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

Case Reference : **CHI/OOHB/LIS/2013/0044**

Property : **10 Glencoyne Court, St Stephens Close, Bristol, BS10 6TP**

Applicant : **Glencoyne Court Management (Southmead) Limited**

Representative : **Mr Gerald Mwale**

Respondent : **Mrs Heather Scrivener**

Representative : **In person**

Type of Application : **Determination of the liability to pay service charges (Landlord and Tenant Act 1985 Section 27A(3))**

Tribunal Members : **Judge A D McC Gregg (Chairman)
Mr Jan Reichel
Mr Mike Jenkinson**

Date and venue of Hearing : **6 January 2014
The Holiday Inn, Bristol City Centre,
Bond Street, Bristol, BS1 3LE**

Date of Decision : **13 January 2014**

DECISION

1. HISTORY OF THIS MATTER

- 1.1 This was an application by Glencoyne Court Management (Southmead) Limited (“the Applicant”) for the payment of service charges by Mrs Heather Scrivener (“the Respondent”) and owner of Flat 10 Glencoyne Court, St Stephens Close, Southmead, Bristol, BS1 6TP.
- 1.2 The original proceedings were commenced in the Northampton County Court but by an order of the 13th March 2013 the Bristol County Court made an order transferring this case to the Southern Residential Property Tribunal, First-Tier Tribunal (formerly the Leasehold Valuation Tribunal).
- 1.3 On the 10th of April 2013 directions were given and these were followed by further directions which were given on the 6th of June 2013.
- 1.4 On the 5th of July 2013 a pre-trial review of this case was held at the Bristol Magistrates Court and further and supplemental directions were then given. Subsequently the inspection of the premises and hearing were fixed for the 16th of October 2013.
- 1.5 The hearing on the 16th of October 2013 took place at DoubleTree by Hilton, Bristol City Centre, Redcliff Way, Bristol but it was adjourned to enable further and detailed information to be provided by the Applicant and also to enable the Respondent to attend in person. Further directions were therefore given.
- 1.6 The hearing was resumed on the 6th of January 2014 and this took place at the Holiday Inn, Bristol City Centre, Bond Street, Bristol when both the Applicant and the Respondent attended.

2. THE INSPECTION OF THE PREMISES

- 2.1 The Tribunal inspected the premises on the 16th of October 2013 in the presence of Mr Mwale who represented the Applicant.
- 2.2 Flat 10 Glencoyne Court is one of 40 flats in two separate blocks of brick construction built, probably, in the 1960s.
- 2.3 The flats were originally built as sheltered accommodation.
- 2.4 The accommodation of flat 10 comprised a living room, a kitchen/diner, a double bedroom and a bathroom/WC.
- 2.5 There is a communal laundry for all 40 flats.
- 2.6 Each block has a separate electric meter room and each flat is now separately metered since December 2011.
- 2.7 There are 2 car parking areas and communal garden areas.

3. THE HEARINGS

- 3.1 The hearing of this case commenced on the 16th of October 2013 at the DoubleTree by Hilton Hotel, The Bristol City Centre, Redcliff Way, BS1 6NJ.
- 3.2 Mr Mwale represented the Applicant. The Respondent, Mrs Scrivener was unavailable.
- 3.3 The hearing was resumed on the 6th of January 2014 at the Holiday Inn, Bristol Centre, Bond Street, Bristol and was attended by both the Applicant and the Respondent.

4. THE ISSUES

- 4.1 It became clear from the written representations that had been received from the Respondent that the issues relating to the service charges for the insurance premiums, the electricity charges, the repairs and renewals and maintenance charges, cleaning, garden maintenance and management fees for the years 2009, 2010, 2011 and 2012 were in dispute.
- 4.2 During this first day of the hearing on the 16th of October 2013 it was clear that there was uncertainty with regard to many of the service charge figures that had been claimed by the Applicant and accordingly, and in the absence of the Respondent the case was adjourned and further detailed directions were given. Following those detailed directions the Applicant lodged with the Tribunal, on the 25th of November 2013, a further bundle of documents in support of the Applicant's claim in respect of the items that were in dispute and the case was set down for a further hearing (second day) at the Holiday Inn, Bristol City Centre, Bond Street, Bristol, BS1 3LE on Monday the 6th January 2014.

5. THE LIABILITY TO PAY THE SERVICE CHARGES

- 5.1 The Applicant relied on the terms of the Respondent's Lease, a copy of which had been provided to the Tribunal and, in particular, the definition of service charge, service charge percentage and service costs as set out on page 3 of the Lease.
- 5.2 Clause 2 of the Lease defined the meaning of "service charge" on pages 5 and 6 of the Lease. Clause 5.2 of the Lease on page 8 imposed the liability to pay service charges and Schedule 3 on pages 15 and 16 of the Lease set out the services to be provided by the Management Company.

6. THE LAW

6.1 The Statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19 and 27a of The Landlord and Tenant Act 1985, "The Act,"

6.2 Section 18 provides:

- 1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part 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.*

6.3 Section 19 provides:-

- 4) *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 payment, reduction or subsequent charges or otherwise.*

6.4 Section 27A 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.*

Subsections 2 to 7 of the section 27A are not relevant in this application.

7. The Decision

7.1 The decision in this case has not been an easy one for the Tribunal for a number of reasons and, in particular:

- (1) Notwithstanding clear directions with regard to the preparation of the bundles of documents, the bundles that were provided to the Tribunal remained unpaginated, inconsistent and lacking various documents that were eventually produced at the hearing.
- (2) The Respondent whilst owning the premises has not lived at the premises and was therefore unable to comment on, for example, what maintenance had or had not been carried out.
- (3) The Applicant's representative, Mr Mwale only took over the management of the flats in April 2012 and it is clear that the premises, prior to that date had been poorly managed, as a result of which there were no paper trails in the form of invoices or receipts for many of the items claimed.

7.2 Having heard from both parties and considered the documentation that had been provided the decision of the Tribunal with regard to the various items is as follows:

7.3 Insurance

Year	Claimed	Agreed	Disputed	Decision	Reasons (see below)
2009	£4,201.80	£3,805.50	£396.26	£4,201.80	(1)
2010	£4,208.00	£4,208.00	£7.12	£4,208.00	(2)
2011	£4,467.50	£4,467.50	Nil	£4,467.50	(3)
2012	£4,866.11	£4,866.11	Nil	£4,866.11	(4)

- (1) The Tribunal accepted that the difference between the figures claimed and agreed but an explanation was given for this (Directors insurance) and further the Tribunal accepts that the sums were paid and that the schedule accords with the payments and that the insurance was provided at a reasonable cost.
- (2) The Tribunal noted that an error had been made in the addition of the figures, on the part of the Respondent.
- (3) The amount originally disputed was due to the premiums being paid over 2 accounting years. Subsequently accepted by the Respondent.
- (4) As (3) above.

7.4 Cleaning

The Respondent's flat is tenanted and the Respondent does not live on site. She did not believe or accept that the cleaning had been done and, particularly, disputed sums if there was not any invoice in support.

Year	Claimed	Agreed	Disputed	Decision	Reasons (see below)
2009	£2,265.00	£1,760.00	£505.00	£1,920.00	(1)
2010	£1,760.00	£480.00	£1,280.00	£480.00	(2)
2011	£1,440.00	Nil	£1,440.00	Nil	(3)
2012	£1,450.00	Nil	£1,450.00	Nil	(4)

- (1) Two payments were apparently made with no invoices (£160 and £345). The Tribunal were prepared to allow the payment of £160 as there was evidence of a payment and bank reference for the other monthly payments during that accounting year. There was however nothing in support of the payment of £345 which was therefore disallowed.
- (2) No invoices were produced for the disputed amounts. Nine invoices were missing for that year. Accordingly, the Tribunal were not prepared to accept or assume that these had been properly invoiced or paid.
- (3) No invoices were provided for any payments. As (2) above.
- (4) Whilst Mr Mwale took over the management in April 2012 no invoices were produced by him in support of this claim.

7.5 Gardening

Year	Claimed	Agreed	Disputed	Decision	Reasons (see below)
2009	£1,531.00	£1,220.00	£311.00	£1,220.00	(1)
2010	£415.00	£180.00	£235.00	£180.00	(2)
2011	£2,230.90	Nil	£2,230.90	£300.00	(3)
2012	£600.00	Nil	£600.00	£300.00	(4)

- (1) No invoices had been produced in support of the disputed amount.
- (2) As (1) above.
- (3) Whilst the Respondent felt that any garden maintenance was a very low standard she accepted that some gardening had been done and the Tribunal awarded a quantum meruit figure of £300.00.
- (4) As (3) above.

7.6 Repairs and maintenance

Year	Claimed	Agreed	Disputed	Decision	Reasons (see below)
2009	£10,929.49	£5,965.17	£4,964.32	£5,965.17	(1)
2010	£11,797.60	£5,692.50	£6,105.10	£5,692.50	(2)
2011	£5,261.10	Nil	£5,261.10	Nil	(3)
2012	£1,832.26	£1,492.15	£340.11	£1,492.15	(4)

(1) The Respondent agreed those items that had been supported by invoices. With regard to the other items The Tribunal was not prepared to accept the sums of this magnitude without the production of proper invoices particularising what work was done, for what purpose and showing that the work was reasonably required and carried out to a reasonable standard. The Applicant was unable to point to any works that had been done and the Respondent was not aware of any such works.

(2) As above.

(3) As above.

(4) As above.

7.7 Management fees

Year	Claimed	Agreed	Disputed	Decision	Reasons (see below)
2009	£6,900.00	£6,900.00	Nil	£6,900.00	(1)
2010	£7,050.00	£7,050.00	Nil	£7,050.00	(2)
2011	£6,623.00	£5,987.50	£635.50	£6,623.00	(3)
2012	£7,200.00	£2,400.00	£4,800.00	£2,400.00	(4)

(1) The parties agreed this item.

(2) Whilst the Respondent initially disputed this item she did accept the expenditure of £1,762.50 which was supported by invoices and that there were bank transfers for the remaining items claimed and she therefore accepted the entire claim albeit that she felt the management had been poor.

(3) The Tribunal accepted that the sum of £6,623.00 had been spent as supported by transfers from the bank account.

(4) Mr Mwale claimed that an AGM of the management company had agreed that he should take over as Manager and he could claim fees as per the previous Manager. There was no invoice to support the figure claimed as a management fee by Mr Mwale and indeed no evidence had been produced to show that he was the Manager. The figure was only referred to in a profit and loss account that had been produced at the hearing but there was no evidence or invoice to show that it had ever been invoiced and no invoice in support of it.

7.8 Electricity

7.8.1 Originally all charges for electricity had been in dispute. The Respondent now accepted that, whilst the charges were unsatisfactory until the time when all the flats were individually metered (in December 2011) and the communal electricity was separately metered she accepted that the electricity had been provided as claimed. Namely:

Year	Amounts
2009	£6,873.98
2010	£7,785.00
2011	£8,393.00
2012	£6,595.87

7.8.2 The Tribunal therefore decided that the sums set out in the decisions column of the various headings together with the electricity charges were due and payable by the Respondent to the Applicant.

8. APPEALS

- 8.1 A person wishing to appeal against this decision must seek permission to do so by making written application to the First-Tier Tribunal at the Regional office which has been dealing with the case.
- 8.2 The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- 8.3 If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend the time or not to admit the application for permission to appeal.
- 8.4 The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result which the person is seeking.

Dated: 13 January 2014

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Judge A D McC Gregg
Tribunal Chairman