 February – 19 July 2013 was not reasonably incurred;
 - 1.7 in view of the determination made in paragraphs 1.1 and 1.3 each of the Applicants is liable to pay as service charge their Proportion (as that term is defined in the Leases) of the total expenditure of £15,199.08;
 - 1.8 in view of the determinations made in paragraphs 1.2, 1.4, 1.5 and 1.6, the Applicants are not liable to pay any amounts by way of service charge in respect of this expenditure;
 - 1.9 in view of the determinations made in paragraph 1.8:
 - 1.9.1 the Tribunal considers it is just and equitable to grant the Applicants' application under section 20C of the 1985 Act; and,
 - 1.9.2 the Tribunal makes an order under Regulation 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, ("the Rules"), requiring the Respondents to reimburse the Applicants (or such of them as paid the fees) the application fee of £90 and the hearing fee of £190.00.

Application

- 2.1 By an application dated 23 February 2014, ("the Application"), the Applicants sought a determination of the reasonableness of, and the liability to pay service charges in respect of the Property for the service charge years or part years 1 December 2011 to 30 June 2012, 1 July 2012 to 30 June 2013 and 1 July 2013 to 30 June 2014.
- 2.2 A Case Management Conference was held on 18 June 2014 at which both parties attended, and following which the Application was stayed for a period of 28 days to allow the parties further time to reach a negotiated settlement of the issues in dispute.

- 2.3 Directions were issued dated 24 June 2014, (the Directions”), to provide for the situation if the negotiations between the parties proved unsuccessful in reaching a settlement.
- 2.4 It appears that the negotiations were unsuccessful and the following submissions were received pursuant to the Directions:
- (i) letter dated 30 July 2014 from Empirical Property Group, (“EPG”), on behalf of the Respondent enclosing a letter dated 30 July 2014 to Janet Brereton “By email only” and stated to be in compliance with paragraphs 3 and 4 of the Directions;
 - (ii) the Applicants’ statement of case pursuant to paragraphs 6 and 7 of the Directions;
 - (iii) letter dated 1 September 2014 from EPG querying the Applicants’ compliance with the Directions, and the Applicants’ response dated 16 September 2014; and
 - (iv) the Applicants’ supplemental statement of case dated 26 October 2014.
- 2.5 A hearing was arranged to take place at the Tribunal’s offices at 1st Floor, 5, New York Street, Manchester M1 4JB at 1130 am on Friday 14 November 2014, following the Tribunal’s inspection of the Property at 1000 am on the same date.

Inspection

- 3.1 The following Applicants attended the inspection:
Ms.J.Brereton – Apartment 27
Mr.J.Fernandes – Apartment 39
Mr.T.Harris on behalf of Ms.S.Harris – Apartment 42
Mr.P.Shelley and Ms.K.Williams – Apartment 25.
The Respondents did not attend and were not represented.
- 3.2 The Property is a converted mill building with a central lobby/staircase between the “old” building and a new extension. On each of the ground, 1st and 2nd floors, there are 3 apartments. There is an extensive basement area which houses the electricity , gas and water meters, some areas which were apparently intended as storage for the apartments but are as yet unutilised and a number of further apartments which appeared to be still in the process of construction. The total number of finished/occupied apartments is 18; the basements apartments once completed may number 2 or 3. The Applicants believe that the First Respondent is the owner of the basement units. The Tribunal noted a distinct smell of damp in the basement.
- 3.3 The Applicants explained that, until August 2013, there were no separate electricity meters for the apartments but that this was remedied by the Applicants at their cost.
- 3.4 The communal areas (other than in the basement) are carpeted , painted and lit.
- 3.5 Both of the external entrances to the Property have door entry systems, and the apartments on the ground floor have burglar alarms.

- 3.6 There is a fire alarm system installed for the communal areas and there are smoke alarms on each floor.
- 3.7 There are no designated parking areas for the Property [and the Leases do not provide for parking spaces], although there is some land to the front and to the side of the Property which is currently used for parking. The land surrounding the Property is poorly-maintained; there are some foundations in the grassed areas for further proposed development which it appears is now abortive.

The Law

4. Section 18 of 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.
5. Section 19 provides that –
- (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 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.
6. Section 27A provides that:
- (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 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.
- 7. In *Veena SA v 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].

Hearing

- 8. The hearing was attended by the same Applicants as attended the inspection together with Mr.G.Tait (Apartment 31), and Ms.Dean, (Apartments 30 and 40).
- 9. The Respondents did not attend at the hearing. The Tribunal delayed the commencement of the hearing to ascertain if the Respondents would be attending. On being contacted by telephone, conflicting reasons were given for their non-attendance. Having satisfied themselves that the Respondents had been notified by letter of the date and time of the hearing, the Tribunal determined that it was proper to continue with the hearing in their absence.
- 10. At the outset of the hearing, the Tribunal confirmed that the items of expenditure which were in dispute were as follows:
 - 10.1 Electricity
 - 10.2 BT account
 - 10.3 Communal cleaning
 - 10.4 Security
 - 10.5 Buildings insurance
- 11. It was also confirmed by the Applicants that there are 2 forms of lease in respect of Apartments at the Property. The form of lease which was attached to the Application, (“Lease A”), was entered into in respect of Apartments 27,29 and 32. The other form of lease, (“Lease B”), was

entered into in respect of Apartments 17, 25, 26, 30, 31, 32, 34, 36, 37, 40, 41 and 42. (Lease A and Lease B are together referred to as “the Leases”).

12. The Applicants made the following submissions by reference to the Respondents’ written submission entitled “Bills Charged and Cost”, and the Applicants’ responses (both at section 0.3 in the Applicants’ Supplemental Statement of Case):
- 12.1 Electricity:
- (i) the amount of £5932.68 in respect of A/c no. 013417515740 was difficult to reconcile with the bills received from the Respondents (section 3.24);
 - (ii) the other 2 accounts were not recognised by the Applicants;
 - (iii) from the date the first leaseholder moved into the Property (March 2012) until August 2013, there were no separate meters for the apartments meaning that the electricity charges during this period related both to the communal areas and the individual apartments;
 - (iv) construction works were still ongoing at the Property up until about a month prior to the hearing, and the contractors were using the communal electricity supply for their power tools etc;
 - (v) electricity charges for the communal areas for the first quarter following the installation of the individual meters for the apartments was c£450; by switching to an alternative supplier, the charges had been reduced to c£350;
- 12.2 BT: it was queried whether this account related to the Property as (i) it was addressed to FSL Properties Greenock Ltd.; and (ii) there is no communal broadband supply to the Property;
- 12.3 Communal cleaning:
- (i) again, it was queried whether the invoices (section 3.19) related to the Respondents’ offices in Swinton rather than to the Property;
 - (ii) it was denied that there had been regular cleaning at the Property: there had been cleaning before the BBC visited the Property in December 2013, and again after there had been a lot of dust/debris in the communal areas as a result of ongoing construction works in the basement of the Property;
 - (iii) reference was made to an e-mail dated 19 February 2014 from Laura Buckley, on behalf of the Respondents, (section 3.12), in which she states that all cleaning bills will be removed although she asserts that cleaners did attend at the Property up until August 2013;
- 12.4 Security:
- (i) the invoice for £1836 plus VAT for security services (section 3.23) related to a 30 day period from 1-30 April 2013. It was stated that there was a lot of construction work going on at that time with some plant, machinery and materials both inside and outside the Property. The Applicants consider that the security was effected to secure the plant, machinery and materials and not for the security of the Property itself;

- 12.5 Annual Fire Maintenance:
- (i) again the Applicants noted that the addressee of the invoice dated 10 December 2012 (section 3.21) was not either of the Respondents but a separate company called St.Thomas Place Construction Ltd.;
 - (ii) no fire certificate was made available to the Applicants following this inspection;
 - (iii) reference was made to an Enforcement Notice of the Greater Manchester Fire and Rescue Service enclosed in their letter dated 9 July 2013 addressed to Fresh Start Living (section 3.25) following an inspection of the Property on 8 July 2013 which had apparently identified defects/inadequacies in the fire prevention/precaution measures in place at the Property;
 - (iv) the Applicants had arranged and paid for the works which had been necessary to ensure the proper working of the fire alarm system at the Property;

12.6 Buildings Insurance:

- (i) despite repeated requests, the Respondents had failed to provide the Applicants with details of the insurance policy for the Property;
- (ii) on making enquiries of the brokers, they were told that they were not entitled to information as they were not named persons on the policy;
- (iii) certain information told to them by a Mr.Phil Wright of Fresh Start Living suggested that the policy which had been effected was a contractors' policy rather than insurance in accordance with the requirements of the Leases;
- (iv) since August 2013, the Applicants had taken out their own insurance in respect of the Property.

13. Finally, the Applicants confirmed that they wished to pursue the section 20C application as stated in the Application. They confirmed that they had sought to reach a negotiated settlement of the matters in dispute with the Respondents and avoid the need for a hearing.

14. Before closing the hearing, the Tribunal briefly explained why it had no jurisdiction, or why it would be inappropriate for it, to deal with the matters set out in paragraphs 3.4, 3.5, 3.6 and 3.7 of the Supplemental Statement of Case, (section A2).

Deliberations


15. The Tribunal was satisfied that:

- (i) there were no differences between Lease A and Lease B in respect of the rights and liabilities of the Applicants in respect of service charges payable for the Property; and,
- (ii) all of the items in dispute concerned expenditure that was chargeable as service charge expenditure in accordance with the terms of the Leases.

16. The Tribunal considered that:

- (i) the Respondents had failed to comply with the Directions by failing to produce much of the information/documentation required under paragraphs 3 and 4; and,
 - (ii) as set out in the Tribunal's letter dated 22 September 2014, any failure of compliance with the Directions by the Applicants was attributable in the most part to the Respondents' failure to provide relevant documentation.
17. In determining that the electricity charges were reasonable, the Tribunal:
- (i) accepted the Applicants' evidence that a reasonable quarterly charge for electricity to the communal areas is £450. This was based on amounts actually paid by the Applicants for the communal electricity supply following installation of separate meters for the apartments in August 2013;
 - (ii) took into account the gradual occupation of the apartments from March 2012 ;
 - (iii) excluded amounts reasonably estimated to have been incurred by contractors working at the Property and using the communal electricity supply; and
 - (iv) included estimated amounts for electricity charges for individual apartments over the relevant period and up to August 2013.
18. In determining that the BT account charges had not been reasonably incurred, the Tribunal:
- (i) was unconvinced that the invoice related to the Property/the Respondents;
 - (ii) noted that the only invoice available to the Tribunal was for £110.10 when the amount charged in the Respondents' submission, "Bills Charged and Cost", was £575.81; and
 - (ii) accepted the Applicants' evidence that, although the invoice was headed "Internet Services", there was no communal broadband supply to the Property.
19. In determining that the expenditure on communal cleaning should be limited to £1720, the Tribunal:
- (i) accepted the Applicants' evidence that since November 2013 they had assumed responsibility for the cleaning and maintenance of the internal communal areas;
 - (ii) disregarded the concession apparently made on behalf of the Respondents in the e-mail dated 19 February 2014 to waive all cleaning charges as it was considered that this had been made in the course of the negotiations to try to settle the dispute. This was consistent with the Tribunal's decision to disregard apparent concessions made by the Applicants in their written responses referred to in paragraph 12 above which they confirmed at the hearing were made in the course of the same negotiations.

20. In determining that the expenditure on the Annual Fire Maintenance had not been reasonably incurred and/or services had not been provided to a reasonable standard, the Tribunal noted as follows:
- (i) the maintenance appears to relate either to a different company, namely, St Thomas Place Construction Ltd, and was not therefore reasonably incurred as service charge expenditure in respect of the Property; or,
 - (ii) if the expenditure does relate to the Property, the service provided was not to a reasonable standard as 7 months later an enforcement notice was issued by the Greater Manchester Fire and Rescue Service in respect of the Property.
21. In determining that the expenditure on insurance had not been reasonably incurred, the Tribunal :
- (i) accepted the Applicants' evidence that (a) the Respondents had failed to provide them, on request, with satisfactory evidence of the insurance cover which had been effected; and (b) the brokers had refused to provide them with information about the insurance policy because they were not named insureds on the policy;
 - (ii) noted that both of these failures on the part of the Respondents constituted breaches of paragraph 9 of Schedule 5 to the Leases; and
 - (iii) concluded that the Applicants' concerns regarding the adequacy of the insurance cover were reasonably founded (although they may be incorrect) and were exacerbated by the Respondents' repeated failures to provide, and/or enable the Applicants to obtain, the information to which they were entitled under the terms of the Leases and which would have established whether appropriate insurance was in effect and the premium paid.



List of Leaseholders:

Peter Shelley & Kiran Williams - Apartment 25 Mac Court, St Thomas Place, SK1 3TY

John Throup – Apartment 26 Mac Court, St Thomas Place, SK1 3TY

Janet Brereton – Apartment 27 Mac Court, St Thomas Place, SK1 3TY

Gordon Tait – Apartment 31 Mac Court, St Thomas Place, SK1 3TY

Phil & Alison Hill – Apartment 32 Mac Court, St Thomas Place, SK1 3TY

Graham Hodgson – Apartment 34 & 36 Mac Court, St Thomas Place, SK1 3TY

Jorge Migel Fernandes – Apartment 39 Mac Court, St Thomas Place, SK1 3TY

Sarah May Harris – Apartment 42 Mac Court, St Thomas Place, SK1 3TY