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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00DB/LSC/2015/0080**
Property	:	**15 Keswick View, Ackworth, Pontefract, West Yorkshire WF7 7BT**
Applicant	:	**Joanne Robinson**
Respondent	:	**Blue Property Management UK Ltd**
Type of Application	:	**Landlord & Tenant Act 1985 s27A & s20C**
Tribunal Members	:	**Judge S O Greenan** **Mr M Bennett MRICS**
Date of Decision	:	**21 January 2016**

DECISION

Background

1. By an application dated 12th August 2015 the Applicant Joanne Robinson applied to the First Tier Tribunal for a determination as to the reasonableness and payability of the service charges for her flat at 15 Keswick View ("the property") for the year 1st July 2012 to 30th June 2013.

2. The Respondent filed a statement for the hearing dated 2nd December 2015 and a witness statement of Tamara Gifford dated 2nd December 2015.

3. A Scott Schedule was prepared (239 in the Respondent's bundle) and completed by both parties.

4. The Applicant's case, in summary, was that the Respondent had failed to manage properly the block and the development in which it is situated, that the service charge demands had been issued late, and were therefore not payable, and that excessive amounts had been charged for various items including fire risk assessments, health and safety assessments, and cleaning.

5. The Respondent's case, in summary, was that the expenditure was properly incurred, that budgets were clear, and that the Applicant's complaints were not substantiated.

6. The Applicant is resident overseas and her interests in these proceedings have been represented by her uncle, Stephen Robinson, and a friend, Paul Richmond.

The inspection

7. The Tribunal inspected the property prior to the hearing on 21st January 2016. Representatives of both parties were present at the inspection.

8. Flat 15 is a first floor flat situated in a two storey block containing four flats. It is one of two similar blocks situated in a cul-de-sac. For service charge purposes the two blocks are treated as a single entity. Internally the common parts consist of a hallway providing access to the entrance doors of two flats, and stairs to a landing providing access to the entrance doors of the two first floor flats. The size of the internal areas was very modest. Externally there are small areas of communal garden to the front of the block, with a grassed strip to the rear of the properties. There is a tarmacked parking area with marked bays. There is a timber bin store. There are two external light pillars.

9. The Tribunal noted that the internal common areas had a rather worn appearance with the carpets being worn and discoloured, and redecoration needed to the internal walls. Externally the communal areas appeared to be adequately maintained.

The hearing

10. The hearing took place following the inspection at Wakefield Magistrates Court. The Applicant was represented by Mr Robinson and Mr Richmond. The Respondent was represented by Peter Evans, director. Also present was David Garvey, property manager.

11. Mr Richmond indicated that the Applicant relied primarily on the written documents already submitted including the Scott Schedule. He highlighted concerns about the lateness of the service charge demands, difficulties getting sight of the underlying invoices, and the increase in the cleaning costs.

12. It was established through dialogue with the Applicant's representatives that the following items of expenditure were challenged: cleaning; electricity; fire risk assessment; health and safety assessment. management fees; repairs.

13. In addition the Applicant challenged the payability of the service charge invoice on the basis of section 20B of the Landlord and Tenant Act 1985.

14. In addition the Applicant sought an order under section 20C of the 1985.

The law

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

> "(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—
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> (a) the person by whom it is payable,
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> (b) the person to whom it is payable,
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> (c) the amount which is payable,
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> (d) the date at or by which it is payable, and
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> (e) the manner in which it is payable."

16. Section 19 of the Landlord and Tenant Act 1985 provides:

> "(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
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> (a) only to the extent that they are reasonably incurred, and
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> (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;
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> and the amount payable shall be limited accordingly.
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> (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."

17. Section 20B of the 1985 Act provides:

> (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then

(subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

18. Section 20C of the 1985 Act provides:

(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 or the Upper Tribunal, 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.

(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.

The lease

19. Leasehold title to the property was acquired by the Applicant pursuant to a lease made on 30th March 2006.

20. By the Third Schedule to the lease the buyer covenants:

"To pay to the Management company the Maintenance Charge... on the days and in the manner herein provided without any deduction...

21. By the Fifth Schedule the Management Company covenants "to keep the Common Parts in a good state of repair and condition", and "to keep the Common Parts clean and tidy and to arrange for the regular cleaning of the exterior of all windows comprised in the Buildings and the interior of all windows comprised in the Common Parts". There are covenants to keep any lamps which illuminate the common parts in proper working order, and to

maintain aerials. There is a covenant to insure. The Common Parts are defined as "all parts of the Development including the Main Structure and Accessways (but excluding the Amenity Areas the Estate Road and the Estate Sewers).

22. There are also covenants to "maintain repair renew and improve" the Amenity Areas and Service Installations, to clean and cultivate verges and recreational areas, and to keep lamps illuminating the amenity areas in working order. The Amenity Areas are defined as "roads verges grassed and floral areas pedestrian ways forecourts or drives".

23. The Sixth Schedule provides that:

"The Management Company shall as soon as practicable after the 1st day of January in each year prepare estimates of the sums to be spent by it on the matters specified in Part II of this Schedule ... for such year in respect of:

i) Expenditure relating specifically to the Buildings and the Common Parts ...

ii) Expenditure relating to the Amenity Areas ..."

24. The Sixth Schedule also provides that Flat 15 is liable for 12.5% of the Maintenance Charge, which is defined as the sums payable in relation to the Building and Common Parts and the Amenity Areas under the Sixth and Fifth Schedules.

The 18 month rule issue

25. It was not disputed that on 22nd December 2014 the Respondent issued the Applicant with a service charge invoice for a balancing payment for the year 2012/13 in the sum of £913.13. The charge was described on the invoice as an "excess charge" relating to "Expenditure over and above the Original Budget" and the sum was stated to be due on 21st January 2015.

26. The relevant provision of the 1985 Act is set out above. There are conflicting decisions as to when costs are 'incurred' for these purposes. In *Jean-Paul v Southwark London Borough Council* [2011] UKUT 178 (LC) it was held that costs are only incurred when payment is made; but in *OM Property Management Ltd v Burr* [2012] UKUT 2 (LC) it was held that costs are incurred on the presentation of an invoice or on payment; but that whether a particular cost is incurred on the presentation of an invoice or on payment may depend upon the facts of the particular case: where, for example, payment on an invoice has been long delayed, it may be relevant to decide whether the payment was delayed because there was a justified dispute over the amount of the invoice or whether the delay was a mere evasion or device of some sort in order to postpone the running of the statutory time limit.

27. In effect, a landlord has 18 months from when he incurs a service chargeable expense to either (1) demand it (as a service charge) from the leaseholders; or (2) notify the leaseholders that they will, at a later date, be required to pay a service charge for the specified items.

28. Mr Lazinskas in his written statement had indicated that the Respondent had underestimated the year service charge budgets for the period 1.7.12 to 30.6.13 and also for the period 1.7.13 to 30.6.14. It had therefore raised balancing charges for each year. He submitted that the 18 month rule did not apply, but did not put forward any reasons for this.

29. In relation to the 2012/2013 accounts, the year end date was 30.6.13. The invoice for the balancing charge was served on 22.12.14. Therefore pursuant to section 20B the Management Company is not entitled to recover costs incurred prior to 22.6.13 by way of an invoice served on that date.

30. The Respondent provided a summary of the expenditure for 2012/13 beginning at p34 in their bundle. That summary shows a large number of invoices with the date of 30.6.13. Those include all the charges for cleaning

the communal areas, a total of £3,055.20; the fire risk assessment (£593); more than half of the general repairs (£1931.69); the health and safety risk assessment. In addition the landscape and ground maintenance charges are all invoiced on 28.6.13.

31. The total expenditure incurred on or after 22.6.13 is £8639.63. 12.5% of that figure is £1079,95

32. The Tribunal therefore concluded that the sum demanded on 22.12.14 from the Applicant was less than 12.5% of the total of the costs incurred after that date. The demand therefore contravene the 18 month rule.

Challenges to specific items

33. In relation to the issue of reasonableness:

> ""The test is whether the service charge that was made was a reasonable one; not whether there were other possible ways of charging that might have been thought better or more reasonable. There may be several different ways of dealing with a particular problem of management. All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT may have its own view. If the choice had been left to the LVT it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable"." - *Regent Management v Jones* [2010] UKUT 369 (LC).

34. There is no expectation that a landlord should use the cheapest method of providing a particular service or undertaking a particular task.

Cleaning

35. Cleaning of the common parts had originally been provided by Tower Cleaning Solutions. Their services were dispensed with and they were replaced by Blue Property Maintenance UK Ltd. This company is, like Blue Property Management UK Ltd, part of the Blue Property Group.

36. Mr Garvey indicated that 2.5 hours of cleaning per week was provided to the common parts at an annual cost of £2,340 including VAT. This worked out at £15 per hour.

37. Mr Robinson told the Tribunal that he believed Tower Cleaning Services charged an annual fee of about £860 per year.

38. Neither party appeared to know why Tower Cleaning Services were no longer doing the cleaning.

39. The Tribunal noted that the Management Company had transferred the cleaning services from an existing provider to an associated company. The Tribunal accepted, in the absence of any evidence to the contrary from the Respondent, that this had resulted in a substantial increase in the cost of cleaning.

40. The Tribunal regarded the sum charged annually for cleaning the modest internal areas of the two blocks as excessive and it followed that it was not reasonably incurred. The Tribunal found that a figure of half the total charged would be reasonable. The Respondent is therefore entitled to recover £1,170 for this item.

Electricity

41. A total of £1,053.12 had been charged for the 8 properties. This included the supply to the common parts and the electricity for the two outside light columns.

42. The Respondent had produced invoices from the electricity supplier which showed that the electricity charged for had been supplied. There was nothing to suggest that some other use was being made of the electricity and the costs appeared to be genuinely incurred. The Respondent is entitled to recover this item in full.

Charges for fire risk assessment and health and safety assessment

43. A fire risk assessment had been carried out on 10.7.12 and another on 30.6.13. The costs of both of these was included in 2012/13. £240 had been charged for each assessment. The work had been carried out by Blue Risk Management UK Ltd, another company associated with Blue Property Group.

44. A copy of the fire risk assessment was contained in the Applicant's bundle. The risk assessment was carried out on 18.6.13. It is a 7 page document prepared using a pro forma. The assessment did not include any inspection of the individual flats.

45. The only matters noted by the assessor to report back to the Management Company were the lack of a fire action plan at the exit door, and the presence of stored items in the communal areas. The rest of the report is entirely routine and contains material which will not vary from year to year.

46. The health and safety assessment was carried out on the same days in 2012 and 2013 as the fire risk assessment. The author of both documents is the same – DV Warren. A copy of the assessment was contained within the Applicant's bundle. The assessment was carried out using a pro forma. The

only recommendations in the report for action are the same as those identified in the fire assessment report.

47. £240 including VAT was charged for each report.

48. Mr Evans suggested that carrying out the assessments and producing the reports would be a day's work. He was not able to say what hourly rate was being charged. Mr Robinson suggested that the inspection should have taken no more than 15 minutes per block. He did not indicate how long he thought producing the report should take, nor an appropriate hourly rate.

49. Mr Robinson also pointed out that the recommendations made in the report in relation to clearing items from the common parts and providing a fire action plan had not actually been carried out, suggesting the assessment was more of a box ticking exercise than a genuine piece of work.

50. Applying the law as set out in paragraph 33 above, the Tribunal concluded that the charges for the fire risk assessment and the health and safety assessments were significantly in excess of that which might reasonably be expected to be charged for a short and very simple piece of work, largely repetitious of an exercise undertaken previously. The Tribunal noted that the supplier was not at arms' length to the Respondent. The Tribunal concluded that this work could have been undertaken by a locally based consultant who would not have charged more than £100 for each report, including VAT. The Respondent is therefore entitled to recover £400 in total.

Management fees

51. The Respondent charged £187.50 including VAT for each property during the relevant period.

52. Mr Robinson on behalf of the Applicant submitted that the general standard of management was poor. Blue Property Management UK Ltd were difficult to communicate with. If they had responded in a more timely way when concerns were raised the Tribunal might have been avoided. Mr Robinson did not suggest what a reasonable fee might be.

53. Mr Evans disputed that his company was poor at communication. He pointed out that work was being undertaken by the company which would not be obvious to leaseholders, such as liaising with the head landlord, and dealing with sales and purchases. In his experience the industry standard fee ranged from about the level of his fees to £300 plus VAT per dwelling.

54. The Tribunal did not regard this figure as excessive or out of line with management charges for similar dwellings in the Yorkshire area. In the view of the Tribunal, having regard to its experience of such fees, the fee charged by the Respondent was at the bottom of the usual per unit management charge for a flat. It could not be said that it was other than reasonably incurred.

55. The Respondent is entitled to recover the management fee in full.

Repairs

56. Certain repairs which were no longer being charged for were removed from the Scott Schedule. Using the last three digits of the reference number as the identifier, they were 164, 188, 776, 712, 720, 677, 353, 558.

57. In relation to the repairs the Tribunal noted numerous items included for the checking of lighting, emergency lighting, and smoke detectors. Work of this kind was carried out on 17 occasions shown on the Scott Schedule. The tasks involved are simple and do not require any technical knowledge or more than simple training.

58. Significant expenditure was being incurred in relation to this activity. For example, on 31.12.12 an invoice was raised for a lighting check to all communal lights, internal and external, in the sum of £168. On the same date £102 was charged for checking the emergency lighting. There are only four external lights, two on bollards in the car park, and one by each front external door. The internal lighting is to only two floors. The testing of the emergency lighting involves using a key or switch which turns off the mains power to the emergency lighting system, thus forcing it to come on (if it is working efficiently). £42 per hour was being spent on carrying out lighting checks. A simple emergency lighting check was costing £42.

59. In total £872.96 was spent on this type of work during the year.

60. Mr Robinson submitted that these were simple tasks which could be undertaken by the cleaner.

61. Mr Evans suggested that these checks were of some importance because of the safety aspect and should be done by a qualified person.

62. It was the view of the Tribunal that to engage someone who charged £42 per hour to carry out such simple tasks was not the action of a reasonable landlord.

63. There was no reason why these checks could not be carried out by the cleaner during his weekly visits. The work involved was straightforward and it would not be difficult to find a cleaner who could undertake it. As the cleaner was working for a sister company, training could easily be arranged.

64. The Tribunal concluded that employing a separate trained worker to carry out these checks was outside the scope of what a reasonable landlord would do. The Respondent is therefore not entitled to recover the £872.96 spent on these items.

65. The Applicant also challenged the figure of £560.40 spent on replacing ordinary locks on the meter cupboards with digilocks.

66. In relation to this item Mr Garvey told the Tribunal that the charge was for two days' work for a joiner including travelling and collection of materials. The work was done by an internal contractor who was based in Manchester.

67. Mr Robinson suggested that the sum was excessive and the work was not in event necessary as the existing key locks could have continued to be used.

68. The Tribunal accepted that issues had arisen in relation to the existing locks which meant that replacement with digilocks was a reasonable course of conduct.

69. The Tribunal did not accept that the task involved anything like two days work. This was wholly excessive. Mechanical digilocks can be obtained from a variety of suppliers for between £25 and £50. Fitting them would be simple job for anyone with joinery skills. It could be accomplished in an hour per lock.

70. In the circumstances the Tribunal was prepared to allow no more than £150 plus VAT for this item.

Summary of decision

71. The Respondent is, subject to what is set out below, entitled to recover the balancing payment set out in its service charge demand of 22.12.14.

72. For the service charge year 2012/13, certain costs have not been reasonably incurred and are reduced as follows:

    a. **Cleaning** - £2,340 to £1,170
    b. **Risk assessment charges** - £960 to £400
    c. **Repairs** – reduced by £1283.36

73. This is a reduction of the total service charge for the 8 flats making up the development of £3,013.36. 12.5% of that figure is £376.67.

74. That figure must be deduced off the Applicant's service charge debt for 2012 to 2013.

75. The Tribunal then considered the Applicant's application under section 20C for an order that the Respondent is not entitled to add costs incurred as a result of these proceedings to the service charge

76. The Respondent indicated that it had not incurred any legal fees as a result of this application.

77. The Tribunal was of the view that the Applicant had been largely successful in her application. The issue of success or failure is not determinative of an application under section 20C. The primary question is whether it would be unjust for the Applicant, following this decision, to find that she had to pay part of the Respondent's costs via the service charge. On the facts of this case the Tribunal concluded that it would, and accordingly made an order under section 20C.