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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/00MC/LSC/2014/0087**
Property	:	**Flat 5, 16 Goldsmid Road Reading RG1 7JZ**
Applicant	:	**James Knight**
Representative	:	**(in person)**
Respondent	:	**Crabtree Property Management**
Representative	:	**James Naylor Crabtree Law**
Type of Application	:	**Determination of liability to pay service charge (s27A Landlord and Tenant Act 1985)**
Tribunal Members	:	**Francis Davey (judge) Mr Neil Maloney FRICS (valuer) Mr David Brown FRICS**
Date and venue of Hearing	:	**21 November 2014 Reading Magistrates' Court**
Date of Decision	:	**26 November 2014**

DECISION

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1. The tribunal determines that, as advance service charges for the period 1st June 2014 to 31st May 2015, the following are payable:

    a) £225 for management fees, being a £200 annual fee and £25 set up fee;

    b) £20 for cleaning;

    c) nothing for communal electricity;

    d) £130 reduced by the cost of the electrical inspection for the health & safety audit;

    e) £138.60 for insurance;

    f) £120 for repairs and maintenance;

    g) nothing to be paid into the reserve fund.

2. The tribunal orders, pursuant to s20C, that all costs incurred by the landlord in connection with these 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 applicant.

3. The respondent is ordered to reimburse the fees paid by the applicant to the tribunal in connection with these proceedings.

REASONS

Unless otherwise stated, all references to section numbers are to the Landlord and Tenant Act 1985

The Application

4. The application concerns 16 Goldsmid Road, Reading RG1 7JZ ("the property"), which is a purpose-built block of 5 units constructed in 1998. The applicant is lessee of Flat 5, a 2-bedroom maisonette.

5. In his application he challenges his service charge bill for the year 2014, naming Crabtree Property Management ("Crabtree") the freeholder's managing agent – as respondent.

6. In particular, the applicant challenges service charges demanded in advance for the period 1 June 2014 to 31 May 2015. The challenge falls under 7 headings:

    a) cleaning;

b) communal electricity;

c) health & safety audit (consisting of asbestos, fire safety and electrical inspections);

d) insurance;

e) repairs and maintenance; and

f) contributions to the reserve fund.

g) management fee

Inspection

7. As well as the tribunal, the inspection was attended by the applicant and Mrs Louise Wilson, an employee of Crabtree,

8. The tribunal inspected the property. It has a very modest front garden area, with vehicle access through and beneath the centre of the building to a rear car park, through which access appears to be provided to car parks belonging to properties located on the Oxford Road.

9. There were three entrances: one appeared to lead into a small lobby, with one overhead light, providing access to the front doors of flats 1 and 2. The second gave access to a carpeted staircase leading up to a small landing, with two wall lights, off which led the front doors of flats 3 and 4. Flat 5 itself had a separate entrance with no common parts.

10. Mrs Wilson had keys only for the entrance leading to flats 3 and 4, the tribunal was therefore able only to view the lobby for flats 1 and 2 through the half glazed front door.

11. The two entrances to the separate common parts areas have small door canopies/open porches. The parties pointed out that the undercloaking at the edge off the roofing of each canopy appeared to be an asbestos sheet.

The Lease

12. The payability of service charges is dealt with in clause 4(ii) of the lease which, so far as is relevant, reads:

"4 The Lessee hereby covenants ...

(a) To contribute and pay to the Lessor a one-fifth part of the costs expenses outgoings and matters mentioned in the Fifth Schedule.

(b) The contribution under paragraph (a) of this clause for each year shall be estimated by the Lessor (whose decision shall be final) as soon as practicable after the beginning of each year of the term and the

Lessee shall pay the estimated contributions in advance in one instalment on the 1st day of June in every year of the term. ...

(c) As soon as reasonably may be after the end of the year ending the 31st May 1999 and each succeeding year when the actual amount of the said costs expenses outgoing ands matters has been ascertained the Lessee (on being supplied with a [sufficient][1] statement of account) shall forthwith pay the balance due to the Lessor or be credited in the Lessor's books with any amount overpaid."

Law

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

"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."

14. There is no requirement that the landlord obtain the lowest market price (*Forcelux v Sweetman* [2001] 2 EGLR 173), although the charge must fall within the range of reasonable responses available to the landlord (*Regent Management v Jones* [2011] UKUT 369 (LC)).

15. It is irrelevant whether or not the tenant will benefit from the works, so long as the tenant is obliged to pay for them under the lease (*Billson v Tristrem* [2000] L&TR 220).

Preparation of the Service Charge Demand

16. In her witness statement, Mrs Wilson said that Crabtree took over management of the property in December 2013.

17. In oral evidence she admitted that only one inspection of the property had been carried out by Crabtree but not until, she thought, 20 October 2014. Her witness statement exhibited a report by the field inspector Ray Grover, dated 20 October 2014, which appeared to

[1] This word is barely legible and has been reconstructed by the tribunal.

confirm her recollection. Significantly the inspection occurred after the service charge demand had been sent out.

18. Mrs Wilson said that they had only carried out the inspection when they had received keys to the property. A letter, dated 5 August 2014, from Crabtree to the applicant concludes by saying:

"We require keys to access the internal common parts of the property, we politely request that you either send us the key in order that we make copies and return to you or you arrange a copy to be made then sent to us at Head Office. Should you make a copy of the key please send us the receipt so that we can reimburse you the cost of doing so."

indicating that leaseholders (including the applicant, who would not have a key to any of the common parts) were asked for keys only after the budget had been prepared.

19. The tribunal suggested to Mrs Wilson that responsibility for keys to the common parts was the freeholder's not the leaseholders' but she did not appear to consider that contacting the freeholder and asking them for keys to the common parts was something that should have been attempted. To her knowledge no-one at Crabtree had requested keys from the freeholder.

20. Mrs Wilson also said that Crabtree had keys for only one of the communal front doors. She was able to admit us to the communal area for flats 3 and 4 with the keys in her possession. By contrast, the inspection report of Ray Grover says "Have been given only one key for this site, this fits the door to flats 1&2 but not for 3&,4 unable to gain access."

21. She was asked on what basis she had prepared the estimates for service charge expenditure for the year 2014/2015. She said that she had studied the lease, but otherwise her estimates had been based on her "professional experience" as a property manager. This, she said, amounted to some 5 years managing roughly 60 properties of various sizes. She had also obtained IRPM part 1 and part 2 qualifications.

22. She said that if provision was made for an item that turned out to be unnecessary, the charge would be "reimbursed" to lessees (presumably by giving credit against the following year's service charges in accordance with the lease).

23. In the tribunal's view this is unsatisfactory. In order for estimated service charges to be reasonable, the landlord (or its agent) must have based that estimate on the actual condition of the property and the level of expenditure that is actually anticipated for the year. The tribunal does not think it was reasonable to estimate future expenditure based on "experience" alone even if supplemented by a reading of the lease. A managing agent acting reasonably would carry out at least a preliminary inspection of the property to satisfy themselves as to what needed doing.

Apportionment

24. A discrete issue that arises at several points of the applicant's written submissions is the question of apportionment. His view is that he should only be charged for those items from which he benefits. He argues that since flat 5 does not connect to any common parts then any work done on the common parts, such as their cleaning or repair, should not be paid by him.

25. The applicant accepts that the lease provides for him to pay one fifth of the total service charge expenditure, regardless of its nature. He said that before his purchase of flat 5 the previous landlord had given him copies of service charge bills which showed that only insurance and gardening were charged to the owner of flat 5.

26. He said that he presumed that all the leases were drafted in the same way and that the landlord was distributing the service charge costs fairly despite the strict drafting of the leases and on that understanding he bought flat 5. He suggested that the new freeholder should be obliged to follow the same practice.

27. The respondent said that there was no legal basis on which their predecessor in title's conduct could bind the new freeholder. In particular there was no evidence that anything had been done that could raise an estoppel in the applicant's favour.

28. The tribunal agrees with the respondent. The tribunal does not have a power to consider the reasonableness of apportionment where a lease provides for fixed fractions of the service charge expenditure to be paid by a leaseholder (see *Billson v Tristrem* and subsequent cases).

29. At the very least, there would need to be very clear evidence of a representation by the landlord that the applicant would not have to pay for items that would otherwise be payable under the lease, in order for an estoppel to be raised in the applicant's favour. The evidence presented fell far short of that. Accordingly, the applicant will have to pay one fifth of the total bill regardless of whether he benefits directly from the relevant expenditure.

Cleaning

30. Mrs Wilson said that her thinking behind a total cleaning budget of £720 was that the internal common parts would probably need an initial clean and the external common parts some attention. She admitted that this estimate was made without having seen the common parts and with no knowledge of their condition.

31. In the tribunal's view, such an estimate made without the benefit of any inspection is unlikely to be reasonable.

32. In the tribunal's view, based on the condition of the property at the inspection, it would be reasonable to carry out a one-off clean in the

first year and perhaps 2 or 3 visits to the property to tidy the external common parts, in particular for sweeping and refuse removal.

33. Using its own expert knowledge of the area, the tribunal would estimate that such cleaning work could cost no more than £100 of which the applicant would be required to pay £20.

Communal electricity

34. The applicant complains that there is no communal electricity. The three lights in the common parts are served from tenants' own electricity supplies.

35. Mrs Wilson admitted that no-one had asked the landlord whether it had paid for any electricity in the past or whether it had any knowledge of communal electricity.

36. The respondent accepted that all this was so, but attempted to defend a charge for communal electricity on two grounds. First, that if there were no communal electricity then the sum would be refunded to the lessees and secondly that there might be a need to install equipment, such as a fire alarm, which would draw electricity.

37. In the tribunal's view this is a hopeless response. A landlord cannot defend a charge for expenditure it knows it will not incur on the grounds that it will return the sum to the lessee. It would not be reasonable to charge the sum in the first place. An entirely speculative possibility that the situation might change with the installation of, e.g, a fire alarm without any concrete plan to do so (and without proving firstly the ability to pass such a charge onto Lessees through the service charge mechanism), cannot save such a charge.

38. Accordingly the tribunal finds that this sum is not payable.

Health & Safety audit

39. The applicant did not object to the fire safety inspection.

40. For the asbestos, he did not think that a house constructed in 1998 would need an asbestos inspection, because by that date it could be assumed that it would not contain asbestos.

41. He also objected to the fact that the inspector had identified possible asbestos but had not tested it to determine whether it was in fact asbestos. He was concerned that the respondent's plan was to carry out expensive monitoring annually when the one-off cost of testing would be more efficient.

42. Mrs Wilson said that the annual monitoring would simply form a part of her annual inspection of the property and would not add any material cost to the service charge bill in subsequent years provided

there were no further concerns, for example damage to the suspected asbestos.

43. In the tribunal's view an initial asbestos inspection was reasonable as the HSE guidance confirms that asbestos can be found in buildings constructed before 2000 and was required in this case under the Control of Asbestos Regulations 2012 and the approved Code of Practice.

44. Where asbestos was identified (or in accordance with the regulatory requirements must be presumed to be an asbestos containing material) a landlord could then reasonably choose to manage risk either by further testing or by annual monitoring as proposed by Mrs Wilson. The sum allowed for asbestos inspection was therefore payable.

45. For the electrical inspection, the applicant said that the inspector had only been able to access the lobby outside flats 1 & 2 and had therefore done half a job. The respondent showed us an electrical installation condition report which supported that conclusion.

46. The applicant said that it would have been more cost-effective to have made sure the inspector had access to all the electrical equipment, which might include having access to the flats from which lights in the common parts were powered. The failure to do that made the expenditure unreasonable.

47. In the tribunal's view the conduct of the actual inspection is irrelevant to its determination of what is reasonable for a landlord to demand in advance as provision for estimated expenditure on an electrical inspection. The tribunal is not concerned with the actual work. If the inspection were not carried out to a reasonable standard or unreasonable costs were incurred, those would have to be subject to a challenged under s27A for the following year's service charge bill.

48. However, the tribunal does not consider that it is reasonable to demand service charges for a proposed electrical inspection if the landlord has no evidence that it is responsible for any communal electricity supply. Not only did Crabtree not make any enquiries before allowing for the sum, the absence of a communal supply is presumably within the landlord's (if not Crabtree's) knowledge.

49. In the tribunal's view this part of the charge for the health and safety inspections should be disallowed. No breakdown of the health and safety provision was provided at the hearing but the exact sum is known to Crabtree who can make proper allowance for it.

Insurance

50. The applicant admitted that he had misunderstood the sum demanded for insurance, thinking that the figure quoted was exclusive rather

than inclusive of tax. His main concern was whether the landlord received any commission for the insurance.

51. The respondent said that the insurance was obtained properly through an insurance broker, but that it was negotiated directly by the landlord. Crabtree had no involvement with the insurance. Neither Mrs Wilson nor Mr Naylor knew whether or not the landlord received a commission.

52. In the absence of any evidence that there was anything wrong with the insurance premium and given the small increase (some £12) in the sum from the previous year, the tribunal finds the sum demanded to be reasonable.

Repairs and maintenance

53. For the reasons explained under electrical repair, the tribunal does not need to consider whether Crabtree's choice of contractor, or the prices that they charge, is reasonable. All that the tribunal is required to do is to consider whether the sums allowed are reasonable for the anticipated work.

54. During the hearing there was some dispute between the parties about the nature and quality of the contractors selected by Crabtree. In particular, the applicant complained that it would have been cheaper to instruct local traders rather than ones based further away and in particular in London. These are matters that the tribunal does not need to consider.

55. Mrs Wilson said that the only work she was aware of that needed to be done in the 2014-2015 year was decoration of the common parts and in particular painting. She said that "various leaseholders" had drawn Crabtree's attention to the need for decoration, in particular the leaseholder of flat 3.

56. Again, the tribunal do not consider that it is reasonable to allow a sum based on "experience" without any reference to the condition of the actual property or any inspection of it. Applying its expert knowledge of the cost of such work it would allow £600 as a reasonable sum to demand in advance for redecoration of the common parts of which the applicant would be required to pay £120.

Contributions to the reserve fund

57. In paragraph 4 of the fifth schedule to the lease the provision for payments to a reserve fund are:

58. "Such sum (to be fixed annually) shall be estimated by the Lessor (whose decision shall be final) to provide a reserve fund for items or expenditure referred to in this Schedule to be or expected to be incurred at any time during the period of three years commencing with the date upon which the estimate is made."

59. Mrs Wilson explained that the sums demanded were for the employment of a surveyor who could "specify the major works". No specific items of work were contemplated.

60. In the tribunal's view a sum is only properly recoverable under this paragraph if the Lessor has in fact turned its mind to proposed expenditure during the period of three years beginning with the date of the demand. Expenditure cannot be "expected" if there are no plans, however tentative, to carry out work.

61. While the employment of a surveyor to specify major works could be covered by paragraph 4, that would only apply if there were some basis for anticipating that major works might be needed.

62. Since Crabtree have arrived at the sum of £3,000 for the reserve fund payments in the year 2014-2015 without having carried out any inspection and with no knowledge of the condition of the property, they cannot have turned their minds properly to what major works might be expected. In consequence it is unreasonable for the landlord to demand any sum for payment into the reserve fund.

63. Therefore the tribunal disallow this item of expenditure.

64. In his written application, the applicant had also objected to a reserve fund on the grounds that if the fund were held by Crabtree and Crabtree were to become insolvent, Crabtree's bank could exercise its right of set-off to take any of the reserve fund in satisfaction of any debts owed by Crabtree to it.

65. Service charges are held on a statutory trust (s42 of the Landlord and Tenant Act 1987). As such, Crabtree would be required by statute, as well as good practice, to designate any reserve fund account as a trust account against which the bank would not be able to exercise its right of set-off. For RICS and ARMA members (who are required to abide by the approved Code of Practice, there should be available for inspection a letter from the bank concerned confirming that they have no right to "set off".

66. This point was explored in the hearing and the applicant appears to have conceded it.

Management fee

67. The applicant complained that the standard of management was poor and that the fee for management was rather high. He submitted emails from Chaneys Chartered Surveyors and Cleaver Property Management both suggesting that their fees would be £150 + VAT per flat or "somewhere in the region of £150 + VAT per flat".

68. The respondent challenged whether Chaneys were qualified to carry out property management. Mr Naylor described the service offered by

Crabtree as being "Rolls Royce" and pointed to a list of services that he characterised as being evidence of this quality of service.

69. The tribunal does not find the applicant's comparables particularly helpful. In particular, they do not contain any explanation of what services would be offered by the proposed managing agents. Had the applicant obtained a more detailed breakdown of the service offered, his comparables might have been of more use.

70. On the other hand, the tribunal does not see anything in the list of services provided by Crabtree that would set it apart. As far as the tribunal can see Crabtree offers just those things that would be expected of any competent managing agent.

71. Looking at the actual service provided by Crabtree it can only be described as poor. In the first 11 months of acting as managing agents, one inspection has been carried out. No effort appears to have been made to obtain keys to the common parts from the freeholder, so that, made even at the date of the tribunal's inspection to gain access to half of the common parts which remain inaccessible.

72. The practice of estimating expenditure without any basis for that estimate is, in the tribunal's view, poor management practice. Good practice would be to inspect the property; decide what works are needed and then produce a budget for at least the next 3 years showing cyclical and major works. Had something in that nature been presented to the tribunal, allowance might have been made for payments into a reserve fund.

73. The property itself is relatively simple to manage. There is about 3 square meters of common parts plus a staircase, a small car park area and some low-maintenance garden at the front. There is simply not a lot to do.

74. Furthermore, the managing agent is not responsible for arranging insurance, something that is often the responsibility of a managing agent.

75. In the tribunal's view it would be hard to justify a figure of more than £200 per flat per annum for on-going management of a property of this nature. It might be possible to obtain a cheaper service, as the applicant suggests, but the landlord is not required to choose the cheapest service. Nevertheless a reasonable figure could not exceed £200 per flat per annum.

76. In the tribunal's view, modern management practice does allow for the charging of a setup fee in the first year. While the practice is not universal, it is sufficiently accepted as to be reasonable. Such a fee might cover matters such as an initial inspection of the property and the initial planning that would be needed to set budgets for future years – of course none of these things were properly done by Crabtree.

77. In the tribunal's view, the largest fee that could reasonably be charged would be in the region of £25 per flat for the first year.

78. Accordingly, the tribunal allows a figure of £225 for the applicant's contribution to management.

79. In his written submissions the applicant had also suggested that consultation under s20 of the Landlord and Tenant Act 1985 might have been required before the landlord entered into its contract with Crabtree.

80. In the hearing the applicant withdrew this point. Mr Naylor assured the tribunal that the contract with Crabtree was not for more than one year and therefore fell outside the provisions of s20, so the applicant's concession appears to be rightly made.

Section 20C and repayment of fees

81. The applicant has asked for an order under s20C and repayment of his fees by the respondent.

82. The respondent criticised the applicant's conduct. In particular the issuing of proceedings almost immediately after receiving the service charge bill without having entered into any negotiations with Crabtree.

83. The applicant responded that his right to make an application under s27A was unfettered. There was no rule that required pre-action conduct. In cross-examination he said that he thought that had he contacted Crabtree, nothing would have been achieved.

84. When pressed as to what difference pre-action contact would have made, the respondent indicated that the applicant had conceded a number of points at the hearing, in particular that he had made a mistake on VAT and that no s20 notice was required for the employment of the managing agent.

85. The respondent also asked "who knows what could have happened?", suggesting that there might have been unspecified progress if the applicant had only contacted the respondent first.

86. While he has failed on a number of issues, the applicant has succeeded in reducing his service charge bill by in excess of a thousand pounds. None of the reduced items were conceded by the respondent at the hearing even the charge for communal electricity (for which there was no basis) was defended on the grounds that it could be refunded to the applicant. The application has also given the tribunal an opportunity to warn Crabtree that its practice of picking figures out of the air risks being successfully challenged in tribunal. It is hoped that this finding will lead to better management in future.

87. Taking all of the relevant factors into account, the tribunal concludes that an order under section 20C is appropriate and justified.

Francis Davey