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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BR/LSC/2018/0027**
Property	:	**44 Muirhead Court, Auckland Drive Salford M6 6FS**
Applicants	:	**Salix Homes**
Respondents	:	**Mr Ian Wright**
Type of Application	:	**Landlord and Tenant Act 1985 – s 27A**
Tribunal Members	:	**Judge M Simpson** **Judge C Hunter** **Ms J Jacobs**
Date of Determination	:	**21 November 2018**
Date of Decision	:	**6 December 2018**

DECISION

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DETERMINATION.

The support charge incurred through the "Care on call" system, currently in the sum of £5.22 per week, is due and payable.

Background.

1. On 16 May 2017 Salix homes issued possession proceedings against Mr Wright in respect of his tenancy of 44 Muirhead Court. The grounds of possession were claimed to be arrears of rent.

2. The case was listed for hearing on 23 June 2017. It is apparent from the Defence filed by Mr Wright, that the issue was whether the amount of rent representing service charges was due and payable and therefore in arrears or not.

3. It appears (although we have not seen the appropriate paperwork) that a possession order was eventually made, because on 16 June 2018 Mr Wright made an application, supported by a statement of that date, to suspend a Warrant of Possession.

4. The warrant was suspended, on terms, by the order of district Judge Evans dated 19 March 2018. By that order she also transferred, to the First-tier Tribunal, determination of the issue of "Care on call charges".

The issue for determination.

5. This is set out in Mr Wright's statement dated 16 March 2018. At the commencement of the tenancy in 2007 Mr Wright's flat, being one of the block of flats, had the benefit of an on-site warden. When Salix homes, who were previously the Local Authority landlords' managing agents, took over as landlord in 2015, the on-site warden service was terminated and reduced to the "care on call" system, with a consequent reduction in service charge from what had initially been about £13 per week to £5.22 per week. Mr Wright's statement indicates that he did not consent to these changes and would prefer to have had no warden service at all whether on-site or on-call. The issue is whether or not the service charge is payable.

6. Salix received a request for basic information from the Tribunal and supplied a copy of the most recent rent notice dated 23 February 2018 which set out the amount and detail of the support charge. It confirms that the service charge is variable and can potentially change each year according to the cost of providing the services together with any prior year adjustment.

7. Directions were given by Tribunal Judge Holbrook at a case management conference on 2 August 2018. The recitals include an unchallenged findings that the support charge is variable and that the issue is not the reasonableness of the amount of the charge, but the contractual issue of payability. The directions also proceeded on the unchallenged basis that it was the support charge (£5.22) not merely the care on-call charge (13p) that was the issue, notwithstanding the wording of the order of District Judge Evans of 19 March 2018.

8. The parties have complied with the directions.

The parties' representations and evidence.

9. In addition to his statement of 16 March 2018 Mr Wright also wrote to the tribunal and Salix explaining that he felt the nature and extent of his payment obligations in respect of service charges had not been fully explained to him in 2007 and that he had misunderstood what was and was not payable and what was his responsibility as opposed to what payments might be met by housing benefit. His view is that the tenants should have a choice of whether they want the care on-call, and, if not, should not have to pay for it.

10. Salix filed the witness statement of Michael Walsh dated 30 August 2018 with exhibits attached including the original tenancy agreement, a copy of the Salix homes customer move in plan, the signup checklist for housing officers and the tenants declaration (all dated at the time of the commencement of the tenancy in 2007). There was also exhibited the notices of new rent dated 27 February 2017 and 23 February 2018, together with the summary of tenant's rights and obligations in respect of service charges.

Determination.

11. Mr Wright has a contractual obligation to pay the rent. The tenancy agreement defines the rent as being inclusive of the service charge. Mr Wright therefore has an obligation to pay the service charge. The service charge, in the tenancy agreement of 2007, is to be determined with reference to what was then set out in Mr Wright's rent book. We have not seen the rent book and none of the parties have referred to the rent book in their evidence. It is clear however that Mr Wright was, during the early years of his tenancy, prior to the on-site warden service being discontinued, aware of the nature and extent of the services being provided and received annual notices setting out the breakdown of the overall service charge. There may have been misunderstandings, especially having regard to the complexities of what may or may not be paid through housing benefit and therefore what contribution may or may not have to be made out of the tenant's other resources, but the contractual position is clear.

12. Mr Wright's flat is one of several in the development which is intended for people over the age of 55 and includes some support in the form of communal services including either a warden service or on-call warden service. Apart from raising issues as to whether or not the tenants should be allowed to charge their phones from the communal electricity system, Mr Wright does not appear to raise any contractual objections to the payment of all the other heads of the service charge apart from the care on-call service.

13. The change which took place in 2015, transferring Mr Wright's tendency from the local authority to Salix changed the tenancy, by operation of law, from a secure tenancy to an assured tenancy. So far as the terms of the secure tenancy are consistent with an assured tenancy then those terms are imported into the short tenancy and become part of the terms of that tenancy. There is no evidence to suggest that the terms of the tenancy, so far as they relate to service charges generally, were changed by virtue only of the change from a secured tenancy to an assured tenancy.

14. It is the common evidence of both parties that a consultation took place prior to imposition of the change from on-site warden to warden on-call service. This is a course of action which the landlord was obliged to take, especially bearing in mind that, paradoxically, the tenancy agreement does not specifically provide an obligation for the landlord to provide the services which clearly have been habitually and regularly supplied to the tenants since the commencement of this development, and to Mr Wright in particular, since the commencement of his tenancy.

15. Mr Wright did not accept the terms of the new tenancy so far as they related to the change from on-site warden to warden on-call service. He declined to sign the new documentation. Strictly speaking that left him in a position whereby the terms of his new tenancy, relating to service charges, were unchanged from the terms under secured tenancy. That is he had an obligation to pay something in the region of £13 per week for an on-site warden. Although we accept it would have been impracticable, we are bound to observe that in strict law this remedy would then have been one which is beyond our jurisdiction, namely applying to the County Court for specific performance by the landlord of the terms of the tenancy. That would not have had the effect of obviating his liability to pay a lower rate for the changed service but would have left him with a liability to pay the full price for the on-site warden and to take enforcement action if he felt the landlord were in breach of their tenancy provisions. In practical terms Mr Wright makes it clear that he wants neither warden service and would prefer not to pay for either. That is not an option that is open to him. The alternative available to him, once he had rejected the proposed new terms of the tenancy were to either take the action outlined above or to terminate his tenancy. He did neither.

16. In those circumstances it is not now open to him to require the landlords to desist from providing a service which he no longer requires. His complaint appears to be not that the landlords are failing to provide a full on-site warden but that they are providing, at reasonable cost, a different type of support package. The development is one specifically designed to offer, amongst other things, a support package. We have seen no evidence of the precise nature and extent of the support package being set out in the tenancy agreement. It appears to be a matter for the landlord's discretion as to how the support package is supplied. So long as a support package is supplied at a reasonable cost then the landlord is complying with such obligations as are imposed upon the landlord by either the terms of the original secure tenancy agreement, or the importation of those terms into the assured tenancy.

17. As recorded in Judge Holbrook's recitals to the case management directions it has already, rightly in our view, been conceded that the service charge is not unreasonable in amount or unreasonably incurred. We are satisfied for the reasons set out above that the full support charge, currently £5.22 per week (in addition to the unchallenged Service Charge which includes £0.13 'Warden call System') is contractually payable and is therefore due and payable as a service charge under the provisions of Section 27A of the Landlord and Tenant Act 1985.

Costs.

18. There appears to be no provision in the tenancy agreements for payment by the tenant and the landlords' costs of these proceedings before the first-tier tribunal or for those costs to be regarded as relevant costs for the calculation of any future service charges. For the avoidance of doubt we make it clear that, had there been an application before us under section 20 C of the Landlord and Tenant Act 1985, we would have made an order that it would be just and equitable for no such costs to be payable by the tenant through the service charge.

Judge Simpson
Tribunal Judge
6 December 2018