



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : CHI/29UM/LSC/2022/0098

Property : 7 Jubilee Street, Sittingbourne,
Kent, ME10 2FU

Applicant : Mr Neil Currams

Representative : None

Respondent : Charlotte Management Limited

Representative : Crabtree PM Limited

Type of Application : Determination of liability to pay and
reasonableness of service charges under
Section 27A of the Landlord and Tenant
Act 1985

Application for Order under section 20C
of the Landlord and Tenant Act 1985

Application for Order under paragraph
5A of Schedule 11 of the Commonhold and
Leasehold Reform Act 2002

Tribunal Members : Mrs J Coupe FRICS
Ms C Barton MRICS

Date of Decision : 15 May 2023

DECISION

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Decision of the Tribunal

- (1) The Tribunal has determined the following sums as reasonable budgeted service charges for the period 2022/2023:
 - i. Repairs and maintenance £2,000.00
 - ii. Window cleaning £400.00
 - iii. Health and safety £550.00
 - iv. TV aerials and entry phone £600.00
 - v. Electricity £350.00
 - vi. Buildings insurance £1,500
 - vii. Management fees £2,245
- (2) The Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985, preventing the Respondent from charging the costs of the proceedings to the Applicant through the service charge. The order is extended to ten additional lessees as recorded in Annex 2.
- (3) The Tribunal makes an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, preventing any administration charges in relation to these proceedings being charged to the Applicant.
- (4) The Tribunal orders the Respondent to refund the Applicant the application fee within 14 days of the date of this decision.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness of the budgeted service charges for the service charge year 2022/2023. The liability to pay was not challenged. The quantum of disputed service charges was £2,160.88.
2. The Applicant also seeks an order pursuant to section 20C of the Landlord and Tenant Act 1985, to which ten named lessees applied to be joined, and an order pursuant to paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
3. Tribunal Directions were issued on 18 November 2022 requiring the parties to attend, by telephone, a case management hearing ("CMH") on 11 January 2023. The CMH clarified and narrowed the issues in dispute. Further directions were issued on 11 January 2023 setting down a timetable for the exchange of documentation culminating in the submission of a determination bundle.
4. The Directions advised the parties that the Tribunal considered the matter suitable for determination on papers unless either party objected in writing within 28 days. The parties were further advised that no inspection would be undertaken. No objections were received.

5. Having reviewed the bundle comprising 78 pages, the Tribunal concluded that the matter was capable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal.
6. These reasons address in summary form the key issues raised by the parties. They do not recite each and every point referred to in submissions. The Tribunal concentrates on those issues which, in its view, go to the heart of the application.

The Background

7. The development comprises four modern and purpose built low-rise blocks of self-contained residential flats built in or around 2018. Flat 7 (“the property”) is located in Block 1, which comprises flat numbers 5 to 15 inclusive, totalling 11 flats.
8. The Applicant holds the property pursuant to a lease granted on 17 July 2020 for a term of 125 years commencing 24 June 2018, between Abbey Developments Limited as Landlord, Charlotte Management Limited as “the company” and Neil Currans as tenant.
9. The Management Company’s right to demand and to collect service charges pursuant to the lease was not challenged in final submissions.
10. The Respondent in this matter is the company, that being Charlotte Management Limited. The property is managed on the Respondent’s behalf by Crabtree PM Limited (“the agent”).
11. The Applicant challenges the reasonableness of the 2022/2023 budgeted service charge costs as follows:
 - i. Repairs and maintenance £2,500.00
 - ii. Window cleaning £1,000.00
 - iii. Health and safety £550.00
 - iv. TV Aerials & entry phone £600.00
 - v. Electricity £840.00
 - vi. Buildings insurance £3,130.00
 - vii. Management fees £2,245.00

The Law

12. The relevant law is set out in sections 18, 19, 20C and 27A of the Landlord and Tenant Act 1985, as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002.
13. The Tribunal has the power to decide all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums that are payable, or would be payable, by a tenant to a landlord for the costs of services, repairs, maintenance or insurance, or the landlord’s costs of management, under the

terms of the lease. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. A service charge is only payable insofar as it is reasonably incurred or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

The Issues

14. Repairs and maintenance: amount disputed £2,500 – the Applicant compares the budgeted figure for 2021/22 of £1,650 against the incurred expenditure of £322 and argues that such figures fail to justify an increase to the budgeted figure of £2,500. By way of an alternative the Applicant proposes a figure of £1,000.
15. In common with further challenged heads of expenditure, the Respondent suggests that, in due course, future budgeted figures will be reviewed by the newly appointed resident Directors of the company and, that in all likelihood, such figures will be decreased.
16. In regard to the current figure, the Respondent states that the nature and frequency of repairs and maintenance is *“hard to predict”* and therefore the figure of £2,500 is *“just an educated guess.”* By way of example, the Respondent referred to the actual expenditure incurred in 2020/2021 of £2,532.
17. Tribunal decision: The Tribunal concurs with the Respondent that the nature, extent and frequency of repairs will differ from year to year. Without a long-term maintenance plan, of which there was no evidence, it is difficult to accurately estimate the likely expenditure for any given period. That said, the Tribunal considers that the Applicant’s proposed budget of £1,000 is unrealistic. With the limited information before it and relying on the general expert knowledge of the Tribunal’s two experienced chartered surveyors, the Tribunal determines a realistic sum to be £2,000.00.
18. Window cleaning: amount disputed £1,000 – the Applicant compares the budgeted figure for 2021/22 of £250 against the expenditure of £125 and argues that such figures fail to justify an increase to the budgeted figure of £1,000. By way of an alternative the Applicant proposes a figure of £80.
19. The Applicant states that the residents engage a private window cleaner to clean non-communal windows with the use of a pole-fed system at a cost of £15.00 per visit and that the same contractor has quoted £20.00 per visit to clean the communal windows. Proposing four visits per annum, the Applicant proposes a budgeted figure of £80.00.
20. The Respondent argues that in order to protect the company, its directors and the agent, contractors are vetted for suitability and, as part of such process, are required to prove that they hold appropriate accreditation and carry sufficient insurance. Furthermore, contractors are required to undertake risk assessments and provide method statements. Whilst lessees are welcome to nominate proposed contractors, any such nominee must

meet the agents' minimum standards.

21. Again, the Respondent states that future budgets will reflect expenditure incurred and that all budgets will be subject to approval by the newly appointed resident directors.
22. Tribunal decision: The Tribunal finds the development to be low-rise with easy access and, accordingly, do not consider this a complex contract. Neither party provide the frequency of the current contract, although the Applicant proposes quarterly cleaning.
23. The Tribunal prefers the Respondent's evidence in that all contractors are vetted and pre-approved to ensure adequacy of public liability insurance, competence and method. The Applicant has neither provided his preferred contractor's quotation for scrutiny, nor has the Applicant provided any qualification, insurance or risk assessment detail in regard to such contractor.
24. Whilst the Tribunal consider the Applicant's proposed sum unrealistic, the Tribunal also fail to find any evidence or justification for the Respondent's figure of £1,000 which appears excessive having regard to the size of the block and the actual cost incurred for 2021/22 which, itself, appears unrealistically low.
25. Having regard to the limited evidence before it, assuming a quarterly cleaning contract, and doing the best it can, the Tribunal, by applying the experience of its members, determines a budgeted figure of £400.00.
26. Health and safety: amount disputed £550 – the Applicant compares the budgeted figure for 2021/22 of £125 against the incurred expenditure of nil, and argues that such figures fail to justify an increase to the budgeted figure of £550. By way of an alternative, the Applicant proposes a sum of £125.
27. The Respondents explains that a Fire Risk Assessment and general Risk Assessment are both due within the service charge year. A quotation of £626, encompassing all four blocks, has been received. Furthermore, the fire doors are also due to be surveyed. The budgeted figure provides not only for the cost of such assessments but includes contributions towards any remedial works identified.
28. Tribunal decision: The Tribunal accepts the Respondent's position in regard to the requirement for such surveys and concurs that a provision for any remedial work is sensible. Apportioning the quotation equally across all four blocks, whilst being a crude and approximate method, provides, in the Tribunal's opinion a realistic quotation. Allowing for the provision of remedial works, the Tribunal finds the budgeted sum of £550 reasonable. Accordingly, the Tribunal determines a budgeted figure of £550.00.
29. TV aerials and entry phone: amount disputed £600 – the Applicant compares the budgeted figure for 2021/22 of £125 against the incurred expenditure of nil, and argues that such figures fail to justify an increase to the budgeted figure of £600. The Applicant considers it excessive to budget

for quarterly call-outs. By way of an alternative, the Applicant proposes a sum of £125.

30. The Respondent demands such sums in anticipation of call out charges and ad-hoc repairs to the communal system; equipment in each flat being the responsibility of the leaseholder. There is no fixed contract insitu. As previously, the Respondent considers it likely that such provision will be reduced in the following year's budget, which will be agreed by resident directors.
31. Tribunal decision: Taking into account the age of the system, the usage by the occupiers of eleven flats and the likely level of call-out charges, the Tribunal determines the budgeted cost of £600.00 to be reasonable.
32. Electricity: amount disputed £840 - the Applicant compares the budgeted figure for 2021/22 of £600 against the incurred expenditure of £73, and argues that such figures fail to justify an increase to the budgeted figure of £600. By way of an alternative, the Applicant proposes a sum of £200.
33. The Applicant accepts that the wholesale price of energy has risen sharply but, nevertheless, considers the budgeted increase excessive. The Applicant queries what savings are generated by the roofing solar panels.
34. The Respondent argues that the utility contracts are negotiated and placed on their behalf by a broker. The brokers' advice will be sought prior to setting the forthcoming budget.
35. Tribunal decision: No evidence of the contract either with the utility company or between the broker and the agent were provided by the Respondent, nor did the Respondent submit any evidence of market testing. The building is three storeys high with presumably internal communal lighting, including emergency lighting, and possibly some external lighting. There is no lift to be powered. In the absence of any evidence to the contrary, the Tribunal therefore considers that the electricity usage will be modest. The only evidence before the Tribunal was the actual costs incurred the previous year, that being £73. The Tribunal finds such figure unrealistically low however, without the previous year's expenditure by way of comparison or any form of explanation from the Respondent, the Tribunal is left with little upon which to base its determination. Accordingly, doing the best it can on the sparse information submitted and having regard to the experience of its members, the Tribunal determines a realistic budgeted sum to be £350.00.
36. Buildings insurance: amount disputed £3,130 - the Applicant compares the budgeted figure for 2021/22 of £2,793 against the incurred expenditure of £1,226, and argues that such figures fail to justify an increase to the budgeted figure of £3,130. By way of an alternative, the Applicant proposes a sum of £1,500.
37. The Respondent states that the insurance renewal is handled on an annual basis by their appointed insurance broker who ensures "*value for residents.*" In setting the budget, the Respondent relies upon the broker's

advice which typically includes an uplift in premium. The Respondent states that the actual premium for 2022/2023 is *"below the budgeted costs for this period."* The Respondent advises that this will be taken into consideration when preparing the forthcoming budget.

38. Tribunal decision: Whilst the Tribunal accepts that insurance premiums have increased over recent years, the Respondent provides no explanation as to why the budgeted cost increased from an actual expenditure the previous year of £1,226 to a figure in excess of double the following year. Furthermore, the Respondent states that the actual figure for 2022/2023 was lower than that budgeted but the Respondent fails to provide the Tribunal with such figure. Therefore, doing the best it can with the limited information submitted by the Respondent, the Tribunal concludes that it prefers the submissions of the Applicant and determines a reasonable budgeted figure for a low-rise, purpose built block of eleven flats to be £1,500.00.
39. Management fees: amount disputed £2,245 - the Applicant refers to alleged poor service, mismanagement, a lack of communication, turnover of staff and a failure by the Respondent to inspect the development regularly. Whilst not suggesting that nil fee is due the Applicant candidly states that he is unable to propose an alternative fee reflective of the service provided.
40. The Respondent states that the management fee, which equates to £170 plus VAT per unit, has been fixed since 2018, a point the Applicant disputes. The Respondent argues that such fee is already lower than their current charges of £250-350 plus VAT per unit. The Respondent provides a list of services included in the management fee. The Respondent acknowledges that a named member of staff left the firm for personal reasons.
41. Tribunal decision: It is common ground between the parties that shortcomings in service have arisen in particular areas. However, the Applicant has neither proposed an alternative figure nor provided any comparable evidence of local managing agent's fees and services. The Tribunal is therefore, once again, in the position of having to rely on the specialist knowledge of its experienced members.
42. In the Tribunal's opinion, the disputed fees are below those charged locally. The Tribunal do not find the level of service proven to be so poor that a further reduction is warranted. Accordingly, the Tribunal finds the budgeted sum of £2,245.00 reasonable for the period 2022/2023. However, for the avoidance of doubt, the Tribunal is not condoning the level of service provided and would encourage the Respondent to address the Applicant's concerns in such regard.

Applications for Orders under Section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002

43. The Applicant requested the Tribunal make an order preventing the Respondent recovering their costs in regard to these proceedings through

the service charge. The Applicant sought to extend the order to ten named lessees with the same block. In accordance with Tribunal directions written authority was included in the bundle from the ten lessees requesting to be joined in this regard and authorising the Applicant to act and to receive documentation on their behalf. The ten lessees are recorded in Annex 2.

44. The Respondent made no submissions in regard to this part of the application.
45. The purpose of Section 20C is to give the Tribunal the power to prevent a landlord recovering its costs via the service charge when it was not able to recover them by a direct order from the Tribunal.
46. In *Tenants of Langford (Sherbani) v Doren Limited* LRX/37/2000, which concerned an application for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 in which the applicant tenants had been successful, the Lands Tribunal (Judge Rich QC), at paragraph 28, said:
"In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they may arise."
47. However, there is also guidance in other cases to the effect that an order under Section 20C is to deprive the landlord of a property right and it should be used sparingly (see for example, *Veena v Chong: Lands Tribunal (2003) 1EGLR175*).
48. The Tribunal has considered all the circumstances and evidence before it, and has determined that the Applicant has been successful in a number of his challenges, although others have failed. Those successful have resulted in a significant reduction in the quantum of costs the Respondent is entitled to recover through the budgeted service charge.
49. The Tribunal is mindful that the Applicant attempted to resolve his grievances through dialogue and correspondence with the Respondent prior to applying to the Tribunal for a determination but was unsuccessful. In the round, the Tribunal therefore determines that it would not be just and equitable if the Applicant were to be held responsible for the cost of these proceedings.
50. Accordingly, the Tribunal makes an order pursuant to Section 20C of the Act that none of the Respondent's costs of these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant. Further, the Tribunal extends the order to the ten additional lessees named in Annex 2.
51. The Applicant also applied for an order under Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the Applicant's liability to pay administration charges in respect of the Respondent's litigation costs. For the same reasons explained above the Tribunal finds it just and equitable to exercise our discretion and make such an order thereby preventing any administration charges in relation to these proceedings being charged to the Applicant.

52. Further, the Tribunal orders that the Respondent pays the Applicant the application fee of £100.00. Such fees to be paid within 14 days of the date of this decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Annex 1

Application under Section 27A of the Landlord and Tenant Act 1985

Sections 18 and 19 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 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' include 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 for the carrying out of works, only if the services are of a reasonable standard;

and the amount 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, so far as relevant, 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) Sub-section (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 included for services, repairs, maintenance, improvements, insurance or management of any 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 payable.

The 'appropriate tribunal' is this Tribunal.

Annex 2: Section 20C order extended to:

<u>Flat</u>	<u>Lessee</u>
5 Jubilee Street	Indika Muthamerengne
6 Jubilee Street	Ayodeji Erinoso
8 Jubilee Street	Herbert Cho
9 Jubilee Street	Patrick Lawler
10 Jubilee Street	Lucy Wayment
11 Jubilee Street	Donna Armitage
12 Jubilee Street	Caroline Sheppard
13 Jubilee Street	Tracy Rice
14 Jubilee Street	Amy Feam
15 Jubilee Street	Liam Siva