



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

**Case Reference** : **CAM/26UB/LSC/2019/0054**

**Property** : **4 Wycliffe Close, Cheshunt, Waltham Cross, Herts EN8 0FJ.**

**Applicants** : **Miss Adeola Gboyega and Miss Adenike Gboyega**

**Respondent** : **Hoxa Ltd**

**Type of Application** : **Application for the determination of the reasonableness and payability of service charges**

**Tribunal Members** : **Tribunal Judge S Evans**

**Date and venue of Hearing** : **Paper determination**

**Date of Decision** : **20 December 2019**

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**DECISION**

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**The Tribunal determines that all the items of relevant costs estimated to be incurred by the Respondent in 2019/2020 are reasonable, and the amounts payable shall not be limited, except for the Applicants' contribution to the reserve fund, which shall be limited to £250.**

## **DECISION**

### **Introduction**

1. The Tribunal is asked to determine the payability and reasonableness of costs to be incurred by way of service charges pursuant to an application made under s.27A of the Landlord and Tenant Act 1985.

### **Parties and Property**

2. The Applicants are the joint leaseholders of the Property, a 2 bedroom flat in a purpose built block of flats, constructed around 2016.
3. There are 2 commercial units on the ground floor. The building has the benefit of a secure intercom access, CCTV, private terrace, balconies, zoned fire alarm system, bin store, and allocated parking bays.
4. The Respondent is the Applicant's Landlord, and engages a Managing Agent called Fresh PML.

### **Background**

5. A service charge budget for flat 4 for the period 24<sup>th</sup> June 2019 to 23<sup>rd</sup> June 2020 has been prepared, bearing the name at the top of the Managing Agents ("Fresh PML").
6. It is clear on the face of this document that the Applicants are charged 12.5% of Landlord's expenses under the "Flat Schedule" and for Reserve Funds Contributions, but 10% for all other matters including Buildings Insurance and items on the "Building Schedule".
7. On or around 16<sup>th</sup> and 17<sup>th</sup> May 2019 Fresh PML served on behalf of the Respondent a service charge demand on the Applicants for the period 24<sup>th</sup> June 2019 to 24<sup>th</sup> December 2019.
8. A letter on the same day, also from Fresh PML to the Applicants, stated that there had been an increase in the reserve budget to ensure that sufficient funds were available to undertake pest control works to eradicate a pigeon problem at the building.
9. It appears the Applicants spoke to a Mr Nyamusenga in the accounts department of Fresh PML, querying various amounts, and they then emailed Fresh PML on 11<sup>th</sup> June 2019 with a letter, which stated that

“the charges are beyond any level of understanding, affordability and future demands”. A response was given on 12<sup>th</sup> June 2019, but the Applicants were not satisfied, and they issued the current Application which is dated 29<sup>th</sup> June 2019.

## **The Application**

10. By their Application the Applicants seek a determination for a single year, 2019/2020.
11. The Applicants do not in terms ask for the Tribunal to assess whether relevant costs have been/will be reasonably incurred, and whether amounts should be limited accordingly, but that is the tenor of the Application.
12. In their Application the Applicants express their concern over the increases in sums when compared with 2018; that the money claimed was not going to be used for maintaining the property on the outside; that the budget for the building insurance was questionable; and that they had not been made aware of the reason for the budget increases.
13. This Application relates to estimated service charges in respect of the following relevant costs only:
  - (1) General repairs: £2000
  - (2) Refuse removal: £200
  - (3) Insurance: £2500
  - (4) Pest control: £520
  - (5) Grounds maintenance: £780
  - (6) Management fees: £3360
  - (7) Reserve fund: £5000
14. The individual sums per annum thus in dispute, when the relevant percentages are applied, are:
  - (1) General repairs: £225;
  - (2) Refuse removal: £25;
  - (3) Insurance: £250;
  - (4) Pest control: £52;
  - (5) Grounds maintenance: £78;
  - (6) Management fees: £336;
  - (7) Reserve fund: £625.
15. Directions were given by the Tribunal on 12<sup>th</sup> September 2019.

16. On 1<sup>st</sup> October 2019 Fresh PML wrote to the Applicants setting out responses to nearly all the items. They emphasised that the accounts to year ending June 2019 had not been finalised, and invited the Applicants to attend their offices and review all invoices.
17. The Applicants wrote to the Tribunal on 14<sup>th</sup> October 2019 with final representations.
18. The Applicants rely on:
  - (1) The contents of their Application Form;
  - (2) Their bundle of 20 documentary items;
  - (3) Their letter to the Tribunal dated 14<sup>th</sup> October 2019.
19. The Respondent relies on documentary evidence amounting to 67 items sent to the Tribunal and to the Applicants on or around 11<sup>th</sup> November 2019, including:
  - (1) A response in tabular form to the items of relevant costs challenged by the Applicants;
  - (2) A brief statement from Jacqui Katz, Director of Fresh PML, managing agents for the Respondent, dated 11<sup>th</sup> November 2019 (item 67).

### **The Lease**

20. The Lease is for 125 years from 24<sup>th</sup> June 2015 at a ground rent of £150 per annum.
21. The relevant clauses for the purposes of the Application are:
22. The Definitions section, which includes:

“(f) The expression “the insured risks” means risks in respect of loss or damage by fire explosion storm or tempest (including lightning) flood subsidence landslip and heave burst pipes impact and (in peace time) aircraft and any articles dropped therefrom riots civil commotion and damage and such other risks against which the Landlord may from time to time reasonably deem it necessary to insure subject to such exclusions and limitations as are imposed by the insurers”
23. Clause 1, which includes an obligation to pay:

“...by way of additional rent a sum or sums equal to the premiums or a due proportion (to be determined by Landlord’s surveyor) of the premium or premiums for insuring and keeping insured the Demised Premises against loss or damage by any of the insured risks (including architects and surveyors and other professional fees and demolition clearance and incidental expenses) Public Liability of the Landlord arising out of or in connection with any accident explosion collapse or breakdown involving or relating to the Demised Premises or any part thereof”

24. Clause 2(2), which requires the Applicants to:

“Pay to the Landlord on demand a fair proportion of the expenses and outgoings incurred by the Landlord or any other person or estimated by the Landlord to be incurred from time to time in the repair maintenance... renewal and insurance of the Building and all... land and all other things shared...and used in common with the flat and any adjoining or neighbouring premises which said contribution shall be recoverable on default rent in arrear.”

25. Clause 2(4), which requires the Applicants to “pay all costs charges and expenses incurred by the Landlord in abating any nuisance at the flat in obedience to a notice served by a Local Authority”.

26. Clause 5(1), which includes the Landlord’s covenants “to repair maintain and renew the Building...and all other things shared or used in common...”

27. Clause 5(2) , which includes the Landlord’s covenant to “...insure and keep insured the Building and the Landlord’s fixtures therein in the full value thereof against loss or damage by fire and such other risks as the Landlord shall deem desirable or expedient in some insurance office or with underwriters of repute....”

### **Relevant law**

28. The relevant statutory provisions are set out in Appendix 1 to this decision.

### **Buildings Insurance**

29. The insurance has been placed since 2017 with Covea Insurance Plc, a reputable insurer. The premiums historically were:

- (1) April 2017: £2007.24, against a Declared Value of £1.5m and Building Sum insured of £2.025M;
- (2) April 2018: £2149, against a Declared Value of £1.56m and Building Sum insured of £2.1M;
- (3) April 2019: £2260.85, against a Declared Value of £1.6m and Building Sum insured of £2.18M.
30. On 17<sup>th</sup> July 2019 the Respondent engaged a Mr Martyn Barrett BSc MRICS FCILA FUEDI-ELAE to undertake a reinstatement costs assessment, which resulted in a reinstatement re-valuation in the sum of £2,002,000.
31. Thus, it appeared the building was being under-insured. Covea then provided an addendum Schedule of Insurance on 2<sup>nd</sup> August 2019 showing the Declared Value at £2,002,000, but requiring an additional premium of £427.18. This extra sum appears to have been paid on 9<sup>th</sup> August 2019: see bottom date-stamp on Respondent's document no.56.
32. Therefore, whilst the estimate sent to the Applicants in May 2019 was for building insurance premium in the sum of £2500, whether or not that increase arose because of a "large claim recently submitted" (see Applicant's item 12), it is now clear that that estimate was on the low side, since the premium for 16<sup>th</sup> May 2019 to 16<sup>th</sup> May 2020 is an actual total of £2688.03 (£2260.85 plus £427.18).
33. I note that document 40 of the Respondent's documents (stated to be an expenditure report for the period 24<sup>th</sup> June 2019 to 30<sup>th</sup> October 2019) indicates a different figure, being £2452.65 (£2025.47 plus £427.18). It is unclear why this lesser sum has apparently been expended, but in any event, the estimate to the Applicants this Tribunal finds to have been reasonable, with credit (if any) no doubt to be applied when the accounts are finalised.
34. No point has been taken by the Applicants over the items on the Insurance Schedule for 2019/2020 except that they seek clarification of the data presented. In the Tribunal's view, the various sections of insured risk would appear to fall within the Lease terms.
35. Nor have the Applicants provided any comparable insurance quotes of their own. The Tribunal reminds itself that the law does not require the Landlord to take the lowest of any quotes in relation to any relevant cost, whether for building insurance or otherwise, as long as the cost is

reasonably incurred. I note from the letter dated 1<sup>st</sup> October 2019 from Fresh PML that the brokers who place the insurance go out to the market annually to ensure that the best cover is obtained.

36. In their letter of 11<sup>th</sup> June 2019 the Applicants make a point against this item that there has not been any visible improvement to the building that has positively been to their benefit since they started living there in 2016, and that not even the windows are cleaned. Those matters are irrelevant to the issue of effecting insurance at a reasonable cost.
37. There would appear to be some discrepancy on the papers over the number of flats in the block, being either 8 or 9, situated over the 2 commercial units. However, there is nothing to indicate that the Applicants contend that the percentages themselves which are applied (10% or 12%) are anything other than a fair proportion of the expenses and outgoings by the Landlord. It is the alleged excessive expenditure to which issue is taken.
38. In all the circumstances, in the Tribunal's judgment the estimated cost to the Applicants of £250 per annum is a fair proportion of a cost which is not only reasonably incurred, but in a reasonable amount.

### **General repairs**

39. There are 2 general repairs schedules, one for the Flat (internal repairs), and one for the Building (external repairs). The Respondent states that as a building gets older, more general repairs are required. However, this building was constructed in 2016. The Applicants have asked for "evidence" of the sums budgeted, but there does not appear to be a breakdown.
40. Nevertheless, in the Tribunal's judgment the relevant costs of £1000 for the Flats and £1000 for the Building is a cost likely to be reasonably incurred, and in a reasonable amount. Indeed, from the evidence, an invoice for door repairs of £100 has already been paid on 9<sup>th</sup> August 2019, and for a carpet repair of £100 on 14<sup>th</sup> October 2019. By that date, there were another 8 months of the service charge year to come. In addition, the Tribunal reminds itself that these are estimated costs, and that any balancing exercise in the Applicant's favour will no doubt occur when accounts are finalised.

### **Grounds maintenance**

41. The Lease at clause 2(2) requires the Applicants to pay a fair contribution to maintenance of land and shared areas.
42. The justification for this charge is not explained in Fresh PML's letter of 1<sup>st</sup> October 2019. However, it is notable from the accounts that £778 was actually spent on grounds maintenance in 2019, against £720 budgeted for 2019/2020.
43. From the expenditure summary running to 30<sup>th</sup> October 2019 (Respondent's item 40), every month since 28<sup>th</sup> June 2019 Lee Bennett Communal Maintenance has been paid £60 for gardening and grounds maintenance. There is a discrepancy between those sums and the invoices which appear at items 44 to 48 of the Respondent's documents, but the invoice sums are in fact higher not lower than £60 per month.
44. The Applicants complain in their letter dated 14<sup>th</sup> October 2019 that the garden has not been well-maintained, but the Tribunal is not being asked within this Application to decide whether services or works have been to a reasonable standard.
45. In all the circumstances, in the Tribunal's judgment the estimated cost to the Applicants of £78 per annum is a fair proportion of an expense or outgoing which is not only reasonably incurred, but in a reasonable amount.

### **Pest Control**

46. According to the Respondent's agent's letter dated 1<sup>st</sup> October 2019, this is not an issue with pigeons but rats, which have been an historic problem around the car park of the building, such that a pest control contract needed to be put in place. There are quarterly charges for pest control which includes inspections of the bait boxes and renewal of bait, in the sum of £132 including VAT per quarter, or £528 per annum. The estimated sum in the May 2019 letter sent to the Applicants was £520. The Applicants have not provided any comparable quotes of their own at any time thereafter.
47. There are 2 invoices which show that £264 of the annual sum has already been paid, in respect of the 2 quarters falling between 19<sup>th</sup> July 2019 and 19<sup>th</sup> January 2020.
48. In the Tribunal's judgment this is a matter of maintenance falling within clause 2(2) of the Lease if not strictly within clause 2(4) – there



is no evidence that a notice has yet been served by the local authority. One might yet be, if the nuisance remains unabated.

49. The Applicants have asked for a pest control maintenance programme, but in the Tribunal's view neither the Lease nor the factual circumstances demand one.
50. In all the circumstances, in the Tribunal's judgment the estimated cost to the Applicants of £52 per annum is a fair proportion of a cost which is not only reasonably incurred, but in a reasonable amount.

### **Refuse removal**

51. This is an amount budgeted for removal of bulk refuse items, based on the previous year's expenditure (up to June 2019) of £180. From the draft accounts no sum appears in the 2019 column but £186 appears in the 2018 column.
52. An invoice appears in the papers dated 3<sup>rd</sup> September 2019 in the sum of £350 for various maintenance items, including removal of rubbish and combustibles from the 2<sup>nd</sup> floor cupboard and disposal of a door from the same floor.
53. The Respondent's agents email of 12<sup>th</sup> June 2019 explains that Fresh PML are not always at the property and if there is bulk rubbish they do need to be advised in order to arrange removal.
54. In all the circumstances, in the Tribunal's judgment the estimated cost to the Applicants of £25 per annum is a fair proportion of a cost which is not only to be reasonably incurred, but in a reasonable amount.

### **Management fees**

55. In neither their Application nor their letters dated 11<sup>th</sup> June 2019 and 14<sup>th</sup> October 2019 do the Applicants contest the recoverability of such charges under the terms of the Lease, only the amount as being excessive.
56. It is notable that the fees sought cover inspections of the building, arranging all repairs and cyclical maintenance, undertaking annual budget reviews and annual reviews of when works are required to the building, plus a 24 out of hours service directly through to a staff member and not a call centre.

57. Again, the Applicants have not provided any comparable quotes. The individual estimated charge of £336 for 2019/2020 has risen marginally, from actuals of £330 in each of 2018 and 2019. The Applicants do not challenge in their Application any years earlier than the budgeted year of 2019/2020.
58. In *Forcelux v Sweetman* [2001] 2 EGLR 173 the Lands Tribunal examined the reasonableness of management fees by considering whether the fees were in line with market rates and accepted that once “reasonably incurred” it was not necessary for the fees to be the cheapest.
59. In the Tribunal’s judgment the increase is not excessive, and the overall sum, whilst higher than in other cases the Tribunal has seen, is not so startling as to lead the Tribunal to interfere.

### **Reserve Fund Contributions**

60. In neither their Application nor their letters dated 11<sup>th</sup> June 2019 and 14<sup>th</sup> October 2019 do the Applicants contest the recoverability of such charges under the terms of the Lease. Whilst the Tribunal has not been asked to determine the issue, the terms of clause 2(2) of the Lease would appear wide enough to cover such charges as estimated sums, as long as they are for repair, maintenance, renewal and insurance of the Building “to be incurred from time to time”.
61. The evidence indicates that the budgeted total of £5000 (£625 to the Applicants) is for “future major works i.e. the internal redecorations”, that the sums are ring-fenced from the general service charges collected, and are not used for day-to-day expenditure. The sums would not appear to be for pigeon eradication. Indeed, the Applicants’ letter of 14<sup>th</sup> October 2019 makes reference to an “expected refurbishment” in 2024.
62. The Tribunal is concerned, however, by the level of the sum. Accordingly to the accounts, only £1000 was levied in 2018 and £1500 in 2019. The reserve funds as at 23<sup>rd</sup> June 2019 are said to be £6475.
63. The Tribunal has no material before it from the Respondent to justify the increase in 2019/2020, relating as it does to a refurbishment mainly consisting of internal decorations, and yet to take place for a number of years. Whilst one of the Fresh PML’s duties is to conduct an annual review of when works are required to the building, the Tribunal has not been provided with any planned maintenance programme for

this refurbishment, or with estimated costs. There is no evidence of statutory consultation having yet taken place.

64. Doing the best it can, this Tribunal considers that a reserve fund sum would be reasonably incurred for 2019/2020, but a reasonable sum should be £2000, and the Tribunal limits the amount payable by the Applicants to £250 accordingly.

## **Conclusions**

65. With the exception of the amount in respect of Reserve Fund Contribution, the Application lies in favour of the Respondent.

66. Nothing however should be taken from this decision (which concerns estimated service charges) as applying any fetter on the Applicants' ability to challenge any actual amount when finalised by the Respondent, by way of further Application or otherwise.

67. No application is made under s.20C of the Landlord and Tenant Act 1985, nor under Schedule 11 paragraph 5A of the Commonhold and Leasehold Reform Act 2002.

Judge: \_\_\_\_\_  
S J Evans

Date:  
20/12/19

## **ANNEX – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.

4. 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.

## **Appendix 1**

### **Landlord and Tenant Act 1985**

#### **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 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.

**Schedule 11 para 5A of the Commonhold and Leasehold Reform Act 2002**

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph-
- (a) "litigation costs" means costs incurred or to be incurred by the landlord in connection with proceedings of a kind mentioned in the table [First-tier Tribunal proceedings.