



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

Case Reference : CHI/24UL/LSC/2020/0064

Property : 25 Bell Court, Merlin Road, Farnborough
GU14 7HR

Applicant : Ms Isabelle Spencer

Representative :

Respondent : A2 Dominion Housing Group Ltd

Representative :

Type of Application : Determination of liability to pay and
reasonableness of service charges

Tribunal Member(s) : Judge D. R. Whitney

Date of Determination : 11th November 2020

DETERMINATION

Background

1. The Applicant is the owner of a leasehold interest in the Property. The Respondents are the freeholder.
2. The Applicant applied to the Tribunal for a determination as to her liability to pay and reasonableness of certain service charges in the year 2018/2019 with a sum of £432.40 in dispute. Directions were issued on 28th July 2020 listing the matter for a telephone case management hearing.
3. The CMH took place on the 10th August 2020 and both parties attended. It was agreed by the parties that the items in dispute for the year 2018/2019 were:

Cost of lighting and electrics
Cost of electrical and lighting tests
Costs associated with passenger lifts
4. Directions were given for the matter to be determined on the papers. The directions have been complied with and the tribunal has been supplied with an electronic bundle by the Applicant. References in [] are to pages within that bundle.

Determination

5. The Tribunal in making its determination has considered all of the documents contained within the bundle. The Tribunal is satisfied that the matter remains suitable for determination upon the papers.
6. The Applicant in her original application challenged further items of service charge which are no longer pursued. She occupies the Property under a shared ownership lease [14-73]. Under the terms of the lease the Applicant is required to contribute fixed percentages to the variable service charge. The percentages vary dependent upon whether the cost relates to the building in which her flat is situated or the estate as a whole.
7. The relevant service charge provisions are set out in clause 8 of the lease [50-53]. These provisions provide for an interim service charge to be levied calculated based upon an estimate with then a balancing charge payable for any deficit subject to provision of accounts.

8. For the service charge year 2018/2019 an estimate was produced. Sadly, in respect of various figures this estimate was deficient and the sums spent exceeded the amount. On 12 September 2019 a balancing charge was demanded by the Respondent [74]. This charge totalled £412.47. A copy of the account, referencing the budget and explanation of overspends was provided by the Respondent to the Applicant [80-86].
9. The Applicant relies on payments from the local authority to settle her service charges. She explains that these payments are based upon the estimate provided by the Respondent and when she approached the local authority after receiving the balancing charge demand they have refused to make any additional payment. The Applicant believes that if a more realistic estimate had been provided then there would not have been a deficit.
10. Whilst the Tribunal has sympathy with the Applicant as was explained at the telephone CMH its jurisdiction is fixed by statute. Our role is to determine whether or not the balancing charge and the items making up the same are reasonable, we do not have any jurisdiction as to issues relating to the Applicants ability to pay the charge.
11. The Respondent in the explanation served with the original demand explains what the costs are and in most cases why they have exceeded the budget figures. For each of the three heads remaining in dispute an amount was budgeted but the sum actually spent far exceeded the budget sums. By way of example the budget for the passenger lifts was £2000 but some £8645.06 was actually spent.
12. The Respondents statement of case is at [113 and 114]. This explains what works were undertaken by way of electrical and light testing and on the passenger lifts. It also explained the electrical and lighting and explains that this is based upon the usage. It is noteworthy that no invoices or other supporting documents are provided.
13. The Applicant in her reply [115-116] continues to challenge the degree of divergence from the budget and also that no invoices have been provided.
14. The Applicant does not appear to challenge the Respondents ability to recover all of the amounts in dispute under her lease. I am satisfied that all such sums are recoverable under the lease terms.
15. Turning to the amounts whilst certainly it is concerning the amount of divergence on certain items within the budget by their nature this will occur. I note the Respondent tried to address this when sending out the demand by way of a written explanation. Whilst clearly this does not appear to assist the personal circumstances of

the Applicant the lease does allow the Respondent to demand any deficit of expenditure. This is what they did.

16. The cost of such expenditure must be reasonable and be for an item chargeable under the lease. As stated above I am satisfied the terms of the lease allow recovery of these costs by the Respondent.
17. I look next at the actual charges. Those relating to the passenger lifts and what is called electrical and lighting testing may be looked at together. Essentially under both of these heads of expenditure extra works were required during the year which had not been foreseen. These included works of repair to the lift totalling £7,452. A breakdown of the sums is given and the Respondent has been consistent in its explanation. Whilst I have not seen any invoices on balance I am satisfied that these sums have been spent by the Respondent. The Applicant does not suggest otherwise nor does she suggest other figures. As a result I am satisfied that the sums claimed are reasonable and the Applicant is required to pay her proportion under the terms of her lease.
18. Turning to what is called “lighting and electricity” the Respondent states:

“The budget provides for the cost to provide lighting in the common parts of the block and includes the electricity costs of running equipment such as the lift and the electronic notice board. The actual expenditure is determined by the usage of lighting and electricity in the common parts of the block.”
19. The Applicant again disputes this on the basis that no invoices or the like or more complete explanation has been provided. She makes the point that she cannot understand why the cost (£1685.63) is essentially double the budgeted amount given the building has been occupied since 2009.
20. I note that no explanation is given by the Respondent as to why the amount actually charged so exceeded the budget. This would have been useful and I would have ordinarily expected some explanation of the sums claimed and or copies of invoices. The Applicants share of this cost is £42.14 of which approximately half this sum was included within the budget.
21. I am mindful that as a Tribunal under our overriding objective we are required to ensure that costs spent are proportionate to the issues in dispute. On balance I accept the Respondents explanation and determine that the figure claimed is reasonable.
22. The Applicant has also sought an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of the Commonhold and Leasehold reform Act 2002. Both such orders are discretionary remedies. Whilst consideration must always be

given to the outcome it is incumbent upon me to look at the matter as a whole. I sympathise with the Applicants position and it is unfortunate that the sums within the budget were exceeded. On the other hand the Respondent has a duty to not claim excessive amounts within its budget. This is often a difficult balance to strike.

23. I therefore decline to make any such orders in this case having regard to all the circumstances of the same.

RIGHTS OF APPEAL

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