



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

Case Reference	: BIR/31UJ/LIS/2019/0036
Property	: 5a & 5b, Timber Street, Leicester, LE18 4QF
Applicants	: Miss Fatema Attarri & Mr Jubinder Grewal
Applicant's Representative	: None
Respondent	: Lisa Property Ltd
Respondent's Representative	: Blue Property Management UK Limited
Type of Application	: Application under Section 27A (and 19) of the Landlord & Tenant Act 1985 for determination of the liability to pay and reasonableness of service charges and for an order under Section 20C and under Schedule 11(5)(a) of the Commonhold and Leasehold Reform Act 2002 for the determination of reasonable administration charges
Tribunal Members	: Mr G S Freckleton FRICS (Chairman) Mrs K Bentley
Date and venue of Hearing	: 10th December 2019 at Leicester Tribunals Centre
Date of Decision	: 17th December 2019

DECISION

BACKGROUND

1. This is an Application originally dated 6th September 2019 for a determination of liability to pay and reasonableness of service charges under Section 27A (and 19) of the Landlord & Tenant Act 1985 (“the Act”). The Application also included an Application for an Order under Section 20C of the Act and an Application under Schedule 11 of the Commonhold and Leasehold Reform Act 2016 for the determination of reasonable administration charges.
2. The Application states that the dispute is in respect of the Service Charges for the year 1st January 2019 – 31st December 2019, 1st January 2020 – 31st December 2020 and ‘other future years’, The Application states that the total amount presently in dispute for the current year is £2,016.80.
3. Although the Tribunal can deal with the current year (1st January 2019 – 31st December 2019) it was confirmed in the Tribunal’s Directions that it could not deal with future years where costs cannot be anticipated. This determination is therefore limited to the budget and charges for the year 1st January 2019 – 31st December 2019. As confirmed by the Tribunal at the hearing the Applicants can make further applications in subsequent years if they wish.
4. Directions were issued by the Tribunal on 12th September 2019 following which submissions were made by both parties.

THE LEASE

5. The property comprises of a terraced house which has been converted into two flats. The Tribunal has been provided with copies of both leases (“the leases”) which are in an identical form. The leases are between Sarah Davies (in both cases) and Wayne Anthony Davenport (5a) and Sophie Louise Titchener (5b). The leases are dated 31st January 2007 and 31st May 2007 respectively. The leases have subsequently been assigned to the Applicants.
6. Schedule 3 of the leases provides for the tenants to pay the service charge and Schedule 5 details the purposes for which the service charges are to be applied.

THE LEGAL FRAMEWORK

7. Under Section 27A of the Landlord & Tenant Act 1985, the Tribunal has jurisdiction to decide whether a service charge is payable and if it is, the Tribunal may also decide:
 - (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

8. Section 19 of the 1985 Act provides that service charges must be reasonable for them to be payable.
- "Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:*
- And the amount payable shall be limited accordingly."*
9. A charge is only payable by the Lessee if the terms of the Lease permit the Lessor to charge for the specific service. The general rule is that service clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (*Gilje v Charlgrove Securities [2002] 1 EGLR 41*). It was also stated in Gilje above "The Lease moreover, was drafted or proffered by the Landlord. It falls to be construed contra proferentum".
10. If the Lease authorises the charges, they are only payable to the extent that they are reasonably incurred; and where they are incurred, only where the services for which they are incurred are of a reasonable standard.
11. The construction of the Lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (*Yorkbrook Investments Ltd v Batten [1985] 2 EGLR 100*).
- THE PROPERTY INSPECTION**
12. The Tribunal inspected the property on Tuesday 10th December 2019 in the presence of Miss Fatema Attarri (one of the Applicants) and Mr S Marlow, Area Manager for Blue Property Management Ltd, (the Respondent's Representative).
13. The property comprises of 2 flats which have been converted from a terraced house. To the side of the house is a pedestrian entryway in which there is a door leading to the first floor flat. The ground floor flat is approached by a pedestrian door at the rear and there is also a front door leading from the front forecourt although the Tribunal understands this is not regularly used.
14. The Tribunal understands that both flats are self-contained one-bedroom units.
15. To the front of the property is a small gravel forecourt on which was standing the refuse bins. The Tribunal was informed that this area is owned with the ground floor flat.
16. To the rear, at the end of the entryway a gate leads to the rear garden. That part of the garden (being approximately half its length) nearest the building is owned with the ground floor flat with the remainder being owned with the first floor flat.

17. The entryway also serves the adjacent house (number 7 Timber Street) which appears to have been similarly converted.
18. Externally the property is of brick construction surmounted by a pitched slate roof.
19. The Tribunal therefore understands that the only 'communal areas' are the side entryway; the path from the entryway to the pavement (approximately 2m in length) and, possibly, part of the rear path leading to the garden area owned by the first floor flat. However, this is doubtful as it is more likely to be partly owned with the two flats with each having reciprocal rights of access over the other. For the purpose of this decision however that is of no real consequence.

THE PARTIES' EVIDENCE AND SUBMISSIONS

20. The same persons attended the hearing. The parties provided submissions, both in writing and at the hearing. In summary these are detailed below:

The Applicants Submissions

21. The Applicants submitted that on 18th August 2019 they requested to examine the supporting accounts and receipts under Section 22 of the Landlord and Tenant Act 1985. At that time the response from the managing agents was that they could not provide receipts for the work on the estimated budget as it had not been completed but that the accounts would be finalised within six months of the year end and at that time any supporting invoices could be inspected.
22. Following several requests, the Applicants received a summary of the insurance premium quotation following which they asked to see a copy of the full reinstatement valuation report but this was not provided. However, after the Application was submitted to the First-tier Tribunal the Applicants had been sent a copy of the reinstatement valuation report together with other documents in respect of the properties.
23. The Applicants confirmed that they understood that the Tribunal could not determine the buildings sum insured although they were of the opinion that this was inflated and this in turn had led to the substantial increase in the insurance premium payable.
24. The Applicants confirmed that the areas of dispute were:

Buildings insurance

25. The Applicants submitted that Blue Property Management UK Ltd had informed them that the insurance had been provided by another company called Urbanpoint Property Management Ltd. The Applicants disputed the premium of £701.33 as they felt it was too high. In 2018 the premium paid was £356.88 which was valid until 17th April 2019. Prior to 2018, the insurance premiums ranged between £180.00 and £285.00 per annum.
26. It was confirmed to the Applicant and to the Tribunal at the hearing that Urbanpoint Property Management Ltd was owned by the same person as the Freehold of the subject property. The Applicants confirmed that they paid their insurance premiums,

together with the Ground Rent to Urbanpoint Property Management Ltd and not to Blue Property Management UK Ltd.

27. The Applicants confirmed that they had spoken to the Building Cost Information service (BCIS) and had used their rebuilding cost calculator which had estimated the rebuilding cost for the property to be £164,000.00. The Applicants had also sought the opinion of a local Chartered Surveyor and were advised that the rebuilding cost should be no more than £190,000.00. As such, the Applicants submitted that the declared value of £286,439.00 and the rebuilding sum insured of £386,693.00 was excessive. The Applicants also submitted that in their opinion there should be no (or limited) cover for rent/alternative accommodation where the level of cover was currently set at £57,000.
28. The Applicants submitted that they had obtained a comparable quotation from the same insurance broker used by Urbanpoint with the buildings insured sum being £386,000.00. The quotation for this from Citygate Insurance Services Ltd was £321.98. The Applicants submitted that they had also obtained further comparable quotations from an alternative insurance broker being Lansdown Insurance Brokers at a premium of £281.91.
29. It was further submitted by the Applicants that they had obtained further alternative quotations based on what they felt to be a more realistic buildings sum insured of £190,000. From Citygate insurance services Ltd they received a quotation of £215.97 and from CIA Landlords insurance a quotation of £178.49. Based on the above the Applicants submitted that they believed a reasonable amount to pay for the building insurance premium should be no more than £300.00 per annum.

Accountancy Fees

30. The Applicants submitted that the accountancy fees in the service charge budget amounted to £346.80 which they felt was too high. The Applicants submitted that this property generated very few invoices and that if it was a block of flats with a large number of invoices being generated then this fee would be justifiable. The Applicants submitted that the accounting fees for another property 'Elizabeth Walk' in the West Midlands which consists of 14 flats was £450.00 per annum which amounted to £33.00 per flat. At the same time the budget for a further property at 'Portland Place' in Hucknall which consisted of 42 flats was set at £879.00 which amounted to £21.00 per flat. In both these cases it appeared that a considerable number of services were provided which would generate a considerably higher volume of invoices and receipts. Based on the above the Applicants submitted that a reasonable accounting fee would be in the region of £120.00 per annum (£60.00 per flat).

Management Fee

31. With regard to the management fee the Applicants submitted that this had been set in the budget at £240.00 in total for both properties. The Applicants further submitted that it was originally set at £600.00 but that following correspondence between the Respondent and the managing agent the fees were reduced to £240.00 although the opinion of the leaseholders was not sought. The Applicants stated that they had been informed by the managing agents that they had visited the property once and they acknowledge that the managing agent had been generally good in responding to the Applicants emails. However, it had been extremely difficult to

obtain information regarding the buildings insurance and this had required sending repeated emails to the managing agents which had taken a lot of time.

32. The Applicants submitted that apart from the one visit to the property, arranging a Health and Safety Assessment and general correspondence with the Applicants, few other services were provided that would justify this level of management fee. The Applicants again referred to the development at 'Elizabeth Walk' where the management fee amounted to £150.00 per flat and to 'Portland Place' where the management fee amounted to £247.00 per flat. The Applicants were of the opinion that the service charges in respect of both of these developments indicated that numerous services were provided and therefore a significantly greater management input would be required.
33. Based on the above, the Applicants submitted that a reasonable management fee should be in the region of £100 per annum for both flats (£50 per flat).

Health and Safety Assessment

34. The Applicants submitted that they had been provided with a copy of the Health and Safety Assessment Report completed by the managing agents but disputed the need to pay for this as they had been unable to see any provision in the lease requiring them to do so. It was further submitted that the property had no internal communal areas and a minimal external area. As such the Applicants were of the opinion that the cost of £240.00 was not justified and not reasonable. The Applicants also submitted that the Risk Assessment form on the Health and Safety report stated the address as being 'Kempston Road' rather than 'Timber Street'. The Applicants had been informed by the managing agents that a Health and Safety Assessment would be undertaken every three years.

Reinstatement Valuation

35. The Applicants submitted that they had received a copy of the reinstatement valuation report and a copy of the invoice only as part of the bundle of papers received as a result of the Application to the First-tier Tribunal. Having inspected the lease the Applicants accepted that they were liable to pay the reinstatement valuation cost (clause 8.2) and that the fee of £300.00 was reasonable. The Applicants understood that the reinstatement valuation would be carried out once every five years and they accepted that this was also reasonable.

The Respondent's Submissions

36. The Respondent made submissions in respect of all the items referred to by the Applicants. For ease of reference the Tribunal has adopted the same order as referred to in the Applicant's submissions above.

Building Insurance

37. The Respondent submitted that the insurance policy was not a stand-alone policy but was part of a larger block policy which provides cover notwithstanding the fact that no occupier details were available in respect of sub-tenants. As freeholders of the building, the Respondent needed to ensure that there was fully comprehensive cover in place that was unconditional and without qualification.

38. The Respondent further submitted that their insurance brokers sought comparable block policy quotations each year approaching such companies as Aegis, Allianz, Aviva, Axa, Covea and LV Zurich. As such, the Respondent submitted that the insurance premium which is sourced from a professional broker is fair for the building and due to be paid.

Accountancy Fees

39. The Respondent confirmed that the accountancy fees amounted to £346.80 (£173.40 per property) and that this fee included certification from external accountants which was carried out to demonstrate transparency and best practice for accounting purposes. The Respondent further submitted that a significant amount of work was carried out on year end accounting to prepare the accounts and that every single invoice and receipt was reconciled for the 12-month period. This was also checked and signed off by Blue Accounting and the area property manager.

40. The Tribunal asked the Respondent to explain the accounting arrangement so that they could better understand the extent of the work completed. The Respondent confirmed that there were two main elements. In the first instance Blue Property Management UK Ltd prepared the accounts from their in-house spread sheets and secondly, they were signed off by an independent external accountant.

41. On being questioned by the Tribunal the Respondent confirmed that part of the accountancy fee was paid to Blue Property Management UK Ltd for this work with approximately £150.00 being paid to the external accountant.

Management Fee

42. With regard to the management fee the Respondent submitted that the cost of £240.00 for both properties (£120.00 each) was a fair fee and included all the duties which were separately detailed in the submission. The Respondent further submitted that it was not common practice for them to discuss what would be a fair fee with leaseholders and that fees were normally set on a 'per property' basis at all of the developments managed by Blue Property Management UK Ltd.

Health and Safety Assessment

43. The Respondent submitted that the Health and Safety Risk Assessment had to be carried out at all leasehold developments in accordance with the freeholder's instructions and that they were completed for the safety of the residents at those developments. The fee charged was a minimum fee and was, in the opinion of the Respondent, fair for a Senior Qualified Risk Officer to attend at site and complete the assessment. The Respondent accepted that the Applicants were correct in that the development was small and unlikely to change significantly. As such they had agreed to complete the Health and Safety Risk Assessment every three years. It was also acknowledged that the Health and Safety Risk Assessment was carried out by a subsidiary of Blue Property.

DECISION

44. The Tribunal considered the submissions made by the parties both in writing and at the hearing and determined as follows:

Building Insurance and Reinstatement Valuation

45. Although the Applicants submitted that they agreed that the building insurance reinstatement valuation should be carried out every five years and that the cost of £300.00 was reasonable they were concerned that the amount of the revaluation has had an adverse impact on the insurance premium due. It is not within the jurisdiction of this Tribunal to determine the reinstatement value of the property although the rebuilding sum insured of £386,693.00 appears high. At the same time the Tribunal is concerned that this valuation has apparently been carried out by a firm based in Middlesex without the benefit of an inspection.
46. The Tribunal noted that the Applicants had consulted a local Chartered Surveyor and had themselves obtained several alternative quotations all of which were considerably less than the premium they were actually paying. Based on the various quotations the Applicants submitted that a premium of £300.00 would be reasonable. The Tribunal agrees with this submission and determines accordingly.
47. At the same Time the Tribunal directs the Respondent to obtain a rebuilding cost valuation from a Leicester-based chartered surveyor as this is likely to be considerably more accurate than the desktop valuation which has been provided. This rebuilding cost valuation should be obtained prior to the next insurance renewal. The Tribunal is also concerned that the invoice for providing the rebuilding cost valuation is excessive and, notwithstanding the fact that it was not disputed by the Applicants, the Tribunal reduces this to £150.00.
48. The Tribunal is also concerned that the Applicants may be paying more than is necessary as the insurance is dealt with through a 'block policy'. The Respondent must be able to demonstrate that it has fully explored the market and not limited itself to the 'block policy' arrangement. The Tribunal do not accept that items such as rent/alternative accommodation costs and non-notification of occupier details cannot be obtained from other stand-alone policies.

Accountancy Fees

49. It is apparent to the Tribunal that some of the work carried out by Blue Property Management UK Ltd and which forms part of the charge for accountancy should be completed by them, as managing agents and included in their management fee. The Tribunal accepts that an external accountant should be employed to assist in the production of the final accounts and sign them off but the cost of this should be no more than £120.00.

Management Fee

50. The Applicants submit that the management fee of £240.00 is excessive. This amounts to £100.00 plus VAT per flat. Both parties agree that when Blue Property Management UK Ltd first took over management of the properties a management fee of £600.00 was initially proposed (£250.00 plus VAT per flat). This was subsequently reduced to £240.00 following representations by the Applicants and discussions between the Respondent and Blue Property Management UK Ltd. The Applicants also submit that there is little management to be undertaken and that in their opinion a management fee of £50.00 per flat (presumably including VAT) would be more reasonable.

51. The Tribunal is well aware of the general level of management fees charged in the market and determines that for such a small development of only two units there must be a minimum fee below which it cannot be economically viable to act. The Tribunal is of the opinion that the present fee charged of £240.00 is fair and reasonable.

Health and Safety Assessment

52. It is difficult to imagine a property with a smaller communal area which in practical terms extends only to the side entryway, which is, in any case, shared with the adjoining property and possibly a small area of footpath. For this reason, the Respondent's Representative has suggested that Health and Safety Risk Assessments are only carried out once every three years.

53. At the hearing the Respondent submitted that the inspection also covered areas such as the chimney and roof of the building although in the opinion of the Tribunal items such as this should be inspected by the property manager. The Tribunal is not wholly persuaded that regular Health and Safety Risk Assessments are required in a property of this type although it accepts that in order to protect both the managing agent and the freeholder periodic assessments are beneficial.

54. However, it is quite clear that the communal area is so small that an inspection can take no more than a few minutes and the cost of £240.00 appears excessive. It was acknowledged by the Respondent at the hearing that this is the general fee charged for properties of various sizes including those which are considerably larger than the subject property.

55. The Tribunal therefore determines that a reasonable cost for the Health and Safety Risk Assessment is £100.00 including VAT and that an assessment should be carried out no more than once every three years although consideration should be given to extending this to once every five years unless there have been any significant alterations.

General Repairs and Maintenance

56. Although not specifically referred to in the written submissions, at the hearing it was noted that the sum of £100.00 was included in the budget for repairs and general maintenance. It was confirmed by the Respondent that no repairs had been carried out during the year and that if this amount was not spent then it would be credited to the Applicants in the service charge budget next year.

57. The Applicants confirmed that they accepted this position and agreed that a nominal amount of £100.00 should be paid to cover any minor incidental expenses.

58. As both parties were in agreement the Tribunal determined the sum of £100.00 should be included in the budget.

59. To summarise, the Tribunal therefore determines that the service charge payable for the Service Charge year ending 31st December 2019 is as follows:

Building Insurance Premium	300.00
Building Reinstatement Valuation	150.00
Accountancy Fee	120.00
Management Fee	240.00
Repairs and Maintenance	100.00
<u>Health & Safety Risk Assessment</u>	100.00
Total	£1,110.00

60. The Tribunal therefore determines that the Service Charge payable in respect of Flats 5a and 5b Timber Street, Leicester, for the Service charge year ending 31st December 2019 is the sum of £505.00 each.

APPLICATION UNDER SECTION 20C

61. In the Applicant's original application to the Tribunal a request was made for an order under section 20C of the act. At the hearing the Applicants confirmed that they felt it was unfair if the Respondent attempted to pass on the costs of the hearing through the service charge.
62. The purpose of an application under section 20C is to prevent a landlord from recovering his costs in Tribunal proceedings through the service charge. The guidance in previous cases is to the effect that an order under section 20C is to deprive the landlord of a property right and it should be exercised sparingly (see for example, Veensa-v-Chong: Lands Tribunal [2003] 1EGLR175).
63. At the hearing the Respondent's Representative confirmed that he had no instructions from the Respondent to indicate that it was the Respondent's intention to recover his costs in respect of the Tribunal proceedings through the service charge.
64. However, for the avoidance of doubt, on balance, the Tribunal considers that it would be in the interest of justice to make an order under section 20C preventing the Respondent from recovering its costs of these proceedings through the service charge in this case.
65. In reaching its decision on section 20C, the Tribunal had regard to the fact that the Respondent had not succeeded in persuading the Tribunal of the merits of its arguments in respect of the insurance premium, reinstatement valuation cost, Health and Safety Risk Assessment or the accountancy fees.

ADMINISTRATION CHARGES

66. The Applicants also submitted that the Respondent should not be permitted to impose any Administration charges on the Applicants as a result of the Tribunal hearing under schedule 11 of The Commonhold and Leasehold Reform Act 2002.
67. The Respondent's Representative confirmed that Administration Charges were normally applied where, for example there were arrears in payment of the service charge.

68. The Tribunal understands from the parties that no payment towards the service charge has been made for the current year but the Respondent's Representative confirmed that it was not the Respondent's intention to apply any Administration Charges and he was prepared to wait for payment of the service charge until after the Tribunal's decision was issued.
69. For the avoidance of doubt the Tribunal determines that no Administration charges will be permitted for the current year.
70. The Tribunal and the Applicants were informed at the hearing by the Respondent that based on current costs and subject to the Tribunal's decision in this case, the Respondent did not envisage any increase in the level of costs for the next service charge year. The Tribunal therefore expects the Respondent to take this determination into account when setting the budget for 2020.

APPEAL

71. Any appeal against this decision must be made to the upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision, (or, if applicable, within 28 days of any decision on the review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the results sought by the party making the application.

Graham Freckleton FRICS
Chairman.
First-Tier Tribunal (Property Chamber) (Residential Property)