



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

Case Reference : **MAN/00BQ/LSC/2020/0046**
Property : **393, Thetford, Rochdale OL12 6RB**
Applicant : **Ms Aneta Wrzesien**
Respondent : **Rochdale Borough Council**
Type of Application : **Landlord and Tenant Act 1985 – section 27A
and section 20C**
Tribunal Members : **Tribunal Judge C.Wood
Tribunal Member S. Wanderer**
Date of Decision : **2 September 2021**

DECISION

Order

1. The Tribunal determined that:
 - 1.1 the costs of the provision of CCTV are reasonably incurred as service charge and that the Applicant is liable to pay the costs accordingly;
 - 1.2 the estimated cost of £187.68 for the CCTV costs for the service charge year (pro-rated) 2020/21 is reasonable.

Background

2. By an application dated 12 May 2020, (“the Application”), the Applicant sought a determination under s27A of the Act of the reasonableness of, and liability to pay, a charge of £187.68 for the provision of CCTV for the service charge year 2020/21.
3. Directions dated 9 November 2020, (“the Directions”), were issued following a case management conference held remotely on 6 November 2020 at which both parties attended and agreed that the Application be determined by way of a paper determination, subject to the parties’ right to request a hearing.
4. Pursuant to the Directions, both parties made written representations.
5. In accordance with the Directions the Tribunal did not inspect the Property.
6. Having regard to the matter for determination and the parties’ written submissions, the Tribunal considered that the Application was suitable for determination on the papers. Accordingly it was determined on the papers on Friday 30 July 2021.

Law

7. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

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.*
8. The Tribunal is “the appropriate tribunal” for this purpose, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

9. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It 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.

10. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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;

and the amount payable shall be limited accordingly.

11. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:

the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

12. There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, he will need to specify the item complained of and the general nature of his case. However, the tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant’s case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

Evidence

13. The Applicant’s written submissions are summarised as follows:

13.1 the Applicant does not wish to pay for CCTV as she does not use it and will not do so in the future;

13.2 the leaseholder of a neighbouring flat (395, Thetford) does not pay for this service;

- 13.3 the service charge for 2020/21 for this flat was £214 as compared with £618.68 for the Property; and,
- 13.4 there are at least 24 units at the block in which the Property is situated making the apportionment of 1/17th incorrect.
14. The Respondent's written submissions are summarised as follows:
- 14.1 the charge of £187.68 is the estimated cost to the Applicant of her share of the annual CCTV charge pro rated for the period from completion of her purchase of the Property on 15 June 2020 to 31 March 2021;
- 14.2 the Applicant's lease, ("the Lease"), provides for an apportionment of 5.88% (1/17th) of the CCTV costs;
- 14.3 the CCTV is a facility provided for the benefit of the residential tenants only to ensure the availability, accessibility and proper maintenance of the communal facilities and areas;
- 14.4 the service charge for 202/21 in respect of No.395, Thetford differs from that for the Property because:
- (a) there is no provision in the lease of No. 395 to charge for the provision of CCTV: it is a much older lease, issued at a time when CCTV was not generally available;
- (b) there was a clerical error which understated the caretaker costs;
- 14.5 leaseholders, like the Applicant, whose leases do contain provision for the charging of CCTV are not financially prejudiced by the absence of this provision in the leases of other flats in the block because their liability is limited to 5.88% (1/17th). They do not therefore "subsidise" the cost for other leaseholders.

Reasons

15. The Tribunal was satisfied that, in accordance with Schedule 7, Part 1, paragraph (f) of the Lease, the Respondent was entitled to charge as service charge the operating costs of CCTV "on the Common Parts".
16. The Tribunal accepted the Respondent's evidence that the provision of CCTV in the communal facilities and communal areas was a benefit to the residents generally, and rejected the Applicant's assertion that this was a service that could be accessed selectively. The Tribunal determined that such costs had therefore been reasonably incurred.
17. The Tribunal was further satisfied that, in apportioning the costs as 5.88% of the total annual costs, the Respondent was acting in accordance with Schedule 2, Part 2 of the Lease.

18. With regard to the Applicant's claim that her neighbour's service charge for the same period was significantly lower than hers, the Tribunal accepted the Respondent's evidence that this was as a result of:
 - 18.1 a clerical error which had understated the caretaking costs; and
 - 18.2 the differences in the terms of the leases between the two properties which permitted the Respondent to charge for CCTV costs under the Lease but not under the lease for No.395 (and other flats within the block).
19. The Tribunal considered that it was important in this respect to note as follows:
 - 19.1 the Application relates only to the CCTV costs charged as service charge in respect of the Property, and, to that extent, service charges charged in respect of other flats within the same block were of no relevance to the Tribunal's determination of the Application;
 - 19.2 because the apportionment was based on the total number of residential units within the block, there was no financial prejudice to the Applicant as a result of the Respondent's inability (because of the differing lease terms) to charge the CCTV costs to all leaseholders.
20. The Tribunal noted that the Applicant had not challenged the reasonableness of the amount charged of £187.68 but the reasonableness of the imposition of the charge itself. In the absence of any evidence from the Applicant in this respect, the Tribunal determined that the estimated cost of £187.68 is reasonable.