



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

Case Reference : **LON/00AH/LSC/2019/0252**

Property : **29 Bletchingley Close, Thornton Heath,
Surrey, CR7 7HT**

Applicant : **Mavis Veronica Simpson**

Respondents : **Elm Management, Ethical Leasehold
Management Limited**

Type of Application : **Section 27A Landlord and Tenant Act
1985 - determination of the
reasonableness and payability of
service charges**

Tribunal Members : **Mr. Mullin
Mr. Harris**

**Date and venue of
Determination** : **16th December 2019**

Date of Decision : **23rd January 2020**

DECISION

For the reasons given below, the Tribunal finds as follows:

- **The service charges for the years 2018, 2019 and 2020 as sought by the Respondent are reasonable and payable.**
 - **The application for an order pursuant to s.20C of the Landlord and Tenant Act 1985 is dismissed.**
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REASONS

Introduction:

- 1.) The Applicant made an application, dated 8th July 2019, under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) for a determination of the reasonableness of service charges for the 2018/19/20 service charge year. Included with the main application was an application for an order under section 20C of the 1985 Act.
- 2.) The Tribunal issued Directions in respect of these applications without a hearing on 11th July 2019.
- 3.) The directions identified the following issues to be determined:
 - a. Resident estate manager salary £550.
 - b. Management fee £446.95
 - c. Contribution to future maintenance fund £150
 - d. Whether an order under s.20C of the Landlord and Tenant Act 1985 should be made.
- 4.) The issue in relation to a – c above is, of course, whether those charges are reasonable and payable.

The Law:

- 5.) A summary of the relevant legal provisions is set out in the Appendix to this decision.

The Lease:

- 6.) The lease for the subject property is dated 25th March 1996 and was assigned to the Applicant in 2012.
- 7.) No particular point was taken by the parties in relation to the wording of the lease. It was common ground that the lease provided for payment of service charges and that the works which are the subject of the

application are in principal recoverable by the Respondent under the service charge mechanism in the lease.

Hearing:

- 8.) The hearing was held on 16th December 2019 at 10, Alfred Place, London, WC1E 7LR. In attendance were the Applicant, assisted by her daughter Joyce Livingston and Ms Collins and Ms O’Sullivan for the Respondent.
- 9.) The Tribunal had the benefit a bundle provided by the Applicant and the Respondent. Documents referred to in these reasons are referenced with the page number for the bundle.

The Issues and the Tribunal’s Determination:

- 10.) The Applicant’s case is essentially that the three service charge items (set out at paragraph 3 above) are excessive and therefore unreasonable.
- 11.) The Applicant explained in her reply (p117) to the Respondent’s statement of case that she was unaware of some of these charges when she purchased the property and that she finds them unaffordable.
- 12.) The difficulty for the Applicant is that the affordability of the charges for her specifically is not a relevant factor in assessing their reasonableness. Further, whilst she may have complaint against the conveyancers who assisted her in buying the property, her knowledge as to the amount of the charges at the point of purchase of the property is also irrelevant to their reasonableness.
- 13.) The Tribunal determines the reasonableness of the individual service charge items as follows:

Resident Manager Salary 2018 -2020

- 14.) The Applicant acknowledges that the lease requires the employment of a resident manager but queries whether the payments are excessive. The Respondent’s statement of case (p106) contains a table showing the hourly rate paid as salary to the resident estate manager in comparison with the national minimum wage, the UK living wage and the London living wage (as calculate by the resolution foundation). For all three years the salary has been above the minimum wage but below the UK living wage and the London living wage. The service charge demanded in relation to the resident manager also includes employer national insurance and pension contributions in addition to the actual

salary; this explains the alleged discrepancy identified in the Applicants Reply at p118.

- 15.) In these circumstances the tribunal determines the service charges relating to the employment of a resident estate manager are reasonable and payable. They are not excessive, far from it, the salary is only slightly above the legal minimum.

Management fee

- 16.) The Applicant's only complain regarding this item, as per paragraph 2 of her reply, is that no figures were provided to her prior to her purchase of the property. Whilst she may have cause to complain to her conveyancers, this is not relevant to the reasonableness of that service charge item. In the absence of any other argument or evidence the service charges relating to management fees are reasonable and payable.

Contribution to the Future Management Fund

- 17.) The Applicant's case on this that the amount sought for payment into the fund is too high. The Tribunal heard evidence from the parties at the hearing and determined that there was a need for external decorations, a large number of the properties in the development still had timber windows, doors and soffits which required painting, and, that there was a justified programme of 'skylight replacement' which had to be budgeted for.
- 18.) A similar application in relation to another property in the same development was determined by a differently constituted Tribunal in 2017 (LON/00AH/LSC/2017/0313). The total figure charged in relation to payment into the fund to all leaseholders was the same in 2017 as in the years which are the subject of this application, namely £15,000. The Tribunal found that was a reasonable sum. Whilst this Tribunal is not bound by that decision, we agree with it and agree with the reasons for it.
- 19.) There is nothing in the Applicant's evidence that demonstrates that the proposed charges are excessive. The information in relation to replacement velux windows is general (in that it does not relate to the specific type of windows actually required) and does not take into account labour costs of fitting the windows. Similarly, the evidence in relation to the cost of replacing the kitchen and bathroom in the Estate Manager's flat is vague and not specific to the property or the works required. In the Tribunal's experience as an expert tribunal, £12,360

would be a reasonable sum to pay for the replacement of a bathroom and kitchen.

- 20.) In those circumstances the tribunal determines that the service charges relating to the future management fund are reasonable and payable.

Whether an order under section 20C of the 1985 Act should be made

- 21.) The Tribunal considers that Applicant has been entirely unsuccessful and that there are no other good reasons why the recovery of the Respondent's costs, if any such costs have in fact been incurred, should be limited.
- 22.) Therefore, the application for an order under s.20C of the 1985 Act is dismissed

Chairman: *Michael Mullin*

Date: *23rd January 2020*

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 Tribunal 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 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.
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

LANDLORD AND TENANT ACT 1985

Section 19 Limitation of service charges: reasonableness

(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 provision of services or the carrying out of works, only of 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 20 Limitation of service charges: consultation requirements

(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 20B.— Limitation of service charges: time limit on making demands.

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C.— Limitation of service charges: costs of proceedings.

(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 leasehold valuation tribunal or the First-tier 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 the county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(ba) in the case of proceedings before the First-tier Tribunal, to the 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 the 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.

Section 20ZA Consultation requirements: supplementary

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “*the consultation requirements*” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 subject of determination by a court, or

(d) has been 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.

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Paragraph 5A to Schedule 11

(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, and

(b) *“the relevant court or tribunal”* means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate

“The relevant court or tribunal”

Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.”