



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

Case Reference : **MAN/OOBY/LSC/2014/0027**

Property : **Flat 5, 11 Livingston Drive,
Aigburth, Liverpool L17 8XW**

Applicant : **Chima Ojukwu**
Representative : **In person**

Respondent : **Ground Rent Trading (Liverpool) Limited**
Representative : **Mr Laurence Freilich, director, Moreland Estate
Management**

**Type of
Application** : **Application under section 27A (and 19) of the
Landlord and Tenant Act 1985 and section 20C**

Tribunal Members : **Mr G. C. Freeman
Mr K.K.K.Kasambara MRICS**

Date of Decision : **11 June 2014**

DECISION

DECISION

The service charge payable by Mr Ojukwu in respect of the Property for the year ended 31st May 2013 is £1164.44

No order under section 20C of the Landlord and Tenant Act 1985 is made.

Background

1. This is an application by Chima Ojukwu (“the Applicant”) dated 5th March 2014 for a declaration whether the service charges for Flat 5, 11 Livingston Drive, Liverpool L17 8XW (“the Property”) are reasonable and payable by him. The Property is a top floor flat within a large Victorian house converted into seven self-contained flats at the turn of this century. The Respondent is the successor in title to the landlord named in the lease and is entitled to the reversion immediately expectant on termination of the lease. The Respondent has appointed Moreland Estates to manage the Property. The application originally covered the service charge years ending 31st May 2013, 2014 and 2105 inclusive. However, when it was pointed out that the service charge for the years 2014 or 2015 could not be accurately quantified by the Tribunal because the final service charge accounts for the year ended 31st May 2014 had yet to be produced and the expenditure for 2015 had yet to be incurred, the Applicant withdrew his application in respect of these years subject to making fresh applications for these periods in the future.
2. The development (“the Development”) of which the Property forms part consists of a former Victorian mansion in a leafy suburb approximately three miles from Liverpool city centre. The conversion apparently took place about the turn of the century. The Development is in reasonably good condition but the Tribunal noted a few minor repairs mainly to the entrance and steps leading to the communal front door. The front area is mainly tarmac for car parking. There are no allocated spaces. The rear garden is laid to lawns and shrubs and is communal. Internally there is a large carpeted hallway and stairs leading to two upper floors. Each floor has two self-contained flats. There is a seventh flat in the basement, access to which is separate from the communal entrance. The building has been fitted with smoke alarms. There is a door entry system to those apartments which share a common entrance.

The Lease

3. The Lease is dated 25th April 2000 and is made between E.B.Property Developers Limited of the one part and Barbara Hanratty of the other part. It created a term of 125 years from 21st March 1999 and reserved a ground rent of £50 per annum. It was not disputed that it reserved a service charge payable in accordance with the Seventh and Eighth Schedules. It was not disputed that the service charge costs are divided equally between the seven flats in the Development.

Inspection and Hearing

4. The Tribunal inspected the common parts of the Development on the morning of the Hearing in the presence of the Applicant. It is as described in paragraph 2 above.
5. A hearing was held at the First Tier Tribunal (Property Chamber) (Residential Property) 3rd floor, Civil and Family Court, Vernon Street, Liverpool L2 2BX on 27th May 2014 at 11.15 am. Mr Ojukwu represented himself. The Landlord was represented by Mr L Freilich. Both parties provided bundles of documents as directed by the Tribunal on 10th March 2014. With the exception of a bundle delivered by Mr Ojukwu which the Tribunal deemed was delivered outside the time limits directed by the Tribunal, the Tribunal considered these carefully.

The Law

6. The relevant law is set out in Appendix One of this decision.

The Applicant's Case

7. Mr Ojukwu claimed that the service charge costs were continually rising. He conceded that the costs may be reasonable, but he was unable to judge whether this was the case because he was unable to judge whether the work had been done. Until 2012 flat owners did not get a breakdown of the costs. Having received the breakdown for the year ended 31st May 2013, he claimed that either services were not performed or were too expensive as follows:
 - 7.1 An invoice from Metrord for £240 referred to work being done on 31st July 2013 to another property. The invoice was in relation to clearing a blocked drain. Mr Ojukwu had not seen the work being carried out and he claimed that there was no evidence that it had so been done.
 - 7.2 The accounts showed that a Mr Tony Rogers carried out work to the Development. Mr Ojukwu wanted to know whether this gentleman was an employee of Moreland Estate Management or a third party contractor.
 - 7.3 Mr Ojukwu complained that window cleaning had not been carried out satisfactorily or at all. He asserted that in order for the windows to be cleaned properly, it should be done by means of a cherry picker. He stated that window cleaning actually cost £215.30 for the period in question but that £500 had been claimed by way of the budgeted service charge. He considered that to be excessive.
 - 7.4 Mr Ojukwu also complained that reported damage/faults were not dealt with timeously. For example, fencing panels which had been vandalised had only just been replaced, six weeks later.
 - 7.5 Mr Ojukwu complained that unclaimed mail was not being cleared from the hallway.

The Respondent's Case

8. In response, Mr Freilich asserted that the invoice from Metrorod was issued in error and produced an invoice allegedly correctly recording the address of the property, namely 11 Livingston Drive.
9. He explained that Mr Rogers employment status was that of part self-employment and part time employment by Moreland Estate Management. He contended that this was irrelevant to the costs of management. He confirmed that during 2012 a credit of £350.00 against the total service charge costs was made as a result of poor cleaning service. During the period in question, cleaning was carried out fortnightly at a cost of £47.50 per clean.

The Tribunal's Findings

10. The Tribunal has to apply a three stage test to the matter referred to it under section 27A:-
 - 10.1 Are the service charges recoverable under the terms of the Lease? This depends on common principles of construction, and interpretation of the Lease.
 - 10.2 Are the service charges reasonably incurred and/or for services of a reasonable standard under section 19 of the Act?
 - 10.3 Are there other statutory limitations on recoverability, for example consultation requirements of the Landlord and Tenant Act 1985 as amended?
11. It was not disputed that the amount payable by the Respondent for the provisions of services within the Property is a variable service charge within the meaning of the Act and that the Tribunal had jurisdiction to consider the amount payable, to whom and by whom it should be paid and the reasonableness of the amount.
12. In coming to its conclusions under paragraph 10.2 above, the Tribunal must take into account the decision in Regent Management Limited and Mr Thomas Jones, a case concerning Waterloo Warehouse in Liverpool, [2010] UKUT 369 (LC)LT Case Number: LRX/14/2009], in which HH Judge Mole Q.C. stated:

"The law is that where a tenant disputes items, he 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 LVT then decides on the basis of the evidence put before it".
13. The Tribunal accepted the Respondent's contention that the Metrorod invoice referred to in paragraph 7.1 was in error and that, in the absence of any evidence contradicting the Respondent's contention that the work had been done, they accepted that the cost had been reasonably incurred and was a reasonable sum.

14. The employment status of Mr Rogers is irrelevant to this application. The Tribunal only has jurisdiction to consider costs which actually have been or are about to be incurred.
15. The Tribunal noted the credit applied to the service charge account in respect of poor cleaning. In the absence of any evidence from Mr Ojukwu as to what an alternative cleaning contract would cost, the Tribunal were unable to determine anything other than the costs of cleaning were reasonably incurred and those costs actually incurred were reasonable.
16. In relation to Mr Ojukwu's other complaints, they noted that he did not necessarily maintain the sums incurred were unreasonable. They found that he had not produced any evidence to show that the question of reasonableness is arguable within paragraph 12 above.
17. Accordingly the Tribunal find that the service charge payable by Mr Ojukwu for the year ended 31st May 2014 is £1164.44, being the total as shown in the accounts dated 16th October 2013 (page 26 of the Respondent's Statement of Case) as £8151.12 divided by seven.

Section 20C of the Landlord and Tenant Act 1985

18. Section 20C provides that
 - (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 the First-tier Tribunal (Property Chamber) or in connection with arbitration proceedings, 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
 - (2) The application shall be made-
 - (a) in the case of court proceedings to the court before which the proceedings are taking place, or, if the application is made after the proceedings are concluded, to the county court
 - (b) in the case of proceedings before a First-tier Tribunal (Property Chamber) to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded to any First-tier Tribunal (Property Chamber)
 - (c)
 - (d)
 - (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.
19. The Tribunal has found the service charges claimed to be reasonable. It has decided that as the Respondent has been successful, no order under section 20C should be made.

Appendix One

The Law

Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

- (1) In the following provisions of this Act "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, or a superior 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.

Section 19 provides that

- (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:and the amount payable shall be limited accordingly.

Section 27A provides that

- (1) 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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3)
- (4) No application under subsection (1)...may be made in respect of a matter which –
 - (a) has been agreed by the tenant.....
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

No guidance is given in the 1985 Act as to the meaning of the words “reasonably incurred”. Some assistance can be found in the authorities and decisions of the Courts and the Lands Tribunal.

In *Veena v S A Cheong* [2003] 1 EGLR 175 Mr Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].