



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

Case Reference : **MAN/00CE/LSC/2021/0090**

Property : **28 LANCASTER COURT, AUCKLEY,
DONCASTER**

Applicant : **EMMA JAYNE GREEN**

Respondent : **ACIS GROUP LIMITED**

Type of Application : **Determination as to Service Charges, s27A
Landlord and Tenant Act 1985
Section 20C, Landlord and Tenant Act 1985,
Paragraph 5A, Schedule 11 Commonhold and
Leasehold Reform Act 2002**

Tribunal Members : **A M Davies, LLB
J Jacobs, MRICS**

Date of Decision : **5 July 2022**

DECISION

1. Service charges payable by the Applicant are as demanded by the Respondent.

2. The Respondent's costs of the application may not be added to the service charge account payable by the Applicant.
3. Insofar as the Respondent's costs of the applicant may be chargeable to the Applicant under the terms of her lease, such costs are reduced to nil.

REASONS

BACKGROUND

1. In or about 2012 the Applicant bought a long leasehold interest in 28 Lancaster Court, Auckley and its associated parking space (the flat). The lease was granted on a shared ownership basis. The Applicant has owned the lease outright at all material times.
2. The flat is one of 6 two bedroomed flats laid out over three floors in a purpose built block (Block D) on an estate consisting of this and two other identical blocks of 6 flats over three floors, a fourth building containing 3 flats, and three terraced houses.
3. The leases were originally granted by the Respondent, which owns and manages the estate as part of its portfolio of leasehold, shared ownership and tenanted flats and houses.
4. The Applicant and her father became aware of discrepancies in the service charge accounts and raised these with the Respondent by way of enquiries and subsequently by lodging complaints, a number of which were referred to the Ombudsman. Findings were made against the Respondent and the Applicant received a modest compensation award. Further complaints and enquiries were not dealt with by the Respondent to the Applicant's satisfaction, and on 8 December 2021 she applied to the Tribunal for a determination as to service charges payable in the years ending 31 March 2020, 2021 and 2022, and for orders regarding the Respondent's costs.

THE LEASE

5. The lease is dated 30 November 2007 and contains errors. At clause 7(2) the leaseholder covenants to pay the Service Charge. The Service Charge is defined at clause 7(1)(d) as “the Specified Proportion of the Service Provision”. The Specified Proportion is defined in the Particulars to the lease as “£396.36 per annum.”
6. Clause 5 of the lease contains covenants on the part of the Landlord (Respondent) to insure Block D, to maintain, renew and where required improve Block D, the service media and apparatus applicable to that block and the “Common Parts”, and to keep Block D cleaned and lighted. “Common Parts” are defined in the lease as “the entrance landings lifts staircases and other parts (if any) of [Block D] and any garden appurtenant to it which are intended to be or are capable of being enjoyed or used by the Leaseholder in common with the occupiers of the other units in [Block D] and the part of parent title number SYK531516 [sic]”.
7. Recital (4) to the lease refers to Block D as containing 3 rather than 6 flats.

THE LAW

8. Section 27A of the 1985 Act enables either party to a lease to apply to the Tribunal for an order as to whether a service charge is payable under the terms of the lease and, if it is, as to the amount which is payable.
9. Section 19(1) of the 1985 Act provides as follows:

“Relevant costs [ie costs incurred by or on behalf of the landlord] 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 provision 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.”

10. “Service charge” is defined at section 18(1) of the 1985 Act as
- “...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....”*

THE HEARING

11. Pursuant to directions, the hearing took place by video link. The Applicant was represented by her father, Mr Green. Ms Osler of counsel represented the Respondent. A comprehensive bundle of document was shared by the parties and made available to the Tribunal.

PRELIMINARY ISSUE

12. Mr Green is not a lawyer. At the start of the hearing the Tribunal established that he was aware that the terms of the lease restricted the Applicant’s annual liability to service charges to £396.36, but that he did not necessarily understand that this provided him with a legal argument against the Respondent’s service charge demands. In practice, both parties to the lease have accepted that a proportion of the Respondent’s actual variable costs of compliance with its lease covenants have been recoverable from each leaseholder on the estate, although the Applicant was bringing issues as to apportionment to the Tribunal.
13. Mr Green was offered the possibility of an adjournment to enable him to take legal advice as to whether an estoppel by convention had been established as claimed by Ms Osler. He understood the position and confirmed that the Applicant did not wish to take any point on the defective lease, but agreed to pay her share of the Respondent’s reasonable expenditure either as agreed or where there was no agreement as determined by the Tribunal. The matter therefore proceeded on that basis.

COST OF REPAIR

14. Clause 7(4)(b) of the lease permits the Respondent to include in the service charge account “an appropriate amount as a reserve for or towards such [expenditure]

which [is] likely to arise either only once during the then unexpired term of this Lease or at intervals of more than one year”.

15. In the service charge year ending 31 March 2020 the Applicant was charged £20.88 for repairing a light, including replacement of part of the door frame to which it was fixed and part of the light fitting itself. The Applicant argued that this expense should have been met from the reserve fund.
16. The Tribunal finds that the purpose of the reserve fund is gradually to build up a resource designed to spare leaseholders from occasional heavy expenditure from which they personally may not benefit, ie expenditure on long-term capital projects such as roof, lift or boiler replacements or resurfacing carparks and pathways. The small repair carried out by the Respondent in this instance was properly charged to the annual service charge account.

CLEANING COSTS

17. The Applicant objected to the Respondent’s apportionment of the costs of cleaning the interior common parts on the Lancaster Court. The cost was divided equally between the 21 flats which share staircases and landings. The three houses on the estate do not benefit from any cleaning services. Mr Green’s argument was that the Applicant was effectively subsidising the leaseholders in the block of three flats, and that a more equitable division would be applying a quarter of the cleaning costs to each block, and requiring the Applicant (and other leaseholders in blocks of 6 flats) to pay one sixth of that sum.
18. The Tribunal rejects this argument. Each flat owner on the estate benefits from the same cleaning service, and division of the cost by 21 is fair and a correct apportionment.

FIRE ALARM TESTING AND SERVICING

EMERGENCY LIGHTING MAINTENANCE

19. The Respondent carries out a weekly fire alarm test in each of the four blocks of flats at Lancaster Court. Twice a year its contractors service the fire alarm system and test the smoke alarms. In the year ending 31 March 2019 the Applicant was charged

£42.92 for this service. The following year the charge for the same service increased to £339.21, which was subsequently reduced to £182.35 following a complaint from the Applicant. For the year ended 31 March 2022 the charge is £179.80.

20. For monthly emergency lighting testing and annual servicing, the Respondent charged the Applicant £25.78 for the year ended 31 March 2020, £4.16 for the following year, and £19.27 for the year ended 31 March 2022.
21. Mr Green argued firstly that the time allowed for attendance on site to carry out this service was too generous, and should not include travelling time, secondly that the hourly rate was too high, and thirdly that the Applicant should be charged for only 50 fire alarm tests and 11 emergency lighting tests per year since the service visits must necessarily include testing the systems. His own calculation, providing for approximately half the time allowed per site visit, was that the annual sum paid by the Applicant should be in the region of £88.55 for the fire alarm testing and servicing. He did not provide a figure for work on the emergency lighting.
22. In reply, Mr Grant for the Respondent explained that historically the cost of these services had been under-charged in the service charge account, although the Respondent was not seeking to recoup any losses from previous years. He explained the calculation of the hourly rates used, which included unproductive time. Mr Grant also told the Tribunal that the times allowed for the work, which included necessary travel time, had been calculated by the Respondent's electrical supervisor.
23. The Tribunal finds that the (reduced) sums charged for fire alarm and emergency lighting testing and servicing in each of the years in question have been calculated or recalculated with sufficient care, and are reasonable and payable by the Applicant.

“GRASS CUTTING”

24. This service includes general tidying of the estate, pruning bushes and weeding. The Applicant referred to recovery of an overcharge of £10 in the 2019/20 service

charge account. This was credited to her 2020/21 account but due to an administrative error the credit was not applied, and the sum remains due to be reimbursed to her. This was raised as an issue before the Tribunal but was not disputed by the Respondent's Mr Grant who confirmed that the correction would be made in the current year.

25. The Applicant also objected to an increase in grounds maintenance cost from £31.36 in the year ended 31 March 2021 to an estimated £50.25 for the following year. She stated that "there was work that was not done" during the year, but no evidence of this was adduced at the hearing. Mr Grant told the Tribunal that the overall amount its contractors charge for work on various sites is divided according to measures taken, which, he said, showed under-recovery at Lancaster Court for the years up to 31 March 2021. He said that the grounds maintenance charges for the service charge year ending 31 March 2022 have yet to be reconciled and confirmed.

26. The Tribunal accepts Mr Grant's evidence and considers that the proposed charge (subject to adjustment when actual costs are known) amounting to less than £1 per week per leaseholder is not unreasonable.

INSURANCE

27. Mr Green objected to the Respondent's practice of dividing its block policy insurance premium equally between the leasehold and shared ownership properties on its portfolio, without regard to their type or size, and despite the fact that the insurers had assessed a re-build value on each insured building. Mr Grant replied that this method of division was adopted for the sake of simplicity.

28. Mr Green did not have any alternative insurance premium figures to put to the Tribunal. In the year to 31 March 2022 the amount charged to the Applicant for the Respondent's costs of insuring as required by her lease was £64.36. The Tribunal considers this a reasonable figure.

MANAGEMENT CHARGE

29. In 2021 the Respondent chose to amend the calculation of management charges payable by its leaseholders from a flat rate to 15% of the service charges they paid,

excluding reserve fund contributions. Mr Grant explained that this was because some of the Respondent's properties received minimal services, and it was therefore unfair for those properties to pay the same management fee as a leaseholder such as the Applicant. He referred to approval of this approach by the National Housing Federation.

30. Mr Green objected that this change had taken place without seeking the views of the Applicant. However Mr Grant said that the change had been triggered by feedback from area service managers.

31. This change of approach has increased the Applicant's management charge contribution from around £23 - £25 pa to around £60 pa. Although this increase seems high to the Applicant, the tribunal has to consider whether what is being charged is reasonable for the services provided. The Tribunal accepts what Mr Grant says, and considers that the service charges generally including the management charges payable by the Applicant are reasonable for the level of service she receives.

INVOICING TIMETABLE

32. In the year to 31 March 2022 the Respondent amended the procedure for raising service charge accounts. Whereas an account had been presented in September of each year using historical actual figures, the Respondent has adopted the system provided for in the lease, ie supplying a budget or estimated account prior to 1 April for the year ahead, and reconciling that account with the actual figures once ascertained following completion of the service charge year. This should have the effect of cancelling or minimising the discrepancies which had arisen between service charges paid by leaseholders of identical flats, which Mr Green had also criticised.

33. The Tribunal approves the Respondent's compliance with the terms of the lease in this regard.

COSTS

34. To the extent (if any) that the terms of the lease permit the Respondent to add its costs of this application to the Applicant's service charge account, the Tribunal has ordered that it may not do so.
35. Further, to the extent (if any) that the Applicant might incur a contractual liability under the lease to indemnify the Respondent for all or part of its costs incurred in connection with the application, any such liability is reduced to nil.
36. Although the Applicant has not succeeded in any of the issues raised in this application, the Respondent has made a number of confusing mistakes in its service charge calculations. Corrections have been made as a result of the Applicant's meticulous examination of her service charge account. As Mr Green pointed out, the consequence is that the Applicant has lost faith in the Respondent. Prior to the issue of this application it seems that the Applicant's queries were not always helpfully answered.
37. More pertinently, this hearing did not justify the use of counsel. All the Applicant's points could be and were fully dealt with by Mr Grant with the support of his colleagues among the Respondent's managers. There were no factual disputes and (other than the potential question of estoppel by convention conceded by Mr Green) no need for legal argument. The estoppel point was not raised in the statements of case of either party. In making its costs orders, the Tribunal has regard to the comments as to appropriate use of legal representation made by the Upper Tribunal in *Avon Ground Rents Ltd v Child* [2018] UKUT 204(LC).