



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

Case Reference : **LON/00AC/LSC/2022/0184**

Property : **Barnabas Apartments, 40A Holden Road, London N12 7AW**

Applicants : **Debra Ross (Flat 1), Sophie Jackson (Flat 2), Michelle Grace (Flat 3), Evan Shapiro (Flat 4), Savan Sabharwal (Flat 5), David Paramor (Flat 7), Peter Smith (Flat 8), Arathi Arulpragasam (Flat 9), Seema Shah (Flats 10, 11 and 12), Myles Jacobson (Flat 14), Chris Szarmach (Flat 15) and Reuben Dass (Flat 18)**

Representatives at hearing : **Debra Ross and Seema Shah in person**

Respondent : **Cullen and Davis 1 Limited**

Representative : **Paul O'Callaghan of Counsel**

Type of Application : **For the determination of the liability to pay a service charge**

Tribunal Members : **Judge P Korn
Mr K Ridgeway MRICS**

Date of hearing : **28 March 2023**

Date of Decision : **24 April 2023**

DECISION

Description of hearing

This has been a face-to-face hearing. The decisions made are set out below under the heading “Decisions of the tribunal”.

Decisions of the tribunal

- (1) In relation to the disputed service charge items, the decision of the tribunal is as follows:-

2020

- Building insurance – each Applicant’s contribution is reduced so that each Applicant pays their service charge proportion of £11,900 but reduced so that they only pay pro rata from the date of completion of their lease until 31 December 2020 (see paragraph 11 below). Nothing is payable by those leaseholders whose leases did not commence until 2021.
- Management fees – only £1,803 is payable for the Property, reduced from £5,409.

2021

- Building insurance – each Applicant’s contribution is reduced so that each Applicant pays their service charge proportion of £11,900, save that those Applicants whose leases were completed during 2021 only pay pro rata from the date of completion of their lease until 31 December 2021.
 - Electricity charges – only £1,200 is payable for the Property, reduced from £7,617.
 - General repairs and maintenance – the sum of £4,188 is not payable at all.
 - Professional fees – the sum of £2,760 is not payable at all.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.
- (3) The tribunal also makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Applicants that none of the costs incurred by the Respondent in

connection with these proceedings can be charged direct to the Applicants as an administration charge under their leases.

- (4) Pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“**the Tribunal Rules**”) the tribunal also orders the Respondent to reimburse to the Applicants the application fee of £100.00 and the hearing fee of £200.00.

Introduction

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) as to the reasonableness and payability of certain service charges.
2. The Property is a purpose-built block of 21 flats completed in 2020. Together with the neighbouring block of 9 flats known as The Bower it forms a small estate (“**the Estate**”).
3. The service charge items disputed by the Applicants are listed in a ‘Scott’ Schedule, and the challenges cover the years 2020 and 2021. The service charge year is the calendar year. We were told that each leaseholder pays one twenty-first, i.e. 4.76%, of the service charge for the Property.
4. Mr O’Callaghan for the Respondent explained at the start of the hearing that he had been instructed very late and had no specific instructions on any of the issues. The tribunal noted that the Respondent had not made any written submissions.

The issues and the tribunal’s conclusion

The issues were discussed at the hearing, and the discussion and the tribunal’s conclusion on each item are summarised below.

2020 service charge year

Building insurance (£12,261 for part of a year)

5. The Applicants state that the estimated amount was £4,000 but that the actual charge was £12,261 which represents an unreasonably high uplift on the estimate. In addition, the £4,000 estimate was for the whole year but none of the leases ran from the beginning of the year. Therefore, aside from the question of what a reasonable annual sum would be, individual leaseholders should only be required to pay pro rata from the date of their respective leases.

6. Copies of the Respondent's insurance policies are in the hearing bundle, and another issue raised by the Applicants is that the policies seem to have overlapping dates and therefore there may be an element of double-charging. The hearing bundle also contains copies of alternative quotes obtained by the Applicants for the whole Estate (i.e. the two buildings). One of these is for £17,885.78 and the other is for £16,688.00.
7. Mr O'Callaghan for the Respondent said that the alternative quotes were not completely 'like for like', commenting specifically on the level of the sum insured.
8. We understand why the Applicants are concerned by the huge apparent discrepancy between the estimated and actual figures and we accept that this will have caused difficulties for individual leaseholders when budgeting for these charges. But this application relates to the reasonableness of the challenged charges themselves, and it is not part of the tribunal's jurisdiction to declare a charge unreasonable simply because it is higher than the leaseholders were led to expect that it would be.
9. However, as noted by the Applicants, even the earliest leases were not entered into until towards the end of October 2020 and therefore none of the Applicants should be paying more than a small proportion of the annual premium attributable to their flat. For example, the lease of Flat 1 was granted on 26 November 2020 and therefore in relation to the 2020 calendar year the leaseholder of Flat 1 should only have to pay for the period 26 November to 31 December (i.e. for 9.84% of that calendar year, assuming the charge to be calculated according to the calendar year).
10. We agree that the evidence indicates that the Respondent had two overlapping policies in place, and the Respondent has offered no explanation for this. We have also considered the Applicants' comparable evidence. It is true that the sum insured is lower under the Applicants' alternative quotations, but the Respondent has offered no evidence to show that the Property was not overvalued for insurance purposes and/or that the Applicants' alternative insurers were using too low a value, and the alternative quotations would seem otherwise to be broadly on a like for like basis.
11. The Respondent has not made any submissions to justify the amount charged and we consider the Applicants' evidence to be persuasive. Based on the information before us we consider that a reasonable charge for the Estate for a whole year would be £17,000. The Property comprises 21 units out of a total of 30 units on the Estate, and in the absence of any arguments to the contrary the Property should bear 70% of the cost (21 being 70% of 30). This means that the charge for the Property for the whole year is £11,900, but reduced to reflect the fact

that the leases were completed either part-way through 2020 or in 2021. Each leaseholder's contribution is therefore their 4.76% share under their lease of the £11,900 but calculated pro rata from the date on which their lease commenced. As noted above by way of example, the lease of Flat 1 commenced on 26 November 2020 and therefore the leaseholder of Flat 1 is only liable to pay pro rata from 26 November to 31 December 2020 inclusive, i.e. she is only liable to pay 9.84% of Flat 1's proportion of the total of £11,900. Therefore, Flat 1 is only liable to pay £11,900 x 4.76% x 9.84%. It should also be noted that Flat 7, for example, is not liable to pay anything for 2020 as the Flat 7 lease was not entered into until 28 June 2021.

Management fees (£5,409)

12. The Applicants state that the service charge accounts were delayed, the managing agents did not provide information when requested, they generally provided a poor service, and they did not supply any invoices. Although they organised the cleaning, the lift has been broken for months and they have not helped to sort out the 'snagging' issues on the construction of the building.
13. We accept, based on the Applicants' written and oral submissions which have not been countered by or on behalf of the Respondent, that the managing agents provided a very poor service. However, the managing agents did attend to certain matters and therefore it is appropriate that a fee be payable, albeit a greatly reduced one. We consider that it would be appropriate to reduce the management fees by two-thirds.
14. In the absence of more detailed arguments having been advanced as regards apportionment of charges over the year, the reduction is a straightforward reduction of the figure of £5,409 for the Property by two-thirds to £1,803 for the Property.

2021 service charge year

Building insurance (£23,419)

15. The Applicants say that the same issues applied as in 2020, and that again there needs to be an apportionment as some leases were only completed during the course of 2021. The Applicants propose an insurance premium for the year of £17,000, albeit apportioned to reflect the fact that some leaseholders will not have had a lease for the whole year.
16. In our view the same arguments that we have accepted above in relation to 2020 apply to 2021. Therefore, again, the charge for the Property for the whole year is £11,900 (£17,000 x 70%). Each

leaseholder's share is therefore 4.76% of the £11,900 but calculated pro rata from the date on which their lease commenced in the case of those leaseholders whose leases commenced during 2021.

Electricity charges (£7,617)

17. The Applicants say that they tried to obtain information from the Respondent on this issue but did not receive a response. The budgeted figure was £1,200 and they do not understand how the actual figure could be so much higher.
18. The Respondent has been either unable or unwilling to explain how the electricity charges of £7,617 could be so much higher than the budgeted sum of £1,200, and £7,617 does seem to us to be unreasonably high in the absence of any justification. Therefore, the charges are reduced to £1,200 which seems a reasonable amount in the circumstances.

General repairs and maintenance (£4,188)

19. The Applicants' challenge is to specific items. The first challenge is to two invoices, each for £264 inclusive of VAT, relating respectively to Flat 2 and Flat 6. In each case the invoice refers to problems with the bath. The Applicants do not consider this to be a service charge item.
20. The second challenge is to an invoice for £1,212 inclusive of VAT relating to work done to level the area below the turf and secure the turf and underlay, to redecorate the internal walls next to the entrance door and to replace cracked paving stones. The Applicants do not accept that these are matters that should properly form part of the service charge, as the work done was to make good items that had not properly been dealt with in the first place.
21. The third challenge is to an invoice for £2,448 inclusive of VAT for replacing cupboard locks. The Applicants do not feel that they should have to pay for this as it just involved correcting an error that the Respondent had made when installing the original locks.
22. The Applicants' specific challenges are all credible and have not been disputed by or on behalf of the Respondent. Therefore, these charges are disallowed.

Professional fees (£2,760)

23. The item challenged by the Applicants is for fire consultancy services. Their understanding is that it related to an EWS1 (external wall system fire review) certification needed by the Respondent to enable it to sell the Property and therefore it was not a service charge item.

24. Again, this is a credible challenge which has not been disputed by or on behalf of the Respondent. Therefore, this charge is disallowed.

Cost applications

25. The Applicants have applied for a cost order under section 20C of the 1985 Act (“**Section 20C**”) and for a cost order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“**Paragraph 5A**”).

26. The relevant parts of Section 20C read as follows:-

(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 ... the First-tier Tribunal ... 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 ...”.

27. The relevant parts of Paragraph 5A read as follows:-

“A tenant of a dwelling in England may apply to the relevant ... tribunal for an order reducing or extinguishing the tenant’s liability to pay a particular administration charge in respect of litigation costs”.

28. The Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be added to the service charge. The Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be charged direct to each tenant as an administration charge under their lease.

29. The Applicants have been successful (or at least partially successful) on all of the issues in dispute, and the Respondent has completely failed to engage with the process or to communicate properly with the Applicants. The Applicants therefore should not have to pay any of the Respondent’s costs in opposing the application. Accordingly, we make a Section 20C order in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge. We also make a Paragraph 5A order in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under their leases.

30. The Applicants have also applied for an order under paragraph 13(2) of the Tribunal Rules for the Respondent to reimburse their application and hearing fees (£300.00 in total). Under that paragraph the tribunal “*may make an order requiring a party to reimburse to any other*

party the whole or part of any fee paid by the other party ...". The Applicants have been successful (or at least partially successful) on all of the issues in dispute and the Respondent has completely failed to engage with the process or to communicate properly with the Applicants. It is entirely appropriate in the circumstances for the Respondent to reimburse these fees, and accordingly we order the Respondent to reimburse these fees to the Applicants.

Name: Judge P Korn

Date: 24 April 2023

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

APPENDIX

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 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.

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
- (6) An agreement by the tenant of a dwelling ... is void in so far as it purports to provide for a determination – (a) in a particular manner, or (b) on particular evidence.