FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/45UH/LSC/2020/0021
Property	:	Flats A and B, 213 Brighton Road Worthing BN11 1HA
Applicants	:	Sally Anne Henderson and Daniel Forbes
Representative	:	-
Respondent	:	Headline Developments Limited
Representative	:	-
Type of Application	:	Reasonableness of service charges - Section 27A of the Landlord and Tenant Act 1985
Tribunal Member(s)	:	Judge R Cohen
Date and venue of hearing	:	Paper determination
Date of Decision	:	7th January 2021

DECISION

Decision of the Tribunal

1 The Tribunal has decided, for the reasons that follow, that the Respondent's service charge demands were largely reasonable. The Tribunal has found in favour of the First and Second Applicants in relation to the following items.

Service charge year 2014-15

Health and safety inspection - £270

2017-18

Exterior redecoration reserve - £250

Forward funding per tenant -£100

2018-19

Forward funding - £100

Electricity - £100 only reasonable (£200 charged)

The other items challenged have been found to be reasonable.

2 The consequential orders as to the Respondent's costs for which the First and Second Applicants applied are refused.

3 The Tribunal makes no order pursuant to Rule 13 for costs to be paid by any of the parties.

The Application

4 This is an application dated 20 May 2020, made jointly by both Applicants, to determine service charges for the years ending 2011 to 2020, under section 27A of the Landlord and Tenant Act 1985 ("**the Act**"). On 11 June 2020, the Tribunal made directions for the conduct of this application for determination on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal. There was no objection.

5 The premises in question are flats A and B, 213 Brighton Road, Worthing, which is a converted, house now comprising three flats. Flat A is the ground floor flat and is leased to the second-named Applicant, Daniel Forbes. Flat B is the first floor flat and is leased to the First –

named Applicant, Sally-Anne Henderson. The top floor flat, Flat C is leased to another who has taken no part in these proceedings.

6 In their application, both Applicants applied also under section 20C of the Landlord and Tenant Act 1985 and under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 for orders that the landlord's costs incurred in connection with these proceedings should not be included in the amount of any service charge payable by the tenant and that any liability to pay an administration charge in respect of litigation costs should be reduced or extinguished. No one else was included in these applications, which could not therefore benefit the tenant of flat C.

The Lease

7 The lease of flat B is dated 11 December 1987 and was granted for a term of 99 years from 24 June 1987 at a premium and a ground rent. The service charge proportion is 40%. By clause 4, the Lessee covenants to pay the Interim Charge (defined as £220) and the Service Charge. Clause 5 contains the detail of the Lessor's covenants in relation to the repair and servicing of the premises. The detail of the provisions for payment of the service charge and the interim charge are in the fourth schedule to the lease. The Tribunal was not shown the lease of flat A, although the lease of flat C was included and appeared to be in common form to the lease of flat B, save that the service charge percentage is 30% and the interim charge £165. It would follow that the service charge percentage of flat A would also be 30%.

8 The Tribunal will refer to specific features of the form of lease and the service charge provisions as is relevant to each issue.

The law

9 The Landlord and Tenant Act 1985

The following provisions of the Act are relevant.

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.

27A 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).

Jurisdiction

10 The Respondent contends that on the authority of *Cain v Islington* [2015] UKUT 0542 (LC) [2016] L. & T.R. 13 the Tribunal has no jurisdiction to deal with this application. In *Cain,* a tenant challenged the reasonableness of service charges paid during the previous 12 years. The Upper Tribunal considered the meaning and effect of

the section 27A(5) of the Act. It held that the provision did not prevent a tribunal from inferring from a series of payments made without protest that the tenant had agreed that the amount claimed was the amount properly payable. The provision only precluded the tribunal from inferring agreement from a single payment. *Cain* was considered in *Marlborough Park Services Limited v Leitner* [2018] UKUT 230 (LC) In that case, a tenant was entitled to seek a determination under section 27A of the Act of the reasonableness of service charges claimed from him, but not in respect of the full 10-year period challenged. By paying service charges during the initial period without protest, he had agreed or admitted them. Further, he was precluded from challenging certain service charges in respect of which default judgments had been entered.

11 The Tribunal notes that there is email correspondence from the Applicants and principally the First Applicant raising issues with the service charges going back to July 2008. This communication continued through 2011 and generally up to June 2020.

12 Having reviewed that correspondence, the Tribunal finds that the liability to pay the service charges or items within the service charge was protested from time to time. Accordingly, the matters in dispute have not been admitted or agreed. The Tribunal therefore has jurisdiction to decide the reasonableness of the disputed items.

The disputed items

13 For each of the service charge years from 2010-11 to and including 2019-20, the Applicants have challenged a number of items comprised in the service charge. The items challenged vary between the years. In order best to record the case for each of the parties and the reasons for the Tribunal's decision, the structure of this decision is as follows. For each year in question, the Tribunal records each category of expenditure which is challenged. In relation to each item, the Tribunal will then summarise the Applicants' case, the Respondent's case, the relevant evidence and the Tribunal's conclusion. The material recorded in the decision is drawn from the application to the Tribunal, the statements of case filed by each party and the documents produced.

14 The Applicants produced a bundle of photographs. These showed premises in a poor state of decoration and repair. The Tribunal did not find the photographs of assistance in deciding the issue because there was no material which connected the photographs to evidence as to what work had or had not been done. To put it another way, if premises are in disrepair or poorly decorated that only serves to confirm the reasonableness of expenditure to remedy the disrepair or to decorate.

15 Parsons Son & Basley, chartered surveyors of Bognor Regis ("**PSB**") were the managing agents for the Respondent

Service charge year 2010-11

Fire protection -£200

16 The Applicants say that this was an ongoing contract that was not consulted on and resulted in a charge of over £100 to leaseholders.

17 In paragraph 17 of their statement of case, the Applicants say that there was a fire maintenance contract with Brighton Fire Alarms. No consultation was undertaken on this contract.

18 In an email from PSB to the First Applicant dated 18 December 2013, PSB answered a question from the First Applicants concerning fire protection works that cost £183.48 as follows

"Fire Protection - Brighton Fire Alarms. Fire maintenance contract -£69.43, Log Book and holder £30.00"

19 The Respondent deals with fire protection works at paragraphs 11-15 of its statement of case
"Long-term qualifying agreement -Fire Protection

11. The Applicants challenge the cost of "fire protection" for the service charge years 2010-11 to 2018-19 on the grounds that it was an "ongoing contract that was not consulted on and has resulted in over £100 to leaseholders": The Applicants assert at paragraph 17 of their statement of case that "the charges ... have amounted to more than £ 100 per leaseholder in one year':

12. The "fire protection" charges were for the testing and maintenance of the fire alarm system in the Property by Brighton Fire Alarms Ltd (BF A). The Respondent's managing agent entered into new contracts with BF A during the relevant period each time for a period of 12 months.

13. Section 20ZA(2) Landlord and Tenant Act 1985 defines a "qualifying long term agreement" (QLTA) as an agreement entered into by on or behalf of the landlord for a term of more than 12 months. If consultation is not undertaken, the landlord may not be able to recover more than £100 per leaseholder in any accounting period towards the costs under the agreement.

14. The Respondent accepts that consultation was not undertaken but avers that it was not required to do so because the contracts with BFA were for 12 months only, and therefore were not a QLTA. An example of one of the agreements with BF A is annexed hereto at Annex 2.

15 If the Tribunal finds that the contracts with BFA were a QLTA, then there is a statutory cap of £100 but this applies to each individual flat's contribution and is not the total recoverable amount. Except for year 2018-2019, in every year throughout the relevant period the cost per flat did not exceed £100. "

20 At paragraph 18 of the Applicants′ statement of case in reply, they say that the contract with Brighton Fire Alarms was clearly a QLTA. The Applicants also stated ″In addition to the emails and extracts from accounts showing pre-payments that we have already submitted, clause 5 of the contract shows that the contract is ongoing unless terminated by one of the parties on giving 3 months′ written notice to expire on the anniversary of the contract″.

21 The Tribunal concludes that what this comes to is that the Applicants contend that the fire protection works were performed under a contract which was a QLTA thereby engaging an obligation on the Respondent to consult with the Applicants. This issue turns on (1) the true construction of the term of agreement under which the fire protection works were performed; and (2) the legal context which is found in section 20ZA(2) of the Act which defines a "qualifying long term agreement" as:

"an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months".

22 In order to construe the agreement, the Tribunal refers to the letter and form of contract entered into between PSB (as Customer) and Brighton Fire Alarms Limited (as Contractor). The examples produced by the Respondent were both dated 16 October 2017. The letter from Brighton Fire Alarms Limited referred to a quote for the coming 12 months. The quote provided for a start date of 1 November 2017 and end date of 31 October 2018. The services covered were fire alarm tests and emergency lighting tests for a charge of £180 plus VAT of £36, a total of £216. So the term of the agreement, if the quote was accepted, appears to be exactly one year. However, the quote was subject to the following provision in the printed terms and conditions

23 Condition –or section -5 stated that

‟Either party may determine this Agreement by three months′ notice in writing to that effect to expire upon the anniversary of the Agreement in which case any unused balance of the charges already paid by the Customer (less reasonable administrative charges) shall be refunded to the Customer. In the event of such termination, the Customer shall therefore be responsible for making their own arrangements in regard to any monitoring or other continuing services which may be required. ‟

24 The first task is to construe the contract in order to understand its term. The quote refers to a term of one year. However, condition 5 provides for termination on giving 3 months′ notice expiring on the anniversary of the contract.

25 Is the effect of this condition to create an agreement which is indefinitely renewable subject to 3 months′ notice expiring on the anniversary of the agreement or is this an agreement of 12 months with

a provision for either party to give an unequivocal and irrevocable notice to the other to that effect?

26 The Tribunal holds that condition 5 does not extend the term of the contract from a term of 12 months precisely into a term of indefinite duration. The Tribunal's reasons are as follows:

1. the express wording in the document produced by the Contractor specifically for the Customer is unambiguous in providing for a 12- month contract period;

2. condition 5 does not provide that the term of the contract is renewable or is renewed unless one or other party takes some action to the contrary effect;

3. condition 5 does provide a procedure by which either party can signal its termination of the agreement;

4. if termination occurs by reason of a condition 5 notice given by either party that does have commercial consequences during the lifetime of the contract. These concern the unused charges less administrative charges being refunded to the Customer with the Customer being left to make its own arrangements for monitoring or continuing services;

5. the Tribunal considers that there may be reasons why the Contractor might wish to terminate its relationship with an unsatisfactory Customer and vice versa. Condition 5 would assist in either case; and

6. the contract in this case is low value (£180 pa) making it useful to have a simple provision to assist the parties in disengaging without requiring any legal advice or assistance.

27 The Tribunal had regard to *Corvan (Properties) Limited v Abdel Mahmoud* [2019] 1 P.&C.R. 3 There, a management agreement contained the following clause:

"The contract period will be for a period of one year from the date of signature hereof and will continue thereafter until terminated upon three months' notice by either party".

28 The Court of Appeal held that although the wording of the clause did not prevent the giving of notice of termination before the conclusion of the twelve months, any such notice would have no effect until after the twelve-month period had ended. To hold otherwise would be to do violence to the words "and will continue". Thus, the term of the contract was for a period of one year plus an indefinite period, with the latter being subject to the three-month termination right. It was therefore a qualifying long-term agreement, because it mandated continuation beyond the first year.

29 By contrast, condition 5 is at best a mechanism for allowing termination where one party is not content with the agreement in operation. If it was intended to provide for annual renewal subject to notice to the contrary, it does not achieve that result having regard to the plain words of the quote.

30 Accordingly, the agreement for the provision of fire protection works is not a QLTA and no obligation to consult arose in relation thereto.

31 If the Tribunal is wrong on the interpretation of the agreement, the evidence supports the contention of the respondents that the amount of service charges referable to the fire protection works agreement per tenant did not, apart from 2016-17 (see paragraph 37 of the Respondent's statement of case), exceed £100 and so those charges are recoverable in any event. The charges for 2016-17 are recoverable on the basis that the Tribunal is correct. (The reference in paragraph 15 of the Respondent's statement of case to 2018-19 is in error).

Exterior redecoration - £2345.89

32 The Applicants' case is that the cost was put at £2022 by PSB on 10 June 2013. Adding 10% for supervision produces £2224 not £2345.89 as claimed. PSB did not attend the premises to supervise the works and the work was sub-standard. The boiler of flat B was not replaced until September 2016.The ironwork was only partially painted. The windows of flat A were painted shut and could not be opened.

33 In the Applicants' statement of case they say that external redecoration was consulted for and quoted in 2011 and funds collected through the service charge for this. However only the front and side were initially instructed, with the rear to follow.

34 The Respondents say in their statement of case that the cost of supervision was charged at 10% of the cost of the works, amounting to £202. This is a reasonable charge in line with market rates. The Respondent's managing agent has been unable to locate copies of the invoices for the works but the anticipated cost of exterior redecoration was £2,346 and the actual cost was £2,345. Statutory consultation would have been followed and a tender process carried out. A reputable contractor was employed, who was still trading. The only evidence the Applicants have adduced is an email from Mr Forbes where he requests some snagging works. No further complaints are recorded, suggesting that the snagging works were completed.

35 The Tribunal notes an email from PSB to both Applicants dated 4 June 2014 which stated that the service charge collected in 2011 was for decoration to the front and side elevations only. The decoration of the rear elevation would cost an additional £1500. The First Applicant's reply also on 4 June 2014 referred to there having been some confusion over what had been paid already but once the position was clarified, the balance for those works would be paid.

36 The Tribunal finds that this correspondence amounts to an enquiry as to what the budget in 2010-11 covered and once that had been resolved, there was an agreement to pay for the costs of the decoration of the rear elevation. It is not correspondence that contained a complaint much less evidence of unreasonable expenditure.

37 As to the supervision charge of 10%, the Tribunal accepts the submission of the Respondent in its statement of case that this is a market rate. There is no contemporary evidence to support the Applicants' complaint that PSB did not attend site to supervise the works. The Tribunal therefore rejects the Applicants' criticisms of this item.

Service charge year 2011-2

Fire protection - £200

38 The same points arise as in 2010-11

39 The Tribunal rejects the Applicants' criticisms of this item

Service charge year 2012-13

Major works - £800

40 The Applicants say that the service charge account had a sufficient surplus to carry out planned works so this charge was unreasonable and that no major works had been carried out since 2011.

41 The Respondent says that whilst the £800 for project works appeared in a draft budget, no collection was made for reserves to project works during this year. The expenditure for this year showed a surplus which was credited on paper and carried forwards towards expenditure in following years. The Respondent produced the service charge income and expenditure account for the year ending 23 June 2013 which showed income of £2,459.07 and expenditure of £2312.47, a surplus of £146.60. Nothing in those figures suggests unreasonableness in the service charges demanded.

Fire protection works - £183.48

42 The same points arise as in 2010-11

43 The Tribunal rejects the Applicants' criticisms of this item

Maintenance and repairs - £350

44 The Applicants complain that only £155 was spent and ask if it was reasonable to hold this sum rather than credit it against future demands as per the fourth schedule of the lease? The Respondent

accepts that actual expenditure was only £155 but says that the surplus of £921.77 was carried forward within the service charge reserve fund.

45 The Tribunal finds that this item was not unreasonable.

Service charge year 2013-14

£123.10 invoiced to first Applicant to investigate and rectify leak

46 The Applicants claim that there had been seven leaks from flat C since 2013 and £700 in excesses were taken from the service charge account. When a leak was traced to a drip on a pipe going up the stairs that served her property, the First Applicant was invoiced for repairs to the boxing that had to be damaged to trace the leak, rather than an insurance claim made. The Applicants say that it was unreasonable for these issues to be dealt with differently. They ask "should the cost be paid by the flat that caused the leak or the excess for an insurance claim taken from the service charge into which all leaseholders pay?"

47 The Respondent says that it was reasonable for its managing agents to investigate a water leak at modest cost.

48 The Respondent produced an invoice for investigation and testing by a plumber for £123.10 dated 28 January 2014. PSB's understanding as recorded in an email in answer to a query from the First Applicant was that the First Applicant had asked to be invoiced direct. From further emails including one from PSB dated 28 February 2014, it seems that the First Applicant had involved her own plumber but PSB were not aware of this.

49 The Tribunal finds that the two circumstances were not comparable either as to the number of incidents or the costs incurred. The complaint that the treatment of these matters by the Respondent was unreasonable is rejected.

Fire protection - £225.95

50 The same points arise as in 2010-11

51 The Tribunal rejects the Applicants' criticisms of this item

Service charge year 2014-15

Health and safety inspection -£270

52 The Applicants' case is that PSB told leaseholders this was required by law. However, it had not been carried out by August 2016. The invoice eventually provided was for £175 and was to "Tableprime Ltd" so this does not seem to be anything to do with the lessees. The Applicants asked if it was chargeable to the service charge? Was it legally required ? If so, was it reasonable to charge it in June 2015 though it was not carried out in the next 12 months?

53 The Respondent says that the actual expenditure was £175 for a fire risk assessment. An invoice was produced from Fire –X Consulting Ltd addressed to Tableprime Limited care of PSB for the risk assessment of the premises 213 Brighton Road on the 23 September 2016 in compliance with the Regulatory Reform (Fire Safety) Order for £175.

54 The Respondent explained in relation to the service charge year 2017-18 why an invoice was addressed to Tableprime Limited, rather than the Respondent. However, no reason was given for an invoice dated 23 September 2016 featuring in this service charge figure year.

55 The Tribunal finds that this item was unreasonably incurred.

Professional fees - £300

56 The Applicants say that PSB said this was to value the property to confirm the buildings sum insured was sufficient and that this is required every 4/5 years. However, they say that this item had not been charged at least since 2002.The Applicants ask if this is required and chargeable every 4/5 years? Is it reasonable?

57 The Respondent says that it is good management practice for a property of this size to have a revaluation by an RICS qualified valuer every 5 years to ensure that the declared value is correct.

58 The Tribunal accepts the Respondent's position in this regard is reasonable. Values can and do move even if the physical dimensions of the property remain unchanged. It is important that the premises remain adequately insured.

Major works -£1500

59 The Applicants say that given that sufficient funds were held for work proposed at the time this was charged, was it reasonable to charge more? As no major works had been carried out since 2011, was it reasonable for PSB to hold this sum rather than credit it against future service charge demands as per the fourth schedule to the leases?

60 The Applicants refer to Annex 1 to their statement of case but that does not contain any relevant evidence one way or another.

61 The Respondent says that this was on account of works that were not undertaken. The 2015 accounts show a surplus of £1256.70 carried forward to the reserve. Part of the £1500 was used to settle items that came in over budget.

62 The Tribunal rejects the claim that this item was unreasonable.

Insurance excesses - £200

63 The Applicants understood that there was charged excesses for two of the seven leaks from flat C. They say that there had been seven leaks

from flat C since 2015 and £700 in excesses taken from the service charge account. Should this be paid by the flat that caused the leak?

64 The Respondent says that an excess of £100 was in respect of repairs to the front wall of the property.

65 The amount of the excess is, so the Tribunal finds, reasonable.

Fire protection -£210

66 The same points arise as in 2010-11

67 The Tribunal rejects the Applicants' criticisms of this item

Transfer to TT Recharge-Healys

68 The applicants say that this was solicitors" fees to chase arrears of flat C. The Applicants ask if these fees should be paid from the service charges of by the freeholder and whether the fees have been repaid to the service charge fund?

69 The Respondent says that this was to pay solicitors to write to the tenant of flat A to recover arrears of service charge. It is recoverable under clauses 3.10 and 5.1.12 of the lease.

70 The Tribunal accepts the Respondent's case and finds that at £252 the charge was reasonable.

Service charge year 2015-16

Professional fees-tenant recharge loan £472.20

71 The Applicant queries if solicitors' charges to purse arrears from flat C should be charged to the service charge

72 The Respondent says that this was to pay solicitors to write to the tenant of flat A to recover arrears of service charge. It is recoverable under clauses 3.10 and 5.1.12 of the lease.

73 The Tribunal accepts the Respondent's case and finds that the charge is not unreasonable.

Fire protection -£210

74 The same points arise as in 2010-11

75 The Tribunal rejects the Applicants' criticisms of this item

Insurance -£950

76 The Applicants say that the actual cost was £793.84 and the difference was not refunded or applied to future expenditure. PSB confirmed in a letter dated 22 September 2015 to the First Applicant that the

insurance premium for the period 1 June 2015 to 31 May 2016 was £793.84.

77 The Respondent says any surplus was forwarded to the reserve fund.

78 The Tribunal finds that this item was reasonably charged.

Service charge year 2016-17

Insurance excess - £99.99

79 In this complaint, the Applicants returned to the treatment of the insurance excesses for the seven leaks from flat C. The Applicants complaint is that the excesses should have been paid by the tenant of flat C.

80 The Respondent does not deal with that complaint directly saying that a lower excess is usual.

81 The Tribunal finds, having regard to the small amount involved, that the Respondent's charge for this item is not unreasonable.

Fire protection -£210

82 The same points arise as in 2010-11

83 The correct amount for this year is in fact £381.89, according to the Respondent.

84 The Tribunal rejects the Applicants' criticisms of this item

85 The Tribunal bases its decision on this item on the ground that the fire protection works contract was not a QLTA.

Project works -£1850

86 The Applicant complains that the item was charged with one set of works in mind and then re-allocated. The Applicants also challenge the recoverability of monies spent on the re-allocated works.

87 The Respondent says this item was on account of repairs which were not carried out. The request followed a section 20 consultation. The funds are now available to the Applicants who have obtained an order under which they have acquired a right to manage.

88 The Tribunal notes that in the emails referred to by the Applicants in their application to the Tribunal, the Applicants' assumption seems to be that the works to which the charge was re-allocated properly fell within the service charge.

89 The fact that the plans changed did not make the item unreasonable as the Tribunal so finds.

Service charge year 2017-18

Fire protection - £350

90 The same points arise as in 2010-11

91 The Tribunal rejects the Applicants' criticisms of this item

Fire health and safety assessment - £200

92 The Applicants complain that an invoice for £75 has been produced addressed to Tableprime Ltd

93 The invoice is addressed to Tableprime Ltd c/0 PSB, dated 10 October 2017.It is for £75. The Respondent says that PSB negotiated a discounted fee for a portfolio job lot. This could explain the addressee of the invoice. The item is not, so the Tribunal finds, unreasonable.

Exterior redecoration reserve - £ 250

94 The Applicants say this is unreasonable as huge reserves have been built up.

95 The Respondent says it was a reasonable sum on account of planned decoration works.

Forward funding per tenant -£ 100

96 The Applicants say this is unreasonable, as huge reserves have been built up.

97 The Respondent says that this was the 40% share of the tenant of flat B to build reserves

98 On neither of these last two items does the Respondent address the reserves or the precise purpose of these charges. The Tribunal finds that both were unreasonably made.

Insurance -£950

99 The Applicants say that this amount is excessive.

100 The Respondent rejects this as a vague assertion

101 The Respondent says that the cover was obtained from Aviva plc in the usual course of business. The Respondent does not say what steps if any were taken to test the market. The inference is that it did not do so. However, the Applicants have not produced any evidence as to what other premiums might have been achievable. In those circumstances, the Tribunal finds that the insurance premium was not unreasonable.

Service charge 2018-19

Forward funding - £100

102 The Applicants say this item is unreasonable, no major works having been instructed since 2011.

103 The Respondent, without giving reasons, says this was a reasonable request

104 The Tribunal finds that this item was unreasonably demanded in the absence of any justification

Cleaning - £150

105 The Applicants dispute that the Respondent ever cleaned communal areas

106 The Respondent says that this charge was not incurred.

107 The Tribunal accepts that the item was not unreasonable.

Grounds maintenance - £150

108 The Applicants dispute this as the garden area belongs to the Second Applicants' flat and he was made responsible for any damage.

109 The Respondent says that this charge was not incurred.

110 The Tribunal accepts that the item was not unreasonable.

General repairs - £600

111 The Applicants say that these repairs would not have been necessary if the building had been properly maintained and major works performed as charged for.

112 The Respondent says this was an on–account demand of which £320 was spent.

113 The Tribunal accepts that the item was not unreasonable.

Electricity - £200

114 The Applicants say this was excessive as the charge the previous year was £75.35

115 The Respondent agrees that the actual cost was £75.35.

116 The Tribunal finds that, allowing a reasonable margin for error, a charge of £100 was the maximum reasonable charge.

Insurance excesses -£200

117 The Applicants again make their point about the excesses due from seven claims for leaks from flat C.

118 The Respondent says an excess of £100 a claim over two claims was not unreasonable.

119 The Tribunal agrees with the Respondent.

Exterior decoration reserve -£250

120 The Applicants say this item is unreasonable, no major works having been instructed since 2011.

121 The Respondent says that this was a reserve fund for redecoration of the rear elevation.

122 The Applicants did not reply on that point.

123 The Tribunal accepts this item as not unreasonable.

Fire protection £381.89

124 The correct amount of this item is £219.85.

125 The same points arise as in 2010-11

Admin fee for follow up letter to flat B -£38

126 The Applicants say this letter was premature and the charge therefore unreasonable.

Admin fee for court action letter to flat B- £162

127 The Applicants say this letter was premature and the charge therefore unreasonable.

128 The Respondent says that these letters were written to follow up arrears.

129 The Tribunal holds that these expenses were not unreasonably incurred as arrears have to be recovered.

Service charges for any future years

130 The Applicants seek a decision on two future items

131 The first is £5500 or any amount for work to soffits, fascias and gutters and £1000 or any amount for producing a specification of works for exterior decoration/soffits/fascias/gutters/roof works etc.

132 The second item is £175 plus VAT or any amount as an administration fee for a licence for the Second Applicant to resurface or maintain the communal pathway or his front parking area.

133 It is relevant to record here that on 20 July 2020 the Applicants and the third lessee achieved the right to manage the property.

134 The Applicants complain at some length about the alleged inaction of the Respondent in handing over the information that the RTM company requires.

135 The Tribunal notes that the resolution of disputes of that character are not the subject matter of proceedings such as these.

136 In their statement of case, the Respondent says that the Applicants have acquired the right to manage so the first future years issue is irrelevant. In any event, the unaudited accounts for the year ending 2020 show that the monies held in reserve funds was not unreasonably high considering the Respondent's repairing, decorating and insuring obligations. The Tribunal agrees that first issue is not for decision now. It is a fact specific matter depending on the detail of the work proposed and the projected cost.

137 In their statement of case in reply the Applicants go into further detail as to the financial accounting arising from the RTM order and difficulties allegedly experienced with the Respondent.

138 The Tribunal considers that these are matters which fall outside the scope of the present proceedings and upon which it cannot therefore offer any guidance to the parties.

139 In relation to the second future item, the Respondent refers to the email and letter from the Respondent's managing agent to the Second Applicant both dated 26 July 2017 which explain that the fee was to consider Mr Forbes' application to undertake structural alterations. There is no record of this fee having been paid. This is not relevant to service charges and falls outside the scope of these proceedings.

Costs and consequential orders

140 Both the Applicants and the Respondent have claimed or reserve the right to claim costs from the other under Rule 13. Rule 13 enables the Tribunal to make an order for costs only if the party against whom the order is sought has acted "unreasonably in bringing, defending or conducting proceedings".

141 There is no basis on which to order costs in favour of the Applicants. The Tribunal could only make an order for costs in favour of the Applicants if the Respondent had acted unreasonably in defending or conducting the proceedings. The outcome of the proceedings is that the Respondent has succeeded on most of the items in dispute, both by number of items and the amounts of money involved. The Respondent conducted its case properly, submitting a statement of case and

relevant documents in an orderly way. The Respondent did not act unreasonably in defending or conducting the proceedings.

142 The Tribunal can order costs in favour of the Respondent only if it finds that the Applicants acted unreasonably in bringing or conducting these proceedings. The Respondent in its statement of case claims that the proceedings are unreasonable on four grounds being:

a) The Applicants have pursued a determination on liability for matters that are no longer relevant given that the lessees acquired the right to manage in July 2020.

b) The Applicants case concerning fire protection work was unsuccessful.

c) The Applicants have paid the service charges.

d) This is a speculative application largely unsupported by evidence.

143 The Tribunal holds that an unsuccessful point is not necessarily a point that is unreasonably taken. As to the unreasonableness, if any, disclosed by the 4 points on which the Respondent relies:

a) The acquisition of the right to manage came at a relatively late stage in the narrative and impacted a relatively small number of issues;

b) The Applicants' case concerning fire protection works was unsuccessful but it was not unreasonably pursued;

c) Whilst the Applicants had paid the service charges, there was a documented history of dissatisfaction expressed by the First and Second Applicants over the years, as referred to above. The Applicants succeeded on the question of jurisdiction. Unreasonableness on this ground is not established;

d) The application was supported by evidence albeit that the organisation of the evidence could and should have been compiled in chronological order. That feature does not make the conduct of the proceedings unreasonable as such.

144 The Tribunal concludes that whilst the Respondent was the successful party, the Applicants conduct in bringing or conducting the proceedings was not unreasonable so as to lead to an order for costs in favour of the Respondents.

145 The position then is that the Respondent has succeeded in these proceedings and has incurred expense in so doing. Given that outcome, the Tribunal turns to the claims for consequential orders in relation to the treatment of the Respondent's expenses either as service charge items or as administration charges.

146 As to the application under section 20C of the Act, in *Conway v Jam Factory Freehold Limited* [2013] UKUT 0592(L.C.) at [53] Martin Rodger QC cited with approval the following from Judge Rich QC

sitting in the Lands Tribunal in *Tenants of Langford Court (Sherbani) v Doren Limited* LRX/37/2000

"the primary consideration that the LVT should keep in mind is that the power to make an order under s.20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that make its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably and properly incurred by the landlord, it would be unjust that the tenants or some particular tenant should have to pay them."

147 As between the Applicants and the Respondent it would not be unjust if the Respondent was able to recover a fair proportion of its expenditure in defending proceedings in which it has been largely successful. However, there is a tenant who is not a party to these proceedings, being the tenant of flat C. Whether or not that tenant was supportive of the Applicants or not is not a matter on which the Tribunal has any information. Equally, the Tribunal could not express a view on the Respondent's ability to make a recovery through the service charge without affecting the rights of the tenant of flat C. It would be unjust to make any decision adverse to the tenant of flat C without that party being heard.

148 Accordingly, the Tribunal declines to make an order under section 20C for the benefit of either of the present Applicants. Whether and to what extent the Respondent can make a contractual claim against either of the present Applicants or the tenant of flat C would have to be considered on another occasion, if not agreed.

149 The same approach should govern the application under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. It would be unjust for the Tribunal to make any order given the substantive outcome.

150 For the avoidance of doubt, the Tribunal has not considered the amount that might properly be recoverable by the Respondent on any basis.

Conclusion

151 Accordingly, the application to the Tribunal is allowed to the extent stated.

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.

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