



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

Case Reference : **BIR/00GL/LSC/2022/0009**

Subject Property : **24 Wilton Court
Stoke-on-Trent
ST1 3GW**

Applicant : **Sean Bagguley**

Respondents : **(1) Wedgewood Gardens Management
Company Limited
(2) Mainstay Residential Limited**

Representative : **J B Leitch**

Type of Application : **Application under section 27A of
the Landlord and Tenant Act 1985 for
the determination of the
reasonableness and payability of
service charges in respect of the
subject properties**

Tribunal Member : **Deputy Regional Judge Nigel Gravells**

Date of Decision : **13 April 2023**

DECISION

Introduction

- 1 This is a decision on an application under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') in respect of service charges relating to 24 Wilton Court, Stoke-on-Trent ST1 3GW ('the subject property').
- 2 The Applicant, Mr Sean Bagguley, has been the leaseholder of the subject property since 8 May 2007, pursuant to a lease dated 8 May 2007 for a term of 999 years (less three days) from 22 November 2005. The freeholder of the property is Glenthistle Homes Limited. Wedgewood Gardens Management Company Limited ('Wedgewood') is the management company responsible for the management of the subject property under the terms of the lease; and Wedgewood has appointed Mainstay Residential Limited ('Mainstay') as its managing agent. Mainstay was acquired by FirstPort Property Services ('FirstPort') in 2020 and FirstPort appears to have assumed responsibility for some service charge dealings with the Applicant (and with the Tribunal).
- 3 By application dated 26 September 2022, and received by the Tribunal on 28 September 2022, Mr Bagguley made three applications: (i) under section 27A of the 1985 Act for the determination of the reasonableness and payability of service charges demanded by Mainstay/FirstPort ('the section 27A application'); (2) under section 20C of the 1985 Act for an order for the limitation of costs ('the section 20C application'); and (3) under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing the Applicant's liability to pay administration charges in respect of the Mainstay's litigation costs ('the paragraph 5A application').
- 4 On 21 November 2022 the Tribunal issued Directions for the conduct of the section 27A application. The section 20C application and the paragraph 5A application were stayed pending the determination of the section 27A application.
- 5 The Applicant indicated that he was content with a paper determination and Mainstay did not dissent. Accordingly, the Tribunal determined the section 27A application on the basis of the documentation submitted by the parties.

Background

- 6 The subject property is a two-bedroomed ground floor flat in a purpose-built block of flats.
- 7 By clause 9 of the Applicant's lease the management company (defined by clause 1.17 to include both Wedgewood and Mainstay) covenants to observe and perform the obligations contained in the Seventh Schedule. The Seventh Schedule lists the usual range of services to the non-demised parts of the block and the estate, including maintenance, repairs and cleaning.
- 8 By clause 6 the Applicant covenants with the lessor and with the management company to observe and perform the lessee's covenants set out in the Fourth and Fifth Schedules. By paragraph 1 of the Fourth

Schedule the Applicant covenants to pay the service charge to the lessor or the management company.

- 9 Clause 1.29 defines 'service charge' as 'a reasonable proportion of the total costs charges and expenses incurred by the management company ... in performing its obligations set out in the Seventh Schedule'. It appears that the block costs are apportioned among the flats in proportion to their respective floor areas and that the estate costs are apportioned equally among the flats.
- 10 By paragraph 1 of the Fifth Schedule the Applicant covenants to pay the estimated service charge in advance and any balancing charge when the actual costs for the relevant year have been determined.
- 11 In his application form the Applicant challenged the reasonableness and payability of service charges of £5132.40 demanded by Mainstay/FirstPort. It is not clear how the Applicant calculated that figure since it is the account balance on the summary statement for the subject property as at 11 November 2022, six or seven weeks after the Applicant made his application to the Tribunal. According to the summary statement the figure of £5132.40 is made up of estimated service charges for 2022, some balancing charges for 2021 and an amount for roof refurbishment.
- 12 The Applicant's specific challenges were –
 - (i) that he is not liable to pay for roof repairs (either directly or indirectly through contributions to a reserve fund) since the lease does not include such works in the obligations of the management company;
 - (ii) that he is not liable to pay for roof repairs since such works should not be necessary on a recently-built property;
 - (iii) that in any event he is not liable to pay any service charges because he does not recall signing the lease and/or agreeing to the method of apportionment of service charge costs adopted by the management company.
- 13 In response to a number of requests for elaboration, on 6 January 2023 the Applicant submitted a short statement which provided a breakdown of the charges challenged (£3860.42 (roof repairs) and £1141.30 (contribution to reserve fund)) but which largely repeated the limited substance of the statement in his application form. However, by way of an additional ground of challenge, he questioned whether the costs of roof repairs should be covered by the buildings insurance.
- 14 The Applicant also challenged a late payment charge of £80.00.
- 15 The total amount challenged in the Applicant's 6 January 2023 statement was £5081.72.

Statutory framework

- 16 Section 27A of the 1985 Act, so far as material, provides –
 - (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.

17 Sections 18 and 19 of the 1985 Act provide –

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.

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 provision 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.

Preliminary issues

Identity of the Respondent

18 Mainstay argues that the application is invalid and should be struck out because it names the wrong party as Respondent: Mainstay is not a party to the lease.

- 19 The Tribunal accepts that the argument of Mainstay is technically correct. The appropriate Respondent should be Wedgewood, the management company named in the Applicant's lease. However, the Tribunal is of the view that it would be inappropriate to strike out the application. First, the Tribunal notes that Mainstay did not raise this issue until it submitted its statement of case dated 3 February 2023, more than two months after its legal representatives were made aware of the application and the Tribunal issued its Directions, naming Mainstay as the Respondent. On the contrary, correspondence with J B Leitch and with Mainstay and First Port proceeded on the basis that Mainstay was the appropriate Respondent. Second, if the Tribunal were to strike out the application, the Applicant could make a new application but its substance would be identical. Third, the Tribunal has no reason to believe that the error has affected the conduct of the proceedings or that Wedgewood would be prejudiced by its retrospective addition/substitution as a Respondent to the application. The Tribunal therefore directs that, pursuant to rule 10(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, Wedgewood be added as a Respondent to the application.

Late payment charge

- 20 Strictly speaking, the late payment charge challenged by the Ais not a service charge but an administration charge under Schedule 11 to the Commonhold and Leasehold Reform Act 2002. As such any challenge should be made by separate application under paragraph 5 of that Schedule. However, Mainstay has indicated its willingness to cancel the charge.

Challenges of the Applicant

Whether the Applicant is bound by the lease

- 21 It is appropriate to address first the Applicant's argument that he is not liable to pay any service charges. He argued variously (i) that he did not sign the lease, (ii) that he does not recall signing the lease and/or agreeing to the method of apportionment of service charge costs adopted by the Respondent and (iii) that he was the victim of a property investment 'scam'.
- 22 In the view of the Tribunal the Applicant's arguments are inconsistent with the evidence.
- 23 The Tribunal has been provided with (i) an Official Copy of the Register of Title showing that the Applicant was registered as the leaseholder of the subject property on 12 July 2007 and (ii) an official copy of the lease dated 8 May 2007.
- 24 There is no evidence that the Applicant has previously sought to deny his leasehold ownership or has made any application to the Land Registry to question that ownership.
- 25 In those circumstances, the Tribunal determines that the Applicant is bound by the lease and all its terms.

- 26 Those terms include the apportionment of the service charges. The method of apportionment adopted by the Mainstay (and set out in paragraph 9 above) comprises a combination of common formulae; and the application of that method cannot be said to be unreasonable.

Whether roof repairs are covered by the service charge provisions of the lease

- 27 The Tribunal is of the view that the argument of the Applicant is untenable.
- 28 By paragraph 1 of the Seventh Schedule to the lease the management company covenants 'to keep the Reserved Property ... in a good and tenable state of repair, decoration and condition ...' The Reserved Property is defined in clause 1.27 and the First Schedule as including 'the main structural parts of the buildings including ... the external walls ... and internal loadbearing walls *the roof* foundations floors joists beams ...' (emphasis added).
- 29 By paragraph 1 of the Fourth Schedule the Applicant covenants to pay the service charge, which is defined by clause 1.29 as 'a reasonable proportion of the total costs charges and expenses incurred by the management company ... in performing its obligations set out in the Seventh Schedule'.
- 30 It is difficult to see how it can be argued that the lease does not provide for the management company to repair the roof and to recover the appropriate proportion of the costs through the service charge payable by the Applicant.
- 31 The same principles apply to contributions to any reserve fund maintained by the management company to spread the costs of major works such as roof repairs.

Whether the costs of roof repairs should be met from other sources

- 32 The Applicant argues that roof repairs should not be necessary in a recently built property.
- 33 In so far as this is an argument that the cost should be met by the NHBC (Buildmark) Policy for the block containing the subject property, that policy covered the building for ten years from completion in 2007. The final residual liability of the developer under that policy expired in 2017.
- 34 The Applicant also suggests that the cost of the roof repairs might be covered by the buildings insurance. However, as the insurance documentation makes clear, the cover is limited to damage caused by specific risks such as fire and storm. The cover does not extend (nor is it usual for such a policy to extend) to repairs required as a result of general wear and tear and degradation. That demarcation is clearly reflected in the terms of the lease relating, on the one hand, to buildings insurance (paragraph 4 of the Sixth Schedule) and, on the other hand, to the management company's maintenance and repair obligations (First Schedule and paragraph 1 of the Seventh Schedule).
- 35 It follows that the costs of the roof repairs would not be covered either by the NHBC Policy or by the buildings insurance policy.

Summary

- 36 The Tribunal determines that the Applicant has failed to establish that he is not bound by the (terms of the) lease and is not liable to contribute to the costs of roof repairs.
- 37 The Tribunal determines that the (estimated) costs (to be) incurred by the management company for the roof repairs would be reasonably incurred and that the Applicant is liable to pay his proportion of those costs through the service charge.
- 38 In the absence of any challenge to any other sums demanded by Mainstay/FirstPort and set out in the summary statement for the subject property dated 11 November 2022, the Tribunal determines that the costs included in the demand for £5132.40 would be reasonably incurred and that the Applicant is liable to pay that sum.

Appeal

- 39 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 40 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 41 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 42 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

Section 20C and paragraph 5A applications

- 43 The Tribunal has issued Directions in relation to the Applicant's section 20C application and paragraph 5A application.

13 April 2023

Professor Nigel P Gravells
Deputy Regional Judge