

9358



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

**Case Reference** : MAN/00BW/LSC/2012/0114

**Property** : 14 Prospect House, Green Lane, Standish,  
Wigan, WN6 0TU

**Applicant** : Frank Cunliffe

**Respondent** : Theowal Ltd.  
**Represented by** : OM Property Management Ltd.

**Type of Application** : Landlord and Tenant Act 1985, section 27A  
Application to determine service charges

**Tribunal** : Habib Aziz LLB (Hons), MBA (Tribunal Judge)  
I James MRICS

**Date of Decision** : 16 August 2013

---

**DECISION**

---

© CROWN COPYRIGHT 2013

## **Decision**

1. The service charge amounts payable for the lift maintenance of £443.31 in 2007 and the electricity charges for 2008 were reasonably incurred and are payable by the Applicant.

## **The Background**

2. By an application dated 13th of August 2012, the Applicant applied to the Leasehold Valuation Tribunal for the determination of liability to pay and reasonableness of service charges for the years 2007, 2008, and 2009. The application was made pursuant to section 27A and section 19 of the Landlord and Tenant Act 1985.
3. On 01 July 2013 the functions of Leasehold Valuation Tribunals transferred to the First-tier Tribunal (Property Chamber) ("the Tribunal") and so this matter now falls to be determined by the Tribunal.
4. According to the lease supplied with the application, the Applicant is a joint owner of a two bedroomed property at 14 Prospect House, Green Lane, Standish, Wigan WN6 0TU.

## **The Property**

5. The Tribunal inspected the property on 16th August 2013. The Applicant made his presence known, but did not stay for the whole of the inspection. The Tribunal understands from the letter sent the day before the hearing that the Applicant was not able to attend due to ill health. The Tribunal did indicate to the Applicant that he was able to observe the inspection should he wish to do so. The Respondent was represented by Misbah Khan and Joanna Medley.
6. The subject property, Prospect House, is a development comprising of 17 self-contained flats. It was a development built around 9 years ago. The Tribunal found that the development was well kept. It is located in a nice position in a desirable area. Internally, there is lift access to the upper floors and the communal areas include a stairwell and landings on each floor.

## **The Hearing**

7. The matter was heard at the Tribunal's Office, at 5 New York Street, Manchester. The Applicant did not attend the hearing. The Tribunal had received a letter from his daughter, Gillian Rimmer advising the Tribunal that he would be unable to attend. The Tribunal clerk had contacted Mr Cunliffe before the hearing to ascertain whether or not he wished for it to be rearranged. He confirmed that he did not, and the hearing went ahead. Misbah Khan (who describes herself in correspondence as a "Legal Consultant") and Joanna Medley (Property Manager) appeared for the Respondent.

## **The Lease**

8. The Tribunal was provided with a copy of the lease made between the Miller Group Limited and Frank Cunliffe and Joyce Cunliffe dated 31st of January 2005. It is not necessary to set out in any great detail, all the provisions of the lease as they relate to the service charge as the dispute is limited to two issues, the lift repair (invoice dated 19 December 2007) and the electricity charges for 2008.
9. Under the terms of the lease, the Applicant agrees at clause 3.2 to pay in advance the service charge to the company by 2 equal instalments. The service charge is defined as a sum equal to the aggregate of the proportion set out in paragraph 12 of the particulars (or such other proportion as may be determined pursuant to part 1 of the Fourth schedule) of the aggregate annual maintenance provision for the whole of the block for each maintenance. The Third schedule sets out the lessees obligations. The copy of the lease provided does not include the whole the Third Schedule but no issue has been raised to question whether the Applicant has to pay these charges. The issue is more whether or not they are reasonably incurred and as a consequence payable.
10. The Fifth Schedule lists the purposes for which the service charge is to be applied. Electricity charge are covered at paragraph 1 (b) which states
11. ... To keep the common parts aforesaid suitably furnished lighted cleaned and supplied with electricity.
12. It also makes specific reference to lift maintenance and insurance at paragraph 9. Paragraph 9 states
13. ...to arrange for the lift to be insured and inspected as to its safe operation twice per year (or more frequently as a the law may from time to time require) and to maintain and keep in repair (and renew when necessary) the lift together with the emergency telephone in the lift and the electricity supply thereto

## **The Law**

14. Section 27A of the Landlord and Tenant Act 1985 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation 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.”

15. 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...”

16. 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.

### **Lift Issue**

17. The Applicant in his application asked “should the residents of prospect house have to pay for repairs to lift when the damage was caused by Wigan Council?” In his letter dated 8 July 2013 to the Tribunal, he stated in the final paragraph

that the only point of issue he has with the management company is the money spent on the repairs to the lift in 2007. The Tribunal was therefore invited by the Respondent to focus on this issue.

18. The Applicant's case (summarised at page 141 by the ombudsman service) is that following repairs to the lift in the 2007, he was levied with a charge of 379.43, which he paid on 7 September 2008. He has contested the charge over a period of time on the basis of that the damage to the lift was caused by United Utilities who were carrying out works in the road outside the premises. The water flowed into the lift shaft and caused damage to the lift. The repair costs were split equally between all the residents but this should not have been the case, according to the Applicant. The Applicant believes that the management company should have made a claim on the building insurance or taken action against United Utilities.
19. There is a copy of the invoice in the bundle of papers. This is at page 100 an invoice for the total sum of £443.31. The Respondent's case is that the Applicant was charged a proportion of this invoice, which totalled the sum of £31.79. This sum of £31.79 was refunded to the Applicant as a gesture of goodwill after he complained. The Applicant has never been charged the sum of £379.43 as his share of the lift invoice. The £379.43 charge was a balancing charge demanded from him in respect of the year ending in 2008. The Respondent claims they are able to do this pursuant to lease. Joanna Medley could not say why they had not claimed against United Utilities as she joined the company after the charges were incurred. No claim was made on the buildings insurance on the basis that the figure of £443.31 would be within the excess specified by any policy.
20. The question for the Tribunal was to determine whether or not this figure was reasonable and payable. The Tribunal determined that the lease does allow for its recovery and the charge of £31.79 was reasonably incurred and is payable the Applicant. The overall repair bill was small and was in all likelihood within the excess charged by the insurance company. The Tribunal noted that whilst it has made this determination, the Respondent had as a gesture of goodwill refunded this sum.

### **Electricity Charges**

21. The Respondent informed the Tribunal that the total sum of £5,754.92 was initially charged for electricity in 2008. This was based on an estimate. When the actual meter readings were taken, the electricity company refunded £4426.43 back to the management company. The management company as a result credited the Applicant the sum of £317.37. This represented the Applicant's proportion of the charges. The Tribunal found that the bill appears reasonable to the cost of providing electricity to the development and noted that the scheme credited the Applicant. The additional electricity costs of drying out the lift after water had penetrated into it are difficult to establish. In the view of the Tribunal, these were likely to be small and may have involved drying the lift out over a period of days, as opposed to months. The Tribunal therefore finds that the electricity charges in 2008 were reasonably incurred and are payable by the Applicant.

### **Service Charge for 2008 and 2009**

22. The Tribunal was asked as part of the application to look at the years 2008 and 2009. It received no submissions from either party regarding 2008 and 2009 save for those mentioned above.
23. The Tribunal heard no evidence, therefore, to suggest that the charges were not reasonably incurred. In the absence of any challenge and having regard to the figures specified in the accounts, the Tribunal noted that the overall costs did not appear to be unreasonable. However, the Tribunal did not engage in any detailed analysis of these accounts.

### **Costs**

24. There is a submission on costs listed at page 119 -121 of the bundle. However, the Respondent confirmed at the hearing that they would not be asking for costs. Accordingly, no order has been made in relation to costs.