Case Reference	**:**	**MAN/OOCG/LSC/2020/0008**
Property	**:**	**86 Hall Park Hill Sheffield S6 5QU**
Applicant	**:**	**Sheffield City Council**
Respondent	**:**	**Mr. Stephen Ernest Stringer**
Type of Application	**:**	**Commonhold and Leasehold Reform Act 2002 - Schedule 11 para 5 Landlord and Tenant Act 1985 - s27A**
Tribunal Members	**:**	**Mr John Murray LLB** **Ms Elisabeth Scull MRICS**
Date of Decision	**:**	**5 August 2020**
Date of Determination	**:**	**7 September 2020**

DECISION

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DECISION

The Tribunal determines that the Service Charges payable by the Respondent to the Applicant are as follows:-

(a) £1721.28 for the major works

(b) £142.18 for the insurance

REASONS FOR DECISION

INTRODUCTION

1. The Applicant issued proceedings in the County Court Business Centre in claim number F3QZ19F3 on 22 March 2019 for £2579.15 for service charges, buildings insurance and ground rent in respect of 86 Hall Park Hill Sheffield (the Property) including interest (27.7.17 to 21.3.19) on the principle sum of £2123.16 continuing at the rate of £0.47 per day at the rate of 8% per annum at the County Court rate of 8%.

2. The Respondent submitted a defence to the claim.

3. The claim was transferred to the Count Court at Sheffield where it was allocated to the small claims track and directions made by District Judge Bellamy on the 13 August 2019. The parties subsequently agreed the matter should be referred to the Tribunal and an Order was made by consent to refer the matter to the Tribunal on 9 September 2019.

THE PROCEEDINGS

4. Directions were made by a Procedural Judge on 6 March 2020 for the application to be determined on the papers without the need for a hearing or an inspection of the Property.

5. The Applicant was directed to file and serve a statement of case within 21 days of the directions.

6. The statement was to specify in respect of each year concerned, the total service charges and administration charges believe payable, with an explanation (by reference to the lease of the Property) the basis on which the charges were applied, calculated and apportioned. The statement was to be accompanied by specified documents.

7. The Respondent was directed to file and serve a statement in response within 21 days along with a schedule setting out in columns each disputed item, reasons for dispute, amount (if any) he was willing to pay, and a space for the Applicant's comments on each item.

8. The Applicant was permitted to file a reply within 14 days of the response.

THE PROPERTY

9. The Property is a flat in a development of four dwellings, three of which share communal facilities, and one which does not. Three (including the Property) pay a "block charge" for services. All four pay an "estate charge" for services.

THE LEASE

10. The Property was let by the Applicant to Edward and Maureen Bradshaw on the 24th July 1989 under the Right to Buy scheme and assigned to the Respondent on 2 May 2008.

11. Under the terms of the lease the Respondent covenanted as follows:

(a) Clause 1(A) and 3(1)(a) to pay Ground Rent of £10 a year in advance on the first of April each year.

(b) Clause 1(B) to pay a Service Charge in addition to rent, to be determined and levied in accordance with the provisions contained in Part III of the Schedule.

(c) Clause 3(30) to pay a contribution to the Buildings Insurance upon demand from time to time the Applicant's expenditure on insuring the Property on a yearly basis. The Applicant is obliged to insure the demised premises by Clause 4(4) of the lease and in accordance with the provisions of that clause.

12. Under Clause 3(29) of the lease the Applicant has the option of either demanding service charges in advance on the basis of an estimate, and reconciling actual service charges at the end of the year, or to demand service charges at the end of the year on the basis of actual costs incurred.

THE LEGISLATION

The relevant legislation is contained in s27A Landlord and Tenant Act 1985 which read as follows:

s27A Liability to pay service charges: jurisdiction.

(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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a)in a particular manner, or

(b)on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred the tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Common hold and Leasehold Reform Act 2002 Schedule 11 paragraph 5:

(1)An application may be made to a [the appropriate tribunal] for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

SUBMISSIONS

THE APPLICANT

12. The Applicant filed a statement of case by Leigh Hall, a solicitor acting on their behalf, summarizing the terms of the lease, the monies sought, the law and details of the fire safety works.

13. The Applicant confirmed that the fire sprinklers were improvements, as they had not existed in the property previously. Clause 3(29) obliged the Respondent to pay for works of improvements, and Clause 4(3)(a) obliged the Applicant to carry out works if desirable in their opinion. The Council felt that the works were "reasonably incurred" on account of the FRA, and that the costs were reasonable. The Applicant stated that they were not aware of the Respondent's financial position, but he had been offered various options to pay, as set out in a "How to Pay" leaflet which accompanied the invoice.

14. The administration fee was set out in Clause 5(6)(vi) of the lease being10% of the relevant charges or £5 whichever is higher.

15. The Applicant said there was no reason why the charges they had incurred in the action should not be recovered from the Respondent, and that no s20C order should be made.

16. The Applicant filed a statement dated 18 June 2020 by Catherine Hill, Acting Leasehold Services Manager.

17. She outlined the County Court claim was made for the following sums:

(a) Ground rent for 1.4.18 to 31.3.19 **£10**. This had been paid since proceedings were issued and was no longer sought.

(b) Block insurance for period 1.4.18 – 31.3.19 totaling £167.53. £25.35 had been paid since proceedings were issued**; £142.18** remained outstanding.

(c) Major works service charge incurred during the financial year 1.4.16 – 31.3.17 for fire sprinklers totaling **£1845.63**. This amount represented the original share of the costs of £1873.90, together with £187.39 which was described as an "administrative fee". The amount had been reduced by

i. £86.96 by way of a credit due to some works not being carried out
ii. along with a corresponding reduction for the administration fee
iii. plus further payments totaling £28.70 for payments allocated against the invoice.

18. Ms. Hill confirmed that the Applicant had opted to request costs after they had been incurred under Clause 3(29). She confirmed that demands were accompanied by breakdown of costs and a Summary of Rights and Obligations.

19. In relation to the Respondent's objections regarding insurance, she stated that the Applicant had taken out insurance in accordance with clause 4(4(i) of the lease in respect of the Respondent's premises, and the structure and exterior of the block of flats in the joint names of the parties, and outlined the procedure the Applicant involved, as follows:

20. The Applicant took out an insurance policy for all of its properties on a city wide basis, and selected the policy through a competitive tendering process with each contract being for an initial period of three years with the option to extend to maximum period of five years.

21. The statement demonstrated that the rates had been very similar for the four years prior to the one in dispute, and the Respondent had not objected previously (although on two occasions had only paid after legal proceedings were commenced).

22. In relation to the installation of the Fire Sprinkler System, Ms Hill provided detailed evidence of the extensive consultation process followed under s20 Landlord and Tenant Act 1985, which had gone beyond the statutory minimum.

23. The contract was awarded to the Lovell Partnership, and the estimated costs for the works to the Respondent's Property was £2400 – 2500. The Applicants' had no record of any written observations made by the Respondent.

24. The Applicant held some residents events across the city to enable leaseholders and tenants to meet with them and contractors, about these major works and others. An event was held for the Respondent's block of flats on the 8 October 2014 but the Applicant had no record that the Respondent had attended.

25. On 2 March 2016, a letter was sent to the Respondent in accordance with s20B Landlord and Tenant Act 1985 setting out his costs for the works as being £2422.21. A formal demand was sent for payment on the 20 October 2017 with a detailed breakdown of the costs, and a Summary of Rights and Obligations.

26. The Respondent wrote to the Applicant on 6 March 2018 disputing his liability to pay for the works. He raised a specific objection regarding the administrative charge for the cost of the works. He objected to the fire sprinkler system, on the basis he neither wanted it, could not afford it, and did not need it. He said he had raised these objections at the consultation meeting. His objections were investigated and responded to, then reviewed, and the determination upheld. He was sent a letter before claim on the 23 October 2018 in accordance with the pre action protocol. He was given on a number of occasions details of how to apply to the Tribunal, but no such application was made.

27. The Applicant sought the Administration fee under clause 5(6)(vi) of the lease, which stated that an amount of 10% of the relevant amount, or £5, whichever was the greater could be added to any sum demanded by the Applicant towards administrative costs and expenses. Ms. Hill said the Applicant put a voluntary cap of £200 on this to ensure reasonableness to leaseholders, but that meant the administration fee might not always cover the actual cost to the Applicant.

28. Further, in respect of the Fire Sprinkler major works costs, the Applicant filed a statement by Gary Lund, Manager of Health and Safety and Wellbeing and dated 18 June 2020 giving full details of why the sprinkler system was necessary and its costs.

29. He set out in considerable detail steps taken by the Applicant following the Lakanal House fire in 2009, and how they had adopted a programme of retrospective fire sprinkler systems in flat blocks with the British Automatic Fire Sprinkler Association. Mr Lund confirmed that the installation of sprinkler systems in tower blocks was not and has never been a mandatory requirement.

30. As part of its continuing duties to maintain fire integrity and compliance, the Applicant carried out regular Fire Risk Assessments of tower blocks. In the summer of 2013, Mr. Lund came to the view that rather than retrospectively fitting fire sprinklers in all occupied tower blocks, the better approach would be to adopt a property focused approach and he produced in evidence his report to the Applicant's Housing Investment Board dated 20 July 2013.

31. In that report he recommended the Respondent's property for installation of a sprinkler system due to its layout. He explained that it was what is known as a Ranch type, or G type property, being a ground floor, one bedroom flat in a three storey block, with 30 flats in the block. It was built on a sloping site, and consequently the ground floor properties only extended halfway back into the block. The bedrooms were located to the front of the block, making the Property twice as wide as the properties on the floor above. The sprinkler system was the preferred option because of a shorter installation time, and lower cost compared to the alternative considered method.

32. A Fire Risk Assessment had been carried out in October 2012 on the Respondent's block to assess the property in accordance with the Housing Health and Safety Rating System. The block was found to meet the Local Government Association Guidance on Fire Safety in Purpose Built Block of Flats, but the Applicant considered the standard was relatively low, and it did not comply with the Regulatory Reform (Fire Safety) Order 2005 and the requirements of Approved Document B of the Building Regulations.

33. The Applicant's FRA therefore identified the need to carry out immediate action to ameliorate the "high risk" found in the block, due to the construction and layout of the flats, to enable

(a) Suitable compartmentation to facilitate a "stay put" policy;
(b) Facilitate the means of escape from the "inner room" bedrooms;
(c) Prevent the spread of fire throughout the timber construction of the block.

34. The recommended works to address the risk was a fire suppression system to all of the properties in the block except some properties where a system of enhanced fire stopping was preferred due to their layout as a fire supression system was not appropriate. Mr. Lund pointed out that failure to comply with the FRA was an offence, and it would not be an option to allow individual residents (tenants or leaseholders) to opt out of the scheme as the whole block would be compromised.

35. He referred to having given a presentation entitled "Fire Suppression, reason for Installation" at an event on 8 October 2014 with the Fire Service, the contractors, and the Council's Project manager, which received positive contributions.

36. Since the installation of the system across the city there had been several incidents of fires in blocks. The systems had activated as required, restricting the spread of fire to adjacent properties. There had been no injuries or deaths as a result of these fires.

THE RESPONDENT

37. The Respondent filed a defence in the County Court proceedings.

38. In respect of the installation of the sprinkler system, he described attending a what had been described as a meeting at the local community centre, but said it was a presentation, not a meeting. He said he had argued that he did not want a sprinkler system, did not need one and could not afford it, and that it would not be reasonable or fair to suggest he was liable to pay for it. He said the flats on the Hall Park Estate had been described as Houses in Multiple Occupation, which they could not be as they were all entirely separate. He stated that as he owned his home, and it was mortgaged, and had not authorised the sprinkler system and it was against his wishes, he should not have to pay for it. He said there were charges for works that had not been carried out – removing and replacing furniture and fixtures, and fittings, and making good redecorations. He asked for a breakdown of the administration figure of £187.39.

39. He described a visit from the Fire Prevention Officers who indicated that converting his porch into a "fire box2 by replacing the corrugated plastic room with glass would have avoided the need for the system.

40. He provided evidence he had paid his ground rent.

41. In relation to the insurance, he said he was obliged to pay his buildings insurance, but did not have the freedom of choice to decide who his insurer should be, if he needed it, or how much he was willing to pay. He felt it was unfair, and gave rise to conflicts of interest. He suggested that just because terms were in the lease, that did not necessarily make them fair, and that he did not benefit for example from any work to the roof, as his flat was on the ground floor. He said as a leaseholder he did not own the structure of his home, which was in the ownership of the Applicant, and if the Applicant wanted insurance to protect the integrity of the building, then they should be expected to pay for it. He stated that there had been a number of floods over the years at his home as a result of the Applicant's negligence, resulting in insurance claims, which resulted in an uninsured excess which the Applicant had not reimbursed him for.

42. The Respondent filed a statement of case dated 30 June 2020. He said a lot of his documents were at his work place and he had not been able to visit them due to the effects of Covid-19, but he acknowledged that a number of documents in the bundle set out his position.

43. He referred to pages 46-48, (his defence, above) 140-158, (a letter to the Applicant dated 24 October 2019) 270- 281 (a letter to the Applicant dated 6 March 2018) and 296-298 (a letter to the Applicant dated 15 November 2018). The letters made substantially the same points as he made his in his defence.

44. He indicated he did not know what s20C of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 meant.

THE APPLICANT'S RESPONSE

45. The Applicant responded by email dated 15 July 2020 to the Tribunal, (copied to the Respondent) and agreed to give him further time to seek advice from the Leasehold Advisory Service in respect of those matters he was not familiar with in case he wanted to make representations about Section 20C.

THE DETERMINATON

46. The Tribunal makes the following determinations

Ground Rent

47. The Ground Rent having been paid is no longer a matter before the Tribunal

Insurance

48. It is a term of the lease that the Applicant must insure the building, and the Respondent must pay his contribution towards that period. The Respondent did not challenge the terms or the cost of the policy but made a general observation that it was unfair.

49. It is entirely normal and necessary that properties are insured and residential leases must contain such a covenant for the Landlord, who has overall control of the building and it's common parts to arrange that insurance, and charge by way of service charge the leaseholders who's homes are protected by such insurance, and there is nothing unfair about it. Whilst it is a relatively common observation for a ground floor lessee to suggest that they do not benefit from roof repairs, the reality is it would not take long for them to notice that a roof was leaking as water finds the path of least resistance, which is usually towards the ground. In any event, the terms of the lease are that all parties will contribute towards the insurance, and the Tribunal determines that the Respondent must pay the amount sought, being £167.53. The

Tribunal understands that £25.35 had been paid since proceedings were issued**; £142.18** remains outstanding.

Administration Charges

50. The parties have referred to the administration charges reserve in the lease at Clause 5.6.(vi); however this is a management charge, rather than an administration charge as defined by Schedule 11 of the Commonhold and Leasehold Reform Act 2002, so is assessed as a service charge in accordance with section 19 of the Landlord and Tenant Act 1985. The Tribunal finds that the charges are as set out in the lease, and at 10% are a standard rate, and reasonable. The Applicant has gone above and beyond a standard management overview for these major works, and the management charges are allowed, in the paragraph below.

Major Works: Sprinkler System.

51. The Applicant quite rightly carried out a Fire Risk Assessment as they are obliged to do. The Risk assessment found that there was a high risk if the sprinkler system was not installed, due to the layout of the properties. In the absence of any direct evidence to contradict this, other than hearsay evidence of an alternative system that some unidentified Fire Prevention Officers may have said to the Respondent, which was not in writing and may well have been misunderstood, there is no other evidence for the Tribunal to rely upon, and we cannot go beyond the Applicant's evidence that a fire safety suppression programme was essential.

52. The Applicant is able to charge for improvements in accordance with Clause 3(29) as the Applicant relied upon in their statement of case. The Respondent is furthermore obliged to pay any costs the Applicant incurs as a result of the Applicant ensuring the premises comply at all times with any fire regulations, as a result of Clause 3(22).

53. The Applicant provided evidence they had properly consulted and served a Summary of Rights and Obligations, complying with their statutory obligations.

54. The Respondent is consequently obliged to pay for major works service charge incurred during the financial year 1.4.16 – 31.3.17 for fire sprinklers totaling **£1845.63**. This amount represented the original share of the costs of £1873.90, together with £187.39 which was described as an "administrative fee". The amount had been reduced by a number of credits as outlined in the Applicant's statement of case, leaving the sum of £1721.28 outstanding.

S20C Landlord and Tenant Act 1985

55. The Applicant has been entirely successful in this case. It is unfortunate that as an Advice Worker, (although not in respect of leasehold law) the Respondent did not seek advice at an earlier stage, as the points he made in his defence were unfounded and misguided. There is no reason why an order should be made under s20C.

Tribunal Judge
John Murray