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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/22UJ/LSC/2013/0064**
Property	:	**5-10 Newstead Way, Harlow CM20 1BW**
Applicants	:	**Lucy Thomas Flat 5** **Amy Thomas Flat 6** **Lewis Heritage Flat 7** **Alan & Catherine Dean Flat 8** **Giovanna Cirillo Flat 9** **Nicola Bastin Flat 10**
Representative	:	**Mr Neil McEleny CHIM**
Respondent	:	**Swan Housing Association Limited**
Representative	:	**Mr Robert Pearce** **Homeownership Project Manager**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 – to determine service charges payable**
Tribunal Members	:	**Judge John Hewitt Chairman** **Mr Neil Martindale FRICS** **Mr David Cox JP**
Date and venue of Hearing	:	**Monday 5 August 2013** **Holiday Inn Express, Harlow**
Date of Decision	:	**13 August 2013**

DECISION

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9. The Respondent, which evidently is a registered Industrial and Provident Society, was represented by Mr Robert Pearce who is employed by the Respondent as Homeownership Project Manager. He was accompanied by Mr Jorgen Dyer, Head of Estates Services, Mr Peter Coombs, Project Manager, Mrs Gill McDonald, Leasehold Officer plus several observers.

10. Oral evidence was given by Mr Coombs and Mr Dyer and both of them were cross-examined. Submissions were made by Mr McEleny and Mr Pearce.

11. Shortly prior to the commencement of the hearing we had the benefit of an inspection of the subject block in the company of Mr McEleny and Mr Pearce and several other employees of the Respondent.

The development and the lease

12. The block comprising 5-10 Newstead Way is part of a larger estate developed by Barratt Homes in or about 2009 and known as Harlow Gateway. The estate comprises a mix of houses and small blocks of flats. Some properties have been sold off for private occupation and some have sold off to housing associations which in turn has let them on a mixed tenure basis.

13. All six flats in the subject block have been sold on long leases on a shared equity basis.

14. We were provided with a sample lease – that for flat 10. It is at [22]. The lease is dated 30 June 2009. It was granted by the Respondent to Hazel Ward. On the front sheet it is described as:

"New Build Homebuy Lease (Flat)
(Granted on Shared Ownership Terms"

The lease granted a term of 125 years from 1 April 2008 at a rent as specified and on other terms and conditions as therein set out.

The lease terms were not in dispute.

In essence the service charge accounting period is 1 April to the following 31 March. A service charge is payable. There are provisions for payments on account, the issue of a year-end certificate of actual expenditure and for balancing debits or credits as the case may be.

15. The lease provides for a contribution of 0.38% to Estate Costs and 4.55% to Block Costs. Despite this the Respondent has made adjustments. The Respondent is also the landlord of 16 flats and 4 houses in nearby Parish Way, 25 flats in nearby Gladwin Way and four houses in Newstead Way. The Respondent apportions the Estate Costs between the 30 properties in Newstead Way and Parish Way (3.33%) and the Block Costs between the six flats in the block 5-10 Newstead

number of units serviced by the team. Evidently no distinction was made between those newer and smaller units that require only a 'light' service and those more troublesome developments where there is regular vandalism and damage and more frequent graffiti removal and ad hoc cleaning services required. Apparently the Respondent's portfolio is substantial and diverse and the call on the cleaning and concierge service varies considerably from development to development.

23. The subject block is relatively new, the halls and stairways are carpeted and graffiti is not a problem, at least, as yet.

24. The submission made by Mr McEleny was that the Applicants should only be required to pay a reasonable sum in respect of the services actually provided to the subject block. He said that by allocating the costs of the Respondent's service across the whole of its portfolio, the reality is that the Applicants are being asked to subsidise the more difficult developments operated by the Respondent which generate a greater demand on and consumption of the services offered.

25. Mr Dyer said that the Respondent had, in the past, used external cleaning services and they were found to be unsatisfactory, hence the Respondent has set up its own in-house team.

26. As will become apparent shortly the evidence and submissions of the Respondent indicate to us that it has a preference to deal with matters in a generalised way across its portfolio rather than focussing on the particular circumstances and needs of each individual development.

Findings

27. We have sympathy with the submissions made on behalf of the Applicants. It is quite clear that clause 7(5) of the lease defines 'Block Service Provision' to be the expenditure reasonably incurred by the landlord in the repair, management, maintenance and provision of services to the Block.

28. Accordingly we find that the costs of the cleaning and concierge service should be limited to those actually provided to the subject block. We find that it is not reasonable that the Respondent should allocate costs across its entire portfolio without regard to the actual services provided to the subject block and what a reasonable cost for the services actually provided might amount to.

29. Other than the general description given above there was no evidence before us as to exactly what cleaning/concierge services had been provided to the subject block during the year in issue. Doing the best we can with the imperfect evidence and limited materials made available to us and drawing on the accumulated experience and expertise of the members of the Tribunal we find that a reasonable sum would not exceed £1,500.00 for the year.

their professional careers. Moreover, in our experience a mark-up usually applied to the net cost before the addition of VAT rather than being applied to the gross amount of the invoice which Axis seems to do.

36. On the limited evidence before us we were not persuaded that it was reasonable to incur the expense of a 24.5% mark-up on the gross amount of invoices submitted by sub-contractors. We find that a reasonable mark-up would not exceed 10% and that should be applied to the net cost before the addition of VAT.

Door Entry Maintenance

37. The Respondent originally certified the Door Entry Maintenance costs at £1,302.00, revised that to £1,532.00 and then revised that down to £1,263.88. But, at the hearing it was unable to explain to us how that last figure had been arrived at. We have arrived at a figure of £1,036.20 as being a reasonable amount payable by the Applicants for the services provided. It is made up as shown below.

From the documents provided by the Respondent we could only identify three invoices:

Planned annual maintenance	£ 180.00
Repairs failsafe release/drop key	£ 520.00 [134/5]
Repair to Flat 7 intercom	£ 85.00 [133]
Sub-total	£ 785.00
Add 10% mark-up	£ 78.50
	£ 863.50
VAT @ 20%	£ 172.70
Total	**£1,036.20**

Fire Equipment

38. The sum claimed covered bi-annual inspections of emergency lighting systems, testing of batteries and smoke vents both arranged via Axis and a fire risk assessment undertaken by a consultant directly engaged by the Respondent. The second inspection revealed some faulty lights and these were replaced.

39. There was no challenge that it was reasonable for the Respondent to incur these expenses the challenge was to the reasonableness of the amount incurred.

40. Applying the same approach identified in paragraph 36 above we have arrived at a figure of £1,614.31 made up as follows:

First inspection	£ 480.48
Second inspection	£ 560.66
	£1,041.14
Add 10% mark-up	£ 104.12
	£1,145.26

the accounts had to be audited because there were more than four flats in the block. It appears the Respondent may have misunderstood the effect of section 21(6) of the Act. That sub-section is only engaged if a lessee exercises the right conferred by sub-section 21(1) of the act and requires his landlord to provide him with a written summary of costs incurred. It was common ground at the hearing that none of the Applicants had exercised the right conferred by sub-section 21(1) of the Act.

49. Evidently the Respondent has an arrangement with its accountants, Grant Thornton, that each year they will carry out a random audit of 10% of the Respondent's block service charge accounts. The cost incurred is then apportioned by the Respondent amongst all of its long lessees, whether their block was the subject of an audit or not.

50. Mr Pearce mentioned that as a Housing Association the Respondent was required to have certified accounts. This may well be right and the Respondent may well have to file accounts with its regulator and/or HMRC in a certain format but these obligations are quite separate from accounts submitted to the lessees of the subject block.

51. We are satisfied that the terms of the Applicants' leases do not oblige them to pay the sum imposed. It is plainly not part of the service charge regime and on the Respondent's accounts and invoices it is dealt with separately. The lease does not impose an obligation on the Respondent to have the annual accounts audited and thus even if the accounts were audited the expense would not have been reasonably incurred.

Management Fees £197.74 per Applicant

52. Mr Pearce made submissions and explained that this levy was imposed to enable the Respondent to recover its back-office staff costs and overheads. Evidently the costs of the Respondent running its long let portfolio and its short let properties are separated out and any joint costs allocated on a pro rata basis, but we were not told what that was. We were simply told that the total costs incurred on the long let portfolio were ascertained and then divided by the number of units within that portfolio to obtain a cost of £197.74 per unit for 2011/12.

53. We were not provided with any of the figures and we have no idea whether or not the exercise was properly and accurately carried out.

54. Despite questioning it appears that most of the functions carried out are of a clerical or accounting nature.

55. This is yet another example of the Respondent taking a very broad brush approach to allocation of its costs and does not appear to bear any reflection on the actual cost of managing the subject block.

56. Doing the best we can with the imperfect evidence presented to us we can but make a broad comparison with the level of management fees that a local managing agent might charge to manage the block. In doing

67. We are satisfied it is fair and just to require the Respondent to reimburse the fees of £350.00. The Applicants sought to resolve matters amicably but were rebuffed by the Respondent. The Respondent suggested they make an application to the Tribunal, they have done so and they have achieved some success. They could not have achieved this without bringing these proceedings.

Judge John Hewitt
13 August 2013

1	2	3	4	5	6
Expense	Total Charge Claimed Gross	Net per flat	Tribunal Decision Gross	Charge Net per flat	Comments
Estate					
Grounds Maintenance	£ 1,764.00	£ 58.80	£ 1,764.00	£ 58.80	Not challenged
Block					
Electricity	£ 587.83	£ 94.60	£ 587.83	£ 94.60	Not challenged
Lighting Maintenance	£ -		£ -	£ -	Claim withdrawn by R
Cleaning/concierge	£ 2,226.29	£ 371.05	£ 1,500.00	£ 249.90	Sum claimed not reasonable in amount
Door Entry Maintenance	£ 1,263.88	£ 255.47	£ 1,036.20	£ 172.63	Sum claimed not reasonable in amount
CCTV Maintenance					Claim withdrawn by R
Fire Equipment	£ 1,795.41	£ 299.24	£ 1,614.31	£ 268.94	Sum claimed not reasonable in amount
Repairs					Claim withdrawn by R
TV Aerial Maintenance	£ 179.28	£ 29.88	£ -	£ -	Expense not reasonably incurred
Audit fee	£ 34.60	£ 34.60		£ -	Expense not reasonably incurred
Insurance	£ 68.75	£ 68.75		£ 68.75	Not in challenge
Management Fee	£ 197.74	£ 197.74		£ 100.00	Sum claimed not reasonable in amount
Totals	**£ 8,117.78**	**£ 1,410.13**	**£ 6,502.34**	**£ 1,013.62**	
Items challenged					