



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

Case Reference : **CAM/00KG/LIS/2020/0024**

County Court Claim No.: **G27YX284**

HMCTS : **CVP**

Property : **29, Colne Court, East Tilbury, Essex RM18
8RE**

Applicants:

Landlord : **(1) Goodwyn Realty Limited**

Management Company: **(2) Crevina Flat Management Company
Limited**

Managing Agent : **Warwick Property Management Limited
t/a Warwick Estates**

Representative : **Mr Jonathan Wragg of Counsel**

Respondent : **Ayodejit Akinliyi Adegbite**

Type of Application : **To determine the reasonableness and
payability of Service Charges (Section 27A
Landlord and Tenant Act 1985) and the
reasonableness and payability of the
Administration Charges (Schedule 11
Commonhold & Leasehold Reform Act
2002)**

Tribunal : **Judge JR Morris
Mrs M Wilcox BSc MRICS**

Date of Transfer Order : **17th September 2020**

Date of Directions : **26th October 2020**

Date of Hearing : **19th January 2021**

Date of Decision : **28th January 2021**

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal determined that the sum of £384.50 was payable in respect of the Service Charge for the year ending 31st March 2020 by the Respondent to the Applicant.

Reasons

Application

2. This application commenced as claim no. GE4QZ3Y85 in the County Court Money Claim Centre on 18th February 2020. A Notice of Defence that the amount claimed has been paid was served on 25th March 2020. District Judge Callaghan sitting at the County Court at Basildon transferred the matter to the Claimant's home court of Chelmsford on 10th September 2020. District Judge Foss sitting at the County Court in Chelmsford transferred the whole matter to the First-tier Property Tribunal and County Court at Cambridge on 17th September 2020.
3. The matter is in two parts:
 - 1) Firstly, the Tribunal is required to make a determination as to the payability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985 and to determine the reasonableness and payability of the Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002).
 - 2) Secondly, the other issues including costs and court fees are to be dealt with by the First-tier Tribunal Judge sitting alone pursuant to amendments made to the County Court Act 1984 by which judges of the First-tier Tribunal are now also judges of the County Court. This means

that in a suitable case, the judge can also sit as a judge of the County Court and can decide issues that would otherwise have to be separately decided in the County Court and this might result in savings in time, costs and resources. These matters will be dealt with in a separate written Decision.

4. Directions were issued on 26th October 2020.

The Law

5. A statement of the relevant law is attached to the end of these reasons.

Description of the Property

6. The Tribunal found that the matter did not require an inspection of the Property and none was made.

The Lease

7. A copy Lease for the Property was provided. The Lease is dated 6th May 1977 and is for a term of 99 years from 24th December 1975. The Lease is made between (1) Fairview Estates (Enfield) Limited, (the Lessor) (2) Patrick Joseph Leslie and Francis Mary Caruthers (the Lessee) and (3) Crevina Flat Management Company Limited (the Company).
8. The Leasehold interest was assigned on 16th May 2005 to Ayodejit Akinliyi Adegbite (the Respondent) as evidenced by the Official Copy of the Register, Title Number EX193193.
9. Crevina Flat Management Company Limited (referred to in the Lease as “the Company”) is responsible for carrying out the obligations under Part IV of the Lease and hereinafter is referred to as the Applicant.
10. The Freehold interest has been transferred to Goodwyn Realty Limited and is the Lessor. The Tribunal has joined the Lessor as a party because if the Management Company defaulted on its rights and obligations under the Lease the Lessor would take over the responsibility.
11. The relevant provisions of the Lease are as follows:

Clause 3(5)(b) relates to the service charge and states:

Contribute and pay on demand the proportionate part set out in Part V of the Schedule hereto of all costs charges and expenses from time to time incurred or to be incurred by the Company in performing and carrying out the obligations and each of them under Part IV of the Schedule hereto as set out in the Notice mentioned in paragraph 10 of the Part IV of the Schedule hereto PROVIDED ALWAYS that if the Lessor shall under the provisions of Clause 6(3) hereof perform or carry out all or any of the obligations of the Company hereunder the Lessee shall contribute and pay to the Lessor on demand the due proportion of all costs charges and expenses as more particularly hereinbefore mentioned.

Paragraph (1) of Part V of the Schedule of the Lease states:
The proportionate part mentioned in Clause 3 (5)(b) is one thirty-ninth part.

The Hearing

12. The hearing was attended by Mr Jonathan Wragg of Counsel for the Applicant together with Ms Jennifer Squire, Property Manager for the Applicant and Mr Ayodejit Akinliyi Adegbite, the Respondent.

Preliminary Issue re Administration Charges

13. At the hearing Mr Wragg stated that the Applicant had believed that the Lease permitted Administration Charges to be made. However, on advice it was acknowledged that these were not payable and had been withdrawn and therefore were no longer in issue.
14. The Tribunal consented to the withdrawal.
15. Mr Wragg said that if the Tribunal agreed the payability of the Service Charge then the fixed costs were still claimed. The Tribunal said these would be dealt with Judge sitting as a County Court Judge following the Tribunal hearing.

Written Submissions re Payability of Service Charge

16. Prior to the hearing the Applicant provided a written Statement of Case in the form of a Witness Statement by Ms Jennifer Squire, Property Manager of Warwick Property Management Limited
17. The Applicant referred the Tribunal to Clause 3(5)(b) of the Lease which requires the Lessee to pay on demand a proportion of the Service Charge which Clause (i) of Part V of the Schedule to the Lease is one thirty-ninth and Clause 9 of Part IV of the Schedule to the Lease states that an accountant and auditor shall prepare the account from which the Service Charge proportion shall be calculated.
18. The Applicant stated that before any service charge demands are rendered, a proposed budget is drafted based on the expenditure in the preceding year along with quotes obtained from the contractors. The budget is sent to the Leaseholders with the demands. The purpose of the budget is to illustrate to the Leaseholder the amount they are required to contribute towards the costs of the services, the services the Applicant expects to provide during the financial year and the sums the Applicant expects to spend on each service. At the end of the financial year, an actual account of the expenditure is prepared. Any deficit is demanded and any surplus is credited to the Leaseholder's Service Charge account as per the terms of the individual Leases.
19. The Service Charge year runs from 1st April in one year to 31st March in the next. The year in issue is for 1st April 2019 to 31st March 2020.

20. The Applicant provided a Statement of Account which showed that the Respondent had paid his proportion of the Service Charge by monthly instalments since 30th September 2010. For the year in issue the Respondent paid £90.00 per month until 18th June 2019 when he increased his payments to £95.00 per month. The Applicant submitted that the Respondent's payments were insufficient to cover the Service Charge demanded.

21. A copy of the Demand for the Service Charge year 1st April 2019 to 31st March 2020 relating to the Respondent was provided. This showed that the instalments were to be paid over a period of 12 months, one a month, by standing order. The first payment is to be paid on 1st May 2019 and the last payment on the 1st April 2020. The Demand provided was dated 10th April 2019 and showed the following amounts due:

Reserve Fund	£256.41
Service Charge 1 st April to 31 st March 2020 due 10 th May 2019	£1,532.62
Outstanding Balance	£285.96
Total	£2,074.99

22. The Respondent provided a written Statement of Case in which he said he had received a Service Charge demand every year except for 2019/20. He said that he had not received a letter or invoice or demand for the Service Charge for 2020/21. He said that he was shocked and surprised to receive a Debt Claim letter on 4th December 2019 dated 29th November 2019 from Property Debt Collection for the Service Charge for 2019/20 as he did not believe that he owed the money. He paid £90.00 monthly, as agreed between PDC Law in 2016, and increased this payment to £95.00 on 18th June 2019 just to build up credit on his account. The Respondent provided the following calculations:

Payments for 2017/18
 $£90.00 \times 12 = £1,080.00$
 Service Charge for 2017/18
 $£1,142.28 - £1,080.00 = -£62.28$

Payments for 2018/19
 $£90.00 \times 12 = £1,080.00$
 Service Charge for 2018/19
 $£858.99 - £1,080.00 = £221.01$

$£221.01 - £62.28 = £158.73$

Therefore, he said he was starting 2019/2020 £158.73 in credit.

Service Charge for 2019/20
 $£1,304.99 - £158.78 = £1,146.21$ (sic)
 Payments from June 2019 to November 2019 = £570.00
 $£1,146.21 - £570.00 = £576.21$
 6 monthly payments of £96.00 = £576.21

Payments for 2019/20
 $£90.00 \times 2$ - April and May £180.00
 $£20.00 \times 1$ - June £20.00
 $£95.00 \times 8$ - June, July, August, September, October,

November, December, January, February, March	£950.00
£50.00 x 1 – January	£50.00
£120.00 x 1 – March	£120.00
Total Payments	£1,320.00

Hearing Discussion re Payability of Service Charge

23. On examining the Statement of Account provided in the written submissions prior to the hearing the Tribunal had noted that the Respondent’s calculations did not take account of the following:

- 1) The annual contributions of £256.41 to the Reserve Fund demanded from each Lessee on 27th March 2018 for costs to be incurred.
- 2) The balancing payment of £141.92 demanded on 28th August 2018 due to the shortfall in the estimate demanded on 4th April 2017 for the year ending 31st March 2018.

24. These additional payments meant that whereas the Applicant’s monthly payments of £90.00 had covered the cost of the Service Charge in previous years, by 18th March 2019 there was a shortfall.

25. The Respondent’s calculations should therefore have shown:

For year ending 31 st March 2018	
4 th April 2017 Estimate for year ending 31 st March 2018	£1,142.28
20 th March 2017 Carried over from previous year	£22.36
Instalment Admin Fee	£12.00
Total demanded	£1,176.64

Less total payments as at 19 th March 2018	
Comprising £90.00 x 12	<u>£1,080.00</u>
Balance	£96.64

For year ending 31 st March 2019	
27 th March 2018 Estimate for year ending 31 st March 2019	£858.99
Reserve Fund	£256.41
Carried over from previous year	£96.64
Admin Fee	£12.00
26 th August 2018 Balancing Payment from 2017/18	<u>£141.92</u>
Total demanded	£1,365.96

Less total payments as at 18 th March 2019	
Comprising £90.00 x 12	<u>£1,080</u>
Balance	£285.96

26. This meant that as at 18th March 2019 the Applicant was starting the year ending 31st March 2020 with a deficit of £285.00.

27. In addition, with regard to the Service Charge years ending 31st March 2020, although the Applicant increased the monthly payments from 18th June 2019

to £95.00 this still did not cover the Service Charge. The additional amount did not take account of:

- 1) The annual contribution of £256.41 to the Reserve Fund demanded from each Lessee on 10th April 2019
 - 2) The additional charge of £641.02 included in the Service Charge for the year ending 31st March 2020 for the costs to be incurred in changing the doors to each flat in order to meet current fire standards.
28. The Respondent said, in his defence, because he had not received the demand for the year ending 31st March 2020 on or about 10th April 2019 he had not been able to take account of the additional contributions to the Reserve Fund and charge for the replacement doors.
29. The Tribunal appreciated the point he made, however, it found that taking into account, so far as the Tribunal was aware, all previous documents sent to the address given had been received, on the balance of probabilities it was reasonable for the Applicant to presume that the Demand dated and sent on 10th April 2019 had been delivered. In addition, the Tribunal found that since the Demands had been sent out at about the same time each year, by the end of May 2019, it was not unreasonable for the Respondent to contact the Applicant with regard to the estimated Service Charge for the following year. On this basis the Tribunal was of the opinion that the onus was upon the Respondent to ensure that he was paying a monthly instalment that was sufficient to discharge his Service Charge liability for the year in issue.
30. At the Hearing Mr Wragg referred the Tribunal and the Respondent to the Statement of Account which showed that the Respondent commenced the year as at 18th March 2019 with a debit of £285.96. Added to this, on 10th April 2019 was a Reserve Fund contribution of £256.41 and an Estimated Service Charge Demand for £1,532.62 for the year 1st April 2019 to the 31st March 2019. The Respondent was liable to pay the sum of £2,074.99 as shown on the Statement of Account for 10th April 2019.
31. Mr Wragg referred to a copy of the Demand for the Service Charge year 1st April 2019 to 31st March 2020 relating to the Respondent which had been provided. This showed that the instalments were to be paid over a period of 12 months, one a month, by standing order. The first payment was to be paid on 1st May of each year and the last payment on 1st April of the following year, in this case 2019 and 2020 respectively. The Demand provided was dated 10th April 2019 and showed the following amounts due:
- | | |
|---|-----------|
| Reserve Fund | £256.41 |
| Service Charge 1 st April to 31 st March 2020 due 10 th May 2019 | £1,532.62 |
| Outstanding Balance | £285.96 |
| Total | £2,074.99 |
32. Mr Wragg then referred to the payments made by the Respondent which are summarised as:
Payments for 2019/20

£90.00 x 2 – 18 th April and 20 th May 2019	£180.00
£20.00 x 1 – 12 th June 2019	£20.00
£95.00 x 7 – 18 th June, 18 th July, 19 th August, 18 th September, 18 th October, 18 th November, 18 th December 2019	£665.00
£50.00 x 1 – 8 th January 2020	£50.00
£95.00 x - 20 th January, 18 th February 2020	£95.00
£120.00 x 1 – 12 th March 2020	£120.00
£95.00 x 2 – 18 th March, 24 th April 2020	£190.00
Total Payments to 18 th March 2020	£1,320.00

33. Mr Wragg said that added to this was also the Year end Balancing Credit for the year in issue which was £370.49.
34. Therefore, the total credited to the Respondent's account for the year in issue is £1,690.49. This sum deducted from the £2,074.99 demanded for the year in issue leaves £384.50 outstanding as at the beginning of the Service Charge year 1st April 2020 to 31st March 2021. The monthly payments for the year 1st April 2020 to 31st March 2021 commence on 1st May 2020 and the last payment on 1st April 2021.
35. Mr Wragg referred the Tribunal to the Applicant's Claim Form to the County Court which had claimed £2,685.99. However, this figure has been reduced due to the withdrawal of the Administration Charges and the continued payments by the Applicant.
36. The Respondent, having had an opportunity to consider the Statement of Account accepted the figures put forward by Mr Wragg on behalf of the Applicant, although he said that the underpayment was not intentional.
37. The Respondent also raised two points:
- 1) Firstly, he asked about the position with regard to the current Service Charge year ending 31st March 2021. The Tribunal said that the Application only related to the year ending 31st March 2020 and therefore the current year was not within its jurisdiction. The Tribunal added that it was very important that the Respondent ensure that the monthly instalment amount he was paying was sufficient to discharge his liability for the current year before the first instalment was due for the year ending 31st March 2022 which was due on 1st May 2020, to avoid court costs.
 - 2) Secondly, the Respondent said that the year-end balance of £208.76 that had been incurred on 31st March 2013 had not been charged to his

account until 9th January 2015, which was over 21 months after the charge was incurred. He said that he believed that this should not have been charged by virtue of section 20B of the Landlord and Tenant Act 1985. The Tribunal said that it could not deal with this issue as it was not part of the Application and so the Applicant was not in a position to answer it. However, Ms Squire said that she would look into the matter and provide a response.

Determination

38. The Tribunal determined that the sum of £384.50 was payable in respect of the Service Charge for the year ending 31st March 2020 by the Respondent to the Applicant.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

ANNEX 2 - THE LAW

Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

1. Section 18 Meaning of “service charge” and “relevant costs”
 - (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, improvement 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 of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include 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 period

2. Section 19 Limitation of service charges: reasonableness
 - (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 provision 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.

3. Section 27A Liability to pay service charges: jurisdiction
 - (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 on the appropriate 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.