

10849



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

Case Reference : **MAN/00CX/LSC/2014/0049**

Property : **89 Regency Court, Bradford BD8 9ET**

Applicant : **Mr F. Suleman**
Represented by Mr A Suleman

Respondent : **Regency Court Management (Bradford) Ltd**
Represented by Mr Miller (Counsel)

Type of Application : **Landlord and Tenant Act 1985 – s 27A**
Landlord and Tenant Act 1985 – s 20C
Landlord and Tenant Act 1987 – s 24

Tribunal Member : **H A Khan (Tribunal Judge)**
A Ramshaw (MRICS)

Date of Decision : **20 March 2015**

Decision

Introduction

1. By an application received on 27 March 2014, Mr Fazal Suleman (the "Applicant") applied to the Tribunal for the determination of liability to pay and reasonableness of service charges for the years 2013 and 2014. The application was made pursuant to section 27A and section 19 of the Landlord and Tenant Act 1985.
2. There were two further applications. There was an application for the appointment of a manager of the property and for an order preventing the costs incurred in connection with these proceedings from being recovered as part of the service charge.
3. The Applicant is the leaseholder of Flat 89 Regency Court, Bradford BD8 9ET ("The Property"). The Respondent to the application was Regency Court Management (Bradford) Limited who were represented by Mr Miller (Counsel).

Inspection

4. The Tribunal inspected the property on the 30 January 2015 in the presence of the Respondent. The Respondent was represented by Mr Gerry Stringer (Director) and Ms Samantha Dinsdale (managing agent). Mr Miller was present at the site office but did not attend the inspection. The Applicant was provided with notice of the inspection but elected not to attend.
5. The property is comprised within a relatively small but compact development. It is constructed of redbrick. There are 154 flats over 6 four-storey blocks. The property is a 3 bedroomed flat in one of the blocks and is located on the ground floor. The same block also contained the site office on the top floor.
6. There was extensive security on the development. Each block contained at least 2 CCTV cameras. One of the cameras was aimed at the entrance to the block and the other was located inside each block pointing towards the entrance. In total, the Tribunal was informed there were 83 (eighty three) CCTV cameras covering the development.
7. The Tribunal found that development was reasonably well maintained. It had good sized communal gardens which were reasonably maintained. However, these were not accessible to the residents/owner occupiers of the development due to either being securely fenced off or the residents not being allowed to use them.
8. A communal garden in the centre of the development, although not fenced off, could not be used by the residents. Mr Stringer informed the Tribunal that this was due to previous antisocial behaviour issues and therefore a decision had been taken not to allow anyone to use them.

The Lease

9. The Applicant is the owner of the leasehold interest in the property. The Tribunal was provided with the lease dated 22 August 1988 and made between City of Bradford Metropolitan Council (1), Barrett Urban Construction (Northern) Ltd (2) and Regent Housing Society Ltd (3) and Mr and Mrs W J Musto (4) (“the Lease”).
10. The Lease makes provision for the leaseholder to pay a reasonable part of the service charge as determined by the management company. The Tribunal was informed that this was apportioned over the number of rooms each property had. The 6th Schedule sets out the maintenance expenses to which the Applicant is expected to contribute to.

The Service Charge

11. The Tribunal was provided with accounts for 2013 and a budget for 2014. The accounts for 2014 had not yet been finalised. For the benefit of consistency, the Tribunal have used the same format, as set out in the Respondents accounts, in specifying what its determination are in relation to the items in dispute.
12. The statement of Samantha Dinsdale (at page 214 of the bundle) explained that the management company had in 2013 agreed a formula in which the service charge costs would be apportioned in a fair way in view of the different sizes of the apartments at the complex. During the hearing, it was explained that this was based on the number of rooms in each apartment. The Applicant did not dispute the way in which the service charge was calculated.

The Law

13. Section 27A of the Landlord and Tenant Act 1985 provides:

“(1) An application may be made to a 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.”

14. Section 18 of the Act provides that “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 cost of management...”

15. Section 19 of the Act 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.

(2) 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.”

16. Section 24(2) of the Landlord and Tenant Act 1987 provides that a tribunal may only make an order:

“(a) where the tribunal is satisfied—

- (i) *that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice, and*

(ii) ...

(iii) *that it is just and convenient to make the order in all the circumstances of the case;*

(ab) *where the tribunal is satisfied—*

(i) *that unreasonable service charges have been made, or are proposed or likely to be made, and*

(ii) *that it is just and convenient to make the order in all the circumstances of the case;*

(aba)...

(ac) *where the tribunal is satisfied—*

(i) *that any relevant person has failed to comply with any relevant provision of a code of practice approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 (codes of management practice), and*

(ii) *that it is just and convenient to make the order in all the circumstances of the case; or*

(b) *where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made”.*

17. Subject to certain qualifications not relevant in this case, Section 21 of the Act permits a tenant of a flat to apply to the tribunal for an order appointing a manager. Before doing so a notice must be served, as required by section 22, on the landlord and any other person with management obligations, which must specify the grounds on which the tribunal would be asked to make an order, and requiring matters capable of being remedied to be remedied within a specified reasonable period. Section 23 provides that no application may be made unless the period allowed for remedy in the notice has expired without matters having been remedied or the requirement to serve a notice has been dispensed with.

The Case Management Conference

18. A case management conference (“CMC”) was held on 10 September 2014. An order made following that hearing recorded that the agreed service charge items in dispute for 2013 and 2014 were security services (this included the site office, although it was not recorded in the order), cleaning and pest services and repairs and renewals. As stated above, these headings were taken from the Respondents own accounts.

The Hearing

19. A hearing was held on 30 January 2015 at Bradford Magistrates Court. The Applicant was represented by his brother, Mr A. Suleman and Mr Miller (Counsel) represented the Respondent. Mr Stringer and Ms Dinsdale attended the hearing along with 3 other directors on behalf of the Respondent. Both parties made oral submissions to the Tribunal. Following the hearing, further evidence was submitted by the Respondent on 21 February 2015 (received by the Tribunal 24 February 2015) comprising of a summary of questionnaires received in response to the consultation exercise on the security and site office. The

Tribunal had invited the Respondent to supply this and made it clear to the Applicant, at the hearing, that he could make written submissions on it but had to do so within 7 days of receipt. This was copied and sent to the Applicant. The Applicant did not provide any written submissions on the additional evidence.

Service Charge Items in Dispute

(a) Security Services (including Site Office)

20. The Tribunal was informed that the total security charge for 2013 was £32,750. This was, essentially, the labour cost of the security officer. His role was described by Mr Stringer and was also set out in some detail at pages 487- 489 of the bundle. The role included safeguarding residents and reporting crime, monitoring 83 CCTV cameras, making sure that the communal doors were locked at all times, providing support to residents to raise management issues, making sure the site and communal areas were well lit up on a night and reporting and removing hazards (including fire hazards) dumped in the communal area. The security officer worked around 55 hours a week. He worked from 3 -10pm Monday to Friday and 10am-12am on the weekend.
21. This additional security had been introduced following complaints of antisocial behavior which included prostitution, fly tipping, use of illicit drugs and sexual activities around the development. The Respondent had consulted with the leaseholders and claimed "100%" of the responses they had received supported the introduction of the security officer. The development had slowly acquired CCTV cameras and prior to the security officer's appointment, there were around 80 cameras in operation. Mr Stringer informed the Tribunal that only the security officer could view the footage due to legislative requirements. Whilst someone came in to cover him if he was on leave, they could not view the footage as they did not have the appropriate licence. Furthermore, as the security officer was also a qualified electrician, his role also covered repairs (but excluded the cost of parts) of the CCTV cameras.
22. The security officer operated from the site office where all the CCTV monitoring equipment was kept. The site office was owned by one of the directors, Mr Riaz, who was also a leaseholder. The site office was used for meetings, attending to residents concerns, meeting with external contractors, provision of amenities for the caretaker and security officer and providing storage for items such as spare bulbs etc. It also stored some cleaning equipment used by the cleaning firm.

23. The Applicant's case was set out in his schedule on page 145 and expanded on at the hearing. He did not believe that a security officer was required. He described the complex as being peaceful and quiet and noted there was no evidence in relation to the number of antisocial behaviour incidents, arrests etc. Furthermore, he alleged that proper consultation had not been carried out prior to the introduction of the security officer.
24. The Applicant's objections to the site office included, it not being required, its use being a breach of the lease and the amount being charged was unreasonable.
25. Mr Miller, rightly, conceded that there was no specific provision in the lease for there to be a security officer or a site office. He relied upon the general provisions, set out in the 6th schedule, in order to justify the charge for these 2 items in dispute. He, respectfully, submitted that the lease should be read purposively.
26. The Tribunal, having considered the documentation and the submissions concluded that the charges relating to security services and the site office were not payable. The Respondent, accepted that the lease did not clearly set out that these charges could be levied in the first instance. Furthermore, even if the Tribunal had been persuaded that the general provisions applied, it would have taken the view that the charges were excessive and not reasonably incurred. The Applicant had contributed to the introduction of a large number (83) of CCTV cameras on the development and it was not clear why these could not be reviewed on the report of an incident, prior to the reporting of it to the Police.
27. The Tribunal was not persuaded that it required a security officer working 55 hours a week in order to monitor those cameras. Furthermore, as shall be referred to below, there was a maintenance person, working on the development who could carry out the functions of the security officer. Mrs Dinsdale in her statement at page 174 referred to the security officer as also acting as a "caretaker". The maintenance person was also a qualified electrician and could carry out the repairs and it would not be unreasonable to expect him to review footage of any antisocial behaviour incidents (subject to getting any appropriate licences) prior to reporting it to the managing agents or to the Police. As the Respondent recognises, it had to balance carefully the costs of the security against the benefits. In the view of the Tribunal, the right balance was not struck in this case.

28. Furthermore, the Tribunal observed that the Respondent was excessive in its security arrangements to the extent that this deprived the leaseholders of access to the communal gardens. The Respondent had, according to Mr Stringer's evidence, imposed a blanket ban on using the communal gardens, irrespective of the conduct of those using the garden. Mr Stringer himself described how he could not "*enjoy a novel and glass of orange juice*" in the communal gardens and he had to drive elsewhere to do so. This was a somewhat disproportionate response and which deprived law-abiding residents of the opportunity to enjoy a facility, whose upkeep they were, directly or indirectly, expected to contribute to.
29. Furthermore, in the Respondent's own evidence, it refers to (page 203) Regency Court not having the facilities to provide an environment for recreation and socialising within the grounds or any of the communal areas. The prohibition on using the communal gardens was enforced to the CCTV cameras and by fencing off and securing them.
30. The site office was not expressly provided for in the lease. It was, according to the Respondent, utilised for management meetings, providing facilities for contractors/site workers, mailshot administration, storage of Regency court documentation and a place for residents/leaseholders to find the security officer. Furthermore, it belonged to one of the directors and had been previously let as a private dwelling. It was, as was rightly conceded, in breach of the terms of the lease which specified that it needed to be occupied by a family. Clearly, it was not if it was occupied as a site office. The Applicant, was not impressed with having to pay for a second floor flat to be used as a site office.
31. Furthermore, there was no lift access to the site office and the only way to get to it was by using a flight of stairs. This involved contractors/caretakers/security officers having to walk past the Applicants flat in order to access the site office. Although the Applicant does not reside at the flat, this would have caused disruption to any prospective occupiers. Furthermore, it would have caused disruption to anyone living near the site office and anyone who suffered from any health issues or disabilities would struggle to get to the site office.
32. The Tribunal, therefore, disallowed the charges for security services and the site office. Whilst the accounts for 2014 have not been produced, the Tribunal's comments in relation to the issues raised would apply equally to the final 2014 service charge accounts.

Cleaning and Pest Services

33. This heading included cleaning and pest control. There was no issue raised by the Applicant in relation to whether such charges could be made. The cleaning was undertaken by Gerval Cleaning Services. This was part owned by Mr Stringer. He informed the Tribunal that he had bid for the work and after losing his initial bid, had secured the work a

year later. He and his wife undertook the cleaning. The service involved hoovering, dusting and general cleaning on a weekly basis. This heading also included regular cleaning of the outside of the windows. Furthermore, the pest element included dealing with any vermin on the development. This included provision of insect monitors and dealing with mice and rat infestations.

34. Mr Stringer gave evidence to the effect that he had quoted cheaper than the previous cleaning company and hence why his company had secured the work.
35. The Applicant felt there was a conflict of interest in that one of the directors company undertaking the work. Furthermore, he alleged that he had not seen any tender documents relating to the award of the work. However, the Applicant did not provide any evidence of being able to undertake such work cheaply nor raise substantial issues about the quality of the cleaning undertaken.
36. The Tribunal, having considered the submissions and evidence, concluded that the costs incurred under this heading, insofar as they had been challenged, were payable and had been reasonably incurred. There was no reason why Mr Stringer's company could not undertake the work provided there was a fair tendering process. There was no suggestion that there wasn't a fair process. Mr Stringer's own evidence, which was not challenged, made it clear that his company had not been automatically awarded the work as they had been unsuccessful in their initial bid. They had only managed to secure the work a year later, with a cheaper bid (up to 26% when compared to 2012). Furthermore, there was a small modest increase in 2014 to cover the cost of cleaning the site office. The standard of the cleaning at the property on inspection was reasonable.
37. The Tribunal, therefore, concluded that the charges for cleaning and pest services were payable and were reasonably incurred. The only element of the cleaning charge that wasn't reasonably incurred was the additional element in 2014 (£360) which covered the cost of cleaning the site office.

Repairs and Renewals

38. The Tribunal was informed that this heading included the cost of materials to replace the CCTV cameras and any other repairs. This was the most substantial amount on the accounts.
39. The Applicant objected to some of the charges including additional payments to the maintenance person and was of the view that this should have been covered under the caretaker charges.

40. The Respondent explained that the amounts paid to the maintenance person were for work undertaken between January 2014 and July 2014. This was a period when no additional charges were made for caretaker services. The additional payments represented substantial work that was undertaken including replacing fencing between blocks 5-8 and clearing of significant rubbish that had accumulated over the years and which had become an environmental and health hazard.
41. The Tribunal, having considered both the Applicant and the Respondent's submissions on this issue, determined that the contested charges were payable and reasonably incurred. There was significant CCTV coverage across the development which clearly needed to be maintained. Furthermore, the Tribunal on inspection was able to see at first hand the work which had been undertaken to replace the fencing.
42. The Tribunal determined that the contested charges under repair and renewals were payable and reasonably incurred.

Appointment of Manager

43. On 14 February 2014, the Applicant served a notice under section 22 of the Landlord and Tenant Act 1987 on the Respondent. In summary, this notice asserted that the Respondent was in breach of its obligations owed under the lease, had proposed unreasonable service charges, was in breach of parts of the RICS Service Charge Residential Management Code, and there were other circumstances that existed which made it just and convenient to appoint a manager. It gave the Respondent 14 days to remedy the matters. Furthermore, the Applicant proposed his brother, Asif Suleman to be appointed as manager.
44. The Tribunal having heard evidence and submissions from the parties and considered all of the documents provided determined that although the security charges have been held to be not payable and were unreasonable, the Tribunal was not satisfied that it is "just and convenient" to appoint a manager in the circumstances of this case. Apart from the service charge issue, the other matters set out in the notice were vague and unsupported by any evidence. The Tribunal found that the Respondent had been forthcoming with information and the development was reasonably well maintained. Further, the Tribunal had some concerns around the proposed manager. The statement from the proposed manager highlighted that Heaton Property Services did not have public liability insurance despite the fact that they were providing advice and assistance, although, the Tribunal acknowledge that Heaton Property Services did say that they would obtain this if required.
45. The Tribunal having considered the matter was not satisfied that it was "*just and convenient*" to appoint a manager in the circumstances of this case.

Section 20C

46. In respect of the application made pursuant to Section 20C of the Landlord and Tenant Act 1985, the Tribunal determined that this application should be granted in part. The Applicant had succeeded on some of the points raised before the Tribunal but on others had failed to provide any supporting evidence other than a string of allegations.
47. Consequently the Tribunal determined that the Respondent shall only be entitled to treat 50% of the costs of dealing with this application, before this Tribunal, as relevant costs for the purposes of determining the amount of service charge payable by the Applicant.

Summary of the Decision

48. The Tribunal, therefore, determines that the service charge amounts payable by the Applicant for the 2013 is as set out in Schedule 1. Whilst the accounts for 2014 have not been produced, the Tribunal's comments in relation to the issues raised would apply equally to 2014.
49. The appointment of a manager application is dismissed.
50. The Section 20C application is granted in part.

Schedule 1

The service charge amounts payable by the Applicant for 2013, apportioned accordingly, are as set out below. For the avoidance of any doubt the only charge disallowed by the Tribunal was Security Services (£32,750). The remaining charges are all payable.

2013

Item	Amount Payable
Turnover	
Maintenance Charges	195,875
Administrative Expenses	
Insurance	11,530
Light & Heat	8,092
General Administrative Expenses	
Caretaking services	7,995
Garden maintenance	16,036
Cleaning and Pest Control	15,135
Meeting Room Hire	5,555
Repairs & Renewals	94,879
Sundry Expenses	4,075
Legal & Professional Costs	
Accountancy Fees	1,020
Managing Agents fees	23,150
Other Legal & Professional	2,078