FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/42UD/LIS/2019/0024**
Property	**:**	**70 Lavenham Road, Ipswich, IP2 0JZ**
Applicant	**:**	**Trevor Hartley**
		Unrepresented
Respondent	**:**	**First Port of Ipswich**
		Unrepresented
Type of Application	**:**	**Section 27A Landlord and Tenant Act 1985**
Tribunal	**:**	**Judge J. Oxlade**
Date of hearing	**:**	**4th February 2020**

DECISION

For the following reasons the application made for determination of the reasonableness and payability of service charges incurred by the Applicant in respect of (i) management fees in the service charge years 2016/17, 2017/18 and 2018/19, and (ii) cleaning, health and safety, and maintenance in the service charge years 2017/2018 is dismissed.

Further, the application made pursuant to section 20C of the 1985 Act is dismissed.

© CROWN COPYRIGHT 2020

REASONS

1.The Applicant made an application for determination of the liability to pay and reasonableness of service charges in respect of the property, in the service charge years ending 30th September 2017, 30th September 2018, and 30th September 2019.

2. In his application he detailed the specific charges levied on the service charge accounts that were of concern to him.

3. In the year ending 30th September 2017, he said that he was concerned by management fees of £1411.08, which he believed were too high for four studio flats, built in 1986. Under the heading "description of the questions you wish the tribunal to decide" he added that all costs associated with studio flats were too high - that is, except garden costs.

4. In the year ending 30th September 2018, he said that the items of service charge that were in issue were management fees of £1482, cleaning of internal stairwell of £550, health – safety of £570, and maintenance of £3,774.22. Under the heading "description of the questions you wish the tribunal to decide" he added that management fees are too high for a small block of flats (studio), the internal stairwell is in fact cleaned by residents though charged at £550 for a contractor, who did not do any cleaning, and health and safety was charged for somewhere between £200 and £570, although the site is small with no obvious health and safety risks, and that there were two garden walls rebuilt with no evidence that it was put to tender and the costs were too high.

5. He wish to make further comments: maintenance was haphazard, the exterior was last painted in 1997 and there was no evidence that works were being put out to tender to minimise costs. He emphasised that all costs associated with the property were too high except the grounds. He said that the contribution of £700 for the reserve was demanded, but there was no information as to why this was asked or what it was to be used for.

6. On 28th November 2019 directions were made to progress the application, wherein it was noted that neither party (at that point) wished for there to be hearing. By paragraph 3 of the directions the leaseholder was required by 4 December 2019 send to the Respondent A schedule (in a form attached to the directions), setting out in the relevant column by reference to each service charge year the item amount in dispute, the reasons why the amount was disputed, the amount (if any) the tenant would be prepared to pay for the item. Further, by the same date the Applicant was to send to the Respondent copies of any alternative quotes or any other documents including colour photographs on which the Applicant intended to rely, and a statement setting out the relevant service charge provisions of the lease and any legal submissions that he wish to make, and any witness statement from which he relied. Thereupon, by paragraph 4 the Respondent landlord was to respond.

© CROWN COPYRIGHT 2020

7. The directions provided that if not otherwise requested, the application will be determined on the basis of documents filed in repressed representations made on or after 27th January 2020.

Evidence

8. The application was listed for hearing before me today. On file there was a copy of the application made - the contents of which are noted above - a copy of the lease, a copy of the service charge accounts for the years ending 30 September 2017, 2018, and estimated service charge for year ending 2019.

The Lease

9. The lease provides by Clause 1.8 that the maintenance year shall mean every 12-month period, ending on the 30th September, and the "service charge" means the sum equal to ¼ of the aggregate annual maintenance provision for the whole block. At Clause 3.2, in every maintenance year the lessee is to pay the service charge to the company by two equal instalments in advance on the half-year days, and thereafter a due proportion of any adjustment payment. At Clause 4.1 the company covenants that during the term of the lease it shall carry out repairs, and provide the services specified in the Fifth schedule, and the service charges must be to be applied to decorate and repair the structure, maintain the grounds (including walls), to decorate and repair the common parts, and by Clause 2 to keep the common parts suitably furnished, lighted and cleaned. By Clause 5(a) to make provision for the payment of cost and expenses incurred by the company in running and managing the block, collecting in rents and service charges, and the costs of audited accounts, and in respect of other service and expenses. Clause 13 to carry out repairs to another part of the block which the company may be liable and to defray and such other costs incurred by lesser to maintain the block as a block of good class residential flats. The lessor has a power to set aside an appropriate amount as reserves for or towards those matters mentioned in the fifth schedule, as are likely to give rise to expenditure, by virtue of the fourth schedule part two clause 2 (ii).

10. It appears from the terms of the lease that the specific items appearing in the service charge accounts which have concerned the Applicant, do fall within the obligations of the lessor, and the obligations of the lessee to pay.

The accounts

11. The Applicant has accurately set out in his application the sum spent on each items in dispute - save that in the income and expenditure accounts for the year ended 30th September 2018 the costs spent on internal stairwell cleaning costs were £480 not £555.

Non-compliance with directions

12. The Directions made on 28th November 2019, at paragraph 3, set out what the Applicant needed to do, and then the Applicant having done so, what the Respondent must do in reply. However, the Applicant has not done so, absent of which the Respondent's obligations to comply with the directions in reply, fall away.

© CROWN COPYRIGHT 2020

Relevant law

13. The relevant law is set out at Appendix A.

Findings

14. In the application, the Applicant *asserts* that specific items of service charges are too high, but his assertions do not amount to *evidence*.

15. The Directions made by the Tribunal were made to act as a steer to both parties to file *evidence*, but regrettably this did not result in evidence being filed.

16. It would have been helpful, for example, when asserting that management fees were too high for a small block of flats, for the Applicant to have secured evidence from other managing agents as to what they would charge to manage a block of this size with this specification and configuration, with the level of repair or disrepair, the level of major works needed (or not needed), and any specific complications on gathering service charges. It would have been helpful, for example, when asserting that the internal stairwell was cleaned by residents - albeit that they were charged for a contractor who did not do any cleaning at all - for there to be witness statements from the residents setting out how this state of affairs had arisen, when it started, who now did the cleaning, how often, whether or not there was a sheet setting out a signature from the contractor in the communal space, and any correspondence entered into between the residents and the managing agents or contractor going back to show that somebody had raised this is a complaint. Although it is said by the Applicant that service charge was paid for rebuilding of two garden walls and which was too high to justify the maintenance of £3774.22 in fact that figure is a combination of two figures: general maintenance of £1337.98 and major works of £2436 24. The Applicant has given no indication of what correspondence was entered into by anybody, at any time on this subject, whether there was any consultation, when the work was done as an emergency, whether or not there were alternative quotes provided, and any issue taken in prior correspondence by the Applicant with the managing company on the subject at all.

17. It may well be the case that had the Applicant adduced the evidence in support, he could have converted assertions into findings that the service charges were not reasonably incurred, not payable, and should be reduced. Further, he may have been able to show that there had been a failure of the consultation procedure. Yet, as at the date of the hearing - which is today - no evidence has been filed to support the assertions made in the application, and there had been no attempt to comply with the directions or to explain why they could not be complied with, nor any application made to extend time. That being so I dismiss the application.

18. Further, I do not consider it "just and equitable" to make an order depriving the Respondent of the power to add any costs it may have incurred (albeit marginal, from the level of engagement) in these proceedings, and so declined to make an order under section 20 C of the 1985 Act. Whilst the Applicant says that his requests have fallen on deaf ears, and that the Respondent is unhelpful and unresponsive and unreasonable - often ignoring enquiries but he has not gone into detail - he is not provided any detail surrounding that at all. To emphasise the point, the Applicant has provided no correspondence - whether by way of email, by letter or any other means - to evidence

© CROWN COPYRIGHT 2020

his assertion that prior to issuing the application, he has had raised these issues with the Respondent. That being, the applicant has not satisfied me that it will be just and equitable to make an order depriving the Respondent of adding any costs incurred in the proceedings to service charge account as part and parcel of management of the premises.

…………………

Judge. J. Oxlade

4th February 2020

Appendix A

The 1985 Act (as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002) provides as follows:

Section 18

"(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling house as part of or in addition to the rent –

(a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or in the landlord's cost 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 of which the service charge is payable.

(3) For this purpose

(a) costs include 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 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 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.

(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

© CROWN COPYRIGHT 2020

incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

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 or LVT or first tier Tribunal…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….

(2)….

(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 27 A

(3) An application may also be made to a leasehold valuation tribunal for a determination whether it costs were incurred for service, repairs, maintenance, improvements, insurance, or management of any specified description, a service charges would be payable for the costs and if it would 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.

© CROWN COPYRIGHT 2020