



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

Case reference : **BIR/00GA/LIS/2020/0004**

HMCTS code (paper, video, audio) : **P:PAPERREMOTE**

Property : **3 Goodridge Court Gloucester Road
Ross on Wye, HR9 5GD**

Applicant : **Audrey Mullins**

Representative :

Respondent : **Fairhold Homes (No 3) Limited**

Representative : **JB Leitch Limited**

Type of application : **For the determination of the
reasonableness of and the liability to
pay a service charge**

Tribunal : **Judge D Barlow**

Date of decision : **1 October 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not proportionate, no-one requested the same and all issues could be determined on paper. The parties have submitted statements and other correspondence to the tribunal which has been fully considered and where relevant, is referred to below.

Decisions of the Tribunal

- (1) The Tribunal determines that the sum **£192.75** in respect of the of the Service Charge Deficit for period from 1 September 2018 to 31 August 2019 is payable by the Applicant to the Respondent.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

REASONS:

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the whether the Service Charge Deficit in respect of the service charge year 1 September 2018 to 31 August 2019, which was included on the service charge demand for the half year period from 1 March 2020 to 31 August 2020, is payable and reasonable.
2. The Applicant also seeks an order for the limitation of the Respondents costs in these proceedings under s20C of the 1985 Act and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The Law

3. The relevant law is set out in the Appendix to this decision

The background

4. The property which is the subject of this application is a ground floor flat within Block 2 of the Goodrich Court development at Gloucester Road, Ross on Wye.
5. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards the costs of such services, by way of a variable service charge. The relevant provisions of the lease will be referred to below, where appropriate.

The issues

6. The specific matter for the Tribunal to determine is whether the balancing charge, described as the Service Charge Deficit, for the period 1 September 2018 to 31 August 2019, demanded from the Applicant, in the sum of £192.75 is payable and reasonable.

The evidence

7. The Applicant has provided a copy of her lease the terms of which require the landlord to carry out the services set out in the Sixth Schedule for which the Applicant pays a variable service charge.
8. The Fourth Schedule sets out the mechanism for payment. Each year the tenant must pay half yearly, in advance, on account of the Service Charge, such reasonable sum (the budgeted figure) as the landlord or its agents consider appropriate (paragraph 4.1). After the end of each Service Charge year (31 August) final accounts summarising the actual expenditure for the preceding year are prepared and sent to the tenant. This final account will include a balancing charge, showing any surplus or deficit in respect of the on-account payment demanded on the half year account. (paragraph 5.2).
9. The Applicant, Mrs Mullins questions why the budget figure for the service charge year 2018/2019 was less than the actual costs and expenses incurred leading to a deficit demand of £192.75. Mrs Mullins queried the deficit with the landlord's agents, First Port Retirement Property Services on 23 March 2020. They responded on 22 April 2020 to say that the deficit had come from the gardening contract and electricity, and also some VAT introduced by the government in November 2018, that were not budgeted for. Mr Mullins made submissions concerning this exchange in which she alleges bad management, stating that the electricity bills could be more closely monitored in the communal areas by the use of thermometers and reducing the use of dryers replacing them with electric clothes horses in each flat.

10. The Respondent filed a detailed statement of case on 4 May 2020 which included copies of the 2018/2019 budget and final service charge accounts which the Tribunal finds have been properly calculated, budgeted and demanded. There is no challenge by Mrs Mullins to the general reasonableness of the service charge for this year, in fact having received an explanation for the deficit from First Port, the only item that Mr Mullins specifically makes submissions on is the electricity bill which she believes is higher than necessary.
11. The Respondent has also filed copies of all invoices in respect of electricity and ground maintenance included in the final account for 2018/2019.
12. The Tribunal has considered the budget and final service charge accounts. Not surprisingly the figures for the various heads of expenditure on the final account vary from the budget. Some are less than budgeted, others are more. They largely cancel out each other save for two items, correctly identified by First Port, as the electricity bills, budgeted for £5,500.00 but coming in at £9,890.88 and ground maintenance, budgeted for £7,635.00 but coming in at £14,693.54. However, the invoices provided by the landlord confirm that these expenses were incurred and paid for by the landlord as included in the accounts.
13. The Tribunal finds that Goodridge Court is a large estate which requires the landlord to incur substantial annual expenditure of some £150,000.00 per year in compliance with its contractual obligations under the leases. While the landlord must do its best to make a reasonable estimate of the service charges for the following year, an estimate is just that; and it is inevitable that the final account will, in some years, yield a surplus and in others a deficit.
14. The only item on which the Applicant has made specific submissions, is the electricity costs. The lease requires the landlord to keep the common areas and any managers flat lit, and where internal, heated (paragraph 3 of the Sixth Schedule). How the landlord complies with this obligation is a matter for the landlord unless there is some evidence that the electricity charges are unreasonably high due to some breach or failure of the landlord to secure a more reasonable alternative. Tenants' can make suggestions about small economies that landlord could consider, but it is for the landlord to determine, acting reasonably, how it complies with its lease covenants. There is no evidence on which the Tribunal can conclude that the electricity charges are either unreasonably high or not payable by the tenant as part of the service charge.
15. So far as ground maintenance is concerned, although the costs exceed the budgeted figure, it is clear that the expenses have been incurred by the landlord in performance of its obligations under the lease and are properly chargeable to the tenant under the variable service charge

provisions. There is no evidence on which the Tribunal can conclude that the charges are unreasonable or not payable.

The Tribunal's decision

16. The Tribunal therefore determines that the amount payable by the Applicant, in respect of the Service Charge Deficit for the period 1 September 2018 to 31 August 2019 is **£192.75**.

Application under s.20C of the 1985 Act and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

17. In the application form the Applicant applied for an order under section 20C of the 1985 Act and for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Having considered the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is not just and equitable to make an order under either of these provisions.

Name: Judge D Barlow

Date: 1 October 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber)

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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