



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

Case Reference : **MAN/00CQ/LSC/2015/0045**

Property : **2 Crossley Court, Cross Road, Foleshill,
Coventry, CV6 5GW**

**Applicant
Representative** : **Crossley Court (Coventry) Limited
Edward H Marston and Company Limited**

Respondent : **Garikayi Brasington Madzudzo**

**Type of
Application** : **Service charges, Section 27A of the Landlord
and Tenant Act 1985.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.
Mrs J. Brown MRICS.**

Date : **12 November 2015**

DECISION

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The background to the application

1. This application comes before the Tribunal by way of an order of District Judge Kesterton sitting at Coventry County Court on 28 March 2015. The Tribunal is required to determine whether service charges in the case are payable under the terms of the lease and if so, to what extent the service charges are reasonable.
2. "The complex" is a purpose built complex containing 24 flats, at Crossley Court, Cross Road, Foleshill, Coventry, CV6 5GW. The application relates to flat 2 "the property".
3. The Freeholder of "the complex" is Mr Mayo, who takes no part in the case.
4. The Applicant Crossley Court (Coventry) Limited holds the remainder of a 99 year head lease to the flats in "the complex", that term commencing on 25 September 1963 and therefore ending on 24 September 2062.
5. The Applicant is represented by the management company, Edward H Marston and Company Limited.
6. The Respondent holds the remainder of a long lease to "the property", ending 19 September 2062.
7. Directions were issued on 14 May 2015. As a result of those Directions a joint hearing bundle has been prepared that is 84 pages in length.
8. The Tribunal inspected "the complex" on 12 November 2015 with a hearing after the inspection. The hearing taking place at Coventry Magistrates Court.

The inspection

9. The Tribunal inspected "the complex" between 10.55 am and 11.45 am on 12 November 2015. Mrs Kim Parker and Mrs Barbara Cocks, both property managers, employed by the management company, were present on behalf of the Applicant. The Respondent was also present.
10. "The complex" has an access road that has been retained by the Freeholder. When looking into "the complex" along the access road there are 11 parking bays set off to the left and there is a storage area provided with four large wheeled dustbins.
11. To the right of the access road at the furthest extent of the road is a locking gate that gives access to the rear of "the complex". Keys have been provided to the tenants. There is also a garden area, down the side of the complex buildings where areas of paving surround areas of land that have been

planted. The exterior walls of the buildings housing the 24 flats are of brick, areas of which been rendered. The rendered areas are generally in need of repair. The pitched rooves are covered with a felt material.

12. The flats are on three stories and arranged so that six flats each share a common entrance, two flats on each storey. Each common entrance has an exterior door that is capable of being locked by use of a key and keys have been supplied to the tenants. Each common entrance has a canopy above it and door buzzer buttons for the flats that are accessed via that door. There are four common entrances.
13. Each common entrance gives access to a passage giving access to the ground floor flats and six post boxes. Stairs lead up to the first story, where two flats are accessed off a passage, stairs lead up the second storey where access is given to the second storey flats, off a passage. All stairs are made of concrete.
14. There are common electric lights in all of these common areas. All of the passages are covered in floor tiles that are known to contain asbestos and where carpets have been fitted they are fitted on top of these tiles.
15. There is a garden area to the front of the complex, set in a similar manner to the garden that is at the side of the access drive. At the furthest extent of the front of "the complex" there is a locking gate, keys for which have been provided to the tenants. This gives access to a private main garden which has a pond, hard standing areas, cultivated areas and trees. There are various benches and seats. From here it is possible to walk along the rear of the "the complex", back to the access road.
16. Rain water down pipes appear generally to be metal. Some were in need of clearing, weeds growing out of them. Gutters appear to be mainly plastic, though other materials have been used in places.
17. The exterior of "the complex" is provided with security lighting.
18. The Tribunal noted that there is a large dirty spillage mark on the carpet in the common passage on the ground floor of "the complex" giving access to "the property". There is rice at the scene of the spillage, indicating that a curry or something similar may have been spilled onto the carpet.
19. Generally, the garden areas are well kept. The rendering to the walls and rain water system need attention and asbestos needs to be removed. Issues caused by trespassers driving onto the private complex need to be addressed.

THE LAW

Landlord and Tenant Act 1985

Section 18, meaning of service charge and relevant costs.

Briefly this defines a service charge and associated costs as the variable cost of providing the service.

Section 27A, Liability to pay service charges: jurisdiction

- (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.

Section 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.

The Commonhold and Leasehold Reform Act 2002, Section 158, Schedule 11, Part 1, provides a definition of administration charges and at paragraph 1 (1) (c), this includes the costs involved in respect of the failure by a tenant to make a payment. This form of administration charge will cover legal costs that have been incurred in enforcing payment of sums due under the terms of the lease.

Relevant provisions of the lease

20. The Tribunal has not been provided with a copy of the lease for “the property”.
21. The Tribunal has been provided with a specimen lease, for flat 24 (hearing bundle, pages 12 to 26).
22. The specimen lease makes it clear that “the complex” is governed by a head lease held by the Applicant, who is given the power to lease out individual flats within “the complex” and each such lessee shall be bound in the same terms regarding service charges. (Clause 2 (4) of the hearing bundle at page 13.)
23. The Sixth Schedule, Clause 19, requires the lessee to indemnify the lessor against a twenty fourth share of all costs, charges and expenses incurred by the Lessor in carrying out its obligations under the Seventh Schedule. (Hearing bundle, page 22.)
24. The Sixth Schedule, Clause 20, requires the lessee to pay such service charges as are reasonably required on the first day of every month. (Hearing bundle, page 23.)
25. The Seventh Schedule requires that the Lessor provide a list of services, these are to pay rates, to insure “the complex”, reinstate “the complex” if it is damaged, keep “the complex” common parts in good repair, good condition decorated, lit, cleaned, clean the windows, ensure there are dustbins and keep books of accounts.

Written evidence

Summary of the written case on behalf of the Applicants

26. The Applicant has provided a statement of his claim in which he asserts that the Respondent has to pay service charges, currently being demanded at the rate of £60 per month, in respect of his lease to occupy “the property”. (Hearing bundle, page 7.)
27. The Applicant in that statement of his claim, at paragraph 12, claims that at 31 March 2015 service charges had been demanded but remained unpaid by the Respondent in the sum of £1,635. (Hearing bundle, page 7.)
28. In reaching this figure of unpaid service charges the Applicant relies upon a tenant account summary. (Hearing bundle, page 48.) This indicates that when the present management agent was appointed to manage “the complex” on 1 July 2013, the Respondent’s service charge account was in

arrears to the sum of £2,449.57. Further, in calculating the figure of £1,635, three court costs have been included, to the total of £375. These three costs are described as court costs or court fees.

Summary of the written case on behalf of the Respondent

29. The Respondent denies that he is responsible for the payment of service charges at all, since he has not signed any document requiring him to pay such charges.
30. The Respondent also contends that services have not been provided to a reasonable standard and not in a regular manner.
31. The Respondent produces 11 photographs to indicate the poor level of services.

The hearing

32. The hearing commenced at 12.15 pm on 12 November 2015, at Coventry Magistrates Court. The persons present at the inspection were present at the hearing.
33. It was agreed between the parties that although the Respondent's tenant account summary showed that on 1 July 2013, the Respondent's service charge account was in arrears to the sum of £2,449.57, these arrears were dealt with by payments made from the prior management agent, Bright Willis in April and July 2014. Hence there were no arrears once these payments were made.
34. The Applicant's representatives made a concession in relation to the court costs and court fees totalling £375, made in the following terms, "I can't see any reference in the lease to legal expenses or costs and therefore I am prepared to accept that they are not chargeable as a service charge cost or administration charge under the terms of the lease."

The evidence

35. Bearing paragraphs 33 and 34 in mind, the Tribunal will only summarise the evidence relevant to the remaining service charge arrears of £1260, in relation to whether or not the sum is chargeable at all as a service charge and if it is chargeable, has it been charged at a reasonable level?

Oral evidence on behalf of the Applicant

36. The Applicant's representatives stated that they were sorry, but that they could not locate a copy of the lease for "the Property", however they assured the Tribunal that all the flats at "the complex" will have long leases that, in

so far as service charges are concerned, are drafted in the same terms. That is why the specimen lease is included in the hearing bundle. The end date for the specimen lease and the lease recorded for “the property” on the Land Registration document are the same date.

37. The Applicant’s representatives stated that the Respondent has been a long leaseholder at “the complex” since 2004, when he moved into flat 2 and must be liable to pay service charges.
38. As such, the Applicant’s representatives stated that the Respondent is liable to pay a one twenty fourth share of the service charges at “the complex”. The Applicant is entitled to charge a reasonable monthly sum towards those service charge expenses and charges £60 per month. In this case, the Respondent has failed to pay 21 payments towards his service charges and as such his service charge account was in arrears to the sum of £1260 at the date that the County Court District Judge Transferred the service charge part of the case to the Tribunal.
39. The Applicant’s representatives took the Tribunal through an account showing that over the relevant three year period, 2013 to 2015, contributions of £60 per month by all 24 tenants would have resulted in a small surplus over 2 years, but a negative figure in the third (Hearing bundle, page 38b.)
40. The Applicant’s representatives took the Tribunal through details of service charge expenditure for the period 6 April 2014 to 5 April 2015. (Hearing bundle, page 43 to page 46.) This deals with the cost of window cleaning, keeping the grounds tidy, insuring “the complex” against the usual risks, various maintenance and repair costs and management costs.
41. The Applicant’s representatives stated that management costs are £120 per flat per year. Further, evidence was given that on some occasions when the service charge account for “the complex” has been depleted, payment of management costs will be delayed until the account can afford to pay these costs.
42. In relation to general condition of the buildings the Applicant’s representatives gave evidence that they were aware of all of the problems and were in the process of putting matters right. This would require the expenditure of substantial sums of money. They confirmed that the required consultation procedure will be undertaken.

Oral evidence on behalf of the Respondent

43. The Respondent gave evidence that he did not think that he was bound to pay any service charges at “the complex”. He had not seen any document that required him to pay such charges and his conveyancing solicitor had not told him that any such charges would be payable.

44. The Respondent was asked to consider the Land Registry Office Copy, relating to “the property” (hearing bundle, page 9 to 11.) The Respondent agreed that the end date recorded for his lease was the same end date for the specimen lease (hearing bundle, page 13). He agreed that a charging order had been placed on the register as a result of a County Court action on 13 July 2009. He had been taken to court in the past in relation to non-payment of service charges.
45. The Respondent indicated that the prior management agent had not presented him with a service charge demand during the first two years of his tenancy. He is aware that work is being done in the gardens, the windows are being cleaned and now he thinks about it, that “the complex” is probably being insured. He does not think that he can be required to contribute to these costs.
46. The Respondent gave evidence that “the complex” is in a poor condition and is not cleaned properly. “The complex” had only been professionally cleaned twice to his knowledge. The Respondent indicated that the stain near his common entrance door revealed how poor the cleaning was.
47. The Applicant’s representatives challenged this assertion. A photograph taken on 5 November 2015 was admitted into evidence of the area in which the Tribunal had seen this stain, showing that the stain was not there on 5 November 2015.
48. The Respondent gave evidence that door bells do not work and therefore the tenants cannot lock the common exterior doors to “the complex”. If they do then visitors and the post man would not be able to get in. He further contended that exterior lights are not working properly.
49. The Respondent gave evidence that strangers could drive onto “the complex” and park their vehicles on private land. He had seen someone drive onto “the complex” and tip rubbish.
50. The Respondent took the Tribunal through the photographs that he has provided demonstrating the poor condition of the building and showing rubbish dumped at “the complex”.
51. The Respondent was asked if he had ever reported any of his concerns to the management agents and he said that he had not.

The deliberations

52. The Tribunal considered the terms of the specimen lease and concluded that The Sixth Schedule, Clause 19, does impose a duty on the lessee to indemnify

the lessor against costs charges and expenses incurred by carrying out its obligations under the Seventh Schedule.

53. The Seventh Schedule deals with all the matters that would normally be expected to be included in a service charge. Providing the services of insuring the complex, providing dustbins, keeping the common parts in good order, keeping books of account, etc., providing all the physical services that will keep “the complex” running.
54. The Tribunal also concluded that The Sixth Schedule, Clause 20, permits the lessor to charge the lessee a contribution to the service charges that are expected to be incurred at “the complex”, at a reasonable figure on the first day of each month.
55. It is agreed that as of this management agent taking over management of “the complex”, the Respondent was not in fact in arrears with the service charge costs. Further, it is clear that the Applicant has demanded from the Respondent 21 payments of service charge contributions, up to the date that the County Court transferred this case for our determination. A total of £1260 in service charges.
56. The Tribunal notes that it has to decide the issue of whether or not the Respondent is bound to pay service charges arising in “the complex”, without the benefit of being able to consider the actual lease for “the property”. Notwithstanding this, the Tribunal concludes that the specimen lease is drafted in such a way that the Respondents lease must be drafted in identical terms, insofar as service charges are concerned, the Tribunal relies on Clause 2 (4) in making this decision. (Hearing bundle, page 13.)The Tribunal also takes into account that service charges are set up to be divided amongst 24 flats at “the complex” and the Respondents flat is one of those 24 flats. The Tribunal considered the Respondent’s evidence in this regard, but did not accept it.
57. The Tribunal therefore decides that the Respondent is bound to pay reasonable service charges at “the complex”.
58. The Tribunal considers the management charges of £120 per flat per year to be well within the range of reasonable fees for management of “the complex”.
59. The Tribunal takes on board all the criticisms that have been raised by the Respondent. For example, it would be far better if the problem of strangers being able to drive vehicles onto “the complex” could be dealt with. The wall render, rain water drainage and the presence of asbestos are all problems, but they are problems that the Tribunal is confident that the Applicant is dealing with through the management agent.

60. The Tribunal has considered the case on both sides of this issue very carefully considering all the written and oral evidence that has been given and determines that a monthly contribution of £60 per flat towards service charge costs is reasonable. There being 21 months at issue, this is £1260.
61. The Tribunal then considered the three figures that are involved in the case and described as court costs and court fees, totalling £375. The Tribunal takes the view that these are not service charges, they were not expended to provide a physical service that could fall within section 18 of the Landlord and Tenant act 1985. They are administration charges, falling within Schedule 11, Part 1 of the Commonhold and Leasehold Reform Act 2002.
62. The Tribunal notes that the transfer from the County Court is only to consider service charges and so it is arguable that these administration costs are outside the matters that the Tribunal has to consider. Further, the Tribunal doubts that administration charges are covered by the terms of the lease. In fact the Tribunal has not had to consider these issues in detail because when the Applicant's representatives were asked to assist the Tribunal by outlining how it is that these administration charges are payable under the terms of the lease a concession was made (paragraph 34 above).
63. As a result of the stance taken by the Applicant in the hearing the Tribunal does not consider the issue of these court costs any further. These costs remain a personal debt, payment being enforceable by the County Court.

The Decision

64. The Tribunal decides that the Respondent is liable to pay the sum of £1260 in service charge contributions. These were already payable to the Applicant on the date that the County Court transferred the issue of determination of service charges to this Tribunal. They must be paid forthwith to the Applicant, to be credited to the Respondent's service charge account.
65. The court costs to a total of £375 are not payable as a service charge or administration charge, this issue having been conceded by the Applicant. Irrespective of our decision, such legal costs remain enforceable by the County Court.
66. This case should now be transferred back to the Coventry County Court.