



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

Case Reference : **CHI/19UH/LSC/2021/0060
P:REMOTE**

Property : **Charmouth Court, Fairfield Park,
Lyme Regis, Dorset, DT7 3DS**

Applicant : **Lesley Jelleyman**

Representative : **In person**

Respondent : **Fairfield Park Management
Company No.3 Ltd**

Representative : **Mr P Galvin**

Type of Application : **S27A and s20C Landlord and
Tenant Act 1985**

Tribunal Members : **Judge F J Silverman MA LLM
Mr M Woodrow MRICS**

**Date and venue of
Hearing** : **Consideration on the papers
26 January 2022**

Date of Decision : **21 February 2022**

DECISION

- 1. The Tribunal determines that the s20 notice served by the Respondent on 28 May 2021 is valid and enforceable to the maximum sum of £2,500 plus VAT (to be divided between the tenants in the proportions in which each is responsible for payment of service charge). It finds the sum of £2,500 plus VAT to be a reasonable sum for the service proposed.**
- 2. No order is made under s20C Landlord and Tenant Act 1985.**

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P:REMOTE. 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 which the Tribunal was referred to are contained in an electronic bundle comprising approximately 130 pages the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

1. The Applicant seeks a determination in respect of service charges for 2021 and 2022 in the sum of £4,200 pursuant to section 27A of the Landlord and Tenant Act 1985.
2. The Application was filed on 09 July 2021 and Directions were issued on 14 September 2021.
3. The parties consented to a paper consideration which took place on 26 January 2022. The form of hearing was P:REMOTE.
4. An order pursuant to section 20C of the Landlord and Tenant Act 1985 was also requested but no application has been made for an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
5. The application states that the sum in dispute relates to the costs of reports and surveys commissioned by the Respondent as a preliminary step prior to the repair of garages which form part of the tenants' demises.

6. Charmouth Court forms part of the Fairfield Park residential development in Lyme Regis which is understood to have been constructed in the late 1970s. The property lies on the western side of Charmouth Road, on the northern side of the River Lim valley. The Tribunal understands that the ground generally slopes down to the south and the garages form a staggered terraced block, running down the slope, close to the western boundary of the development.
7. Current Covid restrictions prevented the Tribunal from making a physical inspection of the property but it was assisted by photographs and site layout plans of the garages included in the hearing bundle and an overview of the property from Google earth.
8. The garages to which this application relates are in varying states of disrepair and prior to the service of the s20 notice under discussion the Respondents had obtained generic professional advice about the repairs which had been discussed at a meeting of the tenants during an EGM on 27 May 2021 where the majority of the tenants decided to accept a recommendation that further professional advice in the form of a ground investigation report should be obtained because of the nature of the ground and siting of the structures.
9. A s20 notice was issued on the following day (28th May 2021) for a sum in the order of £2,500 + VAT (i.e. not a definite figure) and on the 3rd of June the chairman of the company received an update of the surveyors' costs of an extra £1,000 + VAT. This was caused by a request by the leaseholders for the consideration of a third possible solution to the problem to be included in the report.
10. The Applicant avers that the information relating to the increased fee was passed on to the committee members but not to the remaining leaseholders. The Respondent states that the increased sum was noted in the second stage notice but was not quantified (page 115). Despite that, the only objection to the increase was made by the Applicant who further asserts that on 5th July 2021, she believed that the Respondent, having received at that time only three objections to the s20 proposals (out of a total of eleven leaseholders), intended to contact the surveyor to engage their services (page 36). Since the consultation period ended on 30 June 2021 there could be no objection to the Respondent instructing a surveyor on 05 July 2021 (page 113).
11. The issues to be determined by the Tribunal therefore appear to be:

- i) Whether an appropriate consultation was carried out.
 - ii) Whether survey fees demanded or to be demanded as service charges are reasonable.
12. The Respondent's decision whether to demolish, rebuild or repair the garages is not before the Tribunal on this application. Similarly, internal company issues do not fall to be determined by this Tribunal.
13. The service of the s20 notice on 28 May 2021 followed from a meeting on the previous day which was attended by or on behalf of all the tenants where the only dissent expressed at the meeting had been voiced by the Applicant acting on behalf of herself and as proxy for another tenant, and one other tenant.
14. The notice specified a cost in the region of £2,500 plus VAT. This was accepted by the vast majority of the tenants without comment. It is clear from this wording that the tenants knew that the figure they were each committing to pay could be more or less than £227.27 +VAT (a 1/11th share of the cost) (£272.72 including VAT). This sum is barely over the £250 per unit limit specified in the statute.
15. The next notice served on 03 July 2021 (page 115) confirmed that the original price had increased but did not state by how much. The increase was generated by the variation of the instructions, with the tenants' consent, to include a third option or solution to the garage problem.
16. The non-disclosure of the increased figure, whether deliberate or in error, might have led the tenants to assume that the amount of the increase would be proportionate. The actual increase was to be an allowance of a further £1,000 plus VAT bringing the total cost of the survey to £4,200 including VAT (previously £3,000) and increasing each tenant's proportion of liability to £381.81 (previously £272.72). This is an increase of approximately 30% over the original estimate and although small in relation to the probable overall cost of the proposed works (likely to be between £10,000-£30,000) is none the less significant and the Tribunal considers should have been disclosed in full in the second notice.
17. The Tribunal therefore concludes that although it considers the original notice giving an 'in the region of' figure of £2,500 plus VAT' to be valid and enforceable and of reasonable amount for the advice proposed, it does not

permit the Respondent to include the additional £1,000 plus VAT as a part of the amount recoverable through the service charge.

18. In respect of that additional sum the Respondent is at liberty to ask the leaseholders to pay it voluntarily, but the excess is not legally recoverable as part of the service charge unless a further s20 consultation process is undertaken.
19. The Applicant's request to the Tribunal to grant an order under s20C in her favour is refused. The documents before the Tribunal suggest that the Applicant's motive in bringing her application was channelled by the refusal of the majority of leaseholders to agree with her own proposals in relation to the garage repairs. Her application, made only days after the service of the second notice, has succeeded only in part and will have delayed the resolution of the problem, with a consequential effect on costings, for all concerned.
20. The Respondent indicates that they wish to seek costs against the Applicant. If they wish to pursue this option, they must file an application with the Tribunal together with a detailed schedule of their legal costs and written legal submissions with reference to Rule 13 of the Tribunal Procedure Rules 2013.

The Law

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling 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.

Section 19

- (1) Relevant costs shall be taken into account 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 provisions 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.

Section 27A

- (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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or

- (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—

- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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 matter of an application under sub-paragraph (1).

Section 47 Landlord and Tenant Act 1987

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1 or an administration charge] (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2 or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3 or (as the case may be) administration charges] from the tenant.

(3) In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1) A tenant may withhold payment of a service charge if—

(a) the landlord has not provided him with information or a report—

(i) at the time at which, or

(ii) (as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a) the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b) amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3) An amount may not be withheld under this section—

(a) in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b) in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4) If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

S22 Landlord and Tenant Act 1985

22 Request to inspect supporting accounts &c.

(1) This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2) The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a) for inspecting the accounts, receipts and other documents supporting the summary, and

(b) for taking copies or extracts from them.

(3) A request under this section is duly served on the landlord if it is served on—

(a) an agent of the landlord named as such in the rent book or similar document, or

(b) the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4) The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5) The landlord shall—

(a) where such facilities are for the inspection of any documents, make them so available free of charge;

(b) where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6)The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

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.
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.