First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CAM/12UE/LIS/2018/0021**
Property	**:**	**3 Pride Lodge, Lion Yard, High Street, Buckden, PE19 5XA**
Applicant	**:**	**Patricia Monk**
Respondent	**:**	**Rocco Picardi**
Date of application	**:**	**1st September 2018**
Type of Application	**:**	**To determine reasonableness and payability of service charges**
The Tribunal	**:**	**Bruce Edgington (lawyer chair) David Brown FRICS**

DECISION

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1. Of the claim on account of service charges of £2,000.00 made on the 26th June 2017 for the period 25th December 2013 to 24th December 2017, the determination of this Tribunal is that (a) the amounts demanded are not for 'service charges' as most, if not all of the 'estimated' items are for past unidentified service charges and not future ones, (b) in any event, the Respondent has not been able to satisfy the test of reasonableness and (c) the demand does not appear to contain the statutory information which is a prerequisite for all demands for service charges. They are therefore not payable.

2. Of the claim for service charges of £2,034.60 made on the 6th December 2017 for the period 25th December 2013 to 24th December 2017, the determination of this Tribunal is that £160.28 is payable.

3. Of the claim for service charges of £2,077.91 made on the 14th August 2018 for the period 30th September 2013 to 29th September 2017, the determination of this Tribunal is that nothing further is payable.

4. Of the claim for service charges of £530.75 made on the 16th August 2018 for

the period 30th September 2017 to 29th September 2018, the determination of this Tribunal is that £849.45 is payable.

5. No order as to costs save that the Tribunal makes orders pursuant to section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") preventing the Respondent from claiming any amount for representation within these proceedings as part of any future service charge.

Reasons

Introduction

6. The property is said to be a 2 bedroom maisonette in what appears to be a small block of leased residential properties. The Respondent has sent demands for service charges going back over some years and the Applicant considers that some of them are not now payable. She has not challenged the actual amount of the service charges. Despite being ordered to do so, the Respondent has not provided any evidence to justify the amount of service charges allegedly claimed on account.

7. The Tribunal made a directions order on the 21st September 2018 timetabling the case to a determination. As the argument seemed to be based only on legal matters the Tribunal said that it would be content for the case to be determined on the basis of the papers and written representations. The appropriate notice was given with a clear proviso that if a party wanted an oral hearing then one would be arranged. For the same reason, the Tribunal indicated that it would not need to inspect the property. No application has been made for either an inspection or an oral hearing.

8. The directions order stated that 4 copies a single bundle of documents had to be filed by the Applicant with specified documents in it and with numbered pages. She failed to do so. This application is proceeding to a determination because a member of the Tribunal staff has copied the papers filed by both parties to the Tribunal members. The Applicant should note that if any application is made by her in the future, no such courtesy will be extended again.

The Lease

9. The lease is dated 26th June 2013 and is for a term of 125 years from that date with a rising ground rent. The Applicant is the lessee and the landlords are stated to be Rocco Mingalone, Anne Mingalone, Rocco Picardi and Diana Picardi. Why only Rocco Picardi has been named as Respondent is not known but both parties seem to agree that he is either the sole landlord or he represents the landlords. Whatever is the situation, this decision applies to all landlords. The landlord has to keep the structure and common parts in repair and insured and the lessee pays a proportion of the total cost.

10. The lessee covenants in clause 2 to observe obligations set out in the Third Schedule. Paragraph 9 of the Third Schedule sets out the service charge arrangements. They are not very clear but in essence the situation is that the

landlord or its agent has to certify a reasonable estimate of the service charges for the property to be incurred in the year following 29th September. The lessee then has to pay half that figure on the 29th September and the other half on the 25th March in each year.

11. It then seems to be clear that the landlord has to prepare a reconciliation account and, depending on whether more or less than the actual service charges have been paid, there is a credit or debit. Any credit can be put into a reserve fund. There is no dispute about what charges are to be included or what proportion of the total the Applicant has to pay. As far as a management fee is concerned, if the landlord (as in this case) does not employ professional property managers, then he is limited to a fee of 15% of the maintenance charge because of the Fifth Schedule, paragraph 5(c) of the lease.

The Law

12. Sections 18 and 19 of the **Landlord and Tenant Act 1985** ("the 1985 Act") define service charges which are as set out in the lease and are said to be 'relevant costs'. They have to be reasonable. Of relevance to this dispute, subsection 19(2) says "*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*".

13. Section 20B of the 1985 Act says:

> "*(1) If any of the relevant costs to be taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*
> *(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge*".

14. Section 27A of the 1985 Act says that an application can be made to this Tribunal for a determination as to whether a service charge is payable. Section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** permit the Tribunal to make orders preventing a landlord from recovering its costs of representation within Tribunal proceedings as part of any future service charge or administration charge. Subsection 27A(4)(a) of the 1985 Act says that the Tribunal has no jurisdiction if service charges are agreed by the tenant.

The Landlord's case

15. The Applicant acquired her long leasehold interest in 2013 and had not

received any service charge demands until 2017. The reason given for the delay in the provision of service charges accounts is said by the Respondent to be "*challenges to my health in recent years coupled with multiple computer issues*". He also said, in an e-mail dated 25th January 2018, that things had taken "*a little longer than I had hoped*" and that the landlord's portfolio, apart from the building in which the subject property is situated "*consists of all Commercial Properties and I am therefore not very learned when it comes to domestic properties/laws and regulations*".

16. In his submission to the Tribunal dated 10th October 2018, the Respondent sets out certain medical issues, accepts a breach of section 20B of the 1985 Act but then suggests that the Tribunal has power to ignore the 18 month rule. A précis of the case of **Arnold v Britton** [2015] UKSC 36 is supplied. That case simply deals with the rules of interpretation of documents such as leases. It does not suggest that this Tribunal or a landlord can just ignore the 18 month rule. It is binding law which is there to stop just this sort of situation arising i.e. landlords building up a backlog of service charges and then just expecting a tenant to produce a large sum of money covering several years.

Discussion

17. The first demand for service charges was that dated 26th June 2017 which asks for 4 years from 25th December 2013 of 'average estimated costs' for each year of £500 i.e. a total of £2,000. The demand contains no certificate as required by the lease and, indeed, the letter accompanying it says "*I am now working towards being in a position to be able to hand over all the necessary paperwork to our Accountants to enable them to prepare our accounts so we can raise the Individual Service charge Account Invoice/Statements to date*".

18. In other words, it is quite clear from the terms of the letter and the demand that there has been no assessment of the likely service charges for each year. The amounts requested are clearly what some now describe as 'guesstimates'. Further, the copy demand sent in to the Tribunal contains none of the statutory wording required for any demand for service charges setting out the parties' rights and obligations, which makes the demand unenforceable. Finally, the claims are not for charges payable 'before the relevant costs have been incurred' as set out in subsection 19(2) of the 1985 Act.

19. The next letter from the Respondent to the Applicant is dated 6th December 2017 and attaches a 'service charge account/statement' which gives figures of actual service charges from 25th December 2013 to 24th December 2016 and then asks for £500 for the period up to 24th December 2017. Once again, the statutory information is not on the copy demand in the papers which makes it unenforceable. Having said that, it is clear that notice of service charges incurred is being given pursuant to subsection 20B(2) of the 1985 Act which means that the 18 month rule is suspended for service charges actually payable when the letter of the 6th December was received.

20. As to payability, subsection 20B(1) of the 1985 Act applies. This means that only service charges incurred in the previous 18 months are payable i.e. those

incurred after the 8th June 2016, allowing 2 days for the letter of the 6th December 2017 to be delivered.

21. This has been an issue for some time and yet the Respondent has not set out which parts of the service charges were incurred in that 18 month period. The Applicant, in correspondence with the Respondent has taken the rather pragmatic view that 18 months means one complete year plus half the previous year. The Tribunal agrees that this was a sensible way of looking at the problem before the end of the accounting year was changed by the Respondent. The £500 claim for 2017 is somewhat high and does not contain the necessary certificate. However, the actual figures for 2017 have now been produced and any argument on the point becomes irrelevant.

22. The next demand seems to be dated 14th August 2018 and does appear to include the statutory information. However, it changes the accounting period so that it ends on the 29th September 2016 rather than 24th December for all the years in question. It repeats most of the previous demand for 2016 but increases it to £480.80 because of an increase in the cost of lighting the common parts. As the suspension of the 18 month rule only applies back to 8th June 2016, the payable figure for 2016 will have to be reduced.

23. Using a pragmatic approach, the Tribunal determines that one third of the 2016 figure is now payable i.e. going back 4 months from 29th September 2016 which equals £160.28.

24. On the 16th August 2018, a further demand is made for the period up to 29th September 2017 of £449.45. There is no dispute about the basic figures claimed for actual service charges which means that the Tribunal cannot make any determination in respect of that year in accordance with subsection 27A(4)(a) of the 1985 Act as stated above.

25. That demand also claims monies on account of service charges for the period up to 29th September 2018. The Tribunal has jurisdiction to deal with this as the figure has not been agreed. It includes increases of over 60% for management and about 30% for insurance without any explanation or certificate. The service charges to 29th September 2017, excluding management charge, are £355.14 on which 15% management fee would be £53.27 making a total of £408.41. Based on this figure, the Tribunal considers that £400 would be a reasonable payment on account for the period to 29th September 2018, i.e. £200 for each half year.

Conclusions

26. The Tribunal determines that the figures due and payable are:

Period	Amount(£)
Up to 29th September 2016	160.28
Up to 29th September 2017	449.45
29th September 2017 on account	200.00
25th March 2018 on account	200.00
	1,009.73

Costs

27. The Respondent seeks an order preventing the Applicant from claiming their costs of representation as part of a future service charge. The Tribunal must determine whether it would be just and equitable for the landlord not to be able to recover the costs of representation. The Respondent's attention was drawn to this in the directions order mentioned above and he was asked to make any representations. He has chosen not to. In view of the determination made in this case it is deemed just and equitable for such an order to be made as requested.

The Future

28. It is unfortunate that a professional landlord has taken on a residential development without, apparently, understanding the obligations involved. Obviously the Tribunal has sympathy if illness has caused problems, but that does not absolve him or them from statutory responsibilities. There is a copy e-mail in the papers dated 14th October 2018, apparently from the Respondent to the Applicant, from which it seems clear that he does not actually acknowledge any error in ignoring an Act of Parliament. Indeed he almost seems to be blaming the Applicant.

29. Equally, it is clear that the annual service charges being claimed do appear reasonable in amount although the management fees claimed appear to be more than the 15% fixed by the lease. The Tribunal therefore hopes that both parties will reflect on their positions, draw a line under what has happened and resume a more amicable relationship.

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Bruce Edgington
Regional Judge
16th November 2018

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and

decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.