



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

Case Reference : **MAN/00EB/LSC/2022/0062 & 0065**

Property : **275 & 277 Raby Road, Hartlepool, TS24 8HF**

Applicant : **Mrs R Harnden**

Respondent : **Kingston Property Services**
Representative : **N/A**

Type of Application : **Landlord and Tenant Act 1985 – s27A and S20C**

Tribunal Members : **Judge K Southby**
Ms J Jacobs

Date and venue of Hearing : **25 May 2023**
Video hearing

Date of Decision : **26 May 2023**

DECISION

DECISION

- A. In respect of the service charge years from 2017 to 2022 inclusive, the service charge is payable in full by the Applicant to the Respondent.**
- B. The Tribunal makes no order under s20C of the Landlord and Tenant Act 1985**

REASONS

Preliminary and background

1. An application dated 22 June 2022 was made to the Tribunal by the Applicant under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination of liability to pay, and reasonableness of, service charges in relation to two flats at 275 and 277 Raby Road Hartlepool (“the Properties”). The application related to the service charge years from 2017 to 2022 inclusive and was made by Mrs Harnden as owner of 125 year leases (commencing 1 January 2014) of the apartments.
2. Mrs Harden has also made an application for an order under section 20C of the 1985 Act for an order preventing the Respondent from recovering costs incurred in connection with the proceedings under section 27A as part of the service charge.
3. The Respondent is named as Kingston Property Services Limited, the Property Management Company for the Properties.
5. Directions were issued by Judge Bennett on 23 September 2022 following a video case management conference on 19 August 2022.

Inspection

6. The Tribunal carried out an inspection of the Common Parts surrounding the Properties on the morning of 25 May 2023. Mr Williams, Ms Howe and Ms Gray from the Respondent attended. There was no attendance from the Applicant. No evidence was taken at the inspection.
7. The Tribunal observed the Properties to be 2 flats in a block of four, of brick-built construction. The yard/gravel area to the front was tidy with the exception of a small amount of rubbish in the area where the bins were stored. There was a small carpeted entrance hall, including meter cupboards, stairs to the upper floors, and a door to the rear yard/access area and garages. The Property was observed to be in good condition and the Common Parts to be satisfactorily maintained. The cleaning schedule in the entrance hall showed regular fortnightly cleans having taken place, the last one having been on 12 May 2023.

Hearing

8. The Hearing took place by Video Hearing. There were initial difficulties with the clarity of sound from the Respondent which were resolved, and everyone confirmed that they could see and hear clearly. The Tribunal established that all parties had received the bundle of 305 pages. Mrs Harnden confirmed that she had received and read the bundle but that the issues which she wished to raise did not specifically require the Tribunal to refer to the bundle and that she preferred to talk generally about her concerns than be referred to particular pages. The Tribunal was concerned that Mrs Harden did not appear to have access to the bundle during the hearing, but she confirmed that it was on her computer, and that she did not wish to print it out, but that she was satisfied that she could put forward her case using the information she had prepared and that she did not want to adjourn the case to have the bundle sent to her, as she already had it.
9. The Tribunal was very mindful that accessing an electronic bundle whilst conducting a video hearing is not always straightforward. We considered whether it was in the interests of justice to adjourn of our own motion, but we concluded that this was Mrs Harnden's application to be put forward by her in the manner she chose. We listened carefully to the elements of claim which Mrs Harnden put forward and we agree with her that they did not refer to specific pages in the bundle, or require us to look at particular pages to which she was referring. We therefore concluded that it was in the interests of justice and in accordance with the overriding objective for us to proceed with the hearing.

The Leases and the service charge machinery

10. The Tribunal was provided with copies of the Leases for both 275 and 277 Raby Road, which are identical.
11. The Lease is a tripartite lease between Taylor Wimpey, Kingston Property Services Limited and Mr and Mrs Harnden.
12. The Buyer's Covenants are contained within the Third Schedule and include at paragraph 1(a)(i) to pay the Maintenance Charge and the Rent.
13. The Fifth Schedule sets out the Covenants by the Manager in respect of the Buildings and Common Parts and includes keeping the Common Parts in a good state of repair, painting, cleaning of common parts and exterior and interior of all windows comprised in the Common Parts, maintaining illumination, any communal aerial and insurance.
14. Part I of the Sixth Schedule sets out at paragraph 1 that the Manager shall as soon as practicable after the 1st day of January in each year prepare estimates of the sums to be spent by in on the matters specified in Part II of this Schedule ("Estimated Management Costs") for such year and shall forthwith thereafter notify the Buyer of such Estimated Management Costs.

15. Paragraph 3 of Part I of the Sixth Schedule requires that *the Manager shall in respect of each calendar year keep accounts of the sums spent by it on the matters specified in part II of this Schedule (Actual management Costs) in relation to the obligations contained in the Fifth Schedule and shall as soon as reasonably practicable after the end of each calendar year notify the Buyer of the Actual Management Costs incurred during such year and the amount of Estimated Management Costs for the current year notified to the Buyer in accordance with paragraph 1 hereof shall be amended (whether by addition or subtraction) to take into account any excess or deficiency in the Actual management Costs incurred in the preceding year.*
16. The Expenditure to be recovered by means of the Maintenance Charge is set out in Part II of Schedule 6 of the lease and includes at paragraph 6 *'All sums paid by the Manager for the repair and maintenance, decoration, cleaning, lighting and managing of the Development whether or not the Manager was liable to incur the same under its covenants herein contained.'*
17. Paragraph 11 of Part II of the 6th Schedule makes provision for a reserve fund.
18. Part III of the 6th Schedule includes an initial maintenance charge of £896.63. The percentage apportionment is left blank.

Law

19. Section 27A(1) of the 1985 Act provides:

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.*
20. The Tribunal is “the appropriate tribunal” for these purposes, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
21. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It 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.*
22. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.

23. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:

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.

24. Section 20B(1) of the 1985 Act provides:

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.

25. Section 20B(2) provides an exception from this principle for cases where, during the initial 18 month period, the tenant has been given written notice that the costs in question have been incurred and that he or she will subsequently be required to contribute to them.

The Issues

26. The Applicant raises a range of issues both in her oral submissions and in her application form. These were confirmed with the Applicant at the hearing as being as follows:
- a) Unaffordability of the Service Charge/Unsaleability of the flats
 - b) Service Charge has increased since the initial figure in the Lease/breach of contract
 - c) Two unexplained payments of £1494.40
 - d) Monthly Service Charge exceeds government cap/not reasonable
 - e) Cleaning Charges are too High
 - f) Unnecessary repairs to garages

Although there is an element of overlap between the different headings above, we have nevertheless considered each one in turn.

Unaffordability of the Service Charge/ Unsaleability of the flats

27. Mrs Harnden gave oral evidence that the monthly Service Charge has increased from when she took out the Lease on 6 March 2015. It is accepted by Mrs Harnden that when she first took out the Lease the Service Charge was £896.63, as set out in Part III of the Sixth Schedule. Ms Harnden previously stated in her written submissions [page 305] that the charge was around £500

in 2016 although it would appear that she has amended her position in this regard in line with the amount set out in the Lease. It is not disputed by the parties that the Annual Service Charge for 2021 was £1588.33 and the Estimated Service Charge for 2022 was £1528.25.

28. Mrs Harnden stated that she had suffered a financial loss as a consequence of the Service Charge increasing, that she did not know that the charges would rise in this way when she bought the flat, that the building was new and should not have needed maintenance and repair, that the Respondent has breached the contract by raising the Service Charge to this level and that she cannot afford to pay it.
29. Ms Howe from the Respondent gave evidence to the Tribunal that there were 9 properties in the complex – 8 flats and 1 town house which pays no service charge other than a 5% contribution towards buildings insurance. Mrs Harnden's flats are in a block of 4 which is separately insured, and therefore the insurance for that part of the complex is apportioned at 25% per flat. The remainder of the charges are split between the 8 flats with an apportionment of 12.5%
30. Mr Williams submitted on behalf of the Respondent that the charges were recoverable under the terms of the Lease, that they were reasonable and had been reasonably incurred.
31. We find that this aspect of Mrs Harnden's claim is a non-specific argument of affordability and does not address whether any or all of the specific charges are reasonable or payable. This is not a case where there are major works which have been delayed and a large lump sum imposed upon Leaseholders in one go. This is simply a variable service charge, the cost of which has risen over time in line with the general rise in living costs. It is not within the scope of this claim for the Tribunal to consider Mrs Harnden's personal circumstances or the affordability of these charges for her at this point in time. Our task is to assess their reasonableness and payability and an assertion of personal unaffordability is not evidence that the charges are not inherently reasonable.
32. We note that the apportionment under the Lease is blank in Mrs Harnden's Lease but both leases include at 8(b) of the Seventh Schedule (pages 113 & 138) that "The Proportion of the Maintenance Charge... shall be the amount of such Maintenance Charge...divided by the number of flats within the block". We accept the evidence of Ms Howe that this is 4 for insurance and 8 for all other charges and therefore we are satisfied that the apportionment of the service charge, which was not in any event specifically queried by Mrs Harnden is reasonable and properly applied. Whilst we do not doubt Mrs Harnden's assertions that the increase in service charge makes it more difficult to afford we do not find there to be any merit in this aspect of Mrs Harnden's claim. We consider Mrs Harnden's concerns about the extent and legality of the increase in the section below.
33. As above, the issue of saleability of Mrs Harnden's flats is not a matter within the jurisdiction of this Tribunal and goes outside the scope of this application. We therefore do not consider it any further here.

Service Charge has increased since the initial figure in the Lease/Breach of contract

- It is common ground that this figure has increased. We note Mrs Harnden's written submissions [page 305] refer to Mrs Harnden having the right to suspend the charges because she is not in agreement with the contract.
34. Mrs Harnden gave oral evidence that in her view this increase was fraudulent, and a breach of contract and she requested that the Tribunal terminate the contract between her and the Respondent.
35. The Tribunal informed Mrs Harnden at the hearing that the limit of our jurisdiction was to determine the reasonableness and payability of the Service Charge, with reference to both the terms of the lease and the actual charges levied in respect of her Properties. We therefore do not give any further consideration to the request for us to terminate the contract, as that is not within our power, and nor do we make any finding in respect of her allegations of breach of contract as again that is not for us to consider.
36. For the avoidance of doubt, the Lease mechanism provides for the Service Charge to increase. The figure stated in the Lease for the Service Charge of £896.63 is specifically described as "Initial Maintenance Charge" and the mechanism for calculating the Service Charge is clear that it is the actual sums spent by the Management Company in their performance of their obligations, not a fixed amount. Therefore, if the cost of electricity, or cleaning increases then the Maintenance Charge will correspondingly increase. We have been presented with no evidence, and nor is it suggested by Mrs Harnden that the increase in the Service Charge does not reflect the actual cost of the items. Mrs Harnden's complaint is that costs have increased more than she would like, and whilst we accept that this is the case, we find the increase to be in accordance with the terms of the lease and we find the charges to be reasonable and payable under the terms of the lease.

Two unexplained payments of £1494.40

37. Mrs Harnden complained of two payments of £1494.40 being taken from her account on 17 June 2022 by the Respondent. She was unable to provide us with any information in the bundle to support this claim. She had not referred to it in her application form dated 22 June 2022. We note that Mrs Harnden does not refer to these charges in correspondence dated 11 October 2022 [page 227] although she does refer to double billing by sending her separate statements. No evidence is provided to support the suggestion that she is double billed other than to the extent that she is billed twice by reason of having two flats. These payments are not referred to in the document from Mrs Harnden entitled 'Response to the Correspondents Tribunal Applicants After Receiving the Statement for the Applicants at 02/11/2022' [sic].
38. Mr Williams stated on behalf of the Respondent that he was not previously aware that Mrs Harnden was concerned about these payments from June 2022 otherwise the Respondent would have looked into it. If there had been payments taken in error they would be refunded straightaway.
39. We have not been presented with any evidence to support Mrs Harnden's assertions about the two payments of £1494.40 being taken from her account

by the Respondent on 17 June 2022. We would have expected to have seen a copy of Mrs Harnden's bank statements, or indeed for the assertion to have been referenced in her various written submissions to the Tribunal prior to the hearing.

40. In the absence of any supporting evidence we cannot consider the matter any further, other than to note that in the event that these payments have indeed been taken in error, we note the assurance of Mr Williams that it will be rectified immediately, and indeed the balancing process through the service charge account would also operate ultimately to rectify any over-payment. Therefore, the error, if indeed there has been one, does not of itself affect the reasonableness or payability of the individual elements of the service charge. Rather it is an administrative matter, which, understandably, Mrs Harnden is eager to have resolved as a matter of urgency if indeed the transactions are as Mrs Harnden describes.

Monthly Service Charge exceeds government cap/not reasonable

41. We note that Mrs Harnden has used inflammatory terminology such as 'fraudulent' to describe the conduct of the Respondent. We have very carefully considered the bundle of 305 pages, including the written submissions from both parties and the service charge accounts, demands and estimates. We have seen no evidence in the information provided to us that there has been anything fraudulent in the conduct of the Respondent. We find the Properties to be well managed, well maintained and the information provided to the Applicant in the form of the Service Charge Estimates and demands to be clear and in accordance with the terms of the Lease. We note that Mrs Harnden clarifies her choice of language at page 304 saying that in her view *'the billing charges are fraud according to the national fixed rates for charges per flat'*.
42. Mrs Harnden's written submissions [page 227] state that *'Year 2017 the legal price for one flat 275 Raby Road was £503.90 annual.'* Mrs Harnden gives a series of other annual 'legal prices' and says that *'Legal charges across UK for maintenance services as the described [sic] by Gov. was in average of £380 per flat.'*
43. Mrs Harnden gave four different figures in oral evidence for the maximum figure for service charge for a small flat, stating at different points that £200, £218, £179 and £100 were the maximum. She was asked by the Tribunal where she had obtained the figures to which she referred. She was unable to provide the Tribunal with any evidence within the bundle although she stated that it had come from the Competition and Markets Authority website. She was asked whether there was a specific page to which she wanted to refer the Tribunal. She was invited to forward a link to the Respondent and the Tribunal for consideration. She declined or was unable to do so.
44. Mr Williams stated that he has not been provided with any documentation to suggest that there is a national cap on monthly service charges, and nor is he aware of any legislation to limit service charges other than in respect of their reasonableness and payability. He stated that service charges varied enormously from property to property as the range of services offered also

varied and it would therefore be impossible to set a national charge and he was unaware of one.

45. We too have not been provided with any information to support Mrs Harnden's claims and nor are we aware of any legislation other than that under which Mrs Harnden appeals to this Tribunal which would assist her assertions. Nor is it apparent why it would be the remit of the Competition and Markets Authority to set any cap on service charges were one to exist. As an evidence-based Tribunal, in the absence of any evidence on which we can rely we are not persuaded by Mrs Harnden's changeable oral assertions, and we do not find that there is any substance to this element of her claim which would lead us to determine that any aspect of the Service Charge is not payable.

Cleaning Charges are too High

46. Mrs Harnden stated in her application form that the cleaning charges were too high for a small area. We note that it is not disputed by Mrs Harnden that cleaning was taken place when she was asked about this by the Tribunal. Mrs Harnden has not provided any alternative costings of cleaners to the Tribunal.
47. Ms Howe for the Respondent stated that the cleaning services were provided fortnightly and cost around £50 plus VAT per fortnightly visit. The service charge accounts for the year ending 2021 has an actual cost of cleaning of £1565.60 which is broadly consistent with this. The 2022 Statement of Anticipated Service Charge Expenditure [page 208] has the budgeted figure for 2022 as £1570, to be apportioned at 12.5% per flat.
48. Having inspected the Common Parts we do not find a charge of approximately £50 per fortnightly visit to be unreasonable for the cleaning of the block containing Mrs Harnden's Properties and the Common Parts for the other 4 flats. Nor do we have any evidence to suggest that it is unreasonable as compared to other quotations for the same work. We are not persuaded that this sum is unreasonable, and we therefore determine that this element of the Service Charge is payable in full.

Unnecessary repairs to garages

49. Mrs Harnden gave evidence to the Tribunal that an example of the unreasonableness of the Service Charge was the maintenance and repairs done to the garages which she stated was unreasonable as the garages were new and did not require maintenance. She did not suggest that the work which had been charged to the service charge account had not been done, just that, in her view, it did not need to have been done. She did not provide any examples of this work, or any evidence to support her assertions. This is not a claim which Mrs Harnden had made in her application form or her subsequent written submissions and therefore we note that the Respondent has not had the opportunity to provide supporting invoices.
50. We considered the charges for repairs to the garages and note that these were £35.73 in 2017, £295.49 in 2018, £98.34 in 2019, £24 in 2020 and £0 in 2021. We do not find these charges to be unreasonable when it is considered that they apply to 8 garages. In our view even relatively new structures require

occasional maintenance and repair to keep them in good order and the Respondent has an obligation to do so under the terms of the lease. We find this to be a claim made during the course of the hearing to which the Respondent has not had a reasonable opportunity to respond but one which in any event is unsupported by any evidence from the Applicant and which we find to be without merit.

51. Mr Williams for the Respondent made closing submissions that it had been difficult to understand the nature of Mrs Harnden's claims but that the Respondent was confident that they have acted reasonably and in accordance with the terms of the Lease.
52. Mrs Harnden stated in her closing remarks that she did not want to continue with the current service charge arrangements, that she was unhappy with the charitable status of the umbrella social housing organisation of which the Respondent is a part and that if the Tribunal did not find in her favour she would forward the matter to the Crown Prosecution Service.

Costs

56. We note that Mrs Harnden has made an application under s20C, that the Landlord's costs in connection with these proceedings should not be added to the service charge account. We note that Mrs Harnden has been unsuccessful in her application, and we see no reason why the Landlord should not be able to recover costs in so far as they are recoverable under the terms of the lease. We decline to make an order under s20C accordingly.

Concluding remarks

54. The Tribunal has carefully considered all of the evidence both oral and written even if we have not made specific reference to it. We find that we are not persuaded that there are any elements of the Service Charge which should be disallowed. We find the Service Charge to be reasonable and payable in full.