



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

Case Reference	:	LON/00AZ/LSC/2015/0423
Property	:	Jubilee Heights and Kestrel House, Parkside Avenue, London SE10
Applicant	:	Family Mosaic Housing Association
Respondents	:	The 120 long leaseholders of the residential flats in the properties listed in the schedule to the application form
Type of Application	:	Payability of service charges
Tribunal	:	Judge Nicol Mrs SF Redmond BSc (Econ) MRICS
Venue	:	10 Alfred Place, London WC1E 7LR
Date of Hearing	:	2nd December 2015

DECISION

Decision of the Tribunal

The Tribunal determines that a charge arising from a service contract for the communal heating system which includes the Heat Interface Unit for each flat is payable under the terms of the relevant leases.

The application

1. The subject properties have a communal system for the supply of heating and hot water to each flat. The communal system includes as an integral part a Heat Interface Unit ("HIU") for each flat. The application contains the following description, which the Tribunal accepts:

HIUs provide localised control and metering, allowing simple integration of individual dwellings into a larger heating and hot water system. They act as a link between the central boiler and the heating and hot water systems of the individual flats. In our schemes with communal heating system, these units have been installed internally in each of the dwellings. The central plant feed through a bypass valve and a return circuit in the event of no demand from the dwelling system. On the return side a small circulating pump overcomes the resistance of the dwelling's system and a heat meter, measuring volumetric flow rate and temperature difference across flow and return to derive energy use in kilowatt.

2. The HIUs need to be serviced periodically. Until 2013 they were part of the extended warranty for the system but, since then, it had been left to the lessees to arrange servicing. Some lessees indicated they were having difficulties in arranging this. The Applicant has decided to take on the responsibility. They have gone through the first stage of the statutory consultation process and are tendering for suppliers of the service contract even though, at this stage, the cost is estimated at around £135 per lessee. They intend to complete the process in the New Year.
3. The Applicant is concerned that the costs arising from such a service contract might not be regarded as being relevant costs when calculating the service charge because the leases do not specifically refer to the communal system. Therefore, they have applied to the Tribunal under section 27A(3) of the Landlord and Tenant Act 1985 (set out in the Appendix to this decision) for a determination whether, if costs were incurred for this service, a service charge would be payable in relation to them.
4. It is not uncommon for leases to be expressed in generic terms so that a system or element is not referred to specifically but can come within the lease. In this case, the sample leases from each of Jubilee Heights and Kestrel House include the following clauses:-
 - 5.3 The Applicant has covenanted to maintain, repair, redecorate renew and improve, amongst other matters, the Service Media.
 - 7.1 The Respondents have covenanted to pay a service charge.
 - 7.4 The service charge includes the costs of and incidental to the Applicant's performance of clause 5.3.
 - Schedule 1, paragraph 3 The demise does not include Service Media which are within the premises.
 - In Schedule 9, "Service Media" is defined as "drains sewers conduits flues gutters gullies channels ducts shafts watercourses pipes cables wires mains electrical risers aerials and any other conducting media."

5. Mr Peachey, counsel for the Applicant, relied on the decision of the Upper Tribunal Lands Chamber in *Re: Flat 8 and Flat 45 Kennistoun House* [2010] UKUT 194 where the maintenance of the London Borough of Camden's communal heating system was held to come within the relevant leases. However, the determination of such issues always depends on the interpretation of the particular lease in question. Other cases may provide some guidance but cannot be conclusive.
6. The Tribunal is satisfied that the communal heating system comes within the definition of Service Media in the sample leases, including the HIUs. Even though the HIUs are located within the demise of each flat, they are clearly an integral part of the communal system which it is the Applicant's liability to maintain and the maintenance costs of which come within the service charge.
7. The Applicant had been seeking a determination that the indicative price of £135 per unit from the one contractor so far consulted would be reasonable in amount for this service. However, the tendering process has yet to be completed so the Tribunal feels that such a determination would be premature.
8. No lessees attended the hearing of this application. Four lessees had objected by e-mail to the proposed service contract. None of them suggested that such services would be outside the terms of their leases.

Name: NK Nicol

Date: 3rd December 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (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

- (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 provisions 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.

Section 27A

- (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 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 the appropriate 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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.