11077

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/21UH/LSC/2014/0054
Property	:	19 Hillside Drive, Horam, East Sussex, TN21 0HL
Applicant	:	Paul Martin
Representative	:	In person
Respondent	:	Wealden District Council
Representative	:	Mr Tempest (Counsel)
Type of Application	:	Liability to pay service charges
Tribunal Member(s)	:	Judge D Dovar Mr A MacKay FRICS Miss J Dalal
Date and venue	:	13th and 14th May 2015, Eastbourne
Date of Decision	:	18th May 2015

DECISION

---

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable for the years ending 2012, 2013 and 2014.

2. The Applicant also seeks an order for the limitation of the landlord's costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985.

3. The Property is one of four residential units in a block which is located within a sheltered housing complex of 54 units. The complex comprises residential units, a communal block (which includes a lounge, hobby room and laundry), communal gardens, and recreational spaces.

4. At a case management hearing convened in November 2014, the Tribunal, with the assistance of the parties, identified issues that had been agreed and those that remain to be determined.

5. The following issues were agreed:

   5.1 For the years in question the Applicant would pay a 1/54th share of the total service charge liability. The Respondents have recalculated the years in question accordingly and in this determination the Applicant's contribution is calculated as 1/54th of the total cost;

   5.2 Save for the issues set out below as to evidence of the actual costs incurred, the parties have agreed all other issues on heating costs;

   5.3 The Applicant accepts that he has not been charged for water and sewerage charges and so they do not fall to be determined;

   5.4 The Applicant accepts that he has not been charged a management fee of 10% and so this issue does not fall to be determined.

6. The following issues remained in dispute:

   6.1. The electricity, heating and hot water costs;

   6.2. The premium for the building insurance;

   6.3. The costs of a scheme manager;

   6.4. Various s20 consultations;

   6.5. The management fees.

Electricity, Heating and hot water

2011/12

7. The parties agreed that the only costs that were levied in this service charge year were electricity costs. Further the Respondent conceded that the electricity costs fell under a qualifying long term agreement which had not been consulted on and accordingly they were limited to recovering £100 for this year.

8. The costs accepted by the Applicant as having been incurred exceeded £100 and therefore the Tribunal determines that for this year end, the total cost for electricity payable by the Applicant is **£100**.

2012/13

9. The sum claimed for this year was a composite of heating and lighting. The Respondents clarified that the total sum claimed was £8,061.

10. At the hearing, the Respondent revised their claim down to a sum of £6,193.93 for electricity/lighting and £1,637 for heating. This included deducting sums for Sheltered Support Element which they accepted should not have been included. The Applicant stated that he accepted those figures and therefore the Tribunal makes a determination in those amounts; i.e. the total sum payable by the Applicant is **£145.02**.

2013/14

11. The total sum claimed for this year was £10,250. Again this was a composite figure for both heating and lighting/electricity. The Respondent had difficulty in establishing that precise figure, not least because some of the invoices had been lost. The figure claimed for electricity was £6,089. The invoices totalled £3,388.25. The Respondent submitted that the Tribunal should do its best to calculate the balance by effectively just under doubling the amount found to arrive at the figure claimed of £6,089. The Applicant, whilst accepting that a further cost should be added, suggested a less generous approach consisting of working out the amounts for the low and high usage periods. He had not undertaken that task and did not provide the Tribunal with a specific figure.

12. Whilst the Respondent no longer had all the invoices, there was nothing to suggest that the costs claimed on the service charge account had not been incurred. Further, given the Applicants acceptance of the previous years electricity expenditure, which was in excess of that claimed for this year, the Tribunal considers that the £6,089.84 claimed by the Respondent should be allowed. The Applicant's contribution being **£112.77**.

13. With regard to the heating/gas figure, the Respondent relied on a number of invoices in the period to establish a figure of £4,538.15 for gas. The Applicant challenged some of the individual bills, claiming that they appeared excessive. Whilst the figures did fluctuate quite significantly, this appeared to be as a result of the fact that some of the bills were based on estimated readings and some on actual readings. Accordingly, in the absence of any other reason why the figures should be excluded, the Tribunal considers that the sums reflected in the invoices are payable. The Applicant's share amounting to **£84.04**.

Building Insurance

14. For the year end 2012, the building insurance premium was £225.49 based on a reinstatement value of £110,800. For the following year it

was £235.47 based on a value of £115,700 and for the last year £240.36 on a value of £118,100.

15. The Applicant believes that the reinstatement value provided for insurance purposes was too high. As a result of these proceedings the Respondent commissioned a revaluation. Until then, they had, for an unknown number of years been adjusting the sum insured by indexation. As a result of the revaluation, the actual sum insured reduced.

16. The Respondent's revised valuation for reinstatement as at January 2015 was £106,802. This was arrived at by calculating the total rebuilding cost of the entire site and then apportioning a sum to the Applicant's property with an uplift to take into account his share of the rebuilding costs of communal parts.

17. The Applicant challenged this figure on a number of grounds. First he considered that the apportionment of his cost of the communal area should have been 1.85% not 1.83%. Given that this is an argument that would increase his service charge liability, the Tribunal does not consider that it is a matter it can or needs to deal with. If the Applicant wishes to pay more than that demanded, he can do so.

18. The next challenge was to the price per square meter that the Applicant considered was applicable to calculating the rebuilding costs. He referred to a prices index produced by the Respondent and was concerned that the figure adopted by the Respondent appeared to be the figure for properties built before 1974. He considered a lower figure was applicable. However, the Applicant failed to appreciate: 1.) that the Respondent had not started with a price per square meter figure, but had worked downwards from a total rebuilding cost for the site and then apportioned it per unit; and 2.) that the index he relied on was for standard properties and not for sheltered housing.

19. The Applicant had taken the latest valuation and had attempted to work out the previous years premiums retrospectively by reducing the sum insured and then adjusting the premium relative to that reduction. Unfor-

tunately the Applicant had misunderstood how the Respondent's new valuation figure had been arrived at with the result that the figures provided to the Tribunal, although generous to the Respondent on the Applicant's case, were, as was accepted by him, not accurate.

20. The Tribunal was concerned that on this issue, the difference between the parties was marginal and the adjustments would have little impact on the actual sum paid by the Applicant. Indeed this is demonstrated by the Applicant's case on the share of communal part insurance which had him paying more. The Respondent suggested a broad brush approach of reducing each years insurance payment by 10% to account for any overvaluation of reinstatement value. They contended that this was roughly in line with the overvaluation and could be reflected in the premium adjustment.

21. Given the lack of accurate figures by the Applicant and the very modest amounts in dispute, the Tribunal considers that the Respondent's approach is a sensible and proportionate one and therefore determines that the following premiums are payable for the years in question:

    21.1. For 2011/12 - **£203**;

    21.2. For 2012/13 - **£212**;

    21.3. For 2013/14 - **£216**.

Scheme Manager Costs

22. The Applicant's concern on this issue was that for the years ending 2013 and 2014 he had been charged for costs which had not been incurred in that the scheme manager had been absent for significant periods.

23. For the year ending 2013, he claimed that there were 89 days of absence not accounted for.

24. The Respondent stated that whilst a manager had retired in April 2012 and had not been replaced until August 2012, there had been temporary staff employed in the role so that there were only 20 days in total that were not covered. Further, the Respondent stated that it believed that the increase in figure on the accounts for this period between actual (£29,642) and estimated (£24,339) was explicable on the basis that temporary staff were more expensive than full time staff and so the use of temporary staff had increased the expenditure.

25. The Tribunal considers that the figures in the accounts can be relied upon and that despite the absence of supporting vouchers, the Tribunal is satisfied that the sum claimed is payable; which after adjustment to allow for a 1/54 apportionment provides a figure of **£548.92** which the Tribunal determines is payable.

26. For the year ending 2014, the actual costs had been considerably less than estimated because of illness. This reduction was being passed on in any event to the Applicant on the yearly reconciliation. The sum payable is therefore 1/54th of the total cost of £7,995, being **£148.06**.

Section 20 Consultation

27. The Applicant had raised in his statement of case a long list of charges that he considered fell within, and fell foul of, the statutory consultation requirements under the Landlord and Tenant Act 1985. At the start of the hearing this list was whittled down to a much smaller number by the Applicant.

28. There was no issue that of the remaining contracts, the Respondent had not complied with the statutory consultation requirements. The Respondent's case being that they were not qualifying long term agreements and so there was no need to consult. They accepted that if the Tribunal found they were such agreements, then they would be limited to recovering £100 per annum per tenant.

29. There were two items that were conceded by the Respondent. The first, as indicated above was for an electricity contract for two years and the Respondent has limited its charges for that year to £100. The second, was in relation to Ocean Cleansing, contract cleaners, and their charges for 2014 were reduced to £100, saving the Applicant £111.61. A credit is therefore due on that years service charge of **£111.61**.

30. The Applicant also sought to challenge the costs of a contract with Northern Housing Consortium. The Applicant accepted that he was neither billed these costs nor paid them. The Tribunal therefore does not have jurisdiction to deal with this issue as it did not relate to a sum that the Applicant was being asked to pay by way of service charge.

31. Another challenge related to ISS Facility Services. However, for the one year in question, the year end 2014, for which a charge had been applied, the cost to the Applicant was only £85. The sanction for non-compliance with the statutory consultation under s20 of the Landlord and Tenant Act 1985 is to limit recovery to £100 per annum per tenant. Accordingly whether or not this was a qualifying long term agreement is not relevant as either way the Respondent would be entitled to recover £85 in this service charge year.

32. Finally, the Applicant challenged the provision of electricity and gas on the basis that it was procured through a local authority consortium, LASER, led by Kent County Council, which entailed contracting for periods in excess of one year. Mr Palmer of the Respondent gave evidence as to the procurement process of energy (gas and electricity) through LASER. He was clear that there was no one overarching agreement with LASER, but a series of tri-partite agreements with the Respondent, LASER and the specific energy supplier. These were for periods of 12 months, 24 months or 36 months. Whilst in the past the Respondent had contracted for 24 months, for the last few years they had only contracted on a 12 months basis. For the first of the years under scrutiny in this application, the Respondent had contracted for electricity under a two year con-

tract, without consultation, and that was the reason that they agreed to cap the charge for electricity at £100.

33. The Applicant contended that the cost of the energy supplies procured through LASER, both electricity and gas, should be compounded and he suspected that there might be more contracts in excess of 12 months.

34. Following the evidence of Mr Palmer, it was clear that the only energy contracts that were in excess of 12 months had already been accounted for by the Respondent. Further, that each supply had its own contract and that even if they were in excess of 12 months, they should be treated individually. Accordingly, the Tribunal does not make any additional adjustment to the service charges payable for the years in question other than those identified by the Respondent.

Management Fees

35. The Applicant challenged these fees on two grounds. Firstly he maintained that they should be capped at 10% of the other service charge costs under the terms of the lease. Secondly, he claimed that they may not be reasonably incurred, but he had not been given sufficient information to put a positive case forward on that basis.

36. The Respondent contended that it had not charged any management fee and the Applicant was unable to identify any such fee. Again he maintained that he had not been given sufficient information by the Respondent to carry out that exercise. The Tribunal went through the service charge headings with the parties and it became apparent that there were no management fees included in the accounts. Whilst one of the headings 'exchequer services' was said to relate to invoicing for service charge works and this might fall within the heading management fees, the actual cost of this was far less than the 10% permitted under the terms of the lease.

37. Accordingly no adjustment is made in relation to management fees as the Tribunal does not consider that any fees were charged and even if

they were, they were below the amount that was permissible under the terms of the lease relied on by the Applicant.

Conclusion

38. The Applicant has made some modest reductions to his service charge account. The Tribunal is concerned that although the Respondent appears to have offered him more than he has ultimately gained in this application, the Applicant declined their offer and because of his approach, the proceedings have become grossly disproportionate to the sums involved. The Tribunal would urge the Applicant to take a more pragmatic approach in future rather than launch wide ranging challenges to the service charges. Two particular matters stand out as demonstrating a potentially unreasonably approach to these proceedings: firstly, the argument over apportionment of the insurance premium for the communal parts in which the Applicant was arguing that he should pay a greater amount; secondly, the large number of section 20 challenges which all failed, save for the two that were conceded by the Respondent prior to the hearing and which were in any event for modest sums.

39. As well as the adjustment to apportion the Applicant share of costs as 1/54th of the total, the adjustments to the service charges accounts are:

    39.1. For the year end 2012:

        39.1.1. The sum for lighting is **£100**;

        39.1.2. The premium for insurance is **£212.50.**

    39.2. For the year end 2013:

        39.2.1. The sum for heating and lighting is **£145.02;**

        39.2.2. The premium for insurance is **£220.50;**

        39.2.3. The scheme manager cost is **£548.92**.

    39.3. For the year end 2014;

39.3.1. The sum for hearing and lighting is **£196.81;**

39.3.2. The premium for insurance is **£218.50;**

39.3.3. The scheme manager cost is **£148.06;**

39.3.4. A credit is due of **£111.61** for cleaning.

40. The parties agreed that there is no ability to recover the costs of these proceedings under the service charge and so there is no need for any section 20C determination.

Judge D Dovar

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.