



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

Case Reference : **MAN/00BR/LSC/2019/0028**

Property : **93 Brattice Drive, Pendlebury, Swinton,
M27 8WE**

Applicant : **Joule Point Residents Association
Limited**

Representative : **PDC Law**

Respondent : **Ms Wendy A Lincoln**

Representative : **In person**

Type of Application : **Section 27A Landlord and Tenant Act
1985 – Service charges
Commonhold and Leasehold Reform
Act 2002-Schedule 11, Paragraph 5 –
administration charges**

Tribunal Members : **Judge J. Oliver
Tribunal Member S. Kendall MRICS**

**Date of
Determination** : **21st August 2019**

Date of Decision : **11th September 2019**

DECISION

Determination

1. The Maintenance Expenses for the year 2018, in the sum of £354.29, are reasonable and payable.
2. The Respondent is liable for the administration charges in the sum of £316.
3. The costs claimed in the County Court are assessed at £530.
4. No order is made pursuant to Section 20C of the Landlord & Tenant Act 1985.

Reasons

Introduction

5. This is a matter transferred from Manchester County Court by District Judge Osborne on 3rd April 2019 for the determination of the reasonableness and payability of both service and administration charges relating to 93 Brattice Gardens, Pendlebury (“the Property”) for the year 2018.
6. On 24th May 2019 the Tribunal issued directions to enable it to deal with the issues. In those directions the Tribunal Judge directed the Tribunal Judge dealing with the application and, sitting as a Judge of the County Court, to also exercise County Court jurisdiction on any matters falling outside the Tribunal’s jurisdiction in respect of costs and charges detailed in the particulars of claim.
7. The directions provided for the filing of statements and bundles and further for the parties also to state whether any order was being sought pursuant to Section 20 C of the Landlord and Tenants Act 1985.
8. The parties filed statements and the matter was listed for a determination, without an inspection or hearing, on 21st August 2019.

The Lease

9. The Property is held under an Lease, dated 30th June 2010 and made between the Taylor Wimpey Developments Limited (1) the Applicant (2) and the Respondent (3) for a term of 250 years from 1st January 2006 (“the Lease”).
10. Clause 1.21 of the Lease defines the “Maintenance Expenses” as “*means the moneys actually expended or reserved for periodical expenditure by or on behalf of the Management Company at all times during the Term in carrying out its obligations specified in Schedule Five*”
11. Clause 2.3 provides for the Lessee to pay “*the Lessee’s proportion of the Maintenance Expenses in each case free from all deductions or set-off and payable annually in advance on 1 January in every year the first payment to be made on the date of this Lease and (if necessary) apportioned*”.
12. Schedule Five sets out those expenses and services forming the Maintenance Expenses.
13. Paragraph 4 of Schedule Six further provides the Lessee to pay a proportion of the Maintenance Expenses.
14. Paragraph 3 of Schedule Seven provides for the Lessee to be responsible for all costs (including legal costs), expenses and charges in any

proceedings taken in the contemplation of forfeiture of the Lease pursuant to Sections 146 and 147 of the Law of Property Act 1925 (“1925 Act”).

The Issues

15. The Applicant confirmed it is responsible for the management of the development of which the Property forms part through its management agents, RMG. Until 4th March 2018 it managed both the Block and Estate management. From 5th March 2018 Portland Block Management, a RTM Company, assumed responsibility for the management of the block of which the Property forms part. The Applicant has retained responsibility for the management of the Estate.
16. As a result of the change of management the Applicant issued a final reconciliation account for the Maintenance Expenses for the period 1st January to 4th March 2018, in the sum of £354.29.
17. The Respondent disputed the account and because the issue could not be resolved, the Applicant issued the proceedings now before Manchester County Court.
18. In addition to the disputed amount, other charges have been applied to the amount due, being administration charges and costs. The amount of administration charges total £316.00 and costs claimed are £840.
19. The Respondent disputes all the administration charges claimed.

The Law

20.

(1) Section 27A(1) of the 1985 Act provides:

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.*

21. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

22. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It 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.*

23. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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 provision 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.*

24. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

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

25. Paragraph 1 of Schedule 11 of the 2002 Act contains the definition of an administration charge for the purposes of the Schedule:

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 in applications for such approvals,*
- (b) *for or in connection with the provision of information or documents by or on behalf of the landlord as a person who is party to his lease otherwise than as landlord and 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,*
- (d) *in connection with a breach (or alleged breach) of a covenant or condition in his lease*

(2) 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.*

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

26. Paragraph 5 of Schedule 11 of the 2002 Act provides:

(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*
- (f) *the manner in which it is payable.*

Submissions

27. The Applicant provided the Tribunal with copies of the maintenance demand for 2018 issued on 28th March 2018. There are two issued on the same date and whilst showing the same amount as due, provide different figures as to how the amount has been calculated. In essence the Applicant has credited the Respondent the full year of Maintenance Expenses (£922.08) and then recharged the proportion to 5th March 2018, in the sum of £309.12. There is then a deficit charge for 2017, in the sum of £111.90 and proportionate credit for the reserve account of £90.52 for the period 5th March to 31st December 2018. The statement totals £354.29.
28. The Respondent challenged the sum of £354.29 stating this should be apportioned for the period 1st January to 4th March 2018 in the sum of £178.10. On 23rd January 2019 the Respondent paid £85.98 but the Applicant would then not accept the balance offered due to the dispute regarding the account.
29. The Respondent advised she had queried some of the charges forming part of the Maintenance Expenses but those had not been answered. The queries were:
 - (a) a charge of £834 for roof repairs; she had never seen scaffolding on the block and had requested, but had never been provided with a copy of the invoice. The Tribunal was provided with a copy.
 - (b) a charge of £2122.60 for the Cleaning Contract and General Repairs and Maintenance in the sum of £1486.50. The Respondent believed those should be included in the Caretaking and Security charges of £2212.76.
 - (c) a charge of £393.92 for fire equipment stating the extinguishers had been removed two years previously.
 - (d) The charge for building insurance. On 19th July 2018 the Respondent queried why a charge was being made for insurance of £11016.94, when the insurance premium was £8865. Further, why a charge was being made for “another block”.
30. The Applicant confirmed the roof repairs related to a charge for a leak (£450) and for the replacement of dry verge caps (£384).
31. The Applicant stated the building insurance was charged in accordance with the Lease and comprised two separate freehold insurances covering all the development. This charge was charged equally across the development and not per block.
32. The charge for fire equipment was a charge for the quarterly fire defence contract where equipment is checked and maintained; the charge does not relate to fire extinguishers that were removed two years before for health and safety reasons.
33. The Applicant confirmed the administration charges, in the sum of £316 have been applied as follows:
 - (a) a charge of £34 being one to check the arrears, draft arrears letters, update the system and records.
 - (b) A charge of £80 to pass the file to a debt collection agency. This includes checking the records, contacting the debt collection agency and the review of the matter by a senior member of staff.

- (c) A charge of £192 by the debt collection agency, being a fixed charge. The Applicant considers this to be a cheaper alternative to instructing solicitors.
34. The amounts given by the Applicant total £306, but it is noted the debt collection agency undertook searches at HM Land Registry and the Tribunal has presumed the additional £10 is for this item.

Determination

35. The Tribunal noted the Lease provides for the Respondent to pay the Maintenance Expenses and for those to include the items in dispute, in accordance with Schedule Five of the Lease.
36. In respect of the Respondent's submissions regarding the charge of £354.29, the Tribunal finds her to be mistaken in her belief that sum should have been apportioned in the manner she suggests. The Applicant had sent a statement showing the Maintenance Expenses for 2018 had been charged, but then rebated and apportioned them for the period 1st January 2018 to 4th March 2018. Consequently the amount due to 5th March is £354.29; no further apportionment is appropriate.
37. The Tribunal further considered whether those charges challenged by the Respondent are unreasonable and finds they are not.
38. The charge for roof repairs is reasonable; the absence of scaffolding does not necessarily mean no work has been undertaken.
39. The charges made for Cleaning and General Repairs and Maintenance are not part of the charges for Caretaking and Security; they are separate items and have been charged in accordance with Paragraphs 3 and 4 of Schedule Five.
40. The Tribunal noted the Applicant had provided a copy of the insurance charges for the development for the period 1st December 2017 to 30th November 2018. The Respondent was mistaken in her belief the premium was only £8156.46 since there are two insurance policies for the development. The Tribunal was not provided with a copy of the second premium despite it being provided with an apportionment calculation that included the figure. Consequently on the statement provided to the Respondent, if only one premium demand was disclosed, there is clearly an explanation for any misunderstanding regarding the amount charged. The Tribunal noted the heading on the statement said 75-103(odds) Brattice Drive and the Respondent's block is 93-103. The statement relates to all those properties whose management passed from the Applicant on 5th March and confirms the Maintenance Expenses for each of those properties in the sum of £309.12. The amount for insurance is therefore properly charged.
41. The Tribunal thereafter considered the administration charges. The Tribunal determined the Applicant is entitled to charge these items in accordance with the Paragraph 3 of Schedule Seven.
42. The Tribunal considered the administration charges and did not consider them to be unreasonable. Consequently the Respondent is liable for the administration charges in the sum claimed of £316.
43. The Tribunal thereafter considered the issue of costs and found the amount claimed to be unreasonable. No breakdown was provided as to how the amount had been calculated. The Tribunal noted the Court and

Tribunal documents had been prepared either by a paralegal or trainee solicitor. An appropriate charging rate for such a level of fee earner in Outer London would be £126 per hour. This would suggest work in excess of 5 hours, excluding VAT, an amount considered excessive in relation to the amount claimed. The Tribunal considered a charge for 3.5 hours would be more reasonable. The costs claimed in the County Court proceedings are therefore assessed in the sum of £530 inclusive of VAT.

44. The Tribunal noted the directions of the 24th May 2019 had stated the Respondent must state whether she applied for an order pursuant to Section 20C of the Landlord & Tenant Act 1985. The Respondent did not make any application and, accordingly, no order is made.