FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	:	CAM/00KF/LSC/2022/0028
Property	:	Flats 1 & 3, 28 Cobham Road, Westcliff-on-Sea, Essex SS0 8EA
Applicants	:	(1) Suzanne Summers & (2) Anita Price
Applicant's Representative	:	In person
Respondent	:	Nander House Limited
Respondent's Representative	:	Ms Samantha Clark of Sorrell Limited
Type of application	:	Application to determine liability to pay service charges pursuant to s. 27A Landlord & Tenant Act 1985
Tribunal members	:	Mr Max Thorowgood
Venue	:	By telephone
Date of hearing	:	11th October 2022
Date of decision	:	[ ] 2022

DECISION

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1. The application

1.1. The application concerns the property known as 28 Cobham Road, Westcliff-on Sea, Essex. The Applicants are the lessees of Flats 1 and 3 respectively. The Respondent is the proprietor of the freehold title, its shareholders are respectively, Mr Jarrod Grindley, the lessee of Flat 2, and the estate of Maria Lauretta deceased, who was the lessee of Flat 4 and the person who (until her recent death) took responsibility for the management of the building on behalf of the landlord.

1.2. The application relates to the service charges demanded in respect of a single year of account ending 31st March 2022.

1.3. During the course of that period, in about July 2021, the Respondent landlord appointed Sorrel to be its managing agent.

1.4. As made, the application related to the Respondent's demand for its budgeted expenditure for the year to 31st March 2022. As Ms Clark for the Respondent acknowledged that demand had been made in error and without sight of the Applicants' leases which only permit the recovery of sums incurred. A number of other matters were also raised including prospective service charges for future years, consultation in respect of major works and, most pertinently for these purposes, the Applicants' claims to be entitled to recover costs which they claim were unlawfully demanded of them (and paid by them) in respect of service charge arrears.

1.5. Following a case management hearing before Judge Wayte the Applicants' claims in relation to the prospective charges for major works have been struck out and their challenges limited to the following items of actual expenditure:

1.5.1. *Repairs* - £350.50

1.5.2. *Cleaning* - £142.80

1.5.3. *Health & Safety/General risk assessment* - £570.00

1.5.4. *Fixed management fee* - £568.77

2. The Lease

2.1. Before turning to consider the specific heads of claim, it is important to set out the operative terms of the Applicants' leases which are in the following terms, so far as material:

> 2(vi). To contribute upon demand one [half/quarter][1] of the cost of a sum duly certified by the Lessor's Surveyor of the following:
>
> (a) The painting and decoration of the exterior of the property in every third year of the term;
>
> (b) The repair of the roof main walls timbers foundation and external parts of the property; and
>
> (c) The repair decoration lighting cleansing and maintenance of such parts of the property as are used and enjoyed in common with the occupiers of the other first and ground floor flats

And

> (xxii) To pay upon pay upon demand to the Lessors or to their agents for the time being as the Lessors may direct a proportionate part of all costs charges and expenses from time to time incurred by the Lessors in performing and carrying out the obligations and each of them in sub-clause 2(vi) hereof in connection with the ground and f1rst floor flats at the property such costs charges and expenses to be borne equally between the lessees of the ground and first floor flats."

2.2. It is not entirely clear how these provisions are intended to operate together but that is not a matter which I am required to decide because, as Judge Wayte records at §3 of the note supporting the directions she gave for the determination of this matter, it is agreed between the parties that the Applicants are each liable for one quarter of the total amount of the service charges incurred.

[1] The lease of Flat 1 provides for half, that of Flat 3 for a quarter

3. The specific matters complained of by the Applicant

3.1. Turning then to the specific matters complained of, I shall take them in turn as they are set out above:

3.1.1. *Repairs* – The contentious items are two invoices rendered by Molossi Limited. I was told by Ms Clark that Molossi is a firm instructed by Sorrel not by Mr Grindley who said that he had instructed Saxon to carry out the work of re-wiring his flat. The first invoice in the sum of £112.50 was in respect of a power analysis assessment. Ms Clark explained that the purpose of it was to assess the feasibility of installing an independent, common parts power supply in order to enable emergency lighting and/or a fire detection system to be installed. Both items had been recommended by the fire safety report which Sorrel had commissioned. The second invoice in the sum of £76.00 related the making safe of an exposed wire identified as being a hazard by Molossi, presumably in the course of its inspection to which the former invoice related. Ms Clark did not say as much in so many words but she did say that she had been informed by Molossi that the work was urgently required and that she had instructed Molossi to carry it out.

3.1.2. The Applicants variously alleged that these works related to the general rewiring of all the flats and/or that the exposed wiring was either caused by those works or by UK Power Networks in the course of work done by it and that it would have made the wiring safe for no charge. They also said that the existing communal wiring was fed from their supplies and that there was no need for that to change.

3.1.3. Both items seem to me to be amply justified. The feasibility assessment was mandated by the fire safety assessment and the making safe of the exposed wiring was said by Molossi to be

urgently required. In such circumstances it is difficult to see that Sorrel had any real choice by to carry out these works the charges for which seem modest (perhaps in part because they do not bear any VAT). The Applicants' objections seemed to me to be founded on nothing more than an instinctive distrust of Mr Grindley and Ms Clark's *bona fides*. There was no evidence of any sort to support those concerns and I greatly preferred Ms Clark's explanations to theirs.

3.1.4. The parties agreed that the costs of replacing the barrel of the front door lock and having new keys cuts were reasonably incurred and were reasonable in amount.

3.1.5. *Cleaning* – At first glance, the Applicants' position is somewhat curious. They do not object to paying the sum of £142.80 p.a. in respect of the limited cleaning of the common parts which is required. However, the charge to which they do not object as such relates only to the period from December 2021. They say that the rate at which the cleaning is being charged is too much. They say that they used to do the work and agree that they would prefer to pay someone else to do it.

3.1.6. The invoices from A Cleaner Company Limited which have been produced show charges of £21.00 plus VAT in respect of a monthly visit for 1.5 hours. I was told however, that the cleaner comes once a fortnight for about 15 minutes. Enough time in effect to hoover the stairs.

3.1.7. In the absence of any evidence that a reliable cleaner could be found to do the work for less, I am unable to conclude that this charge is unreasonable.

3.1.8. *Health & Safety/General risk assessment* – There are two reports in question: i) A Fire Risk Assessment provided by VE Fire Safety Consultants Limited at a cost of £125.00 plus VAT; and ii) An Asbestos Management Survey provided by Kadec Asbestos Management at a cost of £350.00 plus VAT. The Applicants accept

that the charge made in respect of the Fire Risk Assessment, which had not been carried out since 2016, was reasonable. However, they claimed that it would have been possible to obtain both reports, or a composite report for £300.00.

3.1.9. The Applicants also complained (potentially contradictorily) given their position in relation to the power analysis assessment, that the reports which had been obtained had made a number of recommendations which had not been acted upon.

3.1.10. Again, I regret to say that in the absence of any clear evidence to support the Applicants' claims that the two reports could have been obtained for a combined cost of £300.00, I am bound to prefer the evidence of Ms Clark that she was not aware of any contractor which would have provided both reports for that price. She is an experienced managing agent and said that she selected their contractors because she had worked with them before and that they provided good quality reports at a reasonable price. I remind myself that landlords are not bound to select the cheapest available option in order to act reasonably. If the Applicants had been able to obtain written evidence of competitive quotes in the sum claimed that would, of course, have been a completely different matter.

3.1.11. *Management Fee* – It is beyond doubt, and Ms Clark acknowledged as much, that the failure of Sorrell to read and understand the terms of the Applicants' leases, its consequently misconceived demand for payment of its budgeted service charge (including charges in respect of a garden which had been demised to Ms Summers), its instruction of debt collectors to collect that erroneously demanded service charge and the charges which Ms Price and Ms Summers have had to incur as a consequence is responsible in large measure for their discontent and this application. The Applicants accept the need for a managing agent to be appointed following the death of Maria Loretta who they acknowledge was far from perfect. They naturally wish charges to

be kept to a minimum and it may well be that there are differences of emphasis or aspiration between them and the landlord in terms of the condition and management of the premises. Nevertheless, had Sorrell not made the errors which it did in failing to understand properly the basis of charging under the lease, I think it is unlikely that this application would have been made. The Applicants also spoke of a lack of responsiveness and a lack of respect for the concerns which they wished to express on the part of Ms Clark and Sorrell generally.

3.1.12. These are serious failures of management. I make allowance for the fact that there is always a 'bedding in' period at the beginning of an agent's appointment (which the Applicants fairly acknowledged) but a failure to obtain, read and understand the lease is not excusable on that account. I am also satisfied that whilst Sorrell and Ms Clark may have had some reason to be frustrated or irritated by the manner in which the Applicants' concerns were expressed, they did not respond effectively to those concerns and that too has contributed to a serious and unnecessary deterioration in their relationship. For these reasons I find that the quality of the service which Sorrell has provided since its appointment has been significantly less than the charge which it has made. I therefore find that the reasonable level of remuneration, which I shall consider below, should be reduced by 30% to take account of these failings.

3.1.13. It is the case that the costs of managing smaller blocks are higher because the economies of scale are less and indeed the problems which are required to be managed can be greater. In this area, however, Ms Price was able to adduce what she said was comparable evidence against which to measure Sorrell's charge of £200.00 including VAT per unit which Ms Clark said was a discounted rate.

3.1.14. The Applicant said that local agents; Hair & Son and Pier Management were charging £122.50 per unit and £104.00 per unit

in respect of a block of 6 flats. Without seeing directly comparative quotations, it is difficult to assess their comparability and I remind myself again that a landlord is not bound to select the cheapest available option. In my experience a charge of £200.00 per unit is not unreasonable, particularly so given the small number of units in the property, and I so hold.

4. Sorrell's charge for representing the Respondent at the hearing

4.1. Ms Clark informed me that Sorrell's charge for handling the dispute on behalf of the Respondent was £2,300.00 plus VAT. That is almost certainly considerably less than a firm of solicitors would have charged to provide the same service and is reasonable in principle. It is also right to note that I have dismissed all but one of the Applicants' challenges to the charges made. However, as I have already said, I doubt very much whether any application would even have been made had Sorrell not mismanaged the process when it assumed responsibility for the management of the property. It is also right to note that the challenges were provoked as much by the misconceived demanded for payment in advance in respect of budgeted costs as the actual charges on which I have ruled.

4.2. It is also right to note that Ms Summers told me that she had incurred substantial costs in instructing Jefferies Solicitors to write on several occasion to Sorrell in order to correct misapprehensions on its part regarding her lease. She was unable to tell me how much of the £2,500.00 she had paid was attributable to this matter as opposed the County Court proceedings but said that Jefferies had written 3 or 4 letters on her behalf in this connection.

4.3. In these circumstances, it is appropriate that I should order that the Respondent is not entitled to recover its costs of these proceedings by way of service charge.

5. Conclusions

5.1. My conclusions are therefore as follows:

5.1.1. The charges incurred by the Respondent in respect of repairs, cleaning and health and safety/risk assessment reports were reasonably incurred and reasonable in amount.

5.1.2. The charges incurred in respect of management were reasonably incurred and would have been reasonable in amount had the service been provided not been poor as it was in this case. On that account the charge of £568.77 falls to be reduced by 30% to £398.14.

5.1.3. Because the Applicants would probably not have made their application at all but for the mismanagement of Sorrell and because they have been forced to incur considerable costs in correcting the resulting errors on Sorrell's part, it is not appropriate that the Respondent should be entitled to recover the costs of Sorrell representing it at the hearing from the Applicants by way of service charge.

APPENDIX 1- RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.

APPENDIX 2

RELEVANT LEGISLATION

Landlord and Tenant Act 1985 (as amended)

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.