



FIRST-TIER TRIBUNAL PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference: CHI/00HN/LIS/2021/0007

Property: 14B Solent Gardens, Freshwater, Isle of Wight
PO40 9PN

Applicant: Cecily Stringer

Representative: David Stringer

Respondent: Southern Housing Group

Representative: ---

Types of Application: Determination of service charges - Section 27A
Landlord and Tenant Act 1985 (“the 1985 Act”)

Tribunal Members: Judge P J Barber

Date of Decision: 17 June 2021

DECISION

© CROWN COPYRIGHT 2021

Decision

- (1) The Tribunal determines in accordance with the provisions of Section 27A of the 1985 Act, that the sums demanded by the Respondent from the Applicant in each of the service charge years 2018/19, 2019/20 and 2020/21, are reasonable and payable by the Applicant to the Respondent.**
- (2) In regard to the application under Section 20C of the 1985 Act, the Tribunal makes no order.**
- (3) In regard to the application under Paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) the Tribunal makes no order.**

Reasons

INTRODUCTION

1. The application received by the Tribunal was dated 4 December 2020 and was for determination of service charges in 2018, 2019 and 2020; in broad terms, the Applicant questions why service charges previously at or around £60.00 per quarter since 2007, increased to the region of £220.00-£230.00 per quarter, from March 2018 onwards. The Applicant states that the Property is a two-bedroom flat in a purpose-built block. The Applicant also makes claims under Section 20C of the 1985 Act, and Paragraph 5A to Schedule 11 of the 2002 Act.
2. Directions were issued on 7 January 2021, providing for the matter to be determined by way of a paper determination, rather than by an oral hearing, unless a party objected; no objection has been received by the Tribunal and accordingly, the matter is being determined on the papers.
3. The Respondent has provided an electronic bundle of documents to the Tribunal, comprising 129 pages and which included witness statements, copies of the application, the directions and a copy of the Lease.
4. The lease provided in relation to 14B Solent Gardens, is a Lease dated 23 December 1991 made between South Wight Housing Association Limited (1) Mandy Dora Adams (2) (“the Lease”) and being for a term of years from 23 December 1991 to 24 July 2113.
5. Due to Covid 19 restrictions, no inspection was carried out in respect of the Property.

THE LAW

6. Section 27A Landlord and Tenant Act 1985 provides that:-
 - (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, the date at or by which it is payable, and*
 - (d) *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)-(7)....

WRITTEN REPRESENTATIONS

7. The electronic bundle included a statement dated 28 January 2021 made by David Stringer for the Applicant, in which he made reference to a sudden and disproportionate increase in the Applicant`s variable maintenance charge, adding that his mother, the Applicant, had been the lessee of the Property for 25 years and had been paying a quarterly maintenance charges of well below £100.00 per quarter, adding that these charges were always placed into a sinking fund, but such procedure ended in March 2018 when the residue was returned to his mother, and new charges abruptly rose to well over £200.00 per quarter, effecting an increase of over 200%. Mr Stringer said that a breakdown had been requested and this included a large proportion to Nviro Cleaning Services of roughly £338.00 per annum he said, for a fortnightly ten-minute mop of the tiny communal lobby areas. Mr Stringer questioned why his mother was suddenly being charged so much more, despite there being no change in circumstances regarding his mother`s 4 flat block. Mr Stringer added that his mother is one of very few lessees on the Solent Gardens Estate, most

of the flats being occupied by short term tenants from whom he said she had had to endure many aggravations over the years. Mr Stringer said he had spoken to other tenants on the estate who indicated that their maintenance charges are much lower and he questioned whether his 94 year old mother may be being treated differently to other residents.

8. The Respondent submitted its case including a witness statement dated 20 April 2021 made by Kirsty Pearce, the Respondent's Area Service Manager for the Isle of Wight. Ms Pearce referred to the Lease and exhibited a copy of it; she also described the service charge mechanism in the Lease, with particular reference to clauses 2(r)(i) and (ii), and the Sixth Schedule. In broad terms Ms Pearce submitted that the Respondent is a large, charitable Registered Provider owning or managing close to 29,000 properties in south-east England, that the approach to calculating service charges had been established many years ago and simply uplifted by inflation each year until April 2017 when it was discovered that reserves had been erroneously collected in certain circumstances. Ms Pearce said there had been previous under-recovery of costs and appended a copy of a letter sent to the Applicant in February 2018 regarding changes. Ms Pearce further appended the demands for each of 2018, 2019 and 2020, adding that the service charge year runs from 1st April. In regard to the disputed block cleaning charge, Ms Pearce said that cleaning of all the Respondent's Isle of Wight properties is carried out by Nviro Limited under a contract awarded in 2010, following a procurement exercise, on a 2-weekly basis, appending an excerpt from the relevant specification. Ms Pearce said that the cost of cleaning for this block is split into equal parts between the four flats, and being £335.32 for 2018/19; £360.90 for 2019/20 and to be confirmed for 2020/21; copy invoices from Nviro were attached. Ms Pearce further referred to the management fee which she said that the Respondent is entitled to collect pursuant to clause 2(r)(i) and the Sixth Schedule of the Lease; she said that the management fee covers the cost of items including repairs, services, preparation of accounts and recovery costs. Ms Pearce submitted that the Respondent charges a standard flat management fee being £177.43 in 2018/19; £181.69 in 2019/20 and £184.78 in 2020/21, adding that an estate agent on the Island had been approached and who provided an example of a similar block in Sandown where the annual management fee was circa £800.00 per annum. Ms Pearce further denied that other residents on the estate are charged differently.
9. The Applicant responded to the Respondent's statement of case by an undated document in which Mr Stringer questioned how any previous glaring imbalance of charges could have gone unnoticed for so many years and not spotted by accounts managers or auditors, adding that in his mind there was no doubt that the increase was caused mainly by the new long-term agreement with Nviro. Mr Stringer further submitted from his experience as a former delivery driver on the Island, that he was familiar with most of the 4-flat blocks cleaned by Nviro, and that most were charged much less for cleaning, referring to Sunset Close, Freshwater at £600.00, and Lea Road, Lake at £636.00. Mr Stringer suggested that huge mistakes may still be happening and that the over-priced agreement with Nviro should be ended.

THE LEASE

10. Relevant provisions in the Lease are as follows:

Clause 2(r) is a covenant by the Lessee with the Lessor:

Clause 2(r)

- (i) *To pay to the lessor in each year one equal part (based on the number of flats comprising the building) of the cost (calculated as provided in the Sixth Schedule hereto) of providing the repairs and services and things specified in the Seventh Schedule hereto (other than the costs (if any) of discharging or insuring against such obligations of the lessor as are by law required to be borne exclusively by the lessor) such payments to be made at the times and in a manner provided by the Sixth Schedule*
- (ii) *To pay to the lessor in each year by four equal quarterly payments (and so in proportion for any period less than a quarter) a first proportionate payment to be made on the execution of this lease and the subsequent payments to be made on the four usual quarter days in each year such sum as shall be certified by the lessor to be appropriate in accordance with the Sixth Schedule*

The Sixth Schedule

The cost of repairs services and other things

1. *The cost of the repairs services and other things shall be the aggregate of:*
 - (a) *The actual cost as certified by the lessor of the repairs and the services and other things specified in the Seventh Schedule (including all professional fees incurred in connection therewith)*
 - (b) *Such sum (if any) as (after making allowance for any reserves in hand) may be estimated by the lessor (who shall act as an expert and not as an arbitrator) as required to provide a reserve to meet part or all of the future cost of such repairs services and things as the lessor anticipates will or may arise thereafter during the remainder of the term hereby granted and*
 - (c) *A management charge as certified by the lessor*
2. *Without prejudice to the generality of the foregoing the tenant shall be liable for one quarter of the cost of maintenance of the following:*
 - (a) *The entrance hall and staircase denoted in green on the plan including cost of decoration repair lights and fire extinguisher if any*
 - (b) *The footpaths and bin store coloured orange on the plan*
 - (c) *Any party walls and shared services the use of which are common to the demised premises and any other part of the building*
3. *The year for the purpose of certifying the costs shall run from the First day of April to the Thirty first day of March next thereafter*
4. *The costs calculated as above shall be paid quarterly in advance on the usual quarter days*

CONSIDERATION

11. The Tribunal has taken into account all the case papers in the bundle.

12. The issue for determination under Section 27A of the 1985 Act is as to whether or not the amounts demanded by way of service charge demands made in 2018/19, 2019/20 and 2020/21, are reasonable and payable.
13. The Tribunal accepts that on the face of it, in circumstances where the Applicant had been paying approximately £60.00 per quarter for many years, she would have found the sudden increase from 2018 onwards, to a figure well over £200.00 to be surprising and questionable, in the light of what she regarded as no apparent change in the services provided. However, the Respondent explains that historically the service charges had been set at a level subject merely to annual inflationary increases and that there had been previous under-recovery of costs from lessees. Ms Pearce said that a letter had been sent to the Applicant in 2018 to explain the revised arrangements for charging from 2018 onwards. The Tribunal notes that the contract to Nviro appears to have been let following the carrying out of a procurement exercise by the Respondent.
14. In regard to the costs charged by Nviro, the bundle includes copies of invoices raised by the Respondent on an estimated basis of £865.69 per annum for 2018/19, £880.04 per annum for 2019/20 and £918.84 per annum for 2020/21. These charges generally cover cleaning, communal electricity, window cleaning, fire equipment, skips & paladins, day to day repairs, gardening, refuse disposal, tree maintenance, insurance and a management fee. The cleaning costs were the largest single element in each year. The cleaning costs for each year are in the region of £350.00 or, for the whole block of 4 flats, approximately £1,400.00. On the basis that cleaning takes place fortnightly, then this would indicate a charge for each fortnightly attendance for the block, of or about £53.85. The Tribunal does not consider that charges in this amount are wholly unreasonable or disproportionate, taking into account the infrastructure costs carried by Nviro as a large contractor, including insurances, travel time, equipment and staffing costs. The Applicant had not disputed that fortnightly cleaning had occurred, or in any specific way disputed the quality of the work, other than saying that it was done quickly. The Sixth Schedule of the Lease makes a broad provision that the tenant shall be liable for one quarter of the cost of maintaining the entrance hall and staircase, decoration, repair, lighting, fire extinguisher, footpaths, bin store and other common parts.
15. In regard to the management fees charged, these appear to be in the region of £180 per annum or, for the whole block of 4 flats, approximately £720.00. The Sixth Schedule of the Lease provides for payment of a management charge without any specific limitation. The Tribunal considers in its broad experience that such charges for management of a block of this size and type are not wholly unreasonable. The Tribunal further notes that the Applicant had raised no detailed challenge in her statements in respect of the management fees.
16. In regard to the Respondent`s accounting practices, the Tribunal does note that in the past there appear to have been somewhat arbitrary re-charging arrangements, and accepts that some historic under-charging may have occurred.
17. The service charge invoices included in the bundle, appear to include a summary of tenant rights and obligations. Mr Stringer did allude to the possibility of the charges being higher than those charged to other tenants of the Respondent elsewhere, although no detailed documentary evidence in this regard was produced and Ms Pearce stated that costs for other identical blocks within the estate are charged the same basis per property. Accordingly, on the basis of the evidence as actually

presented, the Tribunal considers the amounts demanded in 2018/19, 2019/20 and 2020/21, to be within the provisions of the Lease and for the reasons as indicated above, to be reasonable and payable.

COSTS

18. In regard to the applications made in relation to costs under Section 20C of the 1985 Act and Paragraph 5A to Schedule 11 of the 2002 Act, the Tribunal makes no orders.
19. The Tribunal is given a wide discretion to do that which it considers just and equitable in all the relevant circumstances in respect of both provisions. For practical purposes in this instance, the test and the considerations are effectively the same for each application.
20. The Tribunal does not consider it to be just and equitable to grant either of the applications in light of the Applicant's lack of success in this matter and the wider circumstances.

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, by email to rpsouthern@justice.gov.uk
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.