



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

Case Reference : CHI/24UD/LSC/2021/0001

Property : 58 Tinning Way, Eastleigh, Hants SO50
9QH

Applicant : Eyitope Akingbade Oyololo

Representative :

Respondent : Trinity (Estates) Property Management
Company Limited

Representative : J B Leitch

Type of Application : Determination of service charges: section
27A Landlord and Tenant Act 1985

Tribunal Member(s) : D Banfield FRICS
Regional Surveyor

Date of Decision : 29 April 2021

DECISION

The Tribunal determines that the charge of £1,540.43 being the tenant's share of the budgeted expenditure for 2020/21 is both reasonable and payable.

The Tribunal determines that it will not make the S.20C Order requested.

Background

1. The Applicant lessee seeks a determination, pursuant to section 27A Landlord and Tenant Act 1985 (“the Act”), of the services charges requested on account for service charge year 2020/2021 in the sum of £1540.43. This sum is the Applicant’s proportion of the total sum budgeted of £62,793.00 for the Sirocco Park estate.
2. The Applicant has also made applications under section 20C of the Act and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002
3. The Tribunal made Directions on 20 January 2021 which contained the following comment on the application “Although the narrative of the application criticises past service charges as being too high, and in particular the inclusion of legal costs in the service charge, he has not included any previous year within the application, and has not specified which items in the budget for 2020/21 he considers to be unreasonably high. The Applicant should bear in mind that these are only budgeted sums; the actual service charge at the year end may be higher or lower. The test for the Tribunal when considering sums requested on account is whether the sum is greater than reasonable (see section 19(2) of the Act).”
4. On page 10 of his application form the Applicant also asks the Tribunal to determine the reasonableness of the ground rent. This request is not pursued in his statement of case, however for the sake of regularity I must confirm that the determination of ground rents is not within the Tribunal’s jurisdiction that being a matter for the County Court.
5. The Tribunal’s Directions indicated that the application was considered suitable for determination on the papers alone without an oral hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objects in writing to the Tribunal. No objections have been received.
6. On receipt, the bundle was examined to determine whether the issues remained capable of being satisfactorily determined on the papers and found that it was. A statement to that effect was issued to the parties on 7 April 2021.
7. References to page numbers in the bundle are shown as []

The Law

8. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can construe the tenancy agreement where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable.

9. 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. Section 19 (2) concerns where a service charge is payable before the relevant costs are incurred no greater amount than is reasonable is payable.

The Applicant's Case

10. In his witness statement [18] dated 29 January 2021 the Applicant challenges the Respondent's invoices, demands for payment and legal fees upon late payment are arbitrary, extortionate and unreasonable."
11. The Service Charge Budget Calculation dated 29/6/20 does not specify among how many flats the service charge is divided.
12. The following Estate Charges are challenged as excessive;
- a. £5,610 for Landscape maintenance is too much for a small garden.
 - b. Vehicle barrier/ Roller shutter - £1,432 - we have paid for its installation.
 - c. General Repairs and Maintenance - £4,800 ... The price is unreasonable and the landlord should show audited accounts.
 - d. Management fee - £6,798- the management are not based on premises and duplicates Repairs and Maintenance.
 - e. Estate Sinking Fund - £2,400- What is it and where is the balance. Overlaps with Repairs and Maintenance
13. Block Charges are challenged as follows;
- a. How many properties in the estate is this charge divided? Is it divided according to the size of each property?
 - b. Fire/Emergency Lightning - £2,709 - Too costly, overlaps with Repairs and Maintenance full details and audited accounts required.
 - c. Drainage Maintenance - £2,422 another overlap?
 - d. General Repairs and Maintenance - £7,400 - too expensive, overlap and why 2 General Repairs and maintenance bills?
 - e. Management Fee - £5,128. Why are there 2 management fees?
 - f. Redecoration fund - £3,700 – No redecoration in 5 years, more details required.
 - g. Block sinking fund - £3,700 Duplication of Estate Sinking Fund
14. "Also, the legal fees for late payment, interest and solicitors costs are unreasonable, exorbitant, abusive and exploitative and I would like the Tribunal to intervene and set out well defined maximum late payment and costs chargeable by the Respondents in future cases., especially in

view of the financial difficulties a lot of tenants have found themselves falling into as a result of the Coronavirus pandemic.”

15. The Applicant also wishes the Tribunal to determine “further costs and legal expenses for late payments such as the court claim ... for £4,086.58 where the original invoice was for £1,446.01 and reduce the costs payable ...and set limits for any future total costs”
16. With regard to costs he considers that the matters he has raised are reasonable concerns and that it would be just and equitable for each party to bear their own costs.
17. Attached to his statement were the following relevant documents
 - a. A payment request dated 10/7/2020 for £1,540.43 in respect of service charges for the period 1/8/20 to 31/7/20 [24]
 - b. Service charge budget calculation dated 26/6/20 showing separate expenditure budgets for Estate and Block items together with the respective proportions payable by the Applicant. [26]
 - c. A Final Reminder dated 25/2/20 warning that an administration charge of £180 would be made if full payment of £1,446.01 was not paid within 7 days. [27]
 - d. Service charge budget dated 10/7/2019 with a charge of £1,485.72 [29]
 - e. County Court Claim Form with Issue Date of 30 April 2020 for £4,086.58 [30]

The Respondent’s case

18. In a statement dated 3 March 2021 [31] the Respondent’s solicitor confirms the parties’ title and that the Respondent is the management company appointed to manage the residential development of which the property forms a part.
19. The following terms of the lease are referred to;

(The Tenant is sometimes erroneously referred to as the Respondent and for clarity I have made corrections)

- a. The Applicant's proportion of service charges is set out in the Lease as being 2.0833% of the Estate Costs as set out in Part A of Schedule Eleven (“the Part A Proportion). The Estate comprises of the land in title number HP226211. The freehold of the Block and part of the Estate is now registered under title HP793515.
- b. Paragraph 2 of Schedule 11 requires the Applicant to pay the Rent in accordance with paragraph 4 of Schedule 2
- c. At Paragraph 2 of Schedule three the Applicant covenants “To pay the Tenant's Proportion of the Estate Service Charge Costs.....”

- d. The Estate Service Charge Costs are defined as “. the money actually expended or reserved for periodical expenditure by or on behalf of the Management Company or the Landlord at all times during the Term in carrying out the obligations as specified in Schedule Eleven.”
- e. The Financial Year is “the period from 1 August to 31 July next following or such other annual period which the Landlord may in its sole discretion from time to time determine.
- f. The Tenant's Proportion" means the proportion of the Estate Service Charge Costs as set out in the Particulars payable by the Tenant in accordance with the provisions of this Lease.
- g. The "Payment Days" are defined as "on 1st August in each year (the first such payment being a proportionate sum being due on and from the date hereof until 31st July next)".
- h. By Schedule Two the Rent includes the Management Company the Tenant's Proportion as rent. (Clause 3) and the Rent " .. shall be payable in advance without any deduction whatsoever on 1 August in each year (the first such payment being a proportionate sum being due on and from the date hereof until 31 July next).
- i. By Schedule Three, Paragraph 1, " To pay the Rent at the times and in the manner herein provided in paragraph 4 of Schedule 2”.
- j. By Schedule Three, Paragraph 2," To pay the Tenant's Proportion of the Estate Service Charge Costs and all existing and future rates assessments charges and outgoings of every kind and description payable by law in respect of the Property or any part thereof and to pay a fair and reasonable proportion of any such expenses which are assessed or charged on the Estate or any premises of which the Property forms only part."
- k. By Schedule Three, paragraph 7 "To pay to the Landlord or the Management Company (as the case may be) on demand the costs and expenses (including any solicitors', surveyors" or other professional fees, costs and expenses and any VAT on them them) properly incurred by the Landlord or the Management Company or in contemplation of any of the following ... The enforcement of any of the covenants on the part of the Tenant contained in this lease.
- l. By Schedule Three, Paragraph 14, "To pay the Tenant's Proportion of the Estate Service Charge Costs to the Management Company in the following manner: -
In advance on the first day of August in every year throughout the Term (or such other dates as shall be notified in writing to the Tenant by the Management Company) the Tenant's Proportion of the amount estimated from time to time by the Management Company or its managing agents as the Estate Service Charge Costs for the forth coming year (" the Yearly Payment")
- m. By Schedule Three, Paragraph 14.3, the Applicant covenanted within 28 days after the service by the Management Company on

the Tenant of a Service Charge Certificate in accordance with paragraph 3.1 of Schedule Five for the period in question the Tenant shall pay to the Management Company the balance by which the Tenant's Proportion of the Estate Service Charge Costs received by the Management Company from the Tenant pursuant to paragraphs 14.1 and 14.2 above falls short of the Tenant's Proportion of the Estate Service Charge Costs payable as certified by the Service Charge Certificate during the said period and any overpayment by the Tenant shall be credited against future payments due from the Tenant. "

- n. The Respondent is entitled to charge interest pursuant to paragraph 15, Schedule Three.
 - o. Pursuant to Schedule Seven paragraph nine the Management Company shall have the right to alter the percentage of the Tenant's Proportion of the Estate Service Charge Costs.
20. In referring to the proceedings before the County Court a breakdown of the sum claimed is given indicating that it is for the service charge year 1/8/19 to 1/7/20 together with Ground Rent, Insurance Administration charges, interest and Legal costs.
21. Referring to the Applicant's grounds of appeal the Respondent states that;
- a. The demand relates to estimated budget expenditure.
 - b. In the case of *OM Property Management Limited v Barr* [2013] EWCA Civ 479 it was said that " On the other hand, as section 19 (2) makes clear, there is a different regime in relation to estimated costs before they are incurred. The Landlord or management company is entitled to reflect reasonable estimated costs in the service charge and the statute makes no provision for adjustment of estimated costs"
22. It is submitted that as per the terms of the Lease as set out above that the Applicant is contractually entitled to demand service charge payment in advance to the expenditure having been incurred.
23. Further, it is denied that any part of the sum demanded is " greater than what is reasonable". Under the terms of the lease the Applicant is entitled to the costs claimed and they are reasonable given the sums are similar to the historic accounts or alternatively there are good reasons for it to be increased. Consequently, the Respondent has good prospects of success of recovery all the sums due as estimated.
24. It was noted that no issue has been taken in respect of the service or form of the demand which is in the correct statutory form.
25. With regard to costs reference was made to the case of *Staghold v Takeda* [2005] 3.E.G.L.R 45 where it was held "that the Landlord or as in this case the Management Company could recover their costs in respect of an application by the tenant who sought a determination on

liability to pay service charges. Further, in the case of Embassy Court Resident's Assoc Limited v Lipman (1984) 271 E.G 545 where the court implied the term into the Lease so that Association could recover their costs, as it was only fair and reasonable that they had the benefit of legal advice and that the leaseholders paid for it.”

26. “The application under S.20C should not apply as it was necessary and reasonable for the Respondent, Management Company to obtain legal advice;; the size of the development. It is clearly equitable and just for the Respondent to recover their legal costs from the Service Charge Scheme. The Respondent also relies on clause 7, Part B, Eleventh Schedule, which allows for the recovery of "legal or other costs" incurred by the Manager where they are not recovered in defending proceedings.”
27. It is submitted that both the Respondent and the Managing Agent's costs are also recoverable under the terms of the lease in respect of these proceedings. The Respondent who is not experience in complex property management issues has spent a substantial amount of time in preparing this case for the tribunal and collecting the necessary relevant documentation. These costs are covered in the clauses 7, Part B of the Eleventh Schedule.
28. A Witness Statement of Michelle Ashley Property Manager of Trinity Estates [40] echoes a large part of the above statement and will not therefore be repeated.
29. Paragraph 28 of the statement [45] explains that the likely expenditure for the forthcoming year is estimated based on previous years' expenditure, any anticipated works and the Respondent's extensive professional knowledge and experience.
30. Accounts are provided for years 2017, to 2020 {122,127,132 &138] and the Estate percentage is 2.0833% and the Block charge 2.7027% split equally between 37 apartments. Originally more but some now managed by the Housing Association.
31. The services provided to the Development are detailed within the Schedule Eleven of the Lease and include inter alia keeping the Estate Communal Areas generally in a neat and tidy condition, repair and replacement of any refuse storage bins, such lighting of the Estate Communal Areas as the Management Company shall think fit and clean the internal and external surfaces of the windows of the Internal Common Parts of the Block, maintaining, renewing the main structure of the Block, including roofs foundations, walls and all external parts, all windows not forming part of the Property, all service installations any fire alarms and firefighting equipment, decoration internally of the Common Areas and the external areas of the Building.”

32. The actual expenditure for the service charge years 2017 to 2019 for the various heads of expenditure challenged was confirmed showing amounts varying both up and down.
33. Management fees were said to be reasonable for an estate of 7 blocks of apartments and common parts of 5 blocks. Total management fees show a slight increase over the previous year.
34. A reserve fund has been set up so that costs for major works such as structural repairs can be spread across a number of years. The estimate for 20/21 has slightly increased from previous years.
35. It is accepted that no decorations have been carried out to date. Hence the need to build the reserve fund to pay what will be a substantial amount. At £3,700 this is similar to previous years.
36. There are no legal fees in the budget although it is noted that the Applicant is seeking the Tribunal's intervention.

Determination

37. The Tribunal's jurisdiction in this matter is, as indicated in the Tribunal's Directions referred to at paragraph 3 above to determine whether the budgeted sums demanded are reasonable.
38. In examining the budgets upon which demands were based and the actual expenditure incurred from 2016/17 onwards it is noted that in some years expenditure exceeds the budget and in others the reverse. The practice appears to be that where the budget exceeds actual expenditure any surplus is transferred to Reserves.
39. Budgets are no more than estimates of the likely expenditure to be incurred during the following year based on whatever information is available to the landlord at the time. The Respondent refers to having used previous years' actual expenditure together with knowledge of intended works and experience as the basis for the estimate, a method which the Tribunal has on many occasions determined as reasonable.
40. In the four years examined, on two occasions the budget was exceeded and on two the reverse, indicating that there is no consistent policy of overestimating the figures included in the budget and as evidenced by the details of actual expenditure referred to in Ms Ashley's witness statement.
41. It is noted that from 2019/20 the budget was divided between Estate and Block Charges. No explanation is provided as to the reason for this change although it is noted that the combined expenditure remains reasonably consistent.
42. Likewise, given that the only reference in the lease is to The Tenant's Proportion of Estate Costs [63] amounting to 2.0833% I am unable to

explain the charge of 2.7027% referred to as Block Charges. I accept however that the Landlord has the power by virtue of paragraph 9 of Schedule Seven to vary the percentage figures and must presume that this has been done.

43. Given the above the Tribunal determines that the charge of £1,540.43 being the tenant's share of the budgeted expenditure for 2020/21 is both reasonable and payable.

44. The Tribunal declines to make determinations as to those charges which are included within the application before the County Court as that court currently has sole jurisdiction in respect of the matters before it.

Costs

45. The costs the Respondent has incurred in defending this application are at issue in two senses. Firstly, whether they can be recovered from the Applicant himself and secondly whether the costs can be recovered by way of the service charge.

46. With respect to the former Ms Ashley refers at paragraph 36 of her Witness statement to the Applicant being liable for the Respondent's full legal costs recoverable on a contractual basis and citing Paragraph 7.1 of Schedule 3. [51]

47. I disagree with her construction of this clause as the whole of paragraph 7 is in respect of the Landlord taking action against the tenant. The reference at 7.1 is to "the enforcement of any of the covenants on the Part of the Tenant contained in this lease" This does not include the costs of defending an action brought by a tenant against the landlord.

48. The costs of the action cannot therefore be recovered directly from the Applicant under this clause.

49. Turning now to the application for an order under S.20C. Whilst the relative success of the parties is not necessarily a guide to whether or not an Order should be made in this case the Applicant has failed in his application. It should have been clear from the observations made in paragraph 4 of Judge Morrison's Directions that the application as made had limited chance of success. Despite this the Applicant proceeded to raise matters which were clearly outside of the Tribunal's jurisdiction.

50. I have some doubts as to the need for the effort that the Respondent has clearly made in defending the application given the palpable weakness of the Application but they clearly felt obliged to do so and were wholly successful.

51. In these circumstances the Tribunal determines that it will not make the S.20C Order requested.

52. In declining to make the Order however I am not however determining that these costs are necessarily recoverable under Clause 7 of Part B of the eleventh Schedule as asserted by Ms Ashley [38] and I am not required to do so under this present application.

53. Should there be a challenge in the future as to whether such costs may be treated as relevant costs no doubt the matter can be fully argued at that time and a firm determination made.

D Banfield FRICS
Regional Surveyor
29 April 2021

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 by email to rpsouthern@justice.gov.uk 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.