



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

Case Reference : **BIR/00CN/LIS/2022/0023**

Property : **Flat 2 York House, Rotten Park Road,
Birmingham, B16 9JH**

Applicant : **York House (Rotten Park Road) Management
Company Limited**

Respondent : **Mr Richie Pamma**

Type of Application : **Service charges, Section 27A, 20C and 22 of
the Landlord and Tenant Act 1985.**

Tribunal Members : **Judge C. P. Tonge, LLB, BA.
Mr T. W. Jones, FRICS.**

Date of Decision : **16 February 2023**

DECISION

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Application and background

1. The Applicant in this case is York House (Rotten Park Road) Management Company Limited, the freeholder and the Respondent tenant is Mr R. Pamma. The management company is Remus Management Limited. The property is Flat 2 York House, Rotten Park Road, Birmingham, B26 9JH
2. The application for a determination of liability to pay and reasonableness of service charges, is made by the Freeholder and is dated 5 July 2022, received by the Tribunal on 13 September 2022. This was copied to the Respondent.
3. Directions were issued on 7 October 2022, by Regional Surveyor Ward. Direction 6 requires the Respondent to provide a statement in response to the Applicants case, by 22 November 2022. That Direction has not been complied with.
4. On 14 December 2022, Regional Judge Jackson issued further Directions containing a Barring Warning. This warning stated that the Respondent had until 4pm on 23 December 2022 to comply with Direction 6 of the Directions of 7 October 2022 (to serve a statement in response) and that if he failed to do so the Respondent would be automatically barred from taking any further part in the proceedings under Rules 9(1) and 9(7)(a) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. This Directions Barring Warning has not been complied with.
5. On 10 January 2023 Regional Judge Jackson made a Barring Order. The Respondent is barred from taking any further part in the proceedings under Rule 9(1) and Rule 9(7)(a) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. Further, The Tribunal need not consider any response or other submission made by the Respondent and may summarily determine all issues against the Respondent under Rule 9(8) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.
6. The Applicant did comply with Directions and has served a bundle of evidence that is 535 pages in length. The application relates to service charge years 2019, 2020 and 2021 and the bundle contains;
 - the lease to the property,
 - a statement of case (called an Applicants Response),
 - H. M. Land Registry documents proving freehold and leasehold title to the property,

- Section 20 Landlord and Tenant Act 1985 major works consultation evidence,
 - insurance documents,
 - accounts invoices and orders for each service charge year in dispute
 - a Scott Schedule covering each service charge year in dispute.
7. The Applicant has consented to the case being dealt with by consideration of the written evidence only. The Respondent has not made any response to this application at all. Direction 8 of the Directions of 7 October 2022 indicate that the Tribunal will decide if an inspection of the property is necessary. The Tribunal decides that no inspection is required.
 8. The Tribunal has checked the arithmetic in calculating the amount of service charges demanded and they are dealt with in the determination. The Tribunal notes that page 535 of the bundle actually refers to service charge year 2021 and not service charge year 2020.
 9. The case has been listed to be determined by a Tribunal on 3 February 2023, by the Tribunal considering the written evidence.

The law

Section 18 of the Landlord and Tenant Act 1985. Meaning of "service charge" and "relevant costs".

(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 purposes—

(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 20C of the Landlord and Tenant Act 1985. Limitation of service charges: costs of proceedings.

(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 or leasehold valuation tribunal (relevant tribunal), or the Lands 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;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Lands 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 of the Landlord and Tenant Act 1985. Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.
- (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 of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 20139.

Rule 9, Striking out a party's case

- (1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.
- (7) This rule applies to a respondent as it applies to an applicant except that—
- (a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them
- (8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

Relevant Provisions of the lease

10. The lease was made on 23 November 1964 and has a term of 99 years, commencing 24 June 1964. The Respondent acquired the remainder of the lease on 8 February 2002.
11. Clause 2(iii) requires the Respondent to keep the flat in good and substantial repair and condition, painted and decorated every five years.

12. Clause 2(viii) requires the Respondent to pay a nine eightieths share of all costs, outgoing and matters mentioned in the fourth schedule.
13. Clause 3(iii) requires the Applicant to keep the Mansion (housing the property) garages and grounds in good repair and insured.
14. The fourth schedule contains 4 clauses that require the Respondent to contribute towards all the usual service charge costs that are being claimed in this case, including insurance and a 10% management charge. On balance, the Tribunal determines that the fourth schedule is wide enough in its description of costs covered to include fire safety costs and accounting costs, alternatively the Tribunal determines that since such costs must be expended for the proper management of the site and also because of the requirements of section 22 of the Landlord and Tenant Act 1985 (requiring accounts to be available) that there is an implied term that they are covered by the fourth schedule.

Deliberations

15. The Tribunal met on 3 February 2023 to determine the issues in the case.
16. Having determined that the service charge costs being demanded are such that they can be charged the Tribunal then considers the individual service charge costs in question.
17. The Tribunal determines that all service charge costs have been properly demanded and charged at a reasonable level and that the Tribunal is able to make this determination pursuant to Rule 9(8) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, that states that “If the Respondent has been barred from taking further part in the proceedings under this rule and the bar has not been lifted, the Tribunal need not consider any response or other submission made by the Respondent, and may summarily determine any or all issues against the Respondent”.
18. The Tribunal therefore determines that the Respondent shall be required to pay the following sums.
19. Service charge year 2019.

• General repairs and maintenance	£144.02
• Electrical maintenance	£47.66
• Fire safety	£318.20
• Building works (section 20 consultation)	£2,302.24
• Electricity	£200.85
• Management fees	£369.73

• Accountancy	£76.95
• Surveyor's fees	£22.28
• Building insurance	£607.63
Total	£4,089.56

20. Service charge year 2020.

• Electrical maintenance	£37.40
• Fire safety	£182.42
• Electricity	£4.50
• Management fees	£66.90
• Surveyor's fees	£22.28
• Bank charges	£2.53
• Building insurance	£442.13
Total	£758.16

21. Service charge year 2021

• General repairs and maintenance	£509.69
• Electrical maintenance	£180.64
• Fire safety	£408.72
• Electricity	£22.42
• Management fees	£165.42
• Accountancy	£39.89
• Bank charges	£2.78
• Building insurance	£427.94
• Risk assessment	£62.10
Total	£1,819.60

Grand total for service charge years 2019, 2020 and 2021

£6,667.32

22. The above figures are all due for payment now, the Tribunal therefore determines that the Respondent must pay the sum of £6,667.32 to the Applicant, forthwith.

Decision

23. The Tribunal Decides that the Applicant must pay the sum of £6,667.32 to the Applicant, forthwith.
24. Appeal against this Decision is to the Upper Tribunal. Should either party wish to appeal against the Decision they must do so within 28 days of the Decision being sent to them, by delivering to this First-tier Tribunal an application asking for permission to appeal, stating the grounds for that appeal, particulars of the appeal, the paragraph

numbers of the Decision that are challenged and the outcome that the applicant seeks from making the appeal.

Judge C. P. Tonge

16th February 2023