



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

Case reference : **CAM/000KC/LSC/2020/0019**

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

Property : **6 Optima House, 43 High Street South,
Dunstable, Beds LU6 3RZ**

Applicant : **Steven Curran flat 6; David Bulmer flat
1; Miss S Zandi flat 2; Registration
Transfers Limited flats 3 and 4; Ross
Scott flat 11**

Representative : **Steven Curran**

Respondent : **Ground Rent Trading Limited**

Representative : **Moreland Estate Management Limited**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal member : **Tribunal Judge Dutton**

Date of decision : **5th October 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and no-one requested the same, and all issues could be determined on the paper. The documents that I was referred to are in a bundle of 54 pages, the contents of which I have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal determines that the sum of £1,088 shall be deducted from the estimated service charges but that the final accounting in respect of same should await the production of the final accounts for 2020.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge year 2020, they being estimated charges.

The background

2. The property which is the subject of this application is a three storey building, comprising 12 flats, some one bed and some studio style. At ground floor level there appear to be two commercial units. There is car parking, some allocated.
3. Photographs of the building were provided in the bundle. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
4. The Applicants hold long leases of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
5. Specifically, the lease provides that the lessee shall pay 8.33% of certain service charges and 2/3rds of 8.33% in respect of insurance for the property and structural repairs.
6. The accounting period runs from 1st January in each for a year and at clause 4 the obligations of the Landlord are set out including the

provision for a Maintenance charge and reserve fund. The interim service charge is defined as being the sum set out in the lease, namely £350 or “such other sum as the Landlord shall from time to time reasonably determine”

The issues

7. In this case the Applicants challenge the estimated service charges for the period 2020. The questions asked of me are whether the costs estimated for the items listed in the application at page 10 are reasonable in relation to the type of property, the level of service and the amount being charged annually. In particular it is said that of the cleaning and gardening there is no garden and that although some residents have a reserved space the area is also used by the commercial tenants. It is said that the insurance is very high and a question is posed as to whether the drainage was blocked by the commercial usage.
8. In the papers before me I had a copy of the annual accounts to the period ending December 2019, which were unaudited but prepared by L B Ladenheim, a Chartered and Certified Public Accountant. I have noted the Accountant’s report.
9. I am not aware that the accounts for 2019 have been challenged.
10. The Applicants have produced some evidence of what they consider could be alternative quotes for some items of service charge and have completed the Scott Schedule annexed to the directions issued in this case on 10th June 2020. I have noted the contents and the copies of photographs showing the property exterior and the interior.
11. On the question of insurance I have been provided with an email from Sentio Insurance Brokers which suggests a premium of £1,500 to 1,800. However, this is surrounded by a number of assumptions and some outstanding questions as well as an estimated rebuild value based on a view on Google maps of £1m. There is also what appears to be a screen shot of another insurance quote, I assume on an individual flat basis of £174.70.
12. A response to a request for an estimate for service charge costs was also included, from CS Block Management. I am not clear as to whether CS BM attended the site but clearly they did not have sight of a lease of the flats. I have noted all that was said in this email.
13. An email from Mr Rupert Nixon indicated that, following a site visit, their annual fee for day to day management would be £1,750 plus VAT.
14. In addition to the above I was provided with an email from Lightning Fire setting out the charges for an initial visit with and the costs for

subsequent visits for FA servicing and e/lighting testing. This was followed by a estimate from Anderton Electrics for testing the emergency lights and the smoke alarms.

15. Estimates were produced for cleaning, both internal and external showing costs of between approximately £3,600 and £3,120 per annum. A quote from Mel's cleaning did not assist as the detailed quote was not attached. In addition to the above I was provided with quote's for deep cleaning and carpet cleaning. Two quotes for decorating the communal areas were provided and I have noted the contents.
16. I am not aware that the Respondent has participated in these proceedings.

Findings

17. This application seeks to challenge the claim for estimated service charge monies. I have not seen the demand that I assume accompanied the claim. No allegation is made that it was defective. The demand, both as provided for by the lease and s19(2) of the Landlord and Tenant Act 1985 must reasonable. The question I must therefore decide is what is reasonable. The difficulty in this case is that the costs are estimated and that no challenge was made to the service charge accounts for 2019, upon which it is usual to base the estimated costs for the coming year. I should say at this stage that any findings I make on the estimated charges does not prevent the Applicants seeking a determination when the actual accounts are produced for the year 2020.
18. There are say half a dozen costs of size and I shall start with those in so far as they are in dispute. The first is the insurance. I have noted the estimate from Sentio Insurance Brokers. This is, not unnaturally, couched in various disclaimers. The Applicants have not been helped by the Respondent's lack of involvement. On 3rd July 2020 Mr Curran wrote to the agents, Moreland Estates, requesting information which would have given him a chance to have obtained a comparable cost for insuring the property. He received no response. The actual costs for 2019 is shown as £6,778.80 in the accounts and a reduced sum of £4,750 is sought. The estimated costs are some way off this. If I consider the cost, I assume per flat, of £174.70 that would show a figure of over £2,000 for the flats on a simplistic basis. This ignores the commercial element and really has little tie in with a block of flats and commercial properties. I bear in mind that it is established that the Landlord does not have to utilise the cheapest insurance. The landlord must show that he has tested the market and explain the reasons for choosing the specific insurance.
19. My finding on the insurance is that the sum demanded is not unreasonable. However, the Landlord's agents should provide the information requested by Mr Curran in his letter so that he can fully review the insurance premium.

20. The next large item of expenditure that is challenged is cleaning and gardening. Again in 2019 an unchallenged figure of £3,499.92 was claimed. The alternative estimates indicate figures not so far removed from the Landlord's estimated charges and accordingly I find that an estimated demand of £3,750 is reasonable.
21. The next item is the management fee. The previous year shows a figure of £2,934.00. This equates to a charge of £244.50, including VAT for each flat. The alternative is £175 per flat, this from Rupert Nixon. It is possible that this alternative is a lower figure to attract the business. The estimate charge is £251.83 per flat. This seems to me to be generous, especially given the lack of involvement by the managing agents in these proceedings. In the circumstances I would reduce the management fee to the 2019 level of £2,934, **a saving of £88.**
22. At £1,500 the general maintenance estimated charge is considerably higher than the actual charge for 2019, which was £275. I appreciate that this is an estimated charge, but the figure actually spent in 2018 was only £426. I find that this estimated charge over eggs the pudding and reduce it to £500, close to the actual charge in 2018 but still giving some wriggle room for costs in the year 2020. **This gives a saving of £1,000.**
23. The fire alarm and emergency lighting appear as one in the 2019 accounts at £1,730. The sum sought as an estimate for 2020 is reduced to £1,210. I see that it would appear that no budgeted figure was given for 2019. I find that the estimated demand is reasonable, notwithstanding the estimates given by the Applicants. These estimates do not tell me how often they would visit for the servicing elements.
24. The remainder of the sums demanded are reasonable. Specifically I consider that the final accounts will show whether the estimated costs for drain clearance and entry phone costs were actually expended, but it does not seem reasonable to make some provision and the amounts sought are in my finding reasonable. The electricity in 2019 was £631.87 and an uplift to £750 is in my finding reasonable. The estimates given by the companies for deep cleaning, carpet cleaning and decorating may be of interest to the Landlord going forward.
25. As I said above there is nothing to prevent the Applicants from reviewing the actual costs when the 2020 accounts are produced. It might be said that the application was somewhat premature given that we are so far into 2020 and if last year is anything to go by the accounts for 2020 should be available in May 2012.

Application under s.20C and refund of fees

26. The Applicants have had a modicum of success. It does not follow that an application under s20C would be successful. However, in this case it

would not seem that the Respondent can have incurred any costs associated with these proceedings, given its lack of involvement. In the circumstances I am prepared to make an order under s20C that the Respondent may not recover the costs of these proceedings as a service charge against the named Applicants. The same applies to any attempt by the Landlord to recover costs under the provisions of paragraph 5A of the 11th Schedule to the Commonhold and Leasehold Reform Act 2002. I do not order that the Respondent to repay to the Applicants the tribunal fees as I consider these should borne by the Applicants.

Name: Tribunal Judge Dutton

Date: 5th 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.
- (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

20CLimitation 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.