10071

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(LEASEHOLD VALUATION TRIBUNAL)

Case Reference	:	**MAN/30UH/LSC/2014/0025**
Property	:	**Apartments 6 & 8 Happy Mount House, Elms Lane, Morecambe LA4 6LR**
Applicants	:	**Mrs J Anderton (Apartment 6) and Miss S Brown (Apartment 8)**
Respondent	:	**Happy Mount House Management Company Ltd**
Represented by		**Mr R P Taylor, managing agent**
Type of Application	:	**Landlord And Tenant Act 1985 – Section 27a(1)**
Tribunal Members	:	**P J Mulvenna LLB DMA (chairman)** **J Rostron MRICS**
Date and venue of Hearing	:	**2 June 2014 at Lancaster Magistrates'Court, George Street, Lancaster LA1 1XZ**
Date of Decision	:	**2 June 2014**

DECISION

DECISION

1. **That the service charges generally levied by the Respondent for the period from 1 October 2010 to 31 March 2011 are not reasonable.**

2. **That Applicants were entitled to withhold payment of the service charges demanded by the Respondent for the period from 1 October 2010 to 31 March 2011 because the demands did not contain a summary of rights and obligations as required by Section 21(1) of the Landlord and Tenant Act 1985 and The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.**

3. **That the Respondent reimburse the Applicants' application fee of £65.00 and hearing fee of £190.00.**

DETERMINATION AND REASONS

INTRODUCTION

1. Mrs J Anderton and Miss S Brown ('the Applicants') who are, respectively, the lessees of Apartments 6 and 8, Happy Mount House, Elms Lane, Morecambe, LA4 6LR ('the Property'), made an application to the Tribunal on 3 March 2014 for the determination of the reasonableness and payability of the service charges for the period from 1 October 2010 to 31 March 2011 demanded by Happy Mount House Management Company Limited ('the Respondent') in respect of the Property.

2. The Property comprises two self-contained, first floor apartments in a purpose-built two storey block of eight such apartments constructed in or around 2009 ('the Development'). Externally, there are landscaped/garden areas, together with car parking and bin stores. The internal common areas include secure entrance halls, together with a lift, stairs and landings. The Development is situated in the Bare district of Morecambe and there is reasonable access to public transport and to local shops and other facilities and amenities.

3. The Applicants have a leasehold interest in their respective apartments for a term of 999 years from 1 April 2008. The apartments comprising the Property are held under identical leases. The Tribunal has seen the Lease in respect of Apartment 8 made on 26 April 2010 between (1) Norman Jackson Contractors Limited, (2) Happy Mount House Management Company Limited and (3) Shelagh Ruth Brown ('the Lease').

4. The Respondent has responsibility for providing services and has an entitlement to recover the cost of such provision by way of service charges. The Respondent has engaged Richard P Taylor Limited ('the Managing Agent') as the managing agents for the Development. The Tribunal has not seen a copy of the agreement under which the Managing Agent operates on behalf of the Respondent. The Managing Agent took over the management

from a company called 'Leasecare' on 20 August 2012. It is understood that, at the material time, the administration of the service charge provisions was undertaken by Bannister Bates Property Lawyers acting on behalf of Norman Jackson Contractors Limited.

THE INSPECTION

5. The Tribunal inspected the common parts of the Development externally and internally on the morning of 2 June 2014. The Applicants were represented by Miss S Brown. The Respondent was represented by Mr R P Taylor of the Managing Agent. The Tribunal found the Development to be maintained to a reasonable standard.

DIRECTIONS & PROCEEDINGS

6. Directions were issued by Judge L J Bennett, sitting as a procedural chairman, on 10 March 2014 and subsequently amended at the Respondent's request. The parties have complied with the Directions.
7. The substantive hearing of the application was held on 2 June 2014 at Lancaster Magistrates' Court. The Applicants were present in person. The Respondent was represented by Mr R P Taylor.

THE LAW

8. The material statutory provisions in this case are as follows.

(i) The Landlord and Tenant Act 1985

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... (c) the amount which is payable'.

Section 27A (3) provides that an application may also be made 'if costs were incurred.'

Section 19(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 21(1) provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. Pursuant to Section 21(2) the Secretary of State has made The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 which prescribe the matters which must be included in the summary. Section 21(3) provides that a tenant may withhold payment of there is non-compliance and Section 21(4) renders ineffective any provision in a lease with regard to non-payment or late payment where a tenant withholds payment under these provisions.

Sections 22 and 23 make provision for the inspection by a tenant of accounts and documents.

(ii) The Commonhold and Leasehold Reform Act, Schedule 11, Paragraph 5 provides for applications to be made to the appropriate tribunal for a determination whether an administration 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.

THE LEASE

9. The Tribunal had before it a copy of the Lease which has been read and interpreted as a whole. In reaching its conclusions and findings, the Tribunal has had particular regard to the following matters or provisions contained in the Lease, none of which were the subject of dispute or argument by or on behalf of the parties:

   a. the Lessee's covenants in the Sixth Schedule;

   b. the Lessor's covenants in the Seventh Schedule;

   c. the Management Company's covenants in the Seventh Schedule.

THE EVIDENCE, SUBMISSIONS & THE TRIBUNAL'S CONCLUSIONS & REASONS

10. The Applicants have asked for a determination of the reasonableness of the service charges for the period from 1 October 2010 to 31 March 2011.

11. The Tribunal had before them the service charge demands for that period and found that they did no comply with Section 21(1) of the Landlord and Tenant Act 1985 and The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. They do not contain a summary of the rights and obligations of the Applicants, as tenants of the Property. The Applicants may, therefore, withhold the payment of the service charges in issue. The Tribunal finds that the Applicants were entitled to withhold payment for the service charges.

12. The Tribunal has, nonetheless considered the question of reasonableness and in that respect heard oral evidence and submissions from the Applicants, together with oral evidence and submissions from Mr Taylor on behalf of the Respondent. The Tribunal also had before them the written evidence and submissions of the Applicant and the Respondent.

13. The Tribunal has considered the issues on the whole of the written and oral evidence and submissions now before them and has had regard to their own inspection and, applying their own expertise and experience, has reached the following conclusions on the issues before them.

14. The service charges demanded by the Respondent for the period in question were based on the following estimated annual costs:

	£ (inc VAT)
Lift maintenance and servicing	1,800.00
Telecommunications line rental and usage	120.00
Management electricity	600.00
Sky dish maintenance	25.00
Window cleaning	300.00
Garden maintenance	600.00
Maintenance of building fabric	250.00
Building insurance	1,500.00
Communal area cleaning	300.00
Maintenance of outside lighting	50.00
Maintenance of roads and sewers	150.00
Water supply (landlord's supply)	100.00
Electrical and fire alarm service test	250.00
Carpets and painting communal areas	300.00
Total	6,345.00

15. The Applicants have challenged the charges on the following bases:

(a) Lift maintenance and servicing: 'The lift was never serviced in the 12 months 2010/11 and a BT line not connected, meaning it did not comply with safety regulations therefore not serviceable. This had been mentioned to the Landlord N Jackson on several occasions.'

(b) Telecommunications line rental and usage: 'Again not in situ or operational.'

(c) Management electricity: 'There were several final demand letters from EON & BT stating that no bills had been paid 2010/2011.'

(d) Sky dish maintenance: 'Also not provided as we had to get our own engineer'

(e) Window cleaning: 'Windows never cleaned from 2010/2011 did not commence until Sept 2011.'

(f) Garden maintenance: 'Never done despite several requests to Landlord, the first gardeners employed were gardening Matters Set 2011.'

(g) Maintenance of building fabric: 'No building maintenance ever done, despite several requests to clean overflowing gutters, etc.'

(h) Communal area cleaning: 'Again not commenced until after we paid the service charges.'

(i) Electrical and fire alarm service test: 'We did not have any checks of electrics/fire alarm test from 2010/2011.

16. The Applicants also say that they have been denied access to the Respondent's accounts and had not been provided with any account summaries or breakdowns.

17. The Tribunal has had regard to *Yorkbrook Investments Limited -v- Batten (1986) 18 HLR 25* in which it was held that there is no presumption for or against the reasonableness of standard or of costs as regards service charges. If a defence to a claim for maintenance costs is that the standard or the costs of the service are unreasonable, the tenant will need to specify the item complained of and the general nature – but not the evidence – of his case; once the tenant gives evidence establishing a prima facie case, it will be for the landlord to meet those allegations. The Tribunal is satisfied that the Applicants in the present proceedings have established a prima facie case.

18. The Respondent has not addressed any of the issues raised by the Applicants and has not produced any evidence that the services in question have actually been commissioned or that payments have been made. In this connection, the Tribunal observe that the Applicants have been denied their right under Sections 22 and 23 of the Landlord and Tenant Act 1985 to inspect accounts and other documents. The Respondent's inability to provide the relevant accounts and other documentation to the Tribunal suggests that it was unable to produce the material. Moreover, the Respondent has not produced any outturn accounts for the period under consideration from which the actual expenditure can be assessed.

19. The Tribunal observe that the disputed service charges relate the period before the Managing Agent took over responsibility on 20 August 2012. The Tribunal has not been told of the reasons for Leasecare's replacement by the Managing Agent and can only assume that, for some reason, the material has not been obtained from Leasecare or from Bannister Bates Property Lawyers, as the case may be, and is not within the Respondent's control.

20. The Tribunal recognises that that these circumstances disadvantage the Respondent quite considerably, but can see no sustainable reason to assist by proceeding by way of making assumptions or drawing inferences which are not evidence-based. In *Schilling & Others -v- Canary Riverside Development PTD Limited (LRX/26/2005 LRX/31/2005 LRX/47/2005)*, it was held that the burden of proof was upon an applicant, although His Honour Judge Michael Rich QC went on to say that

'In civil cases, where the standard of proof is only the balance of probabilities, the burden matters only where either there is no evidence or, in the very

unusual circumstance that, having heard all the evidence, the tribunal is unable to make up its mind.'

21. Having regard to the absence of any evidence at all that the services were actually commissioned and paid for or as to any breakdown of the costs involved, either by way of reference to particular services or unit costs, coupled with the Applicants' unchallenged evidence that the disputed services were not, in fact, provided, the Tribunal have concluded that the services charges demanded by the Respondent for the disputed heads of expenditure were not reasonable and would not, in any event, be payable by the Applicants.

22. It is reasonably likely that some services were provided in the period in question, but there is no evidence as to the nature, extent or costs of such services. The Tribunal has not, therefore, made any decision as to what might have been reasonable charges for such period.

23. The Tribunal would emphasise that this decision is not intended to cast doubt on the current ability of the Respondent to provide services through the Managing Agent who was appointed after the period of the dispute. The Tribunal would, however, also emphasise the need for the Respondent to work closely with the Managing Agent and, in particular, to take and consider his advice on the question of a reserve fund and service charge budgeting and accounting generally.

COSTS

24. The Tribunal has power to award costs and/or reimburse fees under Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 which provides, insofar as it is material to the present case:

'(1) The Tribunal may make an order in respect of costs only –

... (b) If a person has acted unreasonably in bringing, defending or conducting proceedings in –

... (ii) A residential property case...

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or any part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.'

25. Neither party has made an application for the award of costs, although there is still an opportunity to do so (see Rule 13(5)). The Tribunal has, however, considered the position on its own initiative and has determined that, on the basis of the evidence at the time of the Determination, there was no circumstance or particular in which either of the parties had acted unreasonably, save to the extent that, by denying the Applicants their right under Sections 22 and 23 of the Landlord and Tenant Act 1985 to inspect accounts and other documents, the Respondent has caused the Applicants unnecessarily to bring these proceedings before the Tribunal. The Tribunal

concluded that it would not be appropriate or proportionate to award costs to either party, but that it would be reasonable and proportionate to make an order for the reimbursement by the Respondent of the application fee of £65.00 and the hearing fee of £190.00 paid by the Applicants.

26. The Applicants requested that an order be made under section 20C of the Landlord and Tenant Act 1985 that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants. The Tribunal has no evidence that the Respondent has acted unreasonably in any respect, save to the limited extent mentioned in the preceding paragraph. The Tribunal determined that it would not be reasonable or proportionate to make an order.