



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

Case reference : **CHI/45UC/LIS/2020/0011**

Property : **Flat 6a Pier Road, Littlehampton,
West Sussex BN17 5BA**

Applicants : **Dr Margaret Vermette
Ms Wendy Mavis Pearce**

Representative : **PDC Law**

Respondents : **Mr Mathew Bergin
Mrs Jessica Fowler (previously
Parrish)**

Representative : **Ms Sarah Rigby**

Type of application : **Transferred proceedings from
County Court in relation to unpaid
service charges**

Tribunal member : **Judge E Morrison**

Date of decision : **13 July 2020**

DECISION

Background

1. On 4 February 2019 the Applicant lessors issued proceedings in the county court under Claim No. F12YX887, seeking to recover alleged arrears of service charges and ground rent in respect of three service charge years covering the period 1 July 2016 – 21 June 2019 , together with legal costs. The entire claim was transferred to the Tribunal by orders dated 13 December 2019 and 7 January 2020, the county court issues to be decided by a tribunal judge sitting as a judge of the county court.
2. The Respondent lessees had meanwhile made an application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 “(the Act”) in respect of the previous four service charge years (Case No. CHI/45UC/LSC/2019/0016). Following a hearing on 28 February 2020, a decision was issued on 18 March 2020. In the course of those proceedings the Applicant accepted that service charge demands served prior to June 2017 had not complied with section 47 of the Landlord and Tenant Act 1987, and therefore the sums demanded were not payable; the demands had however been re-issued on 21 January 2020 so as to comply.
3. Following a case management hearing on 1 April 2020 in relation to this matter, the Applicants conceded that, as a result of the invalid demands, no monies were in fact owed by the Respondents at the date of issue of the county court money claim. The Applicants did not wish to pursue the money claim, but still sought a determination from the Tribunal as to the service charges for the three years in question, as the Respondents continued to dispute the payability of certain of the charges. Directions were given for a determination on the papers unless either party requested an oral hearing (which neither did).
4. The Tribunal decision in the earlier proceedings had already determined a number of points of principle, notably whether the Respondents were responsible for $\frac{1}{4}$ or $\frac{1}{6}$ of various recurring heads of expenditure. The parties were encouraged to discuss matters with a view to reducing the scope of the dispute. This resulted in the Applicants reducing the service charges they sought to recover from the Respondents, but certain items of expenditure were not agreed.
5. The parties have exchanged statements of case, with supporting documents, and a bundle prepared. The Respondents have been represented throughout in these Tribunal proceedings by Mr Bergin’s aunt, Sarah Rigby, and all their submissions have been made through her.

The lease

6. The Tribunal had before it a copy of the lease for Flat 6A. It is for a term of 99 years from 24 June 1977.

7. The relevant provisions in the lease may be summarised as follows:
- (a) The lessee is required to pay $\frac{1}{4}$ of the lessor's costs of complying with its covenants under sub-clauses(2),(4) (5) and (6) of clause 4 of the lease, and is required to pay $\frac{1}{6}$ of the lessor's costs of complying with its covenants under sub-clauses (1) and (3) of clause 4 of the lease;
 - (b) On account payments are payable on 24 June and 25 December in each year; any balance payable is due 21 days after the lessor serves notice requiring payment of expenditure which has been certified by the lessor's surveyors or accountants;
 - (c) Surplus monies in the hands of the lessor shall be credited against the lessee's future liability but this does not prevent the lessor "opening a sinking fund out of such monies towards the future cost of replacing major items of equipment or repairs and decoration";
 - (d) Sub-clauses (1),(3) (4) and (6) of clause 4 make reference to "the Block", which is defined in clause 1 as "the block of flats and shops comprising Shops No. 5 and 6 and Flats No. 5a and 6a 5B and 6b Pier Road Littlehampton.

The property

8. The property was inspected during the previous proceedings by the judge. The Decision of 18 March 2020 contains a description.

The law and jurisdiction

9. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable.
10. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. When service charges are payable in advance, no more than a reasonable amount is payable.
11. Under section 20C of the Act a tenant may apply for an order that all or any of the costs incurred by a landlord in connection with proceedings before a tribunal 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.
12. Under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 a tenant may apply to the Tribunal for an order which reduces or extinguishes the tenant's liability to pay an "administration charge in respect of litigation costs".

The issues

13. Whether the claimed expenditure on bank charges, fire alarm and emergency lighting, electricity, and management fees is recoverable.
14. Whether, in relation to the Tribunal proceedings, any orders in respect of costs should be made.
15. It should be noted that the Respondents' statement of case mentions a number of additional concerns, including the account arrangements for the sinking fund, the calculation in the accounts of the "reserves", and damp issues. These are not relevant to the current determination. Ms Rigby also asserts in her statement of 17 June 2020 that "Mr Bergin wishes to claim set-off costs" for the cost of redecorating his flat. This is the first mention of any set-off claim since the county court proceedings were issued 19 months ago, despite several hearings across the court and the tribunal. The claim is not particularised, and the Tribunal is not prepared to consider it in these proceedings. Mr Bergin remains free to pursue any appropriate remedies in the county court.

Bank charges

16. In service charge years 2016/17 and 2017/18, the Applicants seek to recover a sum in respect of bank charges. No submissions have been made by the Applicants, even in response to the Respondents' objection to these costs on the basis that the Decision of 18 March 2020 (paragraph 27) found that they were not payable under the lease. There being no further evidence on the point the Tribunal reaches the same conclusion for the same reasons and disallows this expenditure.

Fire alarm and emergency lighting

17. The Applicants seek to recover £465.08 in 2016/17, £474.64 in 2017/18 and £758.13 in 2018/19 for the cost of this item which services the flats, the Respondents' share being $\frac{1}{4}$. They submit that the cost is in line with market rates and the work is carried out by a reputable contractor. In 2018/18 the cost includes a fire inspection report.
18. The Respondents submit that "it is considered unnecessary to conduct weekly tests, and the removal of this service would decrease the costs by about £230.00 per annum ...".
19. This head of expenditure was also considered in the previous proceedings, the Respondents making the same objection. The Tribunal heard evidence from the managing agents that weekly tests were the norm in the many properties they managed, and decided that the cost was reasonably incurred. The Respondents have produced no further evidence and the Tribunal reaches the same conclusion.

Electricity

20. The Applicants seek to recover £238.19 in 2016/17, £233.71 in 2017/18 and £222.83 in 2018/19 for the cost of electricity supplied to the common parts of the flats, the Respondents' share being $\frac{1}{4}$. The supporting invoices from SSE, a major supplier, have been provided. The Respondents contend that "the electricity charges could have substantially lower just by shopping around to find the best deal", and notes that the supplier has not changed for eight years.
21. There is no requirement that a landlord must shop around for the lowest price, and the fact that there may be cheaper options does not mean that the existing charges are unreasonably incurred. The Respondents have not provided any comparable quotes from other suppliers. There is thus no evidence that the charges are unreasonably high or otherwise unreasonably incurred and the Respondents' challenge is rejected: the charges are allowed.

Management fees

22. The Applicants seek to recover £1080.00 in 2016/17, £1120.00 in 2017/18 and £1260.00 in 2018/19 for general management fees in respect of the four flats. In 2016/17 the cost was therefore £225.00 + Vat per flat, rising to £262.50 + Vat per flat in 2018/19. The level of fees was not disputed in the previous proceedings, but the Respondents now submit that "it has been very easy to find an alternative agent who is local, has extensive knowledge of the area and who also has their own buildings and maintenance team so that charges are kept to a reasonable level". In a separate letter of 28 April 2020 sent by Ms Rigby to the Applicants' solicitor, she states that she has alternate cheaper quotes. However, no alternative quotes have been put in evidence.
23. The Tribunal repeats what is said above in relation to the electricity charges. There is no evidence that the fees are excessive and they are all allowed.

Calculation of service charges

24. The tables set out at paragraphs 6 of the Applicants' statement of case calculate the credit which should be applied to the Respondents' $\frac{1}{4}$ share of total expenditure in the first two years to reflect the fact that certain costs are payable in part by the commercial parts of the building. These figures are agreed by the parties.
25. **2016/17:** The revised claimed expenditure of £4540.66 is reduced by £44.10 for disallowed bank charges to £4496.56: the sum recoverable from the Respondents is therefore £1124.14 less agreed credit of £160.70 = **£963.44**.
26. **2017/18:** The revised claimed expenditure of £4218.59 is reduced by £41.05 for disallowed bank charges to £4177.54: the sum recoverable from the Respondents is therefore £1044.38 less agreed credit of £141.93 = **£902.45**.

27. **2018/19:** The revised claimed expenditure of £3439.55 is allowed in full; the sum recoverable from the Respondents is therefore **£859.88**.

Costs

28. The Respondents have requested orders under section 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The Tribunal can only make such orders in respect of costs incurred in these Tribunal proceedings, which commenced in January 2020 following the court transfer.
29. In deciding whether to make an order under either provision the Tribunal must consider what is just and equitable in the circumstances. The Tribunal's determination has taken place against the background of a county court claim that was misconceived and is to be dismissed, there being no monies actually due from the Respondents when the claim was issued. Most of the revised service charges have been found to be recoverable, but that was only after the Applicants reduced the charges as a result of the Tribunal's decision in relation to earlier service charge years. Had the service charges been apportioned correctly from the outset it is entirely possible that no proceedings would have been necessary, the sums in dispute being very low. Taking all these factors into account the Tribunal orders that, to such extent that they may otherwise be recoverable under the lease,
- (a) Pursuant to section 20C of the Act, the Applicants' costs in connection with these 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 Respondents, and
 - (b) Pursuant to paragraph 5A aforesaid, the Respondents shall have no liability to pay the Applicants' litigation costs in relation to these Tribunal proceedings.
30. Ms Rigby also seeks a costs order under Rule 13. She says that the Applicants should pay for her own time spent in dealing with the proceedings, and a solicitors' bill in respect of advice she obtained in 2019. It is clear from the documentation that the costs claimed are for time spent in relation to the earlier proceedings and the court proceedings, as well as the instant proceedings. That aside, the Tribunal is not prepared to make any costs order in her favour. Not only is she not a party to the proceedings, but there is no evidence whatsoever that either of the Respondents have incurred any liability to reimburse her for her time or the solicitors fees she incurred. Moreover, the Applicants' conduct in relation to *these* proceedings has not been unreasonable. Following the earlier decision they revised the service charges, the vast majority of which have found to be recoverable.

Dated: 13 July 2020

Judge E Morrison

Appeals

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.