



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

Case Reference : **MAN/00DA/LSC/2014/0133 & 0134**

Property : **38-40 Trentham Street, Leeds LS11 6HW
119 Upper Wortley Road, Leeds LS12 4JN**

Applicants : **Adrian Dilenardo**

Representative :

Respondent : **Adriatic Land 1 (GR4) Limited**

Representative : **Mr Sweeney (Counsel)**

Type of Application : **Section 27A(1) Landlord and Tenant Act 1985**

Tribunal Members : **Mr P A Barber LLB, LLM
Mrs S Kendall MRICS**

Date of Hearing : **25 June 2015**

Date of Decision : **25 June 2015**

DECISION

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The Decision of the Tribunal is in accordance with the following Reasons and findings as set out below. Given that the applications relate to a number of flats in two separate buildings we have set out our Decision as part of the reasons.

REASONS

The Application

1. The Applications are made under section 27A of the Landlord and Tenant Act 1985. There are two applications before the Tribunal in relation to two sets of flats in two distinct converted properties in Leeds. As the parties are the same in relation to both applications and as the hearing covered each of the properties, for convenience this is a Decision and Reasons dealing with both applications.
2. Mr Dilernardo has applied to the Tribunal for a determination as to the payability of a number of service charge items in relation to a number of flats of which he has a leasehold interest in the two properties. Both properties are converted from single dwellings into leasehold flats.
3. The Respondent has recently purchased the freehold interest in both of the properties and has commenced a programme of works and management in accordance with the terms of the various leases (all of which are similar). Mr Dilernardo (who appears to have been managing the properties himself by default of the landlord in the past) is not happy with the way the properties are being managed and the amounts being charged. This has resulted in this application.

Inspection

Trentham Street

4. On the 25 June 2015 the Tribunal inspected the property. The property comprises of 4 flats which are all owned by the Applicant. The building is a red brick double fronted Victorian terrace property. It has a one bedroom basement flat; a two bedroom, ground floor flat; a two bedroom first floor flat and a one bedroom top floor flat. Outside there was general vegetation in the chimney flaunching and the gutters; the lintels were flaking and the pointing was deficient. There was also a brick missing to the left of the top lintel. Generally there were a lot of self-set shrubs around.
5. Inside the property (we only viewed the common parts) there was no fire book by the fire alarm controls (we were told someone associated with the landlord had removed this); there was a damaged light push on the ground floor and on the top floor (which appeared to be permanently on); carpets were missing and loose and worn on the stairs; decoration was poor and a new bannister had been installed to two floors and boarding had been placed above the handrail on the first floor.

Upper Wortley Road

6. On the 25 June 2015 the Tribunal inspected this property. The property is a Victorian end of terrace and comprises of 7 flats. Five of which had access from Upper Wortley Road, one from Barras Garth Road and one from Barras Terrace (accordingly they had different addresses). The Applicant has five of the flats in this development. Outside the garden had been chopped down recently according to the Applicant. The Tribunal noted the following in relation to this property: vegetation in the gutter; rotten doors on the meter cupboard propped closed by a chair; the cupboard contained an old mattress and other detritus; rendering was missing; ridge tiles required repointing; the side windows had clean glass but dirty frames. There also did not appear to be sufficient bins. There was a missing vent on the extractor fan. Mr Dilernardo told us that the gutters leaked, but we did not see evidence of this.
7. Inside in the communal areas the fire alarm had a fault (it was peeping continuously); the emergency door release on the front door does not work, or the key code on the intercom; the staircase was not well cleaned (it was in a poor condition). On the first floor a window on the communal landing did not shut or lock properly and there was no letter box cover. There was a missing reveal to the side of the front door.

The Hearing

8. The Applicant represented himself and Mr Sweeney represented the Respondent. There were no witnesses. The Tribunal had the benefit of various submissions, which we read and took into account in making our decision. We also had three lever arch files of documents (one was almost exclusively copies of the various leases) which contained the invoices; receipts; submissions and service charge accounts. Again we took these into account in arriving at our decision.
9. Mr Sweeney commenced the hearing by taking the Tribunal through the various provisions in the leases setting out the respective liabilities of landlord and tenant in relation to repairs, management and payment of the service charge. Mr Dilernardo took no point in relation to any of the provisions in the leases in relation to repairs or payment of a service charge. He agreed that a service charge is payable in accordance with the terms of the various leases. His contention was that the Respondent was generally charging too much for what it was subcontracting out and charging for its own services. The only area where it was argued that the lease was unclear was in relation to the window cleaning. However as it happens we did not need to construe what the lease meant as will be apparent from our findings and reasons in relation to this item when we deal with the Scott Schedules.
10. The Tribunal then had the benefit of Mr Dilernardo's oral arguments in relation to each of the items on the two Scott Schedules. He set out why he was unwilling to pay these amounts and told us some of the reasons why he thought that the amount was too high. Mr Sweeney was afforded an opportunity to respond as and when appropriate throughout Mr Dilernardo's submissions. We have dealt with each of these in the paragraphs dealing with our findings and reasons below.

11. There was no dispute between the parties in relation to the applicable law and the jurisdiction of the Tribunal to determine the dispute was accepted. The Tribunal had to consider the payability and reasonableness of the various items in the service charge account which Mr Dilernardo was objecting to paying.

Findings of fact and Reasons

Flats 1, 2, 3 & 4 38 – 40 Trentham Street, Leeds LS11 6HW

12. The Tribunal referred to the Scott Schedule on pages 933 through to 937 of the bundle. There were missing from the Schedule, items numbered 5 to 8. Mr Dilernardo told us, and we accepted that these were the same headings as per the Scott Schedule for 119 Upper Wortley Road (the second application). He told us that the figures were taken from the accounts for 2014 which are available at page 1083.
13. The Tribunal therefore went through each of the items on the Scott Schedule, comparing the actual figures with what the Applicant has offered to pay and arrived at the following decision in relation to each:
 1. General repairs: The Respondent has spent £678.90 on general repairs. These include the fitting of a new handrail; works to lighting, carpeting and new locks to the meter cupboard. The way this had been calculated was slightly confusing but the Tribunal was able to add up all of the invoices relevant to these works on pages 912 – 918 to arrive at the above figure. The Applicant told us that he was prepared to pay £323. He questioned the cost of the notice board (£110); the new lock and padlock (£82); the handrail (£228) and the call out fee for after working hours to remove some lose carpets and check the lights are working. Having considered the issues the Tribunal accepts that a call of fee of £75 for checking lights and removing bits of lose carpet, out of hours, is unreasonable and not payable. Every other item appeared to us to be reasonable. Accordingly we find that £603.90 is payable for general repairs.
 2. Electrical items: The Respondent has spent £168.46 on electrical repairs. The Applicant offered to pay nothing for this. Given the works done – a new light switch, new lamps and an adjustment of the timer the Tribunal thought that this amount was reasonable and payable.

3. Fire alarm testing and emergency light testing: The Respondent has paid £1039.73 for testing and maintaining the fire alarm (including keeping a log of visits – which was not available) and £383.18 for emergency light testing. Accordingly items 3 and 4 on the Scott Schedule were added together for the purposes of ascertaining the full amount at the Tribunal hearing. The Applicant told us that he would be willing to pay £500 for these items. He produced no evidence for this indication. However, he did think that there was an element of double billing in regard to these items (item 4 should have been in item 3). Mr Sweeney took us through the invoices and how the full amount should be calculated, indicating that the final invoice should be apportioned to take account of the end of the financial year to arrive at a holistic figure of £1422.91. Having regard to the costs associated with undertaking these tasks; and having regard to the fact that the Respondents have used a large recognised organisation for this purpose with a local branch, we are satisfied that this figure is reasonable and payable.
4. Emergency light testing: This is included in item 3 above.
5. 5 year electrical inspection: The Respondents have paid £500 for this inspection. The Applicant says that this is too much and is willing to pay £295. He produced no evidence for this figure other than explaining that he has similar properties and the cost is only £295. Having regard to the extent of the property; the issues involved in testing the electrical system and using our expert knowledge of these issues, this figure is not unreasonable. Accordingly, £500 is payable.
6. Cleaning and caretaking: The Respondent has paid £410 for cleaning and caretaking (this includes cleaning on a monthly basis together with a one-off deep clean). The Applicant has indicated that he is willing to pay £175 “all in”. Having regard to the size and nature of the property the Tribunal finds that £410 is not unreasonable for a monthly clean and a one-off deep clean. Accordingly this amount is reasonable and payable.
7. Window cleaning: this is agreed at £96. Accordingly this amount is payable.
8. Communal electricity: The Respondent has paid £218.70 for communal electricity at this property. The Respondent states that this is too much as the lights are permanently on due to failure of maintenance of the light switch. However, the Tribunal does not accept this and even if the lights are permanently on, then this is likely to be a problem associated with the use of the switches rather than a failure to maintain (even if three lights would use this amount of electricity). We find that this amount is not excessive and in any event represents electricity used at the property for communal purposes. Accordingly it is reasonable and payable in the sum of £218.70.

9. Annual fixed management charge: The Respondent is charging £402.21 for this. The Applicant is willing to pay £160 for this. Using our expertise and on the basis of the fact that £100.50 per unit management charge is not unreasonable and we find that the sum of £402.21 is reasonable and payable (the additional 21 pence we assume relates to accounting anomaly due to the fact that they Respondent took over management part way through the financial year).
10. Fire Risk and HSE Report: The Respondent has paid £486 for this. The Applicant has said that he will pay £350, but has given no substantial reason for offering this amount. There is an invoice in the documents from a recognised company and again using our expertise and on the basis of a balance of probabilities, we find that £486 is reasonable and payable for such a report.
11. Legal & Other: The Respondents have paid £360 for legal costs and accountancy fees. This includes £300 for accountancy and £60 for brokering and electrical contract, which should instead have formed part of the management costs. The Applicant agrees with the £300 but disputes the £60 brokerage fee. Mr Sweeney told us that this is industry standard. Taking account of our expertise we accept that this is a recognised practice and that a separate charge is appropriate for brokering an electrical contract. Accordingly £360 is reasonable and payable.
12. General: The Respondents have charged £158.70 for mileage to the property and postage recharge for the property (this is 10 pence less than the invoices, but that is probably an error). Having regard to the fact that the Respondent is charging a management fee as a set percentage, and having regard to our expertise and knowledge of industry practice, we thought that this amount should have been included in the management fee and accordingly we find that it is not reasonable and not payable.
13. Reserve Fund: This represents the balance of monies on the account. We accept that a reserve fund is an important aspect to managing leasehold properties of this nature and that the way in which the Respondent has chosen to calculate the amount of the reserve fund is reasonable in the circumstances of these properties and their relationship with the Applicant. Accordingly, we find that this is reasonable and payable as a reserve fund amount.
14. Accordingly as a global amount we find as fact that a sum of £4771.30 is reasonable and payable in relation to the Applicant's flats at 38-40 Trentham Street, Leeds.

Upper Wortley Road

15. The Respondent referred to the Scott Schedule on pages 938 through to 943 of the bundle. He told us that the figures were taken from the accounts for 2014 which are available at page 1070.

16. The Tribunal therefore went through each of the items on the Scott Schedule, comparing the actual figures with what the Applicant has offered to pay and arrived at the following decision in relation to each. The Applicant owns 5 of the 7 flats in this development, including the two on the sides which do not share the communal areas. The Respondent has split the service charges chargeable to the flats to accord with the items which the flats have the benefit of. On the service charge income and expenditure record, the Respondent has therefore listed those items which are relevant only to the 5 flats in the main building which have the benefit of the communal areas (cleaning of these areas etc) and the provided a separate list of items which include all 7 flats. These are set out in schedule 1 and schedule 2 of the 2014 accounts. However, we will determine reasonableness and payability by reference to the Schott Schedule on page 938 onwards.

1. General repairs: The Respondent has paid £536.40 for general repairs covering disposal of rubbish from the communal areas and external parts of the building; fitting of an external brick; a notice board; excess over insurance of re-fixing of slipped slate. The Applicant said he was willing to pay £167 for all of these works. However, having regard to the extent and nature of the works, and using our expertise as a Tribunal we thought that the amount of £536.40 is reasonable and payable.
2. Electrical repairs: This is agreed by the Applicant at £35.96. Accordingly this amount is reasonable and payable.
3. Fire alarm testing: We can repeat here what we stated in paragraph 13(3) above but with different figures. The Respondent is charging for items 3 and 4 a total figure of £1437.50. This includes fire alarm testing and emergency light testing. The Applicant said he is willing to pay £800. Given our findings in paragraph 13(3) above, we thought that the amount as paid by the Respondent in the sum of £1437.50 was reasonable and payable.
4. Emergency light testing: This is included in sub-paragraph 3 above.
5. 5 year electrical inspection: The Tribunal repeats what it has stated in paragraph 13(5) above and finds that the amount paid by the Respondent in the sum of £500 is reasonable and payable.
6. Cleaning and caretaking: Again given our findings in paragraph 13(6) above which we repeat for the purposes of this property, we find that the amount paid by the Respondent in the sum of £410 to include monthly cleaning and a one-off deep clean is reasonable and payable.
7. Window cleaning: The Respondent has paid £96 for this. The Applicant was unwilling to pay anything towards the cleaning of the windows at this property as he stated the frames have not been done. Using the Tribunal's expertise in this matter we thought that window cleaners these days only clean the glass and not the frames. We thought that cleaning frames as well would have resulted in an additional charge and accordingly we find as fact that £96 is reasonable and payable for this service.
8. Communal electricity: The Applicant agreed to this amount in the sum of £107.45. Accordingly this amount is reasonable and payable.

9. Annual fixed maintenance charge: According to the Respondent's submission it is charging £88.03 per unit in the global sum of £528.16 (apportioned for the period). Given the nature and extent of the property and the tasks involved in management, and using the Tribunal's expertise, we thought that this amount was not unreasonable and would be payable.
 10. Fire risk and HSE report: The Respondent has paid £486 to carry out a report in the same manner as that set out above in paragraph 13(10). The Applicant said he was happy with the report but that the amount charged was inflated. There is no evidence for this and in accordance with our findings in paragraph 9(10) above we are satisfied that £486 is reasonable and payable.
 11. Legal & Other: The Applicant agreed the accountant's report at £300 but not the brokerage charge at £60. Given our findings and views expressed in paragraph 13(11) above we are satisfied that this is a reasonable and payable amount.
 12. General: This again represents mileage charges for travelling to the property by the Respondent. Given our findings in paragraph 13(12) above we thought that this should be included in the management fee and therefore disallowed it as not being reasonable nor payable.
 13. Reserve fund: We again repeat our views expressed in paragraph 13(13) above. Accordingly a reserve fund as calculated is reasonable and payable.
17. Accordingly we can simply just disallow the sum of £160.40 from the amount shown in schedule 2 of Service Charge Income and Expenditure Record at page 1070 to arrive at a figure of £2355.61 as the total for Schedule 2 and £2601.31 as the total for Schedule 1.
18. At the end of the hearing the parties raised the issue of historical neglect and made brief submission in relation to this. However, from what we saw of the properties and in relation to the items which are in dispute on the service charge account we did not think that historical neglect was in any way relevant to our decision. The works were necessary regardless of any neglect.

2015 Service Charge Account

19. Mr Dilernardo's applications also ask the Tribunal to deal with the 2015 service charge accounts. However, Mr Dilernardo had not been billed at the date of the application for these amounts and we were told that he had only recently been sent the service charge demands on the 04 June 2015. We were told that the reason for this is that the Respondent did not wish to waive the right to forfeit, but that following clarification of the legal position, bills have now been sent out. Mr Dilernardo told us that he has not received the bills.
20. Neither party therefore had anything to say in relation to the 2015 service charge accounts and accordingly we will strike out the application insofar as it relates to the 2015 service charge account with the proviso that if there is a dispute concerning this, then Mr Dilernardo will be able to bring it back to the Tribunal for determination on a new application.

Section 20C Application

21. Mr Dilerardo has made an application under section 20C of the Act.
22. Given our findings above and given that we have reduced the payability of the service charge by only a small amount to take account of travel expenses we decline to make an order under section 20C.