



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

Case Reference : **LON/OOBC/LSC/2019/0202**

Property : **Flat 1, 27 Argyle Road, Ilford,
Essex, IG13BH**

Applicant : **Miss A Sovari (“the applicant”)**

Representative :

Respondents : **JEM Management (Ground Rent)
Ltd (“the Respondents”)**

Type of Application : **Determination of liability to pay
and reasonableness of service
charges in the years commencing
1st October 2016, 1st October 2017,
1st October 2018 pursuant to
Landlord and Tenant Act 1985
s27A.**

Tribunal Members : **Jim Shepherd
Michael Mathews FRICS**

Date of Decision : **10 September 2019**

DECISION

Decision

1. The sum of £489.99 is payable representing the insurance charge for 2018-2019. The Applicant may already have paid this sum. The costs incurred by the Respondents in connection with the present proceedings are not to be regarded as

relevant costs to be taken into account in determining the amount of service charge payable by the Applicant.

Reasons

2. The Applicant seeks a determination of liability to pay and reasonableness of service charges sought by the Respondents. Her application is divided into:

a) A challenge against services for past years (1/10/16- 1/1/19).The Respondents are claiming arrears of £1054.68.

b) A challenge against service charges for current or future years (half yearly management fee and service charge fee for 1/1/19 - 30/6/19).

3. She and her husband appeared at the hearing. The Respondents were represented by Declan Page a property consultant and Mr Ankur Arora an employee.

4. The Respondents had purchased the freehold of the premises at auction on 26th March 2019. The premises consist of a building divided into four flats. The Applicant is the only leaseholder in situ. The remaining flats are occupied by absentee landlords and are sublet. The Applicant and her husband moved into the premises in around 2016. They occupy under a 99 year lease with 57 years remaining. Under clause 3 (3) of the lease the Applicant is required:

To pay and contribute on demand a sum or sums equal to one fourth part of the amount which the lessor shall expend in carrying out the lessors obligations under Clause 4 (3) (i) to (iii) hereof.

5. The applicable Lessor's obligations are the following:

...Maintain and keep in good and substantial repair condition and redecoration

(i) the main structure of the building including the foundations and the roof thereof with its gutters and rainwater pipes

(ii) the main entrance hall passages landings and staircases together with the main front and rear doors of the Building used by the lessee in common as hereinafter provided and the boundary fences and walls including the front gates (if any)

(iii) all such gas and water pipes drains and electric cables and wires in under and upon the Building as are enjoyed or used by the Lessee in common with the owners or Lessees of the other flats comprised in the building.

6. During the hearing the Respondents correctly accepted that there was no provision in the lease allowing for advance payment and withdrew their opposition to the Applicant's challenge against the half yearly management fee and half yearly service charge fee for the period 1/1/19 - 30/6/19. The Tribunal accordingly finds that these sums are not payable.

7. There remained the challenge against the service charge arrears for the period 1st October 2016 to 1st January 2019 (£1054.68). The Applicant has been withholding sums which she considered were not lawfully due. There is evidence of correspondence between the Applicant's solicitor and the previous managing agents Grangeview Management Limited in which the payability of management fees was challenged as there was no specific provision in the lease upon which the freeholder could rely. The Applicant told the Tribunal that she did all of the cleaning in the building and she and her husband maintained the communal garden. Accordingly she could not see any basis for the charges being made.

8. When the Respondents bought the freehold they paid off the arrears on behalf of the leaseholders and now seek to reclaim the Applicant's share of the debt. It is of course not a given that the sums they have paid are lawfully due from the Applicant.

9. The Respondents failed to comply with directions given by the Tribunal on 14th June 2019 and only really engaged with the Tribunal when they sent documents in on 3rd September 2019. Apparently the matter had been overlooked by a junior member of staff. The Tribunal was not impressed by this excuse however the Applicant indicated that she had had sufficient time to consider the documents and therefore the Respondents were permitted to take part in the proceedings. In the event the documentation they were able to provide was limited to previous demands without any supporting documentation. Charges included:

- A repeated half yearly management fee of £120
- A Health and safety audit 2017 of £15

- Biannual Fire alarm and emergency lighting tests of £39.15, £37.65 and £37.05
- Out of hours emergency service of £15
- Insurance revaluation in October 2016 of £105
- Add insurance 2017-2018 - £11.38
- End of year balancing charge - £40.50
- Insurance 2018-2019

10. The Applicant challenged specific charges such as the health and safety audits, fire alarm tests etc on the basis that she had never seen anyone from the landlord at the building and she or her husband were always there. The absence of documentary evidence of the sums allegedly spent by the Respondent's predecessor in title was a significant hindrance to the Respondents in proving that sums had been properly incurred. The Applicant had tried to have a meeting with the Respondents in order to go through the documentation they held but this meeting had not taken place.

11. Without any documentary evidence the Tribunal is not willing to find that the sums claimed are payable. There is no provision in the lease for charging a management fee. Before such a fee is recoverable there must be an explicit provision

in the lease *Embassy Court Residents Association Ltd v Lipman* [1984] 2 E.G.L.R 60. In any event it is likely that the management fees were charged as advance payments which are not recoverable under the lease as accepted by the Respondents. In relation to remaining charges the Tribunal accepts the Applicant's evidence that the building has largely been ignored by the Freeholder leaving her and her husband to clean and maintain it. There is simply no evidence that the various checks have actually been carried out. There was also no evidence to support the additional insurance charges.

12. On the demand dated 12th March 2018 there is a charge for insurance for March 2018- March 2019. The Tribunal understood that the Applicant had paid her insurance charges and ground rent charges to date. For the sake of completeness the Tribunal finds that this sum of £489.99 is payable but accepts that the sum may already have been paid.

13. The Respondents indicated that they would not be seeking to recover any of their costs from the service charge. For the sake of completeness however the Tribunal makes an order that that the costs incurred by the Respondents in connection with the present proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the Applicant.

Judge Shepherd