



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

Case Reference : CHI/00HH/LIS/2021/0025

Property : 2 Langstone Close, Babbacombe, Torquay,
Devon TQ1 3TY

Applicant : Ms J Ayres

Representative :

Respondent : Mr Malcolm Carter and Mrs Susannah
Segal as Trustees of the Locker Foundation

Representative : Ms R Cunningham, counsel
J B Leitch Solicitors

Type of Application : Determination of service charges

Tribunal Member(s) : Judge D. R. Whitney
Mrs J Coupe FRICS
Ms T Wong

Date of Hearing : 16th and 17th November 2021

Date of Decision : 11th January 2022

DECISION

Background

1. The Applicant issued proceedings in the County Court which were transferred to the Tribunal. Various sets of directions were issued.
2. The Respondent had issued an application for the appointment of a manager under case reference CHI/00HH/2021/0008. Separate directions were issued but a single hearing bundle was prepared by the Applicants to this application for use in both applications. The same panel has determined both applications.
3. The Respondent made applications for Orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
4. The Tribunal in its directions of 1st July 2021 identified the following issues to be determined:
 - The validity, reasonableness and payability of the service charges for the periods; 2016, 2017, 2018, 2019, 2020 and 2021;
 - Whether the demands issued on 9 July 2020 are valid and enforceable;
 - Whether the sums demanded are due and payable;
 - Whether the costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee;
5. References in [] are to pages within that bundle.

The Law

6. The relevant law is contained within sections 19 and 27A of the Landlord and Tenant Act 1985. A copy is attached marked Annex A.

The Hearing

7. The hearing took place remotely by video. No party objected to this process and at the conclusion of the hearing all parties confirmed they had made all submissions they wished to make.

8. The Tribunal did not inspect the premises. The Tribunal had viewed the premises online and various photographs were contained within the hearing bundle.
9. The Tribunal confirmed to the parties it had read the bundle, the Applicant's skeleton argument and the Applicant's costs schedule.
10. The Applicant was represented by Ms Cunningham of counsel and Ms Cartlidge of J B Leitch Solicitors was in attendance. The Respondents witness Ms Louise Andrews, director of Proxim Property Management Limited ("Proxim") was present as well as the actual property manager Ms Fiona Barnett. Mrs Ayres appeared for herself. She confirmed none of her witnesses would be taking part in the hearing or attending the same.
11. This decision records the most salient parts of the hearing which the Tribunal took account of in reaching its determination. It is not however a transcript of all that took place.
12. It was agreed that the estate consisted of 54 flat being those contained within what are known as Blocks A, B & C. There are 20 flats known as Lime View which are also within the freehold title but are managed separately by an RTM Company.
13. Mrs Ayres explained that she believed the demands should all have referred to Irvine Carter and Malcolm Carter as the freeholder. In her submission many only referred to "The Locker Foundation". She suggested she was given no information that a trust owned the freehold until March 2021. In her submission the requirements of sections 47 & 48 of the Landlord and Tenant Act 1987 were not met in that she was not given the proper name and address of her landlord.
14. Mrs Ayres submitted she would have expected to have been told the names of the actual trustees as registered at the Land Registry. Further she was concerned that both service charges and ground rent appeared to be paid into the same account.
15. Mrs Ayres submitted she objected to the service charges which were in her submission excessive. Mrs Ayres spoke to the Scott Schedules in the bundle [638-708]. She suggested a number of fees were matters which should be included within the management fee charged by Proxima and separate fees should not be charged. She stated she had not been provided with a copy of the contract appointing Proxima or the bank statements for the service charge account.
16. Mrs Ayres suggested that a charge for replacement of a balcony window pane was not a service charge item. In her submission this was not

a matter the landlord was obligated to repair and was not recoverable [661].

17. In respect of the installation of smoke alarms Mrs Ayres suggested the alarms fitted were not suitable. She suggested the use of a firm, Dovetail, who were based in the Midlands led to excessive costs due to the costs of travel.
18. Mrs Ayres suggested the placing of air fresheners in the communal hallway was not reasonable.
19. Mrs Ayres explained that all amounts she had paid had been made under protest.
20. Miss Cunningham cross examined Mrs Ayres.
21. Mrs Ayres confirmed she purchased her flat in March 2016. She explained other leaseholders were not attending as many of them suffered from poor health.
22. She explained how she had been paying weekly amounts as this was easier for her to budget as she received her pension credits weekly. She suggested the property managers did not make it easy for her to make weekly payments.
23. In her opinion a local manager would be cheaper and they would use local contractors who would prove cheaper.
24. She confirmed her counterclaim was on the basis that invalid invoices had been issued and so she had not been required to make any payments.
25. Mrs Ayres explained the current property manager only visits every 2 months. Previously the manager would visit every 6 weeks at a pre-arranged date and time. She accepted some people appear to still be told when the manager is attending but she says she is not. In her view this attendance is insufficient to adequately manage the site.
26. Mrs Ayres explained that a Tenants Association was being formed but in early stages. She understood they had not got the numbers which were required. She suggested those forming the Association agree with her the charges are astronomical. Sadly a lot of people are unwell and so she is effectively speaking for all.
27. Mrs Ayres accepted she had received the disclosure which the Tribunal had ordered the Applicant to provide [65]. She stated she had raised no issues with the year 2016/2017 as time did not allow. It was for this reason she had been unable to obtain alternative quotes.

28. In respect of the insurance Mrs Ayres did challenge the cost as unreasonable. She accepts insurance has to be paid for but in her experience it could be obtained cheaper. This is what Mr Stocks (her proposed manager to be appointed) has advised her but she has no alternative quote.
29. Mrs Ayres was referred to clause 4(4) of the lease [6] which provides that:

“(4) At weekly or more frequent intervals during the term hereby granted to water plants (if any) and to clean all stairs halls lobbies passages and where applicable external porchways serving the said flat and so that the Lessee shall be responsible for cleaning the flight of stairs and windows adjacent to the door of the said flat and landing or entrance lobby terminating that flight”
30. Mrs Ayres does not suggest it is reasonable that the leaseholders should undertake the cleaning. In her opinion this should be the responsibility of the managing agent and freeholder. In her submission this is impractical.
31. Mrs Ayres suggested the costs charged for fire signage installation was excessive. She believed the manager could have installed signage having downloaded templates from the internet.
32. Mrs Ayres was questioned by the Tribunal.
33. She explained the Tenants Association was quite new. She was not personally involved.
34. Miss Cunningham presented the case for the Applicant.
35. She referred to the lease [2-13]. Clause 4(23) required the leaseholder to pay towards the service charges in accordance with the Schedule. Miss Cunningham confirmed each flat pays 1/54th.
36. Miss Cunningham then called Ms Andrews. She confirmed that her statement was true and accurate [635-637].
37. Ms Andrews explained the insurance cost had risen because the costs of reinstatement had been reviewed. This was a process they undertook every three years to ensure the re-build costs are correct.
38. Mrs Ayres then cross examined.
39. Ms Andrews explained the freeholder did not provide cleaning as the lease does not provide for them to do so.
40. She explained that they work to ensure they get the most competitive quotes for services. They do struggle sometimes with obtaining local companies. She explained they often use national

companies following a tender process they undertake every year which in her opinion provides the most competitive quotes.

41. In respect of the insurance she confirmed this is arranged through a broker. Proxim receives a commission of 14.9%.
42. The management fees are calculated on a per unit basis which she believes is about £220 plus vat per annum. There is a written contract with a schedule of other costs. She stated the contract had not been disclosed as it was confidential with her client.
43. She confirmed contractors have to join her firms' accreditation scheme. They must go through a process of due diligence but no fee or commission is charged.
44. Ms Andrews was questioned by the Tribunal.
45. She confirmed Proxim manages about 80 blocks nationwide consisting of approximately 1600 units. They manage 2 other blocks in the area surrounding Langstone.
46. Ms Andres explained her company has one global trust account with each property they manage having a separate virtual account. The bank administration fee is for undertaking postings and covers fees they are charged by the bank.
47. Also charge fees for preparing for the audit undertaken. The audit fee itself is what the accountant charges.
48. Miss Cunningham explained that Mrs Ayres began to fall behind with charges in 2018. Initially Mrs Ayres had raised a technical defence as to the name on the demands. Even if this was right the issue of amended demands on 9th July 2020 corrected any issue and payments were due. In her submission there is no question of who the Landlord is now.
49. The 2016/2017 service charges are not challenged.
50. She suggests the landlords evidence should be preferred. Further if the demands are valid the Counterclaim falls away and cannot succeed.
51. Mrs Ayres then made her closing submissions.
52. She suggested it was unreasonable to have the rebuild costs again assessed by the landlords surveyor as this was conducted less than once every three years. Similarly she suggested the commission which was being received by Proxim made the premium unreasonable.

53. Mrs Ayres believes a local manager would be more pro active and cheaper.
54. Both Mrs Ayres and Ms Cunningham confirmed they had made all submissions they wished to make. The Tribunal adjourned confirming it would outline its decision the following morning before Judge Whitney would determine any and all outstanding County Court matters.

Decision

55. The Tribunal thanks both parties for their submissions and evidence.
56. At the resumption of the hearing on 17th November 2021 we explained our determination that we were satisfied that valid demands had been given in 2020. We indicated that certain costs predominantly relating to additional management fees were found unreasonable but in the main the case was provided. This is now our reasoned decision. We attach the Scott Schedules recording our comments on particular items.
57. Mrs Ayres suggests that the demands did not comply with the requirements of Sections 47 and 48 of the Landlord and Tenant Act 1987. We do not agree with Mrs Ayres. All demands explained that her landlord was “The Trustees of the Locker Foundation” and provided an address for the same. The managing agents address was given as the address for service in accordance with Section 48 [347-363]. Later demands issued by Proxim also have named two of the trustees. In our determination these demands met the statutory requirements.
58. We refer to the Scott Schedules in which we set out our determination on individual items challenged. We note the Applicant did not provide a copy of their contract, in our judgment such documents should be disclosed. That being said overall we are satisfied that a reasonable service is being provided. Bi-monthly visits are, in our judgment, reasonable for a development of this type. Further whilst it may be said that the manager resides some distance away any costs of travel are subsumed into the management fee. This is a decision of Proxim as to how they manage their business. We are satisfied that the day to day management is undertaken to a reasonable and proper level and the base cost is reasonable.
59. Mrs Ayres takes issue over the lack of communal cleaning. We accept the submissions of Ms Cunningham that the freeholder is not obligated to clean and in fact the leases place an obligation upon the leaseholders. We agree with Mrs Ayres that practically such an arrangement may be unworkable and other issues arise

however all are bound by the lease. Within this application we have no jurisdiction to vary the lease.

60. Turning to the use of non-local contractors it is for the agent to determine whom they may use. Mrs Ayres was unable to produce any alternative quotes for the works objected to. We accept the evidence of Ms Andrews that her company has a list of accredited contractors and re-tenders each year. She talked about this achieving economies of scale although no specific information was provided. We do accept that various of these contractors whilst Midlands based are national companies. We had no real evidence to challenge the costs and we were satisfied that the same were reasonable.
61. Ms Andrews openly accepted her company receives a commission for the placing of the insurance. Again no alternative quotes were supplied by Mrs Ayres. Looking at all the evidence we heard we are satisfied that the cost of the insurance is reasonable. We are not satisfied that the commission received makes the cost unreasonable.
62. Mrs Ayres appears to take issue with the fact the managing agent will not accept weekly payments. As a Tribunal we accept this would involve the agent in considerable further work in allocating payments correctly. We are satisfied it is reasonable of them to refuse such payments without further costs being incurred.

Conclusion

63. In the main we found the service charges to be due and payable save for those items we disallowed on the Scott Schedules.
64. Mrs Ayres has made an application for orders pursuant to section 20C and paragraph 5A. Such orders are at the discretion of the Tribunal. In this instant case it would in our judgment be unreasonable to make any such order and we decline to do so.

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.