FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BF/LSC/2022/0237**
Property	:	**Flats 1-6, 46 St James Road, Sutton, Surrey SM1 2TN**
Applicants	:	**Hugh & Patricia Shaw (Flat 1)** **Andrew & Siobhan Masterson (Flat 2)** **John Foxcroft (Flat 3)** **Ali Sharif (Flat 4)** **Stuart Cadman (Flat 5)** **Alexander Laurie (Flat 6)**
Respondent	:	**Assethold Ltd**
Representative	:	**Eagerstates Ltd**
Type of Application	:	**Reasonableness of and liability to pay service and administration charges**
Tribunal Members	:	**Judge Nicol** **Mr K Ridgeway MRICS**
Date and venue of Hearing	:	**23rd January 2023** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**11th April 2023**

DECISION

---

(1) The Tribunal determines that the charges claimed by the Respondent in relation to the period of December 2020 until the handover to the Right to Manage company in December 2021 are payable by the Applicants, save for:

(a) The insurance is reduced from £3,830 to £2,480.72.

(b) The cleaning and gardening charges are reduced by 50% from £4,761.80 to £2,380.90.

(c) The window cleaning charges are reduced by 50% from £624 to £312.

(d) The entire costs of £620.40 for "FHS" and £4,989.98 for fire alarm works are disallowed.

(e) The charges of £3,555.43 for electrical works are reduced by 20% to £2,844.34.

(f) The intercom call-out charge of £150 is disallowed in full.

(g) The charge of £629.66 for lock works is disallowed in full.

(h) The charge of £6,350.76 for drain works is reduced to the amount supported by actual invoices, namely £5,490.

(i) The charge of £432 for "FHS Survey" is disallowed in full.

(j) The insurance claim excess of £250 is disallowed.

(k) The handover fee of £720 is disallowed.

(l) The accounts fee of £480 is reduced by 50% to £240.

(m) The charge of £72 for the emergency line is disallowed.

(n) The management fee of £2,067 is reduced by 50% to £1,033.50.

(2) The Respondent may not regard their costs of these proceedings as relevant expenses in calculating any service charges payable by the Applicants pursuant to section 20C of the Landlord and Tenant Act 1985.

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

The Tribunal's reasons

1. The Applicants are the lessees of the 6 flats at 46 St James Road, Sutton, Surrey SM1 2TN. The Respondent is the freeholder.

2. On 28th December 2021 the Applicants acquired the Right to Manage the building. They did so because they were dissatisfied with the services and charges for those services provided by the Respondent's agents, Eagerstates Ltd.

3. On 7th August 2022 the Applicants issued an application pursuant to section 27A of the Landlord and Tenant Act 1985 challenging service charges for the last year prior to the start of the Right to Manage. The Tribunal had previously issued on 4th November 2022 a determination in respect of the 3 years before that (ref: LON/00BF/LSC/2021/0243).

4. On 30th August 2022 the Tribunal issued directions which included the matter being determined on the papers, without a hearing. However, as is their right, the Respondent insisted on an oral hearing and one was listed for 23rd January 2023.

5. Under paragraph 5 of the directions, the Respondent was due to send their case and documents to the Applicants by 11th November 2022. On 10th November 2022 Mr Gurvits of Eagerstates sought to extend this by 14 days but Judge Donegan refused his application.

6. On 24th November 2022 Mr Gurvits emailed claiming for the first time that the Tribunal lacked jurisdiction to hear the Applicants' case but Judge Dutton rejected his submissions.

7. The Tribunal didn't receive the hearing bundle due from the Applicants in accordance with paragraph 9 of the directions and so wrote to them chasing it. By email dated 5th January 2023, the Applicants said they hadn't yet compiled the bundle because they were still waiting for the Respondent's case and documents. The Tribunal required the bundle to be produced by 18th January 2023, with or without the Respondent's input.

8. Mr Gurvits then wrote to the Tribunal alleging that the parties had agreed their own extension of time, as allowed by the directions. The Applicants denied this. Mr Gurvits responded by making a general reference to Tribunal correspondence but he didn't specify any particular item or items of correspondence and the Tribunal is unaware of anything relevant. Judge Bowers reviewed the case and decided that, in the absence of any evidence of any alleged agreement, the hearing would proceed as listed.

9. Further, on 12th January 2023 the Respondent had applied for a postponement of the hearing on the basis that Mr Gurvits's wife had suffered an injury which required him to stay home to assist with childcare. One of their children had also been admitted to hospital on an unspecified date. Judge Bowers refused the request on the basis of a lack of evidence.

10. On 18th January 2023 Mr Gurvits purported to email the Tribunal a copy of the Applicant's Scott Schedule of service charges with the column for the Respondent's comments completed. He did not provide an explanation for producing it so late and without any other documents. In the circumstances, it would be unfair on the Applicants to take it into account and so the Tribunal did not do so.

11. On 19th January 2023 Mr Gurvits emailed the Tribunal again asking for a postponement of the hearing, making submissions about the Applicants' compliance with the directions, and alleging that he had not received the hearing bundle. The Tribunal directed the Applicants to produce the bundle by Friday 20th January 2023 but again rejected the postponement request due to a lack of evidence that Mr Gurvits could not attend the hearing.

12. The Applicants responded that they had emailed the bundle to all relevant email addresses, including that of Eagerstates, at 9:10am on 18th January 2023.

13. The Tribunal heard the application at a face-to-face hearing on 23rd January 2023. Two of the Applicants, Mr Shaw and Mr Foxcroft, attended to represent themselves and their fellow Applicants. They had provided a 394-page bundle of relevant documents, including documents supplied by the Respondent.

14. No-one attended on behalf of the Respondent, although Mr Gurvits did send in a skeleton argument which arrived just before the hearing started.

Respondent's repeated application for adjournment

15. In his skeleton argument, Mr Gurvits repeated the Respondent's request for the hearing to be adjourned. The Tribunal had considered and rejected the Respondent's previous requests. The Tribunal can consider the request again but only if there is something additional to consider or something it overlooked previously. However, Mr Gurvits provided no new grounds or evidence so there is no basis for the current Tribunal members to take a view different from that taken previously. At the hearing of the aforementioned previous case, the Respondent was represented by counsel but Mr Gurvits has provided no explanation why the same couldn't have been done this time. The Tribunal was satisfied that it was fair and appropriate to continue with the hearing.

The issues

16. Eagerstates sent to the Applicants an account which purported to list their relevant expenses in managing the building between December 2020 and when the Applicants' right to manage commenced on 28th December 2021. The Applicants sought to challenge the reasonableness and payability of the service charges arising from the majority of the 20 items listed and each is considered in turn below.

17. In his skeleton argument, Mr Gurvits pointed out that it is for the Applicants to explain what they are challenging and why. He submitted that the Applicants had failed to do so because they had not produced a statement of case to support their Scott Schedule of items in dispute nor any witness statements.

18. The Tribunal is satisfied that the Applicants sufficiently identified the items in dispute and their reasons for disputing them in their Scott Schedule. To the extent that their submissions failed to establish their case on the available evidence, the Tribunal has made findings against them, as set out below. If the Respondent had properly participated in these proceedings, any lack of clarity in the Applicants' case could have been addressed. In particular, the Tribunal's directions provided for the Applicants to reply to the Respondent's case but the Respondent failed to provide anything which could be responded to in the time available.

19. It is also worth noting that the Applicants did provide one witness statement, from Mr Foxcroft, which addressed the cleaning, gardening and window cleaning. He was available at the hearing for cross-examination but Mr Gurvits chose not to take advantage of this by failing to attend or to send counsel or someone else in his stead.

Insurance

20. The Respondent purported to charge £3,830 for buildings insurance obtained from Arch Insurance via brokers. The Applicants effectively repeated their argument from the previous case, namely that the premium had increased significantly from before and they had an alternative quote for Bricks and Mortar for £2,500. The main difference from the previous case was that the Applicants' Right to Manage company had now secured insurance cover with Aviva, via brokers Clear Insurance Management, for £2,480.72.

21. Mr Gurvits pointed out in his skeleton argument that the declared value was higher under Arch's policy but the Applicants had obtained a rebuild cost assessment on which the new policy was based.

22. In the hearing of the previous case, the Respondent's counsel had correctly pointed out that it was essentially a matter for the landlord as to who they insure with and there is no compulsion on the landlord to go with the lowest insurer. However, in the absence of Mr Gurvits or any evidence from him, the evidence available to the Tribunal indicates that the cover was unnecessarily high and the difference in premiums is both large and significant.

23. In the circumstances, the Tribunal is satisfied that the insurance cost should be limited to the same amount as that secured by the Applicants, namely £2,480.72.

Cleaning and Gardening

24. Although Eagerstates was invoiced separately for cleaning and for gardening, their account rolled them up together for a total charge of £4,761.80. The contractors, Doves, invoiced just over £100 plus VAT for each fortnightly clean of the internal communal areas plus disinfecting touch points for COVID purposes and other odd jobs such as oiling door hinges. They also invoiced £80 or £82.40, plus VAT, for each visit for maintenance of the communal gardens, plus extra for additional tasks such as sweeping and disposing of leaves.

25. Mr Foxcroft complained that the cleaners were supposed to take one hour to complete their tasks but were observed doing so within half that time and then sitting in their vehicle for the rest of the time. This supported their contention that they were being overcharged given the size of the property.

26. As for gardening, the external areas consist of narrow stretches of lawn on two sides of the building, with a few bushes or low trees, and a car

park. Mr Foxcroft complained that the gardening work was sporadic and poor. One of the residents cut the grass. Despite complaints, a bush to the rear was allowed to grow so as to obstruct the windows. The Applicants provided photos showing the external areas including the overgrown bush.

27. Again in the absence of any further evidence or explanation from Mr Gurvits or someone else on behalf of the Respondent, the Tribunal accepts that the cleaning and gardening charges should be reduced by 50%.

Window Cleaning

28. The Respondent charged £624 for window cleaning from contractors ESY Services Ltd. The Applicants' first argument was that it did not come within their leases but the Tribunal is satisfied that, if it didn't come within the maintenance and cleaning obligations in paragraphs 1(b) and/or 2(b) of the Fifth Schedule, it comes within the general sweep-up clause in paragraph 14.

29. The Applicants' more substantive complaint was that the service was poor. A number of the windows had juliette balconies which the cleaner could not get through with his brush on a pole. Further, the cleaner's attendance was poor (observed by Mr Foxcroft when he was home due to the COVID pandemic), he did not wipe down window ledges and, when he did attend, his van blocked the car park entrance.

30. The Tribunal is again satisfied that the cost of window cleaning should be reduced by 50%.

Fire, Health & Safety

31. The Respondent charged £620.40 for "FHS". This appeared from the invoices to be for monthly inspections and consequent works by Eastern Fire Ltd, trading as EFP, and fire alarm system inspection and servicing by ESP Fire Alarms Ltd. This followed fire alarm works of £4,989.98 which included the fitting of smoke alarms in each flat, additional to the system which was already there, which all go off when one goes off.

32. The Tribunal agrees with the Applicants that the fire alarm system and the frequency of the inspection and maintenance are substantially over-specified for a building of this size. Of course fire safety is important but this must be balanced with the needs of the building under consideration. A small block of flats is unlikely to need the same system as one suitable for a sizeable office block. The Applicants also provided photographic evidence that the system installation was poorly finished.

33. In the circumstances, the Tribunal has disallowed this entire cost.

Electrical works

34. The Respondent charged £3,555.43 for electrical works in 3 invoices from Property Run electrical contractors.

35. The Applicants complain that, again, the works appear to be over-specified. The lights appear to be suitable for a much larger building. They light up areas significantly beyond the boundary of the building. Light coming in from passing cars or simply walking around inside a flat is sufficient to cause the interior lights to switch on. The Right To Manage company is planning to replace them.

36. Having said that, it is not in dispute that some form of lighting is required in the areas where it has been installed. In the circumstances, the Tribunal has decided to reduce the cost by 20%.

Intercom call-out

37. There was no evidence to support an intercom call-out charge of £150 so the Tribunal disallowed it in full.

Meter cupboards

38. The Respondent charged £690 for meter cupboards based on an invoice for that amount from MM Building Agency. The invoice stated that the work was to make the meter cupboards fire rated. The Respondent also charged £1,066.80 for work to the ground floor distribution board cupboard based on another invoice from MM Building Agency.

39. The Applicants queried whether the cupboards were any different from how they had been previously but admitted they hadn't examined them. They also queried why no similar work had been done to other meter cupboards but that is irrelevant to the reasonableness of work actually done and charged for.

40. The Tribunal is not satisfied that the Applicants had made out that the work or charges for the meter cupboards were unreasonable to any extent.

Lock works

41. There was no evidence to support a charge of £629.66 for lock works so the Tribunal disallowed it in full.

Drain works

42. The Respondent charged £6,350.76 for drain works. The invoices in the bundle from the contractor, Aquevo, totalled £5,490. Each invoice provided a description of the work supported by numerous photos. Their work included routine matters like unblocking a drain but their largest invoice, £4,782, was for the re-routing of poorly installed pipework (for which the Applicants conceded that Eagerstates conducted the required consultation process under section 20 of the Landlord and Tenant Act 1985).

43. The previous Tribunal noted that, for the 3 years they were looking at, "There were a large number of invoices in relation to drain works at the premises. The Applicants said that they had not being made aware of any issues in relation to the drains during their occupation of the premises and no work had been carried out prior to Eagerstates being involved." They disallowed the costs save for £402 for a clearance of tree roots.

44. Irrespective of how much the Tribunal disallowed, the Applicants queried why the Respondent should spend so much on drainage works given that they had claimed to have spent significant amounts for the same purpose in previous years.

45. The Applicants' question is a legitimate one but the Tribunal is satisfied that it is answered, mostly, in Aquevo's invoices which provide more than enough evidence that the work was actually done. The problem for the Respondent is that the remaining £860.76 is unexplained and the Tribunal has disallowed it.

FHS Survey

46. While a fire, health and safety survey might be justified, there was no evidence, whether by a copy of the survey report or an invoice, to support the charge of £432. Given the aforementioned overspecification of fire safety works, the Tribunal needed to see such evidence. In the circumstances, the Tribunal disallowed this charge in full.

Carpet works

47. The Respondent charged £396 for carpet works. According to the invoice from D&S Floors Ltd, the works were to secure loose carpet and replace damaged carpet on the stairs. The Applicants alleged that this related to 3 treads and no other work was needed. In the Tribunal's opinion, the charge would seem to be on the high side for that amount of work but not outside the range of what may be considered reasonable. This amount is allowed.

Insurance claim excess

48. The Respondent's buildings insurance policy contained an excess of £250. In theory this would mean that, on any particular claim, the insured would have to pay the first £250 of any remedial work. However, Shaw explained that he had made the only insurance claim – he had paid the contractor himself and later got the insurance money. There is no evidence, whether by an invoice or otherwise, that the Respondent had to pay out anything in relation to any insurance claim. Therefore it is disallowed.

Handover fee

49. The Respondent included a "handover fee" of £720, presumably for Eagerstates to hand over to the Right To Manage company's agents.

However, there is no provision in the lease for such a charge. It is not a service charge and cannot be allowed.

Accounts fee

50. Eagerstates charged £480 for preparing the annual accounts. A separate accountant was not employed and this shows in the simple one-page layout used to display the relevant expenditure. The bundle contained no invoice for this sum. The Tribunal is not satisfied that this is a reasonable sum for the work done in-house by the agents and it is reduced by 50%.

Emergency line

51. The Respondent charged £72 for an "emergency line". There was no invoice for this and it is not clear what the service consisted of. The Applicants pointed out that the lease did not specifically provide for such a service. In the circumstances, the Tribunal disallowed this amount.

Management fee

52. Eagerstates charged a management fee of £2,067. This amounts to around £575 per flat, plus VAT. In the Tribunal's expert experience, this is high. It is not necessarily unreasonably high if the service is commensurate with the price paid. As can be seen from the above commentary and the previous Tribunal's decision, it is not. In the circumstances, the management fee is reduced by 50%.

Costs

53. The Tribunal has the power under section 20C of the 1985 Act to order that the Applicants' costs of the proceedings may not be added to the service charge. Given the Respondent's minimal participation in the proceedings, it is unlikely that such costs would be high. In any event, the Tribunal is satisfied that it is just and equitable in the light of the above matters to make such an order.

Enforcement

54. The Applicants complained that they had not been refunded the sums found not to be payable by the previous Tribunal. If that is correct, it is not acceptable and would not reflect well on the Respondent. There are enforcement procedures in the county court, on which the Applicants may take their own independent legal advice, but the Tribunal expects parties before it, particularly those who regularly seek to use the Tribunal for their own benefit, to meet their liabilities in accordance with the Tribunal's decisions.

Name: Judge Nicol **Date:** 11th April 2023

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.