



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

Case Reference : CHI/40UB/LIS/2022/0017

Property : 27D High Street, Glastonbury, BA6 9DR

Applicant : Greywall Estates Limited

Representative :

Respondent : Gary Woodhouse

Representative :

Type of Application : Determination of liability to pay and reasonableness of service charges Landlord and Tenant Act 1985

Tribunal Member(s) : D Banfield FRICS
Regional Surveyor

Date of Decision : 17 October 2022

DECISION

The invoice dated 27 October 2021 [109] is not payable although this does not preclude a further invoice being rendered limited to the cost of Insurance and Repairs/Maintenance once those costs have been incurred.

Background

1. The Applicant lessor seeks a determination of the Respondents' liability to pay and reasonableness of service charges for the year 24 March 2021 to 31 March 2022, which is said on the application form to be pursuant to section 27a of the Landlord and Tenant Act 1985. The amount of those charges is £809.93.
2. The Tribunal issued directions on 1st July 2022 which were subsequently varied to determine the question of whether or not the Tribunal has jurisdiction and in Directions dated 19 August 2022 Judge Whitney declared that on the evidence provided he was satisfied that the Property is a residential flat and that the Tribunal has jurisdiction to determine the application.
3. Those directions indicated the Tribunal considered the application was suitable for determination on the papers alone without an oral hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. No objection has been received and this determination is made on the papers received.
4. In accordance with Directions the Applicant has prepared a bundle comprising 136 pages and references to which will be indicated as [*]
5. The Respondent has not participated in the proceedings.

The Law

See the Appendix to this decision for the relevant law.

The Lease

1. The lease [3] is dated 28 November 2014 and is for a term of 999 years from the date of the lease. A Deed of Variation dated 15 June 2016 [30] varies certain terms.
2. Clause 4 requires the Lessee to pay the Principal Rent of one peppercorn annually, Insurance rent in accordance with clause 5.5 and any other sums reserved on demand.
3. Clause 5.5 requires the Tenant to reimburse the Landlord the insurance premium and cost of insurance valuations.
4. Clause 6.2 states "The Tenant is to be responsible for and to indemnify the Landlord against all costs and expenses and any VAT payable on them for which the owner or occupier of the Premises is responsible in respect of the Common Facilities."
5. Common Facilities are defined in the Particulars as "all conduits, structures, walls, fences, roads, paths, works, services or facilities used in common by the Premises and any adjoining premises or by

the owners and occupiers of them including any “party structures” “party walls” and “party fence walls” within the meaning of the Party Wall etc. Act 1996.”

6. Clause 7.11 states “The Landlord shall keep the structural and exterior parts of the Building and the Common Facilities in good repair and condition, damage by an Insured Risk excepted.”
7. Paragraph 1.3 of the Deed of Variation deletes Clause 6.2 of the Lease and replaces it with; “The Tenant is to be responsible for and to indemnify the Landlord against 20% of all costs and expenses and any VAT payable on them incurred by the Landlord in relation to its obligations under clause 7.11 hereof.”

Submissions and evidence

8. In the application form to the Tribunal[125] the Applicant states that the amounts requested are;
 - Expenses incurred/to be incurred in the accounting period (e.g. insurance, managing agents, repairs etc.) The amounts totalled £1,983.00 and 20% of this amount (being £396.60) has been demanded from the leaseholder.
 - Sinking fund budget in relation to the external wall decoration and roof replacement. The estimate comes to £2,066.67 and 20% (being £413.33) of this has been demanded.
 - The total demand equals £809.93. (Demand on 27October 2021 less credit on 9 March 2022)
9. The Applicant says that the Respondent has queried the managing agent’s costs and it then provides copies of other residential leases in the building that provide for a sinking fund.[39]
10. In an undated document entitled The Service Charge Budget[107] the estimated budget for the period ending 23 March 2022 is set out as follows;

<u>Expenditure for all Lessees</u>	
Insurance Building	£750
Managing Agent Fees	£720
Accounts Preparation	£300
Companies House return	£13.00
Repairs/Maintenance	£200
<u>Sinking Fund Budget</u>	
External wall redecoration	£7,000
Internal redecoration	£3,000
Roof replacement/repair	£20,000
11. Single sided Service charge demands reflecting the budgeted figures are at [109 & 110]

Decision

12. The bundle contains three leases. Two are in similar terms but the third, being the lease for the flat the subject of this application is different on a number of important matters. The Applicant considers that the terms of the other two leases are relevant when determining the service charge liability of the Respondent, but this view is misplaced. The terms under which the Respondent occupies No 27D are clearly set out in his lease and lease variation and it is the terms contained in those documents that must determine any service charge liability.
13. Other than the ground rent which is not relevant to this application there are two sections relating to payments the Lessee must make to the Lessor. Firstly clause 5.5 is for the reimbursement of insurance costs and secondly paragraph 1.3 of the Deed of Variation requiring a payment of 20% of the Lessor's cost of complying with Clause 7.11.
14. Clause 7.11 simply requires the Lessor to "keep the structural and exterior parts of the Building and the Common Facilities in good repair and condition" and it the cost of complying with this obligation to which the Lessee must contribute 20%. This contrasts with the more extensive Lessor's obligations in the other two leases which also make specific reference to Managing Agents fees.
15. Again, unlike the other two leases there is no provision for the Respondent to make any contribution to a sinking fund or to make interim payments on account.
16. To summarise therefore it is only to the cost of insurance and the actual cost of repairs/maintenance that the Lessee must contribute. The costs of any managing agent, accountant or Company House fee are not recoverable.
17. Turning now to when those costs may be charged to the Lessee, again unlike the other two leases there is no facility for an interim payment on account. Clause 1.3 of the Deed of Variation is clear that it is "costs incurred" that must be reimbursed rather than "costs to be incurred" and as such any demand can only be issued after the Lessor has made payment for the service that is to be reimbursed.
18. The invoice dated 27 October 2021 [109] is not therefore payable although this does not preclude a further invoice being rendered limited to the cost of Insurance and Repairs/Maintenance once those costs have been incurred.

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 to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.

Appendix of 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.