



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

Case reference : **CAM/34UD/LSC/2019/0010**

Property : **Flat 14 Denbeigh House, Hamblin Court,
Rectory Rd, Rushden, Northants NN10 0AT**

Applicant : **Michael Charles**

Respondent : **Maria Montone**

Type of application : **For the determination of the
reasonableness and payability of
service charges (section 27A Landlord and
tenant Act 1985)**

Tribunal members : **Mary Hardman FRICS IRRV(Hons)**

Date of Decision : **27 August 2019**

DECISION

Decision

- 1) The Tribunal determines that the following costs are reasonable and payable by the Respondent for the years in issue in respect of the separate heads of a) service charges the b) CCTV and rewiring costs (major works) - as set out in the particulars of claim by the Applicant.
- 2) This reflects payments made by the Respondent subsequent to the claim and is as at 31 July 2019.

	Service Charge	CCTV and Rewiring – Major works
2016	£144.00	
2017	£1274.00	£221.00
2018		

- 3) The Tribunal determines that the charge for County Court Fees and any costs related to the County Court hearing are a matter for that Court and not the Tribunal.

The case is now transferred back to the County Court for a decision on any outstanding matters and costs

Reasons

Introduction

- 4) The case was transferred to the First-tier Tribunal by Northampton County Court by order of Deputy District Judge Shedden dated 8 April 2019. It was originally a money claim for service charges said to be due for 2016, 2017, and 2018 together with a court application fee of £450. The total claimed was £4441.72
- 5) Directions were issued on 13 May 2019.
- 6) The bundle received from the Applicant on 11 July 2019 did not include the Respondent's statement of case which she stated was sent by recorded delivery on 24 June 2019. Further directions were issued requiring that the Applicant file with the Tribunal the statement of case and supporting documents which had been sent to them by the Respondent, together with a statement giving reasons for their failure to include the documents in the bundle.
- 7) The Applicant filed these document on 17 July 2019 informing the tribunal that this had been an omission on their part.

The Background

1. The property which is the subject of this application is a flat in a purpose-built, block of 22 flats known as Denbeigh House which fronts onto Rectory Rd with a small grassed area to the front and parking to the rear. It is part of a development of purpose built flats known as Hamblin Court and is managed together with two similar blocks known as Hadleigh House and Cranleigh House.
2. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The relevant provisions of the lease are referred to below.
3. The Witness statement by the Applicant refers to the Respondent acquiring the lease of the property in December 2004.

The Lease

4. The Property is held on a 125-year lease from 22 December 1989 which was originally between Hassall Homes (Herts) Ltd (the Lessor) and Mr I W Courtney and Miss C Pretty (the Lessees) at an initial ground rent of £50.
5. The relevant provisions of the Lease were identified as follows:
6. Paragraph 4 and 4(ii) of the lease set out the apportionment of the service charge which is set as a *seventy second part of the total costs expenses and outgoings and matters mentioned in the Fourth Schedule* .
7. Paragraph 5 of the lease sets out the Lessors obligations to tenants which requires the lessor, subject to payment of the service charge to maintain, repair decorate and renew the structure of Hamblin Court, to keep common parts in good condition and to keep clean and lit the common parts
8. The Fourth Schedule to the lease sets out the Costs expenses outgoings to which the Lessee is required to contribute in accordance with Paragraph 4. Those parts of particular relevance to this case are
9.
 1. *The expenses of cleaning maintaining repairing and redecorating and renewing (a) the main structure and in particular the roof chimney stacks gutters and rainwater pipes but not the flat walls of Hamblin Court (b) the gas and water pipes drains and electrical cables(c) the main entrances passages landing and staircases of Hamblin Court leading to the flats in Hamblin Court (d) the car park landscaped areas gardens and all external communal areas boundary walls and fences of Hamblin Court (e) the flat or flats or accommodation whether in the building or not occupied or used by any caretakers.....(f) all other parts of the building not included*

in the foregoing sub-paragraphs (a) to (e) and not included in the demise of any other flat or part of the building

10. *2. The cost of cleaning, carpeting decorating and lighting the passages landings staircases and other parts of Hamblin Court so enjoyed or used by the Lessee.....*
11. *6. To employ at the Lessor’s discretion a firm of Managing Agents to manage the building and discharge all proper fees salaries charges and expenses payable to such agents or other such persons who may be managing the building and Hamblin Court including the cost of computing and collecting the rents in respect of the building and Hamblin Court.*
12. *8. Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Lessor may be considered necessary or advisable for the proper maintenance safety amenity and administration of the building and Hamblin Court.*

The Law

13. The relevant legal provisions are set out in the Appendix to this decision

The issues

14. The relevant issues for the tribunal’s determination is the reasonableness and payability of the allegedly unpaid service charges forming part of the applicant’s claim in the County Court in the total sum of £4441.72

Applicant’s case

15. The Applicant claim as set out in the Claim form lodged at the County Court on 6 June 2018 is

Service charges for 2016	£1164.72
Service charges for 2017	£1274.00
CCTV and rewiring charges	£ 221.00
Service charges for 2018	£1332.00
Court Application fee	£ 450.00

Total claimed £4441.72

16. However, in correspondence immediately prior to this decision it was agreed between the parties that the amounts outstanding as at 31 July 2019 following a series of payments by the Respondent were

Service charges for 2016	£ 144.00
Service charges for 2017	£1274.00
CCTV and rewiring charges	£ 221.00
Service charges for 2018	0.00
Total	<u>£1639.00</u>

There was no agreement on the Court Application fee of £ 450.00, which is not a matter for this tribunal.

17. The Applicant as part of their bundle provided a short witness statement by Jonathan M Cooper, Chartered Surveyor of Michael Charles which addressed some of the many items raised by the Respondent in her defence, some of which are relevant to the current case and some of which are not.
18. He confirmed that the firm has been managing agents of the block since 1998. He stated that the Respondent has a long history of failing to pay the service charge and service charges from 2005 to 2012 has been paid by her mortgagees following notification from them that Mrs Montone was in breach of her lease due to failure to pay the charges. A claim was made to the County Court in 2015 which resulted in an order to pay £70 a month to clear arrears. However, only sporadic and partial payments above this amount had been made and the total balance outstanding was therefore not being reduced and they had no option to take legal action to require that the full balance be cleared without delay.
19. Mr Cooper states that Mrs Montone did not raise any dispute on service charges prior to the second court claim on 6th June 2018.
20. Any payments made by Mrs Montone were applied to the outstanding charges from the first claim in 2015 which resulted in little of the 2016, 2017 and 2018 service charges being cleared by the time of the claim.
21. He further states that there had been no complaints from other tenants regarding the CCTV and rewiring and there were no comments received following the section 20 consultation. This item was paid for in part by applying £6000 of the sinking fund to the £16,370.79 cost leaving the remaining £10,370.79 to be divided between the leaseholders in Cranleigh House, Denbeigh House and Hadleigh House.
22. The CCTV was fitted on the advice of Northants Police but is not monitored 24/7 and when incidents happen it is not always possible to identify the people responsible. It was mainly installed as a deterrent and footage can be downloaded if a specific time and date is supplied.
23. As Managing Agents, they have had to arrange for the removal of a number of items left in the bin stores. They said that where the culprits can be identified then the cost is charged back to the leaseholder and a number of copies of letters to leaseholders were included in the bundle together with letters to leaseholders concerning security and any anti-social behaviour of their tenants.

The Respondents case

24. The Respondent provided a defence to the County Court Claim and then expanded on these points as part of the bundle for this case. This is at times somewhat difficult to follow and not all of it is relevant to this case. The Tribunal has read the Respondents statements very carefully but does not intend to list all the points that Mrs Montone has made but rather to distil those that are, or may be, relevant to the case in hand.
25. Mrs Montone is not in the main querying the amount of the individual service charge items but the amount of the charges for 2016,2017 and 2018 that are outstanding. She believes that she has paid £875 towards the 2016 service charge of £1164.72, £621.99 towards the 2017 service charge of £1274.00 and has paid the 2018 service charge of £1322.00 in full.
26. In respect of the CCTV and rewiring she believes that the freeholder should pay. She further states that the locations of the cameras were changed from that originally intended and that there was only one quote for electrical work. She believes that 2 of the 6 cameras are trained on the car park which includes car spaces not occupied by residents of the three blocks of flats.
27. She also questions the need for WiFi to be used with the cameras and that there was only one quote provided for this. She also states that the wires for the WiFi have come down and are across the floor creating a hazard.
28. There is an issue with rubbish being dumped in common parts and she believes that the cost of removal should be charged to those responsible rather than added to the service charge.
29. Costs of repairs to the gates should be claimed on the insurance by the managing agents and not added to the service charge
30. There was an estimated amount of £4500 in the 2016 budget, £5000 in the 2017 budget and £8100 in 2018 budget for Repairs and Maintenance. She says that they are getting higher and higher and she does not believe that any work was done.
31. She does not believe that the Managing Agents are adequately managing the building and effectively are not providing value for money for the management charge.

Decision

The Tribunal proposes to address each of the items raised by the defendant:

Amount of service charge outstanding

32. There has been a recent exchange of correspondence following a request from the Tribunal of both parties for clarification on the issue of how payments were being allocated to service charge years. This appears to have resulted in an agreement between the parties of the outstanding amounts as at 31 July 2019 as set out in the Decision at paragraph 1.

Apportionment of service charge

33. In Paragraph 4(ii) the lease provides for the service charge to be allocated on the basis of '*one seventy second part of the total costs expenses and outgoings and matters*'. This relates to the 72 flats which formed the original development of 5 blocks known as Hamblin Court. However, the service charge is apportioned on the basis of 1/47 of the cost of three of the blocks, Denbeigh House, Hadleigh House and Cranleigh House and 1/80 of the costs of the external common parts, car park and courtyard maintenance (72 flats and 8 shop units).
34. The tribunal wrote to the Applicant on this point and they informed the tribunal that the development had been sold in lots and that Denbeigh House, Hadleigh House and Cranleigh House had been acquired by the current freeholder together with the common parts. This appears to have happened as early as 1998 and the basis of apportionment is clearly stated in the service charge estimates provided in the evidence bundle. The Respondent is understood to have acquired her leasehold interest in 2004.
35. The Respondent did not make any claim on this issue, either originally or subsequent to the explanation from the Applicant and given this and the duration of the arrangement the tribunal considers that the course of conduct means that it is not now open to the applicant to challenge the apportionment of the service charge on this basis..
36. In respect of the correctness of the service charge amounts the accounts for each year are certified by Elsby and Co, Chartered Accountants and then apportioned between the flats in Denbeigh, Hadleigh and Cranleigh House in respect of costs for the blocks and between all units on Hamblin Court in respect of External Common Parts, Car Park and Courtyard management. There is no evidence put forward to suggest that this is incorrect and the Tribunal finds that this apportionment is reasonable.

CCTV and WiFi

37. The narrative provided by Mrs Montone and the invoices for repairs to gates and to locks supplied in the Applicants bundle would indicate that there was an issue with security in this development. The Managing Agents state that it was on the advice of Northamptonshire Police that they installed security cameras. At the same time, they commissioned rewiring of the common parts and updating of the emergency lighting system as required by regulations. As part of the bundle they have supplied a letter sent to Mrs Montone setting out the quote for electrical work and two quotes for CCTV and indicating that they

intended to take the lowest quote for the CCTV. The calculation of the financing of this proposal was included and comments were invited within the following 28 days. This appears to have been part of a S20 consultation process although further evidence of this process was not supplied.

38. The WiFi contract, based on the first two quarter invoices appears to be around £2000 and appears to be below the amount requiring consultation.
39. The tribunal is satisfied that expenditure on CCTV and WiFi is permitted under Fourth Schedule Paragraph 8 of the lease to be recharged to the leaseholders and that it is inevitable that cameras trained on a shared car park may benefit other users of that car park in respect of a deterrent. The tribunal cannot comment on the wires that have come down but would expect any health and safety issue to be addressed promptly by the managing agents.

Rubbish Removal being recharged

40. The Applicant has provided evidence of seeking to charge individual tenants for the items but also of such tenants denying the liability of themselves or their tenants. The tribunal is satisfied that such charges to may be reflected in the service charge under Fourth Schedule paragraph 2, and alternatively under paragraph 8 or 9.

Gate Repairs

41. The Applicant did not provide a response to this point but the Tribunal would not find it reasonable to expect that such small sums – generally a few hundred pounds would form part of an insurance claim – almost certainly being within the excess limits and is content that they form part of the service charge amount

Repairs and Maintenance costs

42. The sums that Mrs Montone quotes in her defence are the estimated amounts in the 2016, 2017 and 2018 service charge budgets for Cranleigh House, Hadleigh House and Denbeigh House. The actual costs in these years as shown in the certified accounts are 2016- £26,842, 2017- £10,099 and 2018- £27,967. Whilst it is not clear from the Applicant's case what these amounts were expended on – a bundle of receipts is supplied but do not reconcile with these sums given, there is no specific challenge to any of these amounts or evidence provided of alternatives and the totals have been signed off in the accounts by the Chartered Accountants. The Tribunal is content to allow these figures.

Managing agents' costs

43. Mrs Montone is highly critical of the Managing agents in respect of their management of the three blocks including what she claims are inability or unwillingness to enforce lease covenants in respect of keeping animals, multi occupancy, illegal and disruptive behaviour of tenants, ignoring complaints and failure to monitor and control expenditure.

45. The Applicant states that they repair faults as soon as possible, that they have written numerous letters to leaseholders concerning rubbish removal security in respect of gates and doors and other general anti-social behaviour within the block. They also indicate that Mrs Montone only raised a dispute on service charges prior to the court claim in June 2018 – and not it is assumed at the time of the previous claim in 2015.
46. In terms of managing agent's fees the amount charged for 2016, appears to be £398.75, for 2017 £421.88 and for 2018 £421.88.
47. In the experience of this Tribunal these fees are at the upper end of the market rate for what is a mixed flat and commercial (shop) development but in the absence of any evidence of alternative quotations and given what appears to be the challenging nature of the management of these properties the Tribunal finds these costs to be reasonable

Costs

50. Whilst the Judge's directions invited an application in respect of reimbursement of fees or under section 20(c) of the Landlord and Tenant Act 1985 and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 no application was made. However in view of the poor arrears history of the Respondent and given the application was largely successful the Tribunal considers that such an order would not be appropriate .

Mary Hardman
Deputy Regional Valuer

29 August 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "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 costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (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 provisions 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.

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate 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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).