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First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/11UB/LSC/2017/0027**
Property	:	**15 Chandos Court, Buckingham, MK18 1AJ**
Applicant	:	**Vincent Rowlatt**
Respondent	:	**Vale of Aylesbury Housing Trust**
Date of Application	:	**13th February 2017**
Type of Application	:	**to determine reasonableness and payability of service charges**
The Tribunal	:	**Bruce Edgington (Lawyer Chair)** **David Brown FRICS**

DECISION

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1. The Tribunal determines that of the element for service charges on account to cover non housing benefit charges for the year commencing 1st April 2016 in the sum of £10.55 per week for 21 weeks was reasonable and payable.

2. The Tribunal also makes an order under section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Respondent from collecting its costs of representation in these proceedings as part of any future service charge demand.

Reasons

Introduction

3. This case relates to variable service charges collected in addition to rent for the assured periodic tenancy held by the Applicant. Despite the extensive documentation submitted, the issue is quite narrow. In its directions order made on the 22nd March 2017, the Tribunal indicated that it would be content to deal with this matter on the basis of documents and written submissions without a physical inspection of the property. It was pointed out that if either party wanted an inspection, any request would be considered. If they wanted an oral hearing, then one would be arranged. No request has been made for either an inspection or an oral hearing.

4. The Applicant has sent in a letter dated 16th May asking for an order to be made that the Respondent include within the bundle a copy of his 'further

comments' as attached to his original application. Those further comments are in the bundle as tab 17. The Applicant's criticism that the bundle of documents has not been paginated by the Respondent is well made and makes the Tribunal's task more difficult as it is unable just to refer to page numbers.

5. The property is part of sheltered accommodation being 24 privately rented flats plus a communal lounge, kitchen, utilities room, corridors and, presumably, grounds. It was part of a transfer of housing stock from the local authority in 2006.

6. Prior to April 2016, the heating system for many of the flats was part of the heating system for the common parts, known as the 'district heating system'. The cost of this system was met by housing benefit. However, it seems that housing benefit is not payable for personal heating and the authority paying such benefit found out and informed the Respondent. An agreement was reached between the Respondent landlord and the council that the housing benefit paid for electricity for heating would be reduced by 70% from 1st April 2016 and this cost would have to be passed on to the tenants.

7. A letter was sent to the Applicant on the 22nd February 2016 informing him that he would have to pay £10.55 per week towards service charges over and above housing benefit as from 4th April 2016 which included £3.25 per week which is not disputed. The dispute is only over the heating charge element of £7.30 per week. The letter attached the statutory information required for a service charge demand and therefore the service charge became payable subject to it being reasonable.

8. A decision was then taken by the Respondent to undertake work on the heating system to ensure that the heating within the flats was no longer fed by electricity from the common parts. It was felt, rightly, that this would avoid problems in the future. This work was completed earlier than anticipated and the Applicant was only charged the full £10.55 per week for 21 weeks. It then reduced to the uncontroversial figure of £3.25 per week.

9. The Applicant's main point is that the estimated charges are levelled out over the year and this way of dealing with things has meant that he has paid the full rate at a time in the year when he would not use heating.

10. The agreement between the parties makes it clear that the Respondent can request service charges as estimates based on previous years' figures and "*the difference between any estimate and the actual cost may be carried forward*". By the end of September in each year, a reconciliation statement is prepared showing what was actually incurred during the previous service charge year and the next estimate is based on those figures.

The Law

11. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.

12. Section 19(2) of the 1985 Act states that "*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*". This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.

13. Section 20C of the 1985 Act empowers the Tribunal to make an order that a landlord is to be unable to charge the costs of representation before this Tribunal to any future service charge demand if it is 'just and equitable' to do so.

14. In **Schilling v Canary Riverside Development PTD Ltd** LRX/26/2005; LRX/31/2005 & LRX/47/2005 His Honour Judge Rich QC had to consider upon whom lay the burden of proof. At paragraph 15 he stated :

> *"If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook4 case make clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard."*

Discussion

15. This dispute has not been enhanced by a serious error on the part of the Respondent when it wrote to the Applicant on the 31st March 2016 (tab 15 in the bundle) advising him that the amount he would have to pay would be increased to £17.28 per week without any explanation for the change. It was not until the 17th November (tab 16) that a letter was sent reducing the charge to £3.25 per week after the works and also correcting the charge from April to November from £17.28 to £10.55 per week.

16. In his additional comments supplied with the application, the Applicant says "*the service charge of £10.55 was based on an estimated cost for the whole of the financial year divided into 52 equal payments thus spreading the higher winter usage costs throughout the year. As the landlord did not provide the service for the whole year, it is therefore no longer reasonable to demand a service charge payment of £10.55 per week for estimated personal heating costs incurred during only the spring and summer months*".

17. In the Upper Tribunal case of **Knapper and others v Francis and another** [2017] UKUT 3 (LC), the deputy president reminded everyone that section 19(2) of the 1985 Act "*did not confer jurisdiction on the First-tier Tribunal to direct repayment of any sum which had been collected in*

advance by a landlord but which exceeded the expenditure actually incurred during the period in question".

18. In this case, we therefore appear to have a situation where the tenant does not seem to contest that the £10.55 includes heating charges of £7.30 per week which are based on previous year's figures. He says, in effect, that because the weekly charge was based on heating which was not used i.e. it covered winter 2016/7, then he should get a refund.

19. As will no doubt be clear from the **Knapper** case referred to above, this Tribunal cannot order a refund. In fact, the heating element of the charge has now been removed anyway.

Cost of representation

20. The Tribunal finds, on the balance of probabilities, that the way the Respondent has handled this case has contributed to the making of this application. The obvious error in demanding £10.55 and then £17.28 per week should not have happened and must have caused quite unnecessary anxiety. The Tribunal has not considered the arrears demands and threats of court action in any detail because they are not relevant to this Tribunal's task, but it does seem that delays in making adjustments have occurred.

21. The Respondent asks that no order is made pursuant to section 20C of the 1985 Act even though it has not used lawyers. It simply says that it has spent time handling the case. The Tribunal cannot understand this because the cost of management i.e. staff, forms part of the service charge anyway according to the schedule of services in the tenancy agreement.

22. The Tribunal considers that it is just and equitable to make the order requested.

The Future

23. Although the Tribunal has been unable to make any order in favour of the Applicant, he has certainly made a valid point. The heating charge was based on the whole year and it is clear that the majority of the actual costs would have been incurred over the winter. Without a full explanation, it therefore does appear that the Respondent has recovered more in heating costs than is justified and, without some recompense, that is certainly unreasonable.

24. The Tribunal suggests that the Respondent considers its position by, for example, looking at the quarterly accounts when the demands were being made and comparing those figures with what was received from housing benefit and the tenants. It should then explain to the affected tenants how their service charge accounts will be adjusted to reflect this.

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Bruce Edgington
Regional Judge
26th May 2017

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.