



**In the FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) and in
the COUNTY COURT AT Chelmsford
Justice Centre sitting at 10 Alfred Place,
London WC1E 7LR**

Tribunal Case Reference : **LON/00AZ/LSC/2022/0007**

County court claim no : **H01YY508**

Property : **Flat 3, 25 Mount Pleasant Road,
London SE13 6RD**

**Applicants/
Claimants** : **Long Term Reversions (Harrowgate) Ltd
Greentree Estates Ltd**

**Respondent/
Defendant** : **Beresford Sylvester Waterman**

Type of Application : **Reasonableness and payability of service
and administration charges**

Tribunal : **Judge Nicol (also sitting as a District
Judge of the County Court)
Mr T Sennett FCIEH**

**Date and venue
of Hearing** : **10th June 2022
By video conference**

Date of Decision : **29th June 2022**

ORDERS AND REASONS

Determination of the Tribunal:

The service and administration charges claimed in these proceedings in the total sum of £3,003.76 are reasonable and payable.

Order of the county court:

Upon the Tribunal's determination above,

And upon hearing counsel for the Claimant and the Defendant in person,

IT IS ORDERED THAT:

- (1) The Defendant shall pay the Claimants the sum of £3,003.76.
- (2) The Defendant shall further pay the Claimants' costs of the proceedings, summarily assessed in the sum of £3,776.

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Claimants are the freeholders of the property at 25 Mount Pleasant Road, London SE13 6RD, a house converted into flats. The Defendant is the lessee of one of those flats, Flat 3.
2. On 20th August 2021 the Claimants issued proceedings in the county court for alleged service charge arrears of £1,197.76, administration charges of £531 and contractual costs of £1,080.
3. A Defence was filed on 9th September 2021 alleging substantial failures of services from the Claimants and their agents, Warwick Estates.
4. On 29th December 2021 DDJ Shackleton transferred the claim to this Tribunal.
5. On 16th February 2022 the Tribunal issued directions for determination of all matters, including any matters exclusive to the county court to be determined by the Tribunal judge sitting as a District Judge of the county court.
6. The Tribunal heard the application by remote video conference on 10th June 2022. The attendees were:
 - Mr Jonathan Wragg, counsel for the Claimants;
 - Ms Jacqueline Langford, Property Manager at Warwick Estates; and
 - The Defendant, accompanied by his wife, Ms Elise Rogers.
7. The documents available to the Tribunal consisted of an indexed and paginated bundle of 176 pages in electronic form. The statements of case were the county court pleadings, supplemented by a Scott Schedule. Ms Langford had provided a witness statement and gave evidence.
8. The Claimants broke down their claim as follows:
 - Preparation and processing of a referral by Warwick Estates to PDC Law for enforcement of payment of service charge arrears
£186
 - Balance of service charge arrears for 2019-20 £508.22
 - Arrears of advance service charges for 2020-21 £689.54
 - Process fee from Warwick for reviewing and reconciling outstanding payments £95
 - PDC Instruction Fee £250

• PDC Law costs	£1,080
• Court fees	£115
• Solicitor's fees on issuing claim	£80
Total	<u>£3,003.76</u>

9. The accounts for 2019-20 and the budget for 2020-21 showed the service charges were for the usual categories, the largest items being buildings insurance and the management fee. The remaining fees were incurred chasing the Defendant for non-payment.
10. The Defendant did not disagree with the Claimants' assertion that all the service charge categories were payable under the lease. However, the Defendant and his wife complained bitterly about the poor service they had been receiving, including:
- (a) They had, in good faith, paid advance service charges of £6,845.80 towards a major works programme in 2014 only to see that money sitting unused until it was re-credited in March 2021 (they were the only lessees who paid, resulting in the abandonment of the intended programme, although consultation has been carried out for a new one).
 - (b) They have had to clear rubbish and clean communal areas themselves.
 - (c) It is a 5-hour round trip from their home in Leicestershire to attend to matters at the property which the agents should be attending to.
 - (d) They had to try to tackle a cockroach infestation.
 - (e) Post is delivered to the communal areas unprotected.
 - (f) There have been various maintenance issues, including faulty light switches to the communal parts, an insecure front door, missing balustrades and exposed wiring.
 - (g) They could not sell the property due to these problems but they have also had difficulty renting for the same reasons.
11. However, the Tribunal's jurisdiction does not extend to remedies for a lack of services (rather than the payability or reasonableness of charges arising from services actually delivered). Such issues are not a defence to allegations of non-payment of service charges but may found their own separate claim for damages for breaches of covenant. If such a claim is brought as a counterclaim, either the Tribunal or the court may consider a set-off of any amounts awarded under the counterclaim against any amounts owed in arrears of service or administration charges.
12. The Defendant had not taken legal advice and had not brought a counterclaim. While this means that it is still open to him to bring a claim separately, in the current proceedings neither the Tribunal nor the court can provide a remedy.
13. The Tribunal's task was to consider whether the charges which were actually imposed were reasonable. For example, the Defendant was not charged for repair works which were not actually carried out, even if

they should have been, and the Tribunal had to look at whether the charges were reasonable for the work which was actually done.

14. Due to problems with the recovery of service charges from most of the lessees, Warwick had limited themselves to a minimum level of maintenance. In March 2021, their appointed contractor, Triangle, conducted the 5-yearly ECIR test and Ms Langford expressed her confidence that the electrical services at the property were at least safe. Also, although a deep clean was carried out in June 2020, there was no regular cleaning service.
15. The Defendant complained about the lack of maintenance to a garden but that belongs to one of the other flats and there is no gardening service or consequent service charge.
16. The management fees of £1,635 in 2019-20 and estimated at £1,400 for the year 2020-21 are reasonable for the service actually delivered.
17. In the circumstances, the only conclusion open to the Tribunal is that the service charges are reasonable and payable.
18. Under clause 3.20.3 of the Defendant's lease, he is liable to pay to the Claimants costs and expenses, including that of solicitors or barristers, in connection with the recovery of arrears of rent – under the lease, service charges count as rent. The other charges claimed in this matter are payable pursuant to this provision and are reasonable in amount.
19. The Claimants also sought their costs from the court. Judge Nicol considered this issue alone. There is no reason to depart from the general rule under rule 44.2(2) of the Civil Procedure Rules that the unsuccessful party should be ordered to pay the costs of the successful party.
20. The Claimants submitted a Statement of Costs in Form N260 totalling £4,136. The rates of pay for the fee-earners, the time spent and counsel's fees all appeared reasonable, save that the time for letters/emails out was set at an unfeasibly high 4.1 hours. This is reduced by 2 hours, reducing the total to £3,776 (2 hours x £150 + VAT = £360).

Name: Judge Nicol

Date: 29th June 2022

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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.

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.

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).

Schedule 11, paragraph 5A

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph—
 - (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

<i>Proceedings to which costs relate</i>	<i>“The relevant court or tribunal”</i>
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.