



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

Case reference : **LON/00AZ/LSC/2021/0056**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **Flat 3 (including Garage C), Flat 4 and Flat 7 (including Garage E), Riverside House, 317 Southend Lane, London SE6 3NF**

Applicant : **Southend 317 Ltd**

Representative : **Fountayne Managing Ltd**

Respondent : **Alan Samways**

Representative : **N/A**

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal members : **Judge H Carr
Ms F Macleod MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **5th November 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: **CVPREMOTE**. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 871 pages, the contents of which I have noted. The order made is set out below.

Decisions of the tribunal

- (1) The tribunal determines that the sums demanded by the applicant are payable by the respondent in respect of the service charges for the years 2016-17, 2017-18 and 2018 – 19 and the estimated /budgeted items for the years 2019-20 and 2020-2021. .
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) 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 Respondent in respect of the service charge years 2016-17, 2017-18 and 2018 – 19 and the estimated /budgeted items for the years 2019-20 and 2020-2021. .

The hearing

2. The Applicant was represented by Mr Stern from Fountayne Management at the hearing and the Respondent appeared in person.

The background

3. The property which is the subject of this application comprises three self-contained flats in a purpose-built block of 10 residential flats above a parade of shops. Two of the flats, flat 3 and Flat 7 include a garage. Each of the flats pays 10% of the total charges relating to the residential areas and 5.7% of charges which relate to the whole estate including the commercial premises. The flats comprise three bedrooms, a bathroom, a sitting room and kitchen. Each of the flats is let.

4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
5. The respondent holds long leases of the properties which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

The issues

6. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The reasonableness of service charges for the years 2016 - 2021 relating to
 - a. Communal cleaning
 - b. Estate cleaning
 - c. Communal lighting
 - d. Fire risk assessments
 - e. General maintenance
 - f. Bulk rubbish removal
 - g. Estate gardening
 - h. Roof repair and maintenance
 - i. Banking charges
 - j. Accountancy charges
 - k. Out of office hours call centre charges
 - l. Management fees
7. There was no dispute between the parties about the payability of the service charges demanded. Neither were the charges for insurance,

health and safety assessments and window cleaning in dispute for the years in question.

8. Although the application form made a reference to the costs of major works, the tribunal heard no evidence and made no determination on the costs of major works.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Communal Cleaning charges

10. The disputed communal cleaning charges are as follows:
 - (i) 2016 – 17 total £2241.60 – respondent’s apportionment 10% = £224.16 per flat
 - (ii) 2017 -18 total £2952.60 – respondent’s share 10% = £295. 60 per flat
 - (iii) 2018 – 19 total £2,808.00 – respondent’s apportionment 10% = £280.80 per flat
 - (iv) 2019 – 2020 total £3,000 – respondent’s share 10% = £300 per flat
 - (v) 2020 – 2021 (budgeted) total £2850 – respondent’s share 10% = £285.00 per flat
11. The applicant says that the shared communal walkways and staircase is cleaned on a fortnightly basis. The average charge per clean is £87 including VAT.
12. The respondent says that his tenants have never seen a cleaner or evidence of the stairs and walkways being cleaned. He says that his tenants in flats 9 and 4 clean the stairs and walkway themselves. He also says that the area around the communal bins at the bottom of the stairs is always messy and to minimise rat infestation the tenants try to clean up the area themselves.

The tribunal’s decision

13. The tribunal determines that the amount payable in respect of communal cleaning is as demanded.

Reasons for the tribunal's decision

14. The tribunal accept the evidence of the applicant that the cleaning was carried out.
15. The respondent produced no evidence from his tenants to support his assertion that there was no cleaning. Nor did he produce any evidence to suggest that the costs demanded for the cleaning were not reasonable.
16. In the tribunal's experience the amount charged for cleaning the communal areas is reasonable.

Estate cleaning

17. The disputed estate cleaning costs are as follows:

- | | | | |
|-------|------------|--------------------|-------------------|
| (i) | 2016 – 17 | Total £1,200 | Respondent's |
| | | apportionment 5.7% | = £68.40 per flat |
| (ii) | 2017 – 18 | Nil | |
| (iii) | 2018 -19 | Nil | |
| (iv) | 2019 – 20 | Nil | |
| (v) | 2020 -2021 | Nil | |

18. The applicant says that the cleaning to the estate entails litter-picking and removing leaves and unsightly bigger rubbish. The applicant arranged the estate cleaning as a one off deep clean of the estate which included tidying the estate, trimming the trees and general gardening.
19. The respondent says that the level of cleaning is very poor and while it is agreed that occasionally there is a large level of rubbish removal there is no ongoing maintenance cleaning. He suggested there was duplication between the communal cleaning and the estate cleaning.

The tribunal's decision

20. The tribunal determines that the amount payable in respect of estate cleaning is as demanded.

Reasons for the tribunal's decision

21. It is clear that this is a one-off event. The respondent has produced no evidence that it did not take place. The evidence showing that the estate is not well maintained is not relevant to the reasonableness of this one-off charge. The respondent produced no evidence to suggest that the charge was not reasonable, nor evidence of comparable costs.
22. The tribunal accepts the evidence of the applicant

Communal lighting

23. The disputed charges for communal lighting are as follows:
- (i) 2016 – 2017 total £55.26 Respondents apportionment 10% = £5.53 per flat
 - (ii) 2017 – 2018 Total charge £108.37 Respondent's apportionment = £10.84 per flat.
 - (iii) 2018 – 2019 Total charge £190.36 Respondents apportionment 0% = £19.04 per flat.
 - (iv) 2019 – 2020 Total charge £150.00 Respondent's apportionment 10% = £15.00 per flat.
 - (v) 2020 – 2021 (budget) Total charge £200.00 Respondent's apportionment 10% = £20 per flat.
24. The applicant says that communal lighting is provided to the common parts.
25. The respondent says that the lighting has not worked for the last ten years. The electricity bills show that the charges only cover the meter rental with no electricity being used.
26. The respondent accepts that this is the position but says that the costs of disconnecting the electricity and then reconnecting when the lighting is repaired would be far more than the current costs. The reason the works have not progressed is a lack of funds which is in part due to the respondent not paying his service charges.

The tribunal's decision

27. The tribunal determines that the amount payable in respect of communal lighting is as demanded by the applicant.

Reasons for the tribunal's decision

28. The tribunal accepts the argument of the respondent, that it is cheaper to maintain the supply rather than disconnect it until it has sufficient funds for repairs.
29. The actual charges are dependent upon the supplier and the tribunal accepts the evidence of the applicant in connection with the charges.

Fire risk assessment

30. The disputed charges for fire risk assessment are as follows:
 - (i) 2016 – 2017 total charge £530 Respondent's apportionment 5.7% = £30.21 per flat.
 - (ii) 2017 – 2018 total charge £350 Respondent's apportionment 5.7% = £19.95 per flat.
 - (iii) 2018 – 2019 Total charge £350 Respondent's apportionment 5.7% = £19.95 per flat.
 - (iv) 2019 – 2020 Total charge £350 Respondent's apportionment 5.7% = £19.95 per flat.
 - (v) 2020 – 2021 (budgeted) Total charge £570 Respondent apportionment 5.7% £32.49 per flat.
31. The applicant says that the Fire Risk assessment is required to identify any issues regarding fire safety. The charge includes a fire risk assessment and an emergency lighting certificate.
32. The respondent says there is no lighting anywhere on the premises except one light provided for and paid for by the tenant of flat 4. There is no emergency light and there does not seem to be an emergency lighting certificate provided. There are two invoices in 2016 - 2017 for the fire risk assessment which does not make sense. The respondent also asks why fire risk assessments are repeated annually when circumstances have not changed and the recommendations are repeated.
33. The applicant says that there were two reports in the first year of the claim because the provider of the first report suggested that a second report would be required as further expertise was needed.

The tribunal's decision

34. The tribunal determines that the amount payable in respect of the fire risk assessment is as demanded by the applicant.

Reasons for the tribunal's decision

35. The fire risk assessments were required and it is reasonable for the manager to carry these out on an annual basis.
36. The tribunal accepts the explanation of the applicant as to the two reports in the initial year of the claim.
37. The respondent provided no alternative costings.

General maintenance

38. The disputed charges for general maintenance are as follows:
 - (i) 2016 – 2017 total charge £1050 The Respondent's apportionment 5.7% = £59.85 per flat.
 - (ii) 2017 – 2018 total charge £750 Respondent apportionment 5.7% = £42.75 per flat.
 - (iii) 2018 – 2019 Total charge £385 Respondent apportionment 5.7% = £21.95 per flat.
 - (iv) 2019 – 2020 Total charge £500 Respondent apportionment 5.7% = £28.50 per flat.
 - (v) 2020 – 2021 (budgeted) Total charge £500 Respondent apportionment 5.7% = £28.50 per flat.
39. The applicant says that it carried out repairs to the lighting, painting following graffiti, removed damaged glass from the balconies and carried out repairs to the rest of the property.
40. The respondent says that there is no working lighting, and no evidence of repairs to the rear of the property. He notes there is an invoice from Serview for £265 for rewelding 7 stair treads but the respondent says that only one stair tread was welded. The respondent provided a photograph showing cracks to the fire escape.
41. The applicant explained that the works to the lighting were to assess the state of the lighting for the purpose of the major works estimate. The contractor first considered whether the lights were repairable, and on discovering that they were not, reporting on their condition.
42. The applicant suggested that the photographs were of limited value in demonstrating what work had been done.

The tribunal's decision

43. The tribunal determines that the amount payable in respect of general maintenance is as demanded by the applicant.

Reasons for the tribunal's decision

44. It is clear that limited work was carried out to the property. However there is no evidence that the work was not carried out and the respondent has not provided comparative costings nor evidence to support his assertion that only one stair tread was welded.
45. The respondent is required to pay for the limited works that have been carried out to maintain to communal areas of the property.

Bulk rubbish removal

46. The disputed charges are as follows:

- (i) 2016 – 2017 total £4902 Respondent apportionment 5.7% = £279.41
- (ii) 2017 – 2018 Total £876 Respondent apportionment £49.93
- (iii) 2018 – 2019 Total £708 Respondent apportionment 5.7% = £40.36
- (iv) 2019 – 2020 Total £1000 Respondent apportionment 5.7% = £57
- (v) Nothing budgeted for 2020 – 2021

47. The applicant says that rubbish was dumped onto the estate and in order to limit risk to health and safety it arranged for the rubbish to be removed which happened on several occasions. The rubbish was removed by Swiftwaste removals and the applicant says the costs are reasonable.

48. The respondent says that the cost of the bulk rubbish removal is excessive. He suggested an alternative company which he had quotes from for. He also suggested using skips.

49. The applicant says that these points were not raised at the time, there is no like for like evidence and that he is not persuaded that the use of skips would have been cheaper.

The tribunal's decision

50. The tribunal determines that the amount payable in respect of bulk rubbish removal is as demanded by the applicant.

Reasons for the tribunal's decision

51. The applicant's course of action in removing the bulk rubbish is reasonable and the charges demanded are reasonable. The tribunal agrees with the applicant that there is no clear evidence that the method of bulk rubbish removal proposed by the respondent would have resulted in lower costs.
52. In addition the applicant is not required to carry out the cheapest form of rubbish removal, but simply to manage the property in a reasonable manner,

Estate gardening

53. The disputed charges are as follows:

(i)	2016 – 2017	total £2027	Respondent
	apportionment 5.7% £115.54 per flat.		
(ii)	2017 – 2018	Total £992.05	Respondent
	apportionment 5.7% = £56.55 per flat.		
(iii)	2018 – 2019	Total£ 880.00	Respondent
	apportionment 5.7% = £50.16 per flat.		
(iv)	2019 – 2020 (budgeted)	Total £1000	Respondent
	apportionment 5.7% = £57 per flat.		
(v)	2020- 2021 (budgeted)	nil	

54. The applicant says that the property includes some grassed areas and trees which need to be maintained. Therefore Emprise services carry out regular gardening
55. The respondent says that his tenants tell him there is no regular programme for gardening. He argues that his photographs show that there is no gardening going on.
56. The applicant repeats his points about the lack of value of the respondent's photographs.

The tribunal's decision

57. The tribunal determines that the amount payable in respect of estate gardening is as demanded by the applicant.

Reasons for the tribunal's decision

58. The tribunal accepts the applicant's evidence that the gardening was carried out. It notes that the respondent has not challenged the charging rate. It also notes that the applicant has switched to a cheaper service provider indicating that the management reviews service provision for value for money.

Roof report and maintenance

59. The disputed costs are as follows:

- (i) 2016 – 2017 Total £950 Respondent's apportionment 5.7% = £54.15 per flat
- (ii) 2017 – 2018 Total £375 Respondent apportionment 5.7% = £21.38 per flat
- (iii) 2018 – 2019 total £100 Respondent apportionment £5.70 per flat
- (iv) 2019 – 2020 (budgeted) £400
- (v) 2020 – 2021 £400

60. The applicant says there were some leaks reported at the property which required a roofer on two separate occasions to carry out repair works in 2017. The works were carried out by Paul Dyra

61. The respondent says that he complained of water penetration to flat 7 but no works were carried out so he carried out the works himself.

62. The applicant says that he has always responded to complaints by leaseholders and he has no understanding of how this would have happened.

63. The respondent says that £100 charge for repairing the valve seems excessive.

64. The applicants says that the work was carried out by affordable roofers and that works were carried out to the ball valve at the tank on top of the roof.

The tribunal's decision

65. The tribunal determines that the amount payable in respect of roof repairs is as demanded by the applicant.

Reasons for the tribunal's decision

66. The tribunal accepts the evidence of the applicant that the roof repairs were carried out and that the charges for the works were reasonable.
67. There is no substantive evidence provided by the respondent that this was not the case. It is not sufficient to assert that works were not carried out or that charges are unreasonable, it is necessary to provide evidence and in this case this has not been done.
68. The complaint that the respondent makes about the failure to carry out repairs when he asked would only be relevant if he had raised the issue formally, and in writing with the applicant. There is no evidence that this was done.
69. Nor is it relevant to the general payability and reasonableness of the costs of the roof repairs.

Management fees

70. The applicant says that the fees are reasonable and payable under the lease.
71. The respondent says that the fees are excessive. He considers that there is a poor level of management and poor maintenance and that therefore the level of management fees is too high.
72. The applicant agrees that the property is run down and this is why the freeholder is doing major works. The applicant has carried out cleaning etc which requires organising and managing. The applicant can only do the minimum because of the reluctance to pay service charges from the leaseholders.
73. The applicant says that in his opinion it is a reasonable fee.

The tribunal's decision

74. The tribunal determines that the amount payable in respect of management fees is as demanded by the applicant.

Reasons for the tribunal's decision

75. The tribunal draws on its own expertise to determine that this is a reasonable charge for the services being provided.

76. The respondent provided no evidence of cheaper management fees.

Bank charges

77. The respondent questions the sudden charging of bank charges.

78. The applicant says that Barclays Bank has started charging £7.50 for the account that the management is required to maintain.

The tribunal's decision

79. The tribunal determines that the amount payable in respect of the bank charges is that demanded by the applicant.

Reasons for the tribunal's decision

80. The tribunal accepts the explanation of the applicant.

Accountancy fees

81. The applicant is demanding accountancy fees of £450 per year from 2018 – 19 to 2020 – 2021. The amount payable by the respondent in respect of each of those years is 5.70% which equals £25.65 per flat per year.

82. The applicant explained that the service charges are required to be reconciled by an independent accountant. The fee is reasonable. In the past this has been done in house but the management has decided that is not sustainable or appropriate. The lease entitles the applicant to charge for accountancy fees.

The tribunal's decision

83. The tribunal determines that the amount payable in respect of accountancy fees is as demanded by the applicant.

Reasons for the tribunal's decision

84. The applicant is entitled to charge accountancy fees. It is a reasonable decision to have an independent accountant prepare the accounts. The respondent has suggested no alternative charge but simply queries the emergence of this new charge.

Out of office hours call centre charges.

85. The applicant is claiming £350 for the year 2020 - 2021 for the provision of an out of office hours call centre service. The respondent is responsible for 10% of the charge, ie £35, for each year it is demanded for each of his flats
86. The applicant explained that the charge is allowable under the lease and that the service is a response to leaseholders complaining out of hours
87. The service has not been provided in the past but has been requested by more and more leaseholders. The applicant told the tribunal that the service has been used 76 times since its introduction
88. The respondent says that his tenants did not know about their service and they have complained that the managing agents have failed to respond to complaints from them.
89. He says that the service used to be provided as part of the management service.

The tribunal's decision

90. The tribunal determines that the amount payable in respect of out of hours service is as demanded by the applicant.

Reasons for the tribunal's decision

91. The applicant is entitled to charge for such a service under the lease. The charge appears to be reasonable and it is a reasonable response to a particular problem.
92. The respondent has not challenged the cost or provided alternative costings.

93. The tribunal accepts the applicant's argument that the service is a new service.

Name: Judge H Carr

Date: 5th November 2021

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).