



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(LEASEHOLD VALUATION)**

**Case Reference** : **MAN/00DA/LSC/2018/0005**

**Property** : **Flat 1 & 2, 44 Armley Ridge Road, Leeds LS12 3NP**

**Applicant** : **Antony Trevor Coleman**

**Respondent** : **RG Reversion 2014 Ltd**  
**Represented by** : **Rebecca Ackerley of counsel**

**Type of Application** : **Service Charge**

**Tribunal** : **Tribunal Judge S Greenan**  
**Tribunal Member S Kendall**

**Venue of Hearing** : **Remote hearing**

**Date of Hearing** : **22 April 2021**

**Date of Decision** : **20 July 2021**

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**DECISION**

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## **Background**

1. In this case the Tribunal is dealing with a dispute about service charges in relation to Flats 1 and 2, 44 Armley Ridge Road, Leeds.
2. This application has been much delayed for a variety of reasons. These include chronic ill-health on the part of Antony Trevor Coleman, who has been dealing with this application for the Applicant, and the Covid-19 pandemic starting in March 2020.
3. The Applicant is Tonire Properties Ltd, which is the lessee of flats 1 and 2.
4. The Respondent is R G Reversions 2014 Ltd, the owner of the freehold of 44 Armley Ridge Road.
5. On 12.1.18 the Tribunal received an application in the name of Mr Coleman, who is a director of Tonire Properties Ltd, seeking a determination of liability to pay and reasonableness of service charges for the years 2016-7, 2017, and 2018. He challenged whether the services charged for by the Respondent had been provided and suggested that no work had been carried out for three years. He also raised an issue about whether or the Respondent had entered into a long-term qualifying agreement without consultation and whether there had been a transfer of the freehold without an opportunity to purchase being given to the lessor.
6. Attached to the application was a part of Particulars of Claim issued by the Respondent in 2017 for recovery of unpaid service charge.
7. Following receipt of the application the Tribunal arranged for a Case Management Conference to take place on 6.3.18. Mr Coleman was present at the hearing and RG Reversion 2014 Ltd was represented.
8. At the Case Management Conference Tonire Properties Ltd was added to the proceedings as an applicant.
9. The Tribunal advised Mr Coleman to take legal advice in relation to the issues raised about a possible long-term qualifying agreement and the sale of the freehold.
10. The Tribunal informed Mr Coleman that if he wished to challenge administration charges he should make a separate application, and gave directions generally to bring the case to a hearing.
11. After that hearing Mr Coleman raised health issues with the Tribunal and asked for the proceedings to be stayed until the end of 2018. There followed directions in relation to the filing of medical evidence and in late 2019 attempts to list the case for a hearing on a date convenient to all concerned. Those attempts were overtaken by the global pandemic and as a result the listing of the case was delayed until the spring of 2021.

## **The hearing**

12. The hearing took place remotely on 22.4.21. It was listed to be heard by the same Tribunal and at the same time as a linked case involving the payability and reasonableness of service charges for Flat 3 in the same building.
13. Mr Coleman represented himself. The Respondent was represented by Ms Ackerley of counsel. Also present was Ms Stanway, the Applicant's solicitor, and Ms Walker, a witness whose evidence had been served by the Applicant.
14. In the absence of an inspection the Tribunal viewed the exterior of the property on Google Maps/Streetview. The Tribunal is familiar with the area where the property is situated.

## **The lease**

15. By leases made on 13.7.05 between Your Homes Limited, Armley Ridge Management Company Limited and Mansoor Mahmood Hussain Flat 1 and Flat 2 were demised to Mr Hussain for a term of 99 years.
16. Clause 1 of the lease provides as follows:  
"The Landlord HEREBY DEMISES WITH FULL TITLE GUARANTEE unto the Tenant the Demised Premises...TO HOLD the same UNTO the Tenant for a term of 99 years ... YIELDING [sic] AND PAYING therefor unto the Landlord as rent two hundred pounds... for the first 25 years of the Term... subject to the covenants of the part of the Tenant..."
17. Clause 2.1 of the lease provides:  
"The Tenant HEREBY COVENANTS with the Landlord and the Management Company and with other tenants of the Flats and their successors in title that the Tenant will at all times during the said Term perform and observe the provisions and stipulations set out in Schedule 4... and... pay the Service Charge in accordance with the provisions of clause 5 [and] ... pay the Management Charge in accordance with the provisions of paragraph 2 of Schedule 4..[and] to pay to the Landlord on demand interest accruing in respect of any of the sums due from the Tenant to the Landlord under this Lease (whether or not lawfully demanded) which remain unpaid more than 7 days after become due..."
18. Clause 5.4.1 provides:  
"The Tenant covenants with the Landlord that on 2 January in each year of the Term the Tenant will pay the Landlord such sum in advance and on account of the Service Charge for the Financial Year then current as the Landlord may from time to time specify as being in its absolute discretion a fair and reasonable assessment of the likely Service Charge for that particular Financial Year the first advance payment of which will be made on the date of this Lease".
19. In addition the lease provides in paragraph 1 of Schedule 4 a covenant by the tenant to "pay the Service Charge hereby reserved at the times and in the manner aforesaid and to pay the Insurance Rent on demand".

20. Schedule 4 paragraph 2.1 provides for payment of the yearly management charge and paragraph 2.2 provides that the management charge may be “estimated by the management Company and the Landlord or their respective duly authorised agents in accordance with clause 6.3 whose decision shall be final as soon as practicable after the beginning of each year of the Term and the Tenant shall pay the estimated Management Charge Contribution in two equal half yearly instalments..”
21. Paragraph 2.4 of Schedule 4 provides for the tenant to be given credit if the actual management charges are less than the estimated charges.
22. Schedule 4 paragraph 4 contains the following covenant by the tenant: “To pay to the landlord all costs charges and expenses (including legal costs and fees payable to a surveyor) which may be incurred by the landlord in connection with the recovery of arrears of rent or for the purposes of or incidental to the preparation and service of any notice or proceedings under Section 146 and 147 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court”.
23. The landlord covenants:
  - a. Subject to the Insurance Rent being paid, to keep the property insured;
  - b. Subject to the service charge being paid, to keep the roof, foundation, structure and exterior of the building in good repair and condition.
24. Clause 6 of the Lease contains a covenant on the part of the Management Company to “provide the management Services Subject to payment by the Tenant of the Management Charge when due...” By Part 1 of Schedule 6, the Management Services include the provisions, replacement, renewal, repair and maintenance and cleaning of the common parts, water and sewerage, lighting and heating of the common parts, fire fighting equipment, decorating and furnishing of the common parts, cleaning the exterior windows, and any other amenities deemed reasonable or necessary by the Management Company.
25. R G Reversions Ltd became the registered proprietor of the freehold of 44 Armley Ridge Road on 15.10.14.
26. Armley Ridge Management Company Limited became insolvent and was dissolved on 3.4.07. Pursuant to the lease the lessor became responsible for providing management services. It appointed Inspired Property Management Ltd (“IPM”) as its professional managing agent to provide services and to collect the service charge.
27. Another company, also appointed by the lessor, collects the ground rent: that is Pier Management Ltd.
28. The Applicant Tonire Properties Ltd was registered as the owner of Flats 1 and 2 on 6.5.14. It was purchased as an investment property.

## **The law**

29. The following provisions of the Landlord and Tenant Act 1985 apply:

### **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 [F24dwelling] as part of or in addition to the rent—*
  - (a) *which is payable, directly or indirectly, for services, repairs, maintenance, improvements 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 for which the service charge is payable.*
- (3) *For this purpose—*
  - (a) *“costs” includes 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 or later period.*

### **19 Limitation of service charges: reasonableness.**

- (1) *Relevant costs shall be considered 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.*

### **27 A 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).*
- (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.*

### **The property**

30. 44 Armley Ridge Road is a four-storey terraced house of traditional construction probably built in the late nineteenth or early twentieth century. It has been converted into three separate dwellings. The semi-basement comprises Flat 1. Flat 2 occupies the first floor. Flat 3 occupies the second and third floors. Flat 1 has a separate entrance and shares no common parts with flats 2 and 3. Flats 2 and 3 have a shared hallway and staircase.

31. The property is in the Armley area of Leeds, close to the A647 Stanningley

### **The Applicant's case**

32. The Applicant challenges the reasonableness of the service charges for the years 2016 to 2018.

33. The Applicant told the Tribunal that he had bought the flats as an investment to pay for his daughter's education. He renovated the flats and improved the communal hallway. He had been told that the management company had gone into receivership.

34. In relation to the previous proceedings in the County Court, Mr Coleman felt that he had been treated like a professional landlord when he was not a professional landlord. He had had to agree to things to avoid losing the flats. He felt that it was "all cloak and dagger" and that he had not been given a fair chance to defend the proceedings, although the agreement reached was negotiated on his behalf by solicitors instructed by him.

35. He was sceptical about the work which was said to have been carried out by IPM though he agreed that they had removed some debris. He was adamant that they did not have any access to the common parts until 2019. He also pointed out that there was no electricity supply in the common parts until he arranged for a socket to be put in, which is a spur from the electricity supply to Flat 2. He believed that the electricity for the light of the common parts was also coming from Flat 2.

36. He did not feel that the out of hours coverage was needed.

37. Ms Latif and he had jointly paid for roof repairs. They had also decorated the communal areas and replaced the carpets.

38. He regarded the accountancy fees of £350 as excessive. His accountant had said that he would do the work for £150.

39. He felt that there should be more discussion with the lessees about what works were going to be done and about the maintenance of a sinking fund.

40. He viewed the agreement between the freeholder and IPM as being a qualifying long-term agreement and that the arrangement of renewing the agreement each year was a device.

### **The Respondent's case**

41. The Respondent asserts that no service charges were ever demanded for the period from 1.1.16 to 31.12.16 so there can be no sum to dispute. It invites the Tribunal to strike out that part of the Applicant's application on the basis that it does not have jurisdiction or, alternatively, that the application has no reasonable prospect of success: Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 ("the Rules") Rule 9.

42. In relation to the 2017 charges, the Respondent indicates that it brought proceedings in the County Court and succeeded in obtaining judgment in relation to both flats. For Flat 1, it obtained a judgment for a total of £1,649.06, made up of ground rent for 2015 and 2016 at £200 per annum; insurance at £466.38; administration charges at £369.98; interest at £60.70; legal costs and court fees at £352. For Flat 2, it obtained a judgment of £1,443.71, made up of ground rent for 2015 of £200; insurance at £466.38; administration charges of £369.48; statutory interest of £55.35; legal costs and court fees of £352.50.
43. The Respondent then began possession proceedings in relation to Flats 1 and 2, based on the sums for which judgment had been entered plus additional arrears of ground rent and service charge which had arisen after the judgments had been obtained.
44. The Applicant instructed solicitors to act for him in the possession proceedings. It is the Respondent's case that the Applicant conceded that the 2017 service charges were owing. It therefore contends that the 2017 charges fall within section 27A(4)(a) of the 1985 Act in that they have been admitted and agreed by the tenant; alternatively within section 27A(4)(c) in that they have been the subject of a determination by the court. On this basis the Respondent contends this part of the Applicant's application should be struck out because the Tribunal does not have jurisdiction pursuant to Rule 9(2)(a) of the Rules.
45. In relation to the service charges for 2018 (and for 2017, in so far as the Applicant's application remains live regarding those charges) the Respondent contends that the sums charged are reasonable. The Respondent explains that the Management Company referred to in the lease was dissolved in 2007 and therefore defaulted on its obligations, causing the Respondent to have to take over the provision of services. In relation to Flat 1 1/3 of the expenditure charged for services is charged, representing an equal division between the three flats. No management charge is raised, because the sums due under that relate entirely to the maintenance of the common parts, to which Flat 1 has no access because it has a separate entrance. In relation to Flat 2, one third of the service charge expenditure is charged, together with one half of the management charge, which is divided equally between the two flats which use the common parts.
46. The Respondent asserts that this proportion is fair and reasonable.
47. The Respondent submits that it has provided all the underlying invoices showing the make up of the service charge and management charge and that the expenditure has been reasonably incurred on works of a reasonable standard.
48. In relation to specific costs, the Respondent submits as follows:
  - a. The management fee per flat per annum was £216.04 in 2017 and £223.33 in 2018 (both inclusive of VAT). Those fees were reasonable and in line with market rates;



- b. An out of hours service is provided at a cost of £8.33 per flat per annum which is incurred in order to give the tenants the facility of being able to seek assistance in an emergency;
  - c. £100 per annum per flat is charged for the sinking fund.
49. The Respondent relied on the evidence of Wendy Walker, the regional manager for IPM. She told the Tribunal that she was the property manager at the time IPM took over management of this particular property. She attended on four occasions in 2018. It became apparent that the keys which IPM had did not get access to the property, so she arranged for the locks to be changed, which was done in March 2018, and provided the owners and tenants with new keys. She also arranged for a key safe to be installed. There is an invoice in the bundle for this work. Thereafter she was able to get access. A sub-tenant was using the communal electricity supply so she arranged for a lockable socket to be installed. None of the lights in the common parts work so she arranged for them to be repaired. She had a notice board put up in the property which had IPM's contact details on it, together with an evacuation plan.
50. In relation to the accountancy fees, Ms Walker indicated that the work was carried out by a third party to ensure transparency. There was an obligation under the lease to maintain a sinking fund and it was a benefit to the lessees to do so as it meant it was less likely that they would face an unexpected demand for a large sum. Despite the age of the property the sum going into the sinking fund was relatively low.

## **Findings**

### 2016 service charges

51. It is the Respondent's case that no service charges were demanded or paid in that period. The Applicant has not produced any documentation to indicate that they were.

### 2017 service charges

52. The Respondent has produced email correspondence between the solicitor acting for the Applicant and the solicitor for the Respondent relating to the possession proceedings in April 2017. That shows that the Respondent's solicitor accepted the sum of £7,437.40 in full and final settlement of the claims relating to Flats 1 and 2.
53. The Respondent relied on the decision of the Upper Tribunal in *Marlborough Park Services v Leitner* [2018] UKUT 230 (LC). In that case the Upper Tribunal dealt with a case where a lessee had paid service charges without objection until March 2012. He failed to pay them for the year 2012/13 and a judgment was obtained in the County Court. He continued not to pay and alleged that he had not received correspondence relating to the service charges. He then issued a Tribunal application challenging the reasonableness of service charges for the years 2007 to 2016. The landlord sought to strike out that application. The Tribunal rejected that application and the landlord

appealed. The UT allowed the appeal in relation to the service charge paid without protest up to 2012 and the service charge paid pursuant to a default judgment in 2012/13.

54. In this case the solicitor acting for the Applicant paid an agreed amount to settle a claim for service charges and to avoid a judgment being entered and possible forfeiture. The payment was described as being in full and final settlement of the landlord's claims. This payment was made by agreement and in the view of the Tribunal clearly falls within section 27A(4)(a). The Tribunal therefore agrees that it has no jurisdiction in relation to the charges for 2017.

#### 2018 service charges

55. The management fee charged for each flat at 144 Armley Ridge Road in 2018 was £186.13 plus VAT. The Applicant has confused the management fee charged for all 3 flats with the fee charged for the individual flats.
56. The Applicant has not put before the Tribunal any evidence that similar management services could be provided at a lower fee.
57. In the experience of the Tribunal this fee is well within the parameters of what is usually charged for the management of this type of property in the Leeds area.
58. £596 plus £40 was spent on repairs in the year. The Respondent has disclosed the underlying invoices.
59. The Applicant expressed scepticism that the works had been carried out. He alleged that the Respondent did not have any access to the property until 2019. On this issue the Tribunal preferred the evidence of Ms Walker, who stated that access had been obtained in March 2018.
60. The Applicant's evidence as to what works had been done or not done was vague and diffuse and lacking any sense of time. The Tribunal preferred the evidence contained in the Respondent's invoices, supplemented by the evidence of Ms Walker.
61. The Tribunal did however identify one item of work which should not have been included in the repair charges incorporated into the service charge. On 1.5.18 a fee of £77.47 had been paid to AP Electrical Ltd to fit a lockable single socket to the communal areas. This replaced an existing conventional socket.
62. From the evidence before the Tribunal it appeared that there is no landlord's electrical supply to the communal areas. The Respondent had arranged for an electrical socket to be installed with the electrical supply being provided by Flat 1. The socket was therefore not the property of the Applicant. It may be that the Applicant could have removed the socket, which was installed in a communal area without permission. In the view of the Tribunal the Applicant could not, within the terms of the lease, carry out the works described above. This item must therefore be excluded from the service charge.

63. The sum of £38.73 must therefore be deducted from the service charge payable for 2018.
64. The Applicant objected to the fee charged for an out of hours service. Ms Walker explained that the provision of an out of hours service enables contact in the event of an emergency at weekends and in the evenings. The annual cost per unit was £8.33. The Tribunal regarded this as reasonable.
65. The Applicant objected to the insurance premium. This does not form part of the service charge and is not the subject of this application.
66. The Applicant objected to agreement between the freeholder and IPM, which he regarded as a qualifying long-term agreement. The agreement is not for more than one year and therefore does not so qualify.
67. The Applicant disputed the accountancy fee. A total of £350 plus VAT had been charged for producing the service charge accounts for all three flats. The Applicant suggested that his accountant had said this could be done for a lower figure but did not produce any evidence to that effect. There was no evidence before the Tribunal that they could be done for less and in the experience of the Tribunal this figure was not excessive.
68. The Applicant objected to the payment of £100 per annum per flat into a sinking fund. The terms of the lease require a sinking fund to be created and this annual sum is reasonable for a property of this size, character and age.
69. The Tribunal finds that in all other respects the service charge due is reasonable and is payable as invoiced.
70. The Applicant has not made an application under section 20C but if he had done so the Tribunal would not have acceded to the application on the basis that his challenge to the reasonableness and payability of the service charge has failed almost entirely. He has succeeded in relation to only one minor item.
71. The Tribunal finds:
  - a. In respect of Flat 1, the application fails entirely;
  - b. In respect of Flat 2, the application in relation to the years 2016 and 2017 fails entirely. The application in relation to 2018 succeeds to the extent that £38.73 is deducted from the total due.

S Greenan  
Tribunal Judge  
20 July 2021