



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

Case Reference : CHI/00HE/LIS/2019/0074

Property : The Mills Penpol Sidings Hayle TR27 4FQ

Applicants : Daniel Reeves and others

Representative : Anthony Richards MRICS FAAV

Respondent : M W Freehold Limited

Representative : Moreland Property Group

Type of Application : Determination of reasonableness of service charges

Tribunal Member(s) : Mr W H Gater FRICS MCI Arb

Date of Decision : 1 June 2020

Decision

The Tribunal finds that the total sums below, for the services referred to in the application may be recovered from the Lessees, in due proportion, in accordance with the terms of their respective leases.

Year ending 2015	£2360
Year ending 2016	£2960
Year ending 2017	£1460
Year ending 2018	£1460

Background

1. The Applicants seeks a determination under Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) as to whether service charges are payable for the years 2013 to 2019 and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) as to whether administration charges are payable.
2. The Applicants also seek an order for the limitation of the Landlord's costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985 and an order for cost under Rule 13.
3. An oral case management hearing took place on 15 January 2020 attended by Mr Antony Richards on behalf of the Lessees.
4. Mr Richards confirmed that he has been instructed to manage the property following the exercise of the Right to Manage on 1 November 2018.
5. The Respondent's representative had been advised of the hearing by letter on 20 December 2019 but was not in attendance.
6. The Tribunal has identified the following issues to be determined though these may be amplified by the parties in their statements of case:
 - Whether the works are within the Landlord's obligations under the lease.
 - Whether the costs are payable by reason of Section 20B of the 1985 Act.
 - Whether the Landlord has complied with any consultation requirements under Section 20 of the 1985 Act.
 - Whether the costs of any works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee.
 - Whether an order under Section 20C of the 1985 Act and Part 5A of Schedule 11 of the 2002 Act should be made.

- Whether an order for reimbursement of the application / hearing fees should be made.
7. Directions in this matter were issued on 15 January 2020. Inter alia they required the Respondent to serve on the Applicants documentation and a Statement of Case by 12 March 2020 as specified in paragraph 12 of the Directions.
 8. The Tribunal is informed by the Applicants that, apart from a copy of the accounts for 2018 which the Tribunal received simultaneously on 21 February, no documents or statement of case have been received by them.
 9. The Applicants submitted a bundle, using the information available, on 27 March 2020.
 10. The Respondent has not complied with Directions.
 11. Accordingly, the Tribunal is now Deciding the case on the evidence provided by the Applicants bundle.

The Lease

12. The Leases of the six flats in Block 1 are identical and all commenced 1 January 2005 for a term of 999 years.
13. Clause 3.2 requires the Tenant to pay the service charge in accordance with the Fourth Schedule. That schedule specifies that the Tenant shall pay 16.66% of the service costs.
14. Schedule Five details the services to be provided.

The Law

15. The Tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable.
16. By Section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. Section 19 (2) concerns where a service charge is payable before the relevant costs are incurred no greater amount than is reasonable is payable.

The Applicant's Submission

17. The bundle contains Schedules of disputed costs and these are attached.
18. The Schedules of disputed costs attached shows the amounts charged by the Respondent, offers by the Applicants and the determination of the Tribunal. These are appended to this decision.

The Issues

19. The Applicants' bundle identifies the relevant issues for determination as follows:

The payability and/or reasonableness of service charges relating to:-

Management fees

20. The Applicants state that the management contracts are supposedly annual but this is not the case. On examination, the signatures for each year are identical and obviously photocopies but with the date altered. The contracts refer to a review date (clause 1.7) and a 'term with an initial period' (clause 1.8) meaning that despite what is written, there is a clear intention to continue. The so-called annual contract is for all practical purposes a long-term agreement.
21. They note that the management agreement used by Moreland Estate Property Management Ltd was subject to the Court of Appeal decision in *Corvan (Properties) Ltd v Abdel-Mahmoud*. The appeal hearing in 2018 decided that the management agreement was a qualifying long-term agreement and should have been subject to consultation. The management agreements as provided do now probably meet the tests required in *Corvan* not to be QLTAs. However, they go on to state that as this case was in 2018, it is suspected (and admittedly cannot be proved) that the management agreements provided have been backdated.
22. Further, given the personnel involved, it is extremely unlikely that the Landlord would terminate the contract with the managing agent given that the two are, in essence, the same.
23. It is considered that the management contract is a qualifying long-term agreement and should therefore have been subject to a consultation with the Tenants under Section 20 of the Landlord and Tenant Act 1985. As this did not happen, management charges should be restricted to no more than £100 per tenant per year.
24. They point to exceptionally poor service from Moreland Estate Property Management Ltd. Responses were rarely received to enquiries. The only correspondence seems to emanate from the inefficient accounts department. The Tenants have received frequent demands for payment from the time when Moreland Estate Property Management Ltd was no longer managing the property and then receive further demands with interest and demands for payment to cover the costs of chasing money that is not owed. Two new Tenants have received demands for service charge for periods well before they acquired their interest in the flats.
25. As shown by the December 2018 Fire Risk Assessment, Moreland Estate Property Management Ltd has not undertaken or instructed basic management tasks. Where work has been instructed, the Tenants have not received good value. Even if it is construed that the management contracts

are qualifying long term agreements, the Tenants should receive a fee rebate due to the extremely poor service received.

26. Moreland Estate Property Management Ltd has rarely replied to requests for information from the Tenants and latterly from Antony Richards Property Services.

27. It is noted that under the terms of the management contract, Moreland Estate Property Management Ltd should visit the development once every two months. The Applicants requested sight of the site visit records but none was provided.

The Tribunal's Decision

28. The Tribunal accepts the Applicants evidence that the amounts payable in respect of management fees are: -

- Year ending 24 Dec 2018 £600
- Year ending 24 Dec 2017 £600
- Year ending 24 Dec 2016 £600
- Year ending 24 Dec 2015 £600

Reasons for the Tribunal's Decision

29. The Tribunal accepts the unchallenged submissions of the Applicant that the management contract is a Qualifying Long-Term Agreement for which no consultation has been carried out and that the amount payable at the statutory maximum of £100 per flat per annum for each of the years.

Insurance

30. The Applicants state that they paid £600 for insurance in the first year of the right to manage company. A receipt for an insurance premium is included in the bundle, but it is of little assistance as it does not specify the property or the nature of cover. The Applicants believe that the service charge payments for insurance do include an element of commission paid to the managing agent under the management contract.

The Tribunal's Decision

31. The Tribunal determines that the amounts payable in respect of insurance are:-

- Year ending 24 Dec 2018 £600
- Year ending 24 Dec 2017 £600
- Year ending 24 Dec 2016 £600

Reasons for the Tribunal's Decision

32. Clause 4.2 of the lease requires the Landlord to insure the Building, which is defined in the lease as Mill Court Apartments edged green on plan 2.

33. Clause 4.4 stipulates that the Landlord shall show evidence of cover and the receipt for the last premium.

34. In the absence of evidence of cover and premium receipts, the Tribunal accepts the unchallenged submissions of the Applicants and the sums payable for insurance are as set out above.

Cleaning and Gardening

35. This is shown as Cleaning and Gardening on the Applicants schedule but only evidence relating to Cleaning was submitted.

36. The applicants state that from the accounts, it would appear that the Tenants have been charged approximately £10 per week for the cleaning. The cleaners - Diane's Cleaning Service - have advised that the charge should be £13 per fortnight. They requested sight of all of the relevant invoices but none were provided.

37. The Tribunal notes that the Applicants propose that a reasonable sum would be £260 p.a or 50% of that charged by the respondent.

The Tribunal's Decision

38. The Tribunal determines that the amounts payable in respect of Cleaning and Gardening are: -

- Year ending 24 Dec 2018 £260
- Year ending 24 Dec 2017 £260
- Year ending 24 Dec 2016 £260
- Year ending 24 Dec 2015 £260

Reasons for the Tribunal's Decision

39. The Tribunal accepts the unchallenged submissions of the Applicants and that the sums payable for cleaning are as set out above.

Fire Safety

40. The Applicants describe the costs for Fire Safety as ludicrously high. The only internal communal area is the hallway and stairs serving Flats 5, 6, 8 and 9. This has a smoke detector linked to the flats. Accompanying this is an emergency lighting system. The accounts for the years 2015 to 2018 show expenditure of £2821.96. A Fire Risk Assessment undertaken in December 2018 noted a lack of suitable signage and that the five-year hard wire test was last undertaken in 2016. They say it is clear that the expenditure attributed to Flats 5 to 10 is incorrect. They requested sight of all of the relevant invoices but none were provided. They believe that any work undertaken was not relevant to Flats 5 to 10 and therefore offer £0.

The Tribunal's Decision

41. The Tribunal determines that the amounts payable in respect of Fire Safety are: -

- Year ending 24 Dec 2018 £0

- Year ending 24 Dec 2017 £0
- Year ending 24 Dec 2016 £0
- Year ending 24 Dec 2015 £0

Reasons for the Tribunal's Decision

42. The Tribunal accepts the unchallenged submissions of the Applicants as to the sums payable for fire safety as set out above.

Health and Safety

43. The Applicants state that there have been no invoices provided to explain what Health and Safety work has been undertaken.

The Tribunal's Decision

44. The Tribunal determines that the amounts payable in respect of health and safety are: -

- Year ending 24 Dec 2018 £0
- Year ending 24 Dec 2017 £0
- Year ending 24 Dec 2016 £0
- Year ending 24 Dec 2015 £0

Reasons for the Tribunal's Decision

45. The Tribunal accepts the unchallenged submissions of the Applicant as to the sums payable for health and safety as set out above.

Redecoration and Repair

46. The 2015 accounts contain expenditure of £1749 for redecorations and repair. The 2016 accounts contain expenditure of £2015 for general repairs. The Applicants understand the first was for decorating the walls and the second was for decorating the windows. In any case, this work (and more) was completed to a better standard (according to those living on site) in 2018 for the sum of £2450. The Tenants have yet again been failed by the management company and have been overcharged. There has been no consultation with the Tenants and on the disputed charges sheet, a generous figure of £1500 has been offered, this being the maximum without a Section 20 consultation.

The Tribunal's Decision

47. The Tribunal determines that the amounts payable in respect of redecoration and repair are: -

- Year ending 24 Dec 2016 £1500
- Year ending 24 Dec 2015 £1500

Reasons for the Tribunal's Decision

48. The Tribunal accepts the unchallenged submissions of the Applicants as to the sums payable for redecoration and repairs as set out above.

Sinking Fund

49. The Applicants state that the lease does not allow for the creation of a sinking fund.

- Year ending 24 Dec 2016 £0

Reasons for the Tribunal's Decision

50. The Tribunal accepts the unchallenged submissions of the Applicant that no sums are payable for a sinking fund.

Door entry system

51. The 2018 accounts show expenditure for a door entry system. The flats do not have a door entry system. There is a door entry system which serves Flats 1-4 - 'Mills 1' only and should not be charged to Flats 5-10.

The Tribunal's Decision

52. The Tribunal determines that the amounts payable in respect of the door entry system are: -

- Year ending 24 Dec 2018 £0

Reasons for the Tribunal's Decision

53. The Tribunal accepts the unchallenged submissions of the Applicant that the sums payable for the door entry system are as set out above.

Application under S.20C, Sch. 11 and refund of fees

54. The Applicants made an application for a refund of the fees that had paid in respect of the application. Having heard the submissions from the Applicant and taking into account the findings above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this Decision.

55. In the application form, the Applicant applied for an order under section 20C of the 1985 Act and Sch11 refund fees. In view of the success in their application the Tribunal determines that it would be just and equitable for these orders to be made.

Application for costs under Rule 13

56. The Tribunal has noted the application by the Applications and defers its decision until the Respondent has received the decision and has 28 days to make representations.

Appeals

1. A person wishing to appeal this Decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the Decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then Decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the Decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

SCHEDULE

DISPUTED SERVICE CHARGES S/C YEAR ENDED 24/12/2015

Case Reference: CHI/00HE/LIS/2019/0074

ITEM	COST	TENANTS' COMMENTS	TENANTS' OFFER to Landlord	LANDLORD'S COMMENTS	TENANTS' OFFER in the absence of Landlord's Response	DISPUTED BALANCE for which refund is requested	TRIBUNAL
Management Fees	£1,200.00	Qualifying long term agreement for which no 520 consultation was undertaken. Therefore fees should be limited to £600	£600	NONE	£600	£600	£600
Cleaning & Gardening	£562.82	Given previous years this seems very high. Please supply invoices	Need to see invoices	NONE	£260	£302.82	£260
Fire Safety	£349.13	It is believed such expenditure was not incurred on this block	NIL	NONE	NIL	£349.13	NIL
Health & Safety	£87.50	Please advise what this refers to and supply an invoice	Need to see invoices	NONE	NIL	£87.50	NIL
Redecorations and Repair	£1,749.00	Please provide relevant invoices, copy of consultation with tenants and quotes received.	Need to see invoices	NONE	In the absence of any proof £1500	£249	NIL

£1,588.45

SCHEDULE

DISPUTED SERVICE CHARGES S/C YEAR ENDED 24/12/2016

[case Reference: CHI/00HE/LIS/2019/0074

ITEM	COST	TENANTS COMMENTS	TENANTS' OFFER	LANDLORD'S	TENANTS' OFFER	DISPUTED BALANCE	TRIBUNAL
			to Landlord	COMMENTS	in the absence of Landlord's Response	for which refund is requested	
Insurance	£910.96	Premium is too high. The premium in 2019 was £600	£600	NONE	£600	£311	£600
Management Fees	£1,200.00	Qualifying long term agreement for which no 520 consultation was undertaken. Therefore fees should be limited to £600	£600	NONE	£600	£600	£600
Cleaning & Gardening	£480.94	Given previous years this seems very high. Please supply invoices	Need to see invoices	NONE	£260	£280.94	£260
Fire Safety	£1,011.37	It is believed such expenditure was not incurred on this block	NIL	NONE	NIL	£1,011.37	NIL
Health & Safety	£87.50	Please advise what this refers to and supply an invoice	Need to see invoices	NONE	NIL	£87.50	NIL
Sinking Fund	£1,300.00	The lease does not allow for the creation of a sinking fund	Return immediately to the Right to Manage Company	NONE			NIL
General Repairs	£2,025.12	Please provide relevant invoices, copy of consultation with tenants and quotes received.	Need to see invoices	NONE	In the absence of any proof £1500	£525.12	NIL

£2,815.89

SCHEDULE

[DISPUTED SERVICE CHARGES S/C YEAR ENDED 24/12/2017

[case Reference: CHI/00HE/LIS/2019/0074

ITEM	COST	TENANTS' COMMENTS	TENANTS' OFFER	LANDLORD'S COMMENTS	TENANTS'OFFER	DISPUTED BALANCE	TRIBUNAL
			to Landlord		in the absence of Landlord's Response	for which refund is requested	
Insurance	£1,005.67	Premium is too high. The premium in 2019 was £600	£600	NONE	£600	£405.67	£600
Management Fees	£1,260.00	Qualifying long term agreement for which no S20 consultation was undertaken. Therefore fees should be limited to £600	£600	NONE	£600	£600	£600
Cleaning & Gardening	£437.65	Given previous years this seems very high. Please supply invoices	Need to see invoices	NONE	£260	£177.65	£260
Fire Safety	£571.40	It is believed such expenditure was not incurred on this block	NIL	NONE	NIL	£571.40	NIL
Health & Safety	£87.50	Please advise what this refers to and supply an invoice	Need to see invoices	NONE	NIL	£87.50	NIL

£1,842.22

SCHEDULE

[DISPUTED SERVICE CHARGES S/C YEAR ENDED 24/12/2018

[case Reference: CHI/00HE/LIS/2019/0074

ITEM	COST	TENANT'S COMMENTS	TENANT'S OFFER to Landlord	LANDLORD'S COMMENTS	TENANT'S OFFER in the absence of Landlord 's Response	DISPUTED BALANCE for which refund is requested	TRIBUNAL
Insurance	£1,003.77	The premium in 2019 was £600	£600	NONE	£600	£403.77	£600
Management Fees	£1,260.00	Qualifying long term agreement for which no S20 consultation was undertaken. Therefore fees should be limited to £600	£600	NONE	£600	£600	£600
Cleaning & Gardening	£431.76	Please supply invoices	Need to see invoices	NONE	£260	£171.76	£260
Fire Safety	£890.06	It is believed such expenditure was not incurred on this block	NIL	NONE	NIL	£890.06	NIL
Health & Safety	£282.50	Please advise what this refers to and supply an invoice	Need to see invoices	NONE	NIL	£282.50	NIL
Door entry system	£514.08	On inspection 17.02.2020 the flats do not have a door entry system.	NIL	NONE	NIL	£514.08	NIL

£2,862.17