10679

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/12UN/LSC/2014/0115**
Property	:	67.69, 71 & 75 Station Street, Chatteris, Cambs PE16 6EL
Applicants	:	Nicola Bacon, Warren, Bacon, Ben Di-Meo and Dean Ramdharry
Respondents	:	Anita Gwenllian Blundell and Jason Blundell – JKB Management
Representative	:	Jason Blundell
Type of Application	:	For determination of reasonableness and payability of service charges for the years 2009–2014 [LTA 1985, s.27A] For an order that all or any of the costs incurred by the landlord in connection with these proceedings before the tribunal 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 [LTA 1985, s.20C]
Tribunal Members	:	G K Sinclair, M Krisko BSc (Est Man) FRICS and P A Tunley
Date and place of Hearing	:	Thursday 26th March 2015 at The Lamb Hotel, Ely, Cambs
Date of decision	:	7th April 2015

DECISION

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Summary

1. This application concerns a modern, self-contained block of six flats comprising three on the ground floor – each with its own front door to the exterior – and three on the first floor accessed via a common external door, lobby, stairs and landing. Each flat also enjoys the use of a specific parking space.

2. For the reasons which follow the tribunal determines that at present no service charge is payable and, when properly demanded, the sums set out in the Schedule annexed – and only those sums – are payable. The result is that a substantial credit is due to each of the applicant tenants.

3. Although at the hearing Mr Blundell represented both himself as manager and his mother as landlord a firm of solicitors and counsel had earlier been engaged to prepare a statement of case in response to the application, ostensibly at a cost of around £800. Pursuant to section 20C of the Act the tribunal determines that when calculating this and/or a future year's service charge payable by any of the four applicants or their successors in title none of the landlord's or manager's costs in connection with these proceedings shall be regarded as relevant costs. The tribunal also determines under rule 13(2) that the respondents reimburse the £315 tribunal fees paid by the applicants in connection with this application.

4. The tribunal further notes that the managing agent's lack of knowledge of and his non-compliance with the leases and the legal principles applicable to the proper management of residential leasehold premises are such as would have provided grounds for the appointment by the tribunal of a manager for cause under section 24 of the Landlord and Tenant Act 1987 had the tenants applied to the tribunal for such relief under Part 2 of that Act.

Relevant lease provisions

5. The sample lease is dated 24th April 2007 and was made between Anita Gwenllian Blundell as landlord, Nicola Jane Bacon as tenant and Horn Construction Ltd as managers for a term of 125 years from that date, at an initial yearly rent of £30 ("basic rent") and as a further rent the service charged described in clause 3.2 and calculated in the third schedule. That schedule provides that the tenant shall pay by way of final service charge 16.6% of the service costs, with quarterly interim service charge payments based on one quarter of the previous year's total.

6. By paragraph 1 of the third schedule the term "service costs" is defined as being the amount the landlord spends in carrying out all the obligations imposed by the lease, which include the managers' obligations in clause 5 and the fifth schedule.

7. By paragraph 2 the managers are required :
   a. To keep a detailed account of service costs, and
   b. Have a service charge statement prepared for each period ending on each

anniversary during the lease period, which statement is to be certified by a member of the Institute of Chartered Accountants in England and Wales that it is a fair summary of the service costs, and is sufficiently supported by accounts, receipts and other documents which have been produced to him.

8. By clause 6 of the lease the managers are required to maintain a reserve fund in accordance with the sixth schedule, namely £500, and to perform the obligations undertaken by the managers in the lease.

Material statutory provisions

9. The method of calculation and the overall amount payable by tenants for maintenance, repairs, other services and management costs by way of service charge are governed principally by the express terms of the lease, but always subject to the cap imposed by section 19 of the Landlord and Tenant Act 1985, which limits the recoverability of relevant costs :
   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.

10. The amount payable may be determined by the tribunal under section 27A. This is the provision under which this application has been brought. Please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)[1] is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the tribunal under section 27A.

11. By section 21 of the same Act 1985 a tenant may require the landlord in writing to supply him with a written summary of the costs incurred over the previous twelve months. The section sets out the requirements of a summary of costs to be supplied under section 21, and if the relevant costs are payable by the tenants of more than four dwellings the summary must be certified by a "qualified accountant".[2] This expression is defined in section 28 as a person who has the necessary qualification, viz eligibility for appointment as a statutory auditor under Part 42 of the Companies Act 2006, but disqualifying anyone who is an officer, partner or employee of the landlord, or the landlord's managing agent of the property or an employee or partner of such agent. (The independence of the person certifying the service charge statement required by paragraph 2(b) of the third schedule is therefore insisted upon by statute).

12. Two further provisions, concerning demands for payment of service charge, are relevant to this case. First, by section 47 of the Landlord and Tenant Act 1987, where any written demand is given to a tenant of premises for rent or other sums payable under the lease (which expression would include a demand for payment of service charge), the demand must contain the name and address of the

[1] Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

[2] See s.21(6)

landlord.

13. Secondly, since 1st October 2007 section 21B of the 1985 Act provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The content of that summary is prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.[3] The document must contain the prescribed heading and text and must be legible in a typewritten or printed form of at least 10 point.[4]

14. Finally, a tribunal may in its discretion make further orders :
    a. Under section 20C of the 1985 Act, that the whole or part of the landlord's costs incurred in connection with the application be disregarded when calculating any service charge payable by the applicant and any other person named in the application, and
    b. Under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the reimbursement of the fees paid by any party.

Inspection, hearing and evidence

15. The tribunal inspected the premises at 10:00 on the morning of the hearing, in the presence of Ms Bacon and Mr Di-Meo. Neither the landlord nor her manager chose to attend. The premises are situated on the northern side and near the western end of Station Street and comprise a new-build block of six flats, with three on the ground floor and three on the first floor. The impression given is that they were built in part of the car park of a former public house which has itself been converted into flats. To the north of the premises, beyond two parking spaces and in the north western corner of the car park, are a pair of semi-detached bungalows of contemporaneous construction but which are in separate ownership.

16. Ms Bacon enjoys a dedicated car parking space immediately next to her flat and seemingly within her demise (it appears edged in red on the plan, although the first schedule merely describes it as a right to use a dedicated space). The other flats also enjoy dedicated parking spaces along the northern edge of the large communal car park; each having a specific flat number marked on the fence. Only the parking spaces, a small area behind the flats and a small garden in front of Mr Blundell's own ground floor flat number 77 on Station Street fall within the landlord's freehold title. The majority of the large ex-public house car park and the vehicular access to it are in separate ownership.

17. After sheltering briefly from the rain in Ms Bacon's ground floor flat and being provided with colour copies of the freehold title plan (no coloured lease plan could be found) the tribunal inspected the common entrance door to the lobby, stairs and landing leading to the three upstairs flats. Four low-energy lights, a single 13 amp socket and a small wall-mounted storage heater were the only items that might draw upon the electricity supply to the common parts. As seen on the photographs in the hearing bundle, the external door was damaged along its closing edge and the lower half of the upstairs window was off its runners and

[3] SI 2007/1257

[4] *Op cit*, reg 3

could not close at all. The condition of the parking areas, common parts to the rear of the building (and damage to the fence separating the property from the car parks to the rear of some equally modern homes built in Old Station Place to the west), and the garden area in front of 77 Station Street were all noted. The external paintwork was in good order.

18. Mr Jason Blundell attended the hearing, which began at 11:25. In addition to the two applicants attending the inspection Mr Warren Bacon, a third tenant, was also present. The applicants' case was conducted by Mr Di-Meo and Ms Bacon.

19. Before the tribunal was a 142 page bundle. Fortunately the contents page was sufficiently detailed to alert the tribunal to the fact that the last two documents comprised a respondents' offer and the applicants' reply. Offers in settlement should never be included in any hearing bundle and, alerted to their existence, it was possible for the tribunal to avoid looking at them.

20. Although disputed by the respondents' solicitors, the applicants had set out in detail each service charge item that they challenged - although they tended not to set out an alternative figure which they would agree.

21. The principal points made by the applicants were :
    a. That no service charge accounts had ever been provided to them
    b. That, contrary to schedule 3, they had never received any service charge statements or receipts from sums spent by the management company
    c. When they asked for proper accounts they had been told that this would cost those requesting them an additional £300 for the accountant (each)
    d. No summary of tenants' rights and obligations had ever been received with any payment request
    e. The EDF electricity bills addressed to JKB Management are marked 61–77 Station Street when the premises comprise 67–77 (odd numbers only), they are estimated only, and (the tribunal observed) are for a business and not a residential supply
    f. No cleaning, weed-clearance, or spreading of shingle was undertaken by or on behalf of the landlord
    g. Neither the communal door nor the upstairs window were ever repaired, yet the damaged front door to Mr Blundell's own flat (77) had been – with the cost added to the service charge
    h. The section 20 consultation concerning external redecoration was suspect, as a contractor who had tendered and was acceptable to tenants never got the job, with it notionally being given to Jason Blundell's father's business –which then subcontracted it to a local decorator for a lower, cash-in-hand price with no VAT. While the applicants were entirely satisfied with the quality of Mr Graham Duck's work they objected to the fact that they had been charged the full price, giving the Blundell family a secret profit
    i. The management charges were queried, as these were never explained.

22. For the respondents, Mr Blundell sought to argue that the written demands for payment of service charge appearing at pages 32–41 were valid, although it was pointed out to him by the tribunal that they were not accompanied or preceded by a certified statement (as required by the lease), did not contain details of the landlord's name and address (as required by section 47 of the 1987 Act), and were

not accompanied by the required summary of tenant's rights and obligations concerning service charges (as required since October 2007 by regulations). He objected that he had served the required summary, but this was vehemently disputed by the applicants present.

23. Mr Blundell saw nothing wrong in asking his father's business to take on the redecorating contract , sub-contract it to another, and invoice for the same price as the person who had quoted initially. This, he claimed, was because Mr Howes who had quoted then insisted on requiring access for a full 7 days, which tenants had rejected. Again the tenants disputed this account, stating that Mr Howes had told them that after submitting his quote he had never heard anything more about the job. The fact that the job was sub-contracted was not mentioned in the respondents' statement of case.

24. Although some heavily redacted bank statements were produced Mr Blundell admitted that they were not solely for these premises. The intention was to prove that the manager had paid one of Mr Blundell's tenants, Mr Lazslo Eberhardt, for weeding, cleaning and removing rubbish. The applicants commented that the bank statements showed no credits for service charge payments actually made (under protest) by them. When shown photos of weeds he was insistent, to the applicants' consternation, that they were not photos taken of the subject land.

25. Mr Blundell explained the absence of comprehensive documentary evidence as due to paperwork being destroyed as a result of a roof leak at the management company's storage facility, although he later confirmed to the tribunal that his accounts of payments made, etc would be recorded on computer. That had not been damaged.

26. On the subject of insurance Mr Blundell told the tribunal that he always used the same broker, who tested the market, but he had never arranged a revaluation since the premises had been built.

27. Asked about his experience in property management, Mr Blundell admitted that this was merely a sideline to his main occupation as a general builder. He had no previous experience and had tried to learn on the job. (He had been managing these premises for six years). There is no reserve fund, as required by the lease.

28. Finally, Mr Blundell was unable to explain what appeared in paragraph 22 of the statement of case settled by his counsel, viz that the service charge account was £269.48 in debt and therefore each of the applicants owed £76. This arithmetic is faulty.

Discussion and findings

29. The tribunal is not impressed by the level of knowledge and ability displayed by Mr Blundell as a manager of residential leasehold property. In six years he has not complied with the obligations set out in the lease, nor understood the content of a valid demand as required by the law (a point not touched upon at all in the respondents' statement of case). The result is that even if every amount claimed were accurate and reasonable nothing would yet lawfully be payable.

30. **The amounts claimed are not reasonable.** Taking the items as they appear

from page 44, listed by each year in the respondents' statement of case at paragraph 10 onwards, the tribunal makes the following general findings and determines that **only the amounts specified in the Schedule to this decision are payable** in respect of the service charge years 2009–2014, **and only then upon the service by or on behalf of the landlord of a valid demand.**

31. *Insurance* – Although concerned that there appears to have been no attempt to check the accuracy of the reinstatement value of the premises, regularly or at all, the insurance has been handled by an independent agent and no objection has been taken to the amount claimed. In respect of each year this is reasonable.

32. *Electricity* – Although each of the limited number of EDF bills produced refers to the premises as 61–77 Station Street the premises concerned are only 67–77 (and 61 has been split into a number of separate flats). Mr Blundell claimed not to have noticed this, nor to have made any enquiry of EDF. He also failed to note that the bills are for estimated readings only. How these might compare with an actual meter reading was unknown. He also failed to grasp that, although he was running a business, the correct tariff for these premises is a residential tariff – not a more expensive business one. Using its own knowledge and experience, and doing the best it can, the tribunal awards a sum appropriate for a few low energy light bulbs in the common parts and a heater which – due to a damaged window – is usually kept switched off. A flat rate of £100 per year is allowed.

33. *Weeding, cleaning and moving rubbish* – The tribunal notes that each bill is said to have been paid before each handwritten Eberhardt invoice. The tribunal is entirely satisfied, from what was seen on the inspection, that the photographs do show weeds at the back of Ms Bacon's flat and the adjoining one. Despite the documents prepared by Mr Blundell's tenant the tribunal prefers the evidence of the applicants that no-one but themselves has carried out any effective weeding or cleaning, and that rubbish has largely been created by the tenants of 65, one of the bungalows at the rear.

34. *Repairs to fence* – Although there seem to be a number of modest repairs over a number of years these were accepted by the applicants, save that in 2012 the figures are exactly the same in exactly the same categories as in 2011. Repairs for that year are disallowed.

35. *Shingle* – The tribunal prefers the evidence of the applicants on this issue. If any shingle had been deposited regularly on the dedicated parking spaces Mr Di-Meo, a policeman, would have noticed it under the wheels of his car. In any case, most of the car park area is not part of the subject premises. There were no invoices showing the purchase of shingle from a builders' merchant.

36. *Repairing a front door* – Mr Blundell has failed to have the broken and insecure front door and upstairs window in the common parts repaired, leaving them in their current condition for years. By contrast, he has arranged the repair of the door to flat 77 (his own flat) and included it as a service charge item, despite the fact that the front door of each flat is part of the demise. The repair is therefore a tenant responsibility; not one for the service charge account. It is disallowed.

37. *Fitting sign to wall* – This concerns moving the bins. The tribunal regards this as an unnecessary expense and it is disallowed.

38. *Painting and redecoration* – This concerns the claimed cost of £1 800 plus VAT for external painting actually carried out (to a very high standard) for £1 700 by Mr Duck. Mrs Blundell (the landlord), her husband's firm (KJ Blundell Building Contractors) and her son's company (KJB Management Ltd) all share the same address, which is a private residence. The tribunal does not consider that the consultation exercise was carried out properly when the contract was awarded not to the very acceptable party that submitted a tender but to Mr Blundell's father – in order that the work could be sub-contracted as a cash job (confirmed by the bank accounts) to Mr Duck and a secret profit be made. The tribunal has taken account of the evidence of both parties and rejects that of Mr Blundell, to the effect that Mr Howes was not awarded the job because he insisted on windows (including those on the ground floor) being kept open for 7 days. It prefers that of the applicants that Mr Howes submitted a quote and then heard nothing more. Further, as the consultation was defective (also by the time scales involved) the tribunal would be entitled, in granting any dispensation, to impose conditions. Rather than restrict recovery to £250 per unit, or £1 500, the tribunal allows the sum of £1 700 actually paid.

39. *Management costs* – As already indicated, the tribunal considers the standard of management to be completely unacceptable. If Mr Blundell has been learning the job as he goes along then in six years he has learnt nothing of the legal principles involved, or of the importance of complying with the provisions of the lease. He has, though, succeeded in arranging for the buildings to be insured – although little else. He is totally unaware of the approach to fees for standard management tasks adopted by the *Service Charge Residential Management Code* ("the Blue Book") published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State under the terms of section 87 of the Leasehold Reform, Housing & Urban Development Act 1993. Although claiming to charge a daily rate of £150 for work done he is and was unable to justify the £685 per annum – more recently rising to £850 – as a reasonable management fee. As the standard of management has been found wholly inadequate a token £50 is allowed for having arranged the insurance; a task requiring minimal effort beyond one or two e-mails or phone calls with the broker.

40. Further, although the subject of ground rent is not a matter within the tribunal's jurisdiction it is indicative of Mr Blundell's (and the landlord's) total failure to understand the lease that, without seeking to implement or be constrained by the clause 7 rent review procedures, the tenants were merely informed by an invalid demand dated 12th October 2014 that "you have already been told the ground rent is being increased".

41. In all the circumstances the tribunal also makes an order under section 20C of the 1985 Act that the whole of the respondents' costs incurred in connection with this application be disregarded as relevant costs for the purposes of this or any future year's service charge for which any of the applicants or their successors in title may otherwise be liable.

42. By rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber)

Rules 2013 the tribunal requires the respondents also to reimburse the issue and hearing fees paid by the applicants.

Dated 7th April 2015

Graham Sinclair

Graham Sinclair
Tribunal Judge

SCHEDULE

Year	Item	Amount	Claimed	Allowed
2009	Insurance	£336.00		£336.00
	Electricity	£339.00		£100.00
	Weeding	£150.00		£0.00
	Repairs & painting to fence	£100.00		£100.00
	Management costs	£685.00		£50.00
	Cleaning	£70.00		£0.00
	Total for year [5]	*£1,680.00*	*£1,440.00*	***£586.00***
2010	Insurance	£345.00		£345.00
	Electricity	£165.00		£100.00
	Weeding	£165.00		£0.00
	Painting communal area	£400.00		£400.00
	Repairing fence	£70.00		£70.00
	Management charges	£685.00		£50.00
	Total for year	*£1,830.00*	*£1,810.00*	***£965.00***
2011	Insurance	£380.00		£380.00
	Electricity	£170.00		£100.00
	Fence painting	£100.00		£100.00
	Supply & spread shingle	£170.00		£0.00
	Management costs	£685.00		£50.00
	Total for year	*£1,505.00*	*£1,680.00*	***£630.00***
2012	Insurance	£380.00		£380.00
	Electricity	£170.00		£100.00
	Weeding	£130.00		£0.00
	Fence painting	£100.00		£0.00
	Supply & spread shingle	£170.00		£0.00

5 NB. Although the costs allegedly incurred total £1 680 only £1 440 was actually claimed by the landlord in respect of the year 2009

Year	Item	Amount	Claimed	Allowed
2012	Management costs	£685.00		£50.00
	Total for year	*£1,635.00*	*£1,680.00*	***£530.00***
2013	Insurance	£394.40		£394.40
	Electricity	£275.99		£100.00
	Refit lock to entrance door	£35.00		£35.00
	Fitting sign to wall & moving bins	£146.30		£0.00
	Weeding	£40.00		£0.00
	Management costs	£728.31		£50.00
	Total for year	*£1,620.00*	*£1,680.00*	***£579.40***
2014	Insurance	£486.53		£486.53
	Electricity	£129.90		£100.00
	Weeding, cleaning & removing dumped rubbish	£480.00		£0.00
	Repairing a front door	£115.00		£0.00
	Painting and decorating of windows	£2,160.00		£1,700.00
	Management charges	£850.00		£50.00
	Total for year	*£4,221.43*	*£4,221.43*	***£2,336.53***
	Total claimed and allowed	£12,491.43	£12,511.43	**£5,626.93**
	of which each pays 16.6%			**£934.07**