



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

Case Reference : **MAN/30UM/MNR/2016/0021
MAN/30UM/LSC/2016/0025**

Property : **12, Rawsthorne Avenue, Ramsbottom
BL0 0LQ**

Applicant : **Miss J Walker & Mr K Brigden**

**Respondents
Represented by** : **Places for People Homes
Mr Douglas-Jones of counsel**

**Type of
Applications** : **Applications to determine a rent under
section 13 Housing Act 1988 &
Reasonableness of Service Charges**

Tribunal : **Mr J R Rimmer
Mr I James**

Date of Decision : **30th November 2016**

DECISION

Decision

The service charge is a variable service charge.

The costs of the services supplied are reasonably incurred at reasonable cost.

No professional or other fees incurred by the Respondent in relation to these proceedings shall be recoverable as future service costs.

Background

- 1 There are two applications before the Tribunal, both having been made by Miss Walker and Mr Brigden. The first, numerically, is an application referring a notice proposing a new rent under an assured periodic tenancy while the second is an application under Section 27A landlord and Tenant Act 1985 in relation to the reasonableness of service charges levied within the rent. They were sent to the Tribunal under cover of a letter from Mr Brigden dated 3rd April 2016. Within the second application there is also an application under section 20C Landlord and Tenant Act 1985 to prevent any charges of a professional nature incurred by the Respondent in these proceedings being included in further service charges for future years.
- 2 In different ways the applications relate to the same issue; the service charges applicable to the property at 12, Rawsthorne Avenue, Ramsbottom BLO 0LQ. In one it is the effect that they have upon the rent and in the other their reasonableness and payability.
- 3 Directions were given by the chairman of this Tribunal on 12th May 2016 as to the future conduct of this matter and at that time the chairman stated that he was of the preliminary view that the Respondent's notice proposing a new rent was defective. Whether or not that was the case, it may well be that the Respondent came to a similar conclusion as it then gave notice that it sought to withdraw the notice.
- 4 The notice had proposed that the rent for 12, Rawsthorne Avenue should be increased from £86.64 per week, including services, to £90.33 per week, including services, with effect from 4th April 2016.

- 5 The Tribunal understands the position to be that following the referral of the notice to the Tribunal there can be no withdrawal of that notice unilaterally, only by mutual consent. The Applicants were not at that time ready to consent, but it would appear from their further conduct that all parties accepted that this application would proceed no further, the service charge issue being sufficiently covered in the second application and the rent remaining as it was unless and until a further notice is served. At the hearing in Bury on 24th November 2016 the parties agreed to treat the notice as withdrawn.
- 6 The service charges under consideration appeared, therefore, to amount currently to £8.63 per week (and would have remained at that amount under the notice, if it had been accepted). They are referred to later in the decision.
- 7 Following the directions given to the parties both sides made extensive submissions to the Tribunal prior to the hearing on 24th November, there having been a previous postponement to allow for difficulties arising for one of the parties.
- 8 It seemed sensible to the Tribunal, having considered all the extensive submissions made to it, that it should consider the issue of the service charge in two parts; firstly the question as to whether it was a fixed, or variable charge, then, secondly the reasonableness of the charge if it came within section 27A Landlord and Tenant Act 1985.

Inspection

- 9 Prior to the hearing the Tribunal inspected the property at 12, Rawsthorne Avenue and found it to be a 2-bedroomed bungalow of brick construction under a tile roof. It is of a style and layout that would fit the description of being particularly suitable for occupation by an elderly, or disabled tenant, although it is of an age that means it is somewhat dated when compared to new-build dwellings. It has a number of adaptations that would assist such a tenant such as installed central heating, relatively level access, high level power sockets and adapted bathroom (if the tribunal understands the situation correctly work done on behalf of the current tenants).
- 10 There are communal garden areas to the front and rear, including a significant grassed area to the rear. There is some disagreement between the parties as to the relative input into gardening and landscaping by the parties that is considered below.
- 11 The property is situated on a large development of registered social housing and appears to have reasonable local amenities and transport facilities into Ramsbottom and Bury.

- 12 Its suitability as a home for an elderly or disabled tenant generates some dispute in the submissions made to the Tribunal, but it is clear to the Tribunal that it is suitable, notwithstanding observations that it could be more suitable, or that there may have been lettings of other properties to tenants who do not match that description.

Submissions and hearing

- 13 The crux of the Respondent's case is that the service charge in this case is not one that varies in accordance with the actual cost of services provided and does not therefore fall within Section 18 Landlord and Tenant Act 1985 (set out below) and is therefore not one within the Tribunal's jurisdiction to consider.
- 14 It is a part of the rent which can be increased or decreased in accordance within section 13 Housing Act 1988.
- 15 Alternatively, the charge is a fixed, rather than variable amount. It is a fixed amount, which is increased and decreased in accordance with the retail price index and not the cost of providing the services.
- 16 They pray in their assistance two cases heard before the Upper Tribunal: Home Group Limited v Lewis and Southern Housing Group etc v family Housing Association (Wales) Ltd. Copies of the two decisions were annexed to the submission from the Respondent. They illustrate the difference, so far as the Respondent is concerned, between a fixed and a variable service charge. As Upper Tribunal decisions they are not binding upon this Tribunal but it behoves the Tribunal to have serious regard to them.
- 17 The Applicant argues that the tenancy agreement in this case may be distinguished from that in the Home group case. In Home Group there is a specific sub-clause (1.3) that refers to the total rent as including net rent, service charges and water charges. There is no equivalent for the tenancy under consideration here. Mr Brigden submitted that there was merely a catch all on the signed sheet that states service charges. By this the Tribunal assumes that Mr Brigden is referring to the final page of the tenancy agreement that was submitted with the application.
- 18 It is also part of Mr Brigden's submission that it is incorrect for the Respondent to assert that the service charges only increase in line with inflation. He provided a detailed analysis of the way the charge has increased from 2010 to 2016 and compared that to what the increase would be if allowing for increases at RPI + 1%. His conclusion is that the latter rate has been greatly exceeded over the period.

- 19 Furthermore, Mr Brigden pointed out, the witness statement of Samuel Wyatt provided by the Respondent refers to the communal light and power charge being increased or decreased, based upon the usage in the previous year.
- 20 Both parties expanded upon these views at the hearing which was held a Bury Magistrates' Court following the inspection on 24th November 2016.

The Law

- 21 The law relating to jurisdiction in relation to service charges falling within Section 18 (referred to above) is found in Section 19 Landlord and Tenant Act 1985 . Section 18 provides:
 - (1)...”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...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.
- 22 Section 19 provides: (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
- 23 Further section 27A landlord and Tenant Act 1985 provides:
 - (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 amount which is payable
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable .

Determination – fixed or variable charge?

24 The Tribunal considered the following matters to be relevant to the issue as to whether or not the charge was a fixed charge rather than a variable charge.

- Whether or not the payment for services is described as part of the rent, or described separately as a service charge is not a determining factor in deciding if it is fixed or variable (see the definition in section 18(1), above)
- The significant matter is whether or not the charge, or any part of it varies in accordance with actual costs incurred, whether they be incurred in the past, present, or future.
- Although it would appear clear that the Respondents base much of their costs upon an inflation based formula to set a costs figure from year to year it is clear from what Mr Wyatt said in both his witness statement and again at the Tribunal that energy charges are assessed on the basis of the previous consumption.
- This would appear to make the charge variable according to the provisions of section 18, above.
- The charge is therefore within the jurisdiction of this Tribunal.

Reasonableness of the charge

25 Having determined that the charge is a variable service charge the tribunal is invited to consider whether those costs are reasonably incurred at reasonable cost.

26 A schedule of the costs is annexed to the notice proposing a new rent under an assured tenancy mentioned earlier and they consist of the following weekly amounts:

Alarm maintenance	£ 1.44
Grounds maintenance/landscaping	£ 2.89
Landscape improvements/treeworks	£ 0.28
Communal light and power	£ 0.73
Supporting people charge	£ 2.49
Administration charge home services	£ 0.22
Administration charge communal services	<u>£ 0.58</u>
	£ 8.63

- 27 In both the written submissions to the Tribunal and in evidence at the hearing the Applicants took issue with a number of the elements of the service charge and indicated that the written tenancy did not reflect the true position at the time the tenancy was entered into, in that Miss Walker had been little time to digest the agreement and rushed in to signing both the agreement and the checklist that accompanied it, without being able to consider the efficacy of the various elements of the service charge.
- 28 This was disputed by the Respondent. Although those present on behalf of the Respondent could not speak personally as to the time the tenancy was entered into the signing of both the agreement and the checklist was clear evidence of agreement with the terms.
- 29 There were factual disputes between the parties in relation to various elements of the charge and whether they were reasonably incurred and at reasonable cost:
- Gardening/landscaping The applicants clearly preferred to do their own work particularly in relation to the extensive communal rear grassed area where there was no demarcation between various properties. They felt they received no benefit from work done by the Respondent's contractors. The respondent's view was that the inspection would have revealed a consistency of cut over the whole area, suggestive of work by one contractor and it was in any event contractually bound to provide the service.
 - Alarm system This was of little use to the Applicants, being limited to certain parts of the interior of the premises and not elsewhere and not agreed to by Miss Walker at the start of the tenancy. The Respondent argued that it was of significant use to tenants and was agreed to as part of the tenancy. It was elicited during the hearing that it had been used by the Miss Walker on at least one occasion.
 - Supporting people The issue here related to the cost of the control centre system that backed up the alarm call system with the appropriate response. The Applicants did not consider it value for money, given the use made of the system and its suitability for miss Walker. The Respondent explained the way the call centre operated and the levels of response to emergency services, carers, or family.
 - Administration charges The Respondent referred to the relatively low level of charges, whether looked at according to a percentage of the total charges, or on a per unit basis. They are indeed lower than many found by the Tribunal in its extensive experience and it gained the impression from the Applicants that if this was the case, then the Applicants were not over concerned with this aspect of their case.

- 30 It was clear from the observations contained in the submissions from the Applicants, the essential elements of which are set out above, that they felt very strongly about those charges for which they received, in their view, very little value for money, or any significant benefit. The Tribunal was impressed with their engagement with the tribunal process and the convictions that they had in relation to the merits of their case.
- 31 The Tribunal does not, however, feel it can agree with the Applicants as to the situation which pertained at the time that the tenancy was entered into. There is a clear written tenancy agreement that sets out the charges due under the agreement, together with the checklist which is quite comprehensive in the matter it deals with. The Tribunal did need to give it some consideration as it does not sit well with the contention that Miss Walker was rushed into the agreement. It may be that time has dulled the memory, but her participation in the tribunal process at the inspection and hearing is not suggestive of someone easily rushed into such an agreement.
- 32 As such the Tribunal is left with the conclusion that the agreement was entered into with the knowledge of the services provided. The Respondent has provided them. The Applicants have chosen to use them very little as a matter of personal choice. That is a matter for them. They appear to accept that the property is suitable for occupation by an elderly or disabled tenant, even if not all such properties nearby are so let, but the Tribunal is drawn to the conclusion that they were aware of the facilities and services at the time of taking the tenancy. Against that background the costs then appear to be reasonable and are reasonably incurred bearing in mind the obligations the Respondent entered into with this, and/or other tenants in relation to those matters which are disputed. There is nothing in the experience of this Tribunal that would suggest that they are unusual, unjustified, or unreasonable.
- 33 There are two other matters that are raised directly, or indirectly by the Applicants that should be the subject of some comment and determination by the Tribunal:
- The Respondent's solicitors joined in the proceedings on behalf of the Respondent after the case management hearing in May. They did not comply with Rule 14 of the Tribunal Rules giving notice of their acting. The judge was however satisfied that it was clear from the context of the correspondence that they acted for the Respondent in all matters and the Applicants were not misled in any way, nor did they suffer any prejudice thereby.
 - There appear to be no provision in the tenancy agreement for professional costs in relation to the conduct of this application by the Respondent to be added to the service charges for future years. If such a provision existed an application under section 20C Landlord and Tenant Act 1985 could be made whereby:

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred by the landlord in connection with proceedings before a court... or leasehold valuation tribunal...are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application

The application shall be made-...

- (2) In the case of proceedings before a leasehold valuation tribunal to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal...
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

It appears to the Tribunal that it is proper to make an order, as under Section 20C in order to confirm the position, as understood by the parties, that no that no such costs in relation to these proceedings shall be added to future service charges.