



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

Case reference : **CAM/33UB/LSC/2022/0051**

Property : **Ground Floor Flat, 2 Oldfield
Court, Wellington Road, Dereham,
Norfolk NR19 2DY**

Applicant : **Cobblestone Investments Limited**

Representative : **Hayes + Storr Solicitors**

Respondent : **Ann Barnard**

Type of application : **For the determination of liability to
pay service charges and
administration charges**

Tribunal : **Judge K. Seward**

Date of decision : **25 January 2023**

DECISION AND REASONS

DECISION

For the following reasons, the Tribunal determines that the Respondent is liable to pay to the Applicant:

- (1) service charges due for the years 2019 to 2022. These total £3,292.00, being £760.00 for 2019 and £844.00 for 2020, 2021 and 2022.
- (2) insurance charges due for the years 2019/20 to 2021/2022. These total £296.70, being £105 for 2019/20, £96.67 for 2020/21 and £95.03 for 2021/22.
- (3) interest on the arrears calculated from the date of non-payment in accordance with the provisions of clause 4.(b)(vii) of the lease together

with the administration charges of £25 per letter in pursuing late payment.

- (4) by way of reimbursement of fees which had been paid to the Tribunal by the Applicant the sum of £100 within 28 days of this Decision.

REASONS

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the liability of the Respondent to pay service charges and administration charges in respect of the property between 2019-2022. The supporting documentation indicates a service charge of £760.00 was charged for 2019 and £844.00 for each of the following service charge years to 2022. This would total £3,292.00.
2. Two different amounts are given for insurance charges over the period 16.5.20 to 15.5.21. The Annual Statement 2020 specifies a sum of £105.00 whereas the Annual Statement 2021 stipulates an insurance sum of £96.67 for the same period. It appears most likely to be an error in the dates with the figure of £105 applicable for the insurance period 2019/20. The sum of £95.03 insurance is claimed for 2021/22. The total sum of insurance charges is £296.70.
3. These sums total £3,588.70. In the application form, the total value stated to be in dispute is £3,685.70. No clear breakdown is provided to account for the additional amount.
4. Each Annual Statement and Statement of Account included a claim of £100 ground rent over which the Tribunal has no jurisdiction and makes no determination accordingly.
5. The relevant legal provisions are set out in the Appendix to this decision.

The background

6. The property which is the subject of this application is a ground floor flat with garden area and parking space at 2 Oldfield Court.
7. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

8. The Tribunal issued Case Management Directions on 24 October 2022. The Respondent has not participated in the Tribunal proceedings, though the Tribunal is satisfied that she has been notified of the proceedings and the Directions, by service at the property address.
9. The application has been determined without a hearing as neither party made a written request to be heard within the timescale prescribed within the Directions.
10. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

11. Following a review of the written submissions, the relevant issues for determination are as follows:
 - (i) the payability of service charges for the service charge years 2019 through to 2022;
 - (ii) the payability of insurance charges for the service charge years 2019/20 to 2021/22;
 - (iii) the payability of interest and other administration charges; and
 - (iv) whether an order for reimbursement of application fees should be made.
12. The Tribunal has made determinations on the various issues as follows.

Documentary evidence

Compliance/non-compliance with Directions

13. The Directions made on 24 October 2022 included a requirement for the Respondent leaseholder to provide details of their case. When the Respondent failed to do so, the Tribunal issued further Directions on 6 December 2022 extending the time limit for compliance until 12 December 2022. At the same time, a warning was issued that a failure to comply with Directions may result in a determination against the Respondent based on the documents produced by the Applicant.
14. The time period for submission of the Applicant's bundle was similarly extended until 23 December 2022 with opportunity for the Respondent to reply to anything new in those documents by 30 December 2022.

15. No response was received from the Respondent who has played no part in these proceedings. It is therefore not possible to discern what objections, if any, the Respondent has as to their liability to pay the service charges and ancillary charges for late payment/fees.
16. No applications have been made by the Respondent under section 20C of the 1985 Act (to limit recovery of the costs of these proceedings through the service charge) or under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (to reduce/extinguish the leaseholder's liability to pay any administration charge in respect of litigation costs).
17. In accordance with the Directions, the Applicant has compiled a paginated case bundle. It includes the application form, lease, the Tribunal Directions, email exchanges with the Tribunal, Applicant's witness statement, invoice and insurance policy schedules, statements of account, copy letters to the Respondent and correspondence between the Applicant's Solicitors and the Respondent's lender. In determining the application, the Tribunal has considered all these documents insofar as relevant to the issues identified above.

Witness statement

18. The bundle contains a signed and dated witness statement of David Temple, a director of the Applicant company. Mr Temple states that at no time has the Respondent contacted him with any queries or concerns regarding the sums she had been asked to pay.
19. The witness statement sets out that the Respondent previously fell into arrears with payments for the years 2017 and 2018, which were settled by her mortgage lender. The lender has declined to make settlement on this occasion without a County Court judgment or authorisation from their customer.
20. Mr Temple produces Annual Statements sent to the Respondent. Interest has been applied to the Respondent's account under the lease.
21. Extracts from the lease are cited which the Applicant considers relevant. These include provisions for ground rent, which fall outside the scope of this decision.

The lease

22. The lease was made on 16 May 1990 for a term of 99 years commencing on 1 July 1998. The Applicant is the current landlord and freeholder. Page 19 of the lease is confirmed as missing, which continued the paragraphs setting out the landlord's responsibilities.

23. The lease includes the following provisions of particular relevance to the issues before the Tribunal.
24. The expression “the Demised Premises” means the ground floor flat “in the Building” known as Unit No. 1 together with the parking space as described in the First Schedule and edged in red on the plans annexed to the lease. “The Building” is defined as “the block of flats constructed or now being constructed by the Landlord on part of the Property and shown as Block 1 and Block 2”. “The Development” means the whole of the Property of which the landlord is the freeholder together with the house and blocks of flats which the landlord has or is in the course of constructing thereon.
25. At clause 4(b), the tenant covenants with the landlord to contribute and pay “a fair proportion of the cost [*sic*] expenses outgoings and other matters mentioned in the Fourth Schedule hereto to be recoverable in default as rent in arrear”. These are expressed in the Fourth Schedule, Part II, as “All expenses (if any) incurred by the Landlord in and about the maintenance and proper and convenient management and running of the Development including...”. There is also provision for the landlord’s incidental expenses including fees and disbursements paid to any managing agent or the addition of 15% added to chargeable items for administration.
26. The landlord’s responsibilities in the Fourth Schedule, Part I, include the maintenance, repair, renewal, and external decoration of (a) the Building (b) water pipes, drains and electric cables etc serving more than one flat (c) common paths, drives and parking spaces (d) boundary walls and fences (e) other parts not included within any flat, along with the keeping of any garden, grounds, and drying areas.
27. The amount of a tenant’s contribution is estimated by the landlord or managing agents (whose decision is final) as soon as practicable after 1st December of the preceding year. The tenant is liable to pay the estimated contribution by two equal instalments on 1st January and 1st July. After the end of each year, when the actual amounts have been ascertained, the landlord must supply the tenant with a summarised copy of the accounts and any balance is payable “forthwith”.
28. Provision is also made within clause 4(b) for a fair proportion of the expenses relating to grounds, drives and parking areas, the windows and window frames of any demised flat along with expenses attributable to any particular block. Such expenses are calculated in relation to the total floor area of the flats.
29. Payment of estimated and final contributions is due within 14 days of the due date or notification, whichever is later. Interest is payable on amounts outstanding at the rate of 4% over the base rate of Barclays Bank PLC or such other rate as may be appropriate in the

circumstances, reasonable to indemnify the landlord in respect of non-payment (clause 4.(b)(vii)).

Tribunal's findings

30. The application was made to the Tribunal on 23 August 2022.
31. A Statement of Account of 1 April 2019 shows service charges due from January to April 2019 at £70.34 per month with late payment charges applied at £25 per month. The Statement was sent to the Respondent and advises that interest will be applied at the year end if payment is not received. It makes no mention of insurance charges. A letter to leaseholders on 19 December 2019 confirms that a monthly charge of £70.34 is payable for an annual service charge of £760 and states that insurance will be requested separately.
32. The Annual Statement 2020 sent to the Respondent on 1 October 2020 shows an outstanding balance of £857.00 from 2019. No breakdown is given but this appears to represent the £760.00 service charge due from 2019, plus late payment requests and with an adjustment for a credit on the account. The 2020 demand includes service charges of £844, insurance of £105, plus interest added for 2019 and 2020 and £100 for "arrears letters".
33. A letter to all leaseholders on 20 November 2020 advised that interest charges at the rate of 15% will be implemented on 31 December 2020 on outstanding balances.
34. The Annual Statement 2021 has a carry forward balance from 2020 added to which is a demand for service charges of £844.00, insurance of £96.67 and arrears letter of £25.00.
35. When the Demand/Statement 2022 was issued to the Respondent on 23 August 2022, the outstanding service charges had risen and a further service charge of £844.00 had become due along with insurance of £95.03.
36. A series of letters demanding payment were sent by the Applicant to the Respondent including those from their instructed Solicitors.
37. Insurance schedules are provided from May 2018 for cover arranged by the Applicant of the flats at Oldfield Court including No. 2. The missing page of the lease appears to be the one with insurance provision. However, the landlord's obligation to insure and recover a proportion of such costs from the tenant is not in dispute. It may in any event be covered by the generic provision within Part II of the Fourth Schedule of an expense incurred in the proper management of the Development.

38. The documentation reveals that service charges are unpaid from January 2019 up to and including 2022. Evidence of unpaid insurance charge demands are provided for 3 years up to May 2022.
39. The lease permits the Applicant to apply interest for outstanding balances and to recover expenses by way of administration charges.
40. The Respondent has not disputed liability for any of the service charge payments nor challenged the reasonableness of the sums. All the charges are of a type payable under the lease. The Tribunal is satisfied that a demand has been duly made in the manner required by the lease.
41. On the evidence provided, the Tribunal finds that service charges and insurance charges are payable by the Respondent over the period 2019 to 2022 (inclusive), plus interest thereon together with the administration charges of £25.00 per letter in pursuing late payment. From the figures provided the service charges total £3,292.00 and £296.70 for insurance. Whilst this is less than the sum stated to be in dispute, the Tribunal is unable to make a finding for the higher sum in the absence of sufficient details.
42. The Tribunal has no jurisdiction over ground rent which is a matter for the County Court.

Refund of fees

43. The application form does not explicitly seek a refund of the fees paid in respect of the application. Nevertheless, under Rules 13(2) and (3)¹ the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid on an application or on its own initiative. The Tribunal may not make an order for costs against a person without first giving that person an opportunity to make representations (Rule 13(6)).
44. The prospect of the Applicant recovering its Tribunal fees was flagged up to the Respondent in the Directions of 24 October 2022 with opportunity given for representations to be made in response. The Respondent was thus on notice of a potential award against her and has made no response.
45. Recovery of fees would ordinarily follow the event where a party has had to apply to the Tribunal to establish liability for service charges and the Respondent has failed to make any response. There is no reason for the Tribunal not to award the Applicant its Tribunal fees incurred when the application has succeeded. In the circumstances it is reasonable for

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

the fees to be reimbursed and for the Tribunal to exercise its discretion accordingly.

46. Taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

Name: Judge K. Saward

Date: 25 January 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

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 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.

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).