FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/42UF/LSC/2020/0012**
HMCTS code (paper, video, audio)	**:**	**P: PAPERREMOTE**
Property	**:**	**23 Sextons Meadows, Bury St Edmunds, Suffolk IP33 2SB**
Applicant	**:**	**Mrs Virginia Mary Poulton**
Representative	**:**	**In person**
Respondent	**:**	**Holding & Management (Solitaire) Limited**
Representative	**:**	**J B Leitch Limited**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal member	**:**	**Tribunal Judge Dutton**
Venue	**:**	**Paper determination**
Date of decision	**:**	**16th November 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 280 pages, the contents of which I have noted. The order made is described at the end of these reasons.

Decisions of the tribunal

(1) The tribunal dismisses the application for the reasons set out below

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2019 and 2020.

The background

2. The property which is the subject of this application is, according to the lease of same dated 1st April 1999, a flat on the ground and first floor of a block of 7 flats and car parking spaces as shown edged in blue on a plan annexed to the lease of the demise. The blue edging on the plan I have would seem to refer to the whole estate. The applicant describes the property as a detached 2 bedroom coach house. The lease at the First Schedule describes the flat by reference to a plan and is to be found on the specified floors, which according to the definitions in the lease are the ground and first floor, with a car parking space. The applicant also holds by terms of separate lease dated 20th November 2014, garden land but the plan annexed to the copy in the bundle is not coloured and it is there impossible to determine where the garden land is situated.

3. Neither party requested an inspection and given the current Covid-19 restrictions the tribunal did not consider that one was an option.

4. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

5. The applicant appears to seek to challenge the service charge costs for Block electricity, communal block cleaning, light bulb replacement, monitoring service, grounds maintenance and general repairs.

6. She says in the application that she "pay £500 every 6 months towards the above costs (over £1,000 a year) none of which I benefit from or use or am entitled to, a I live in a self contained house completely detached from the rest of the block and do not or have not used any of the above services".

7. Further comments are made complaining that she is not entitled to use a communal bin area and that she pay hers own water rates whereas she believes that block residents usage is included in the service charge as well as being required to supply her own TV reception equipment. In addition she says that she has been required to pay £800 towards roof repairs to the block, which she maintains is not her roof and that the costs were incurred before she took occupation, which was in September 2018.

8. Directions were issued by the tribunal on 7th July 2020. These provided for the respondent to provide to the applicant copies of the service charge accounts and estimates together with demands and details of payments made. According to the papers before me the applicant was sent the service charge accounts for 2019, the budgets for 2018 – 2019, 2019 – 2020 and 2020 – 2021. Demands for payment were included and a statement of account showing the payments demands and paid. This document would seem to show that the applicant has paid all that has been demanded of her. These papers were sent in July 2020.

9. Once these papers had been provided the applicant was required to provide a schedule setting out the charges she challenged with reasons and any alternative quotes. The applicant was also to provide a statement, if she had not explained her concerns in the schedule. The applicant did not do so, Further, she was given an extension of time by the tribunal on 2nd September 2020 to file her statement and documents by 16th September 2020 and in failing to do so her application would stand as her statement of case. She again failed to file and serve the papers she was required to deal with by 14th August 2020 and accordingly I have only her application to go on for the purposes of understanding her case.

10. The respondent has filed a detailed statement of case by its solicitors dated 6th October 2020, supported by a witness statement of Tim Hughes, the regional manager for First Point Property Services Limited, the managing agents for the respondent. This statement set out the relevant terms of the lease dated 1st April 1999 and then somewhat surprisingly suggests that as the applicant was not an original party to the lease the application was not validly brought.

11. The statement proceeds to recount the history of the service charge accounts asserting that they had been properly budgeted for and correctly demanded and accounted for. It suggests that the application is limited to the reasonableness of the various service charge items challenged

12. The statement goes on to accept that although the flat is "separated" the applicant is "nonetheless obliged to contribute to towards the service charges as prescribed in the lease". Further, the fact that she may not directly benefit from each and every chargeable service, she is still required to pay for them. I have noted the contents of this statement.

The tribunal's decision

13. I find that the challenge to the stated service charges must fail and I therefore dismiss the application for the reasons set out below

Reasons for the tribunal's decision

14. I consider that the respondent is correct when it states that the burden of proof rests with the applicant. If a bona fide dispute is raised, with some evidence in support, then the burden shifts to the landlord to show that it is reasonable and payable. In this case the applicant has played no part in the proceedings, other than to lodge the application.

15. I have noted the contents of the application and recited the relevant wording above. It is of course correct to say that merely benefiting or using a service is not the only reason for payment for same. The old adage of a tenant on the ground floor of a block of flats still having to pay towards the lift is oft recited. It depends on the terms of the lease. In this case there is an indication that some service charge costs may not be payable by the applicant. See the definition of Service Charge in the Interpretation section at the start of the lease. I could not discern from the accounts for Rockingham Road 2 – 12 and 23 Sextons Meadows whether there has been any such apportionment. I am assuming that this account represents the 7 properties being even numbers at Rockingham Road and the applicant's property. The respondent, in its statement concentrates on reasonableness and not the payablilty. The account is very difficult to follow as it refers to S1 Internal communal areas and S2 Estate and Block, when I cannot see from the lease that there is an obligation to contribute to Estate costs, whatever they may be.

16. The applicant has been given ample opportunity to state her case. To have supplied some photographs of the property would have been of assistance. A clear explanation as to why she says she is not obliged to pay the various amounts would also have assisted me as it is unclear from the lease as to the extent and positioning of her property in relation to the "Block". The terms of the lease are matters that she should have

appreciated when she acquired the property. Reference is made to costs incurred before she took over ownership. I have no idea what apportionments may have been agreed with the seller of the property and that these issues may have been taken into account. Certainly, there appears to be an amount of £221.49 on the statement of account which relates to a period to 30th June 2018, which is before the applicant acquired the property. But I am given no assistance in this regard. With respect to the applicant I cannot make her case for her.

17. That being said I do not think the respondent statement is as helpful as it might have been. It is clear to me that the applicant's complaint relates to the terms of the lease and the payability of the various costs, rather than whether the costs are reasonable, and this is not really addressed. In addition, the suggestion that the claim is invalid because the applicant was not the original party to the lease is, with respect to the respondent, fanciful.

18. As I have said above there are terms of the lease which are unclear, particularly the split between 1/6th and 1/7th of costs, with no explanation as to how that works, and reference to the Estate.

19. That being said, I have some sympathy with the respondent in attempting to respond to the case limited to that set out in the application. These are matters that the applicant could and should have raised but she chose not to do so. I fear that I cannot take the matter any further without the applicant's participation and I must therefore dismiss the application.

Application under s.20C and refund of fees

20. In the application form, the Applicant applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the I determines that no such order under s20C of the Act should be made nor any order under the provisions of paragraph 5A to the 11th Schedule to the Commonhold and Leasehold Reform Act 2002.

Name: Tribunal Judge Dutton **Date:** 16th November 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).