



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

Case Reference : CHI/29UM/LIS/2023/0006

Property : Flat B, 301 High Street, Sheerness,
Kent, ME12 1UT

Applicant : Influential Consultants Limited

Representative : J F Thompson

Respondent : Ms Catherine M Willens

Representative :

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

Tribunal Members : Judge D Whitney
Mr N Robinson FRICS
Mr D Ashby FRICS

Date of Decision : 26 June 2023

DECISION

Background

1. The Applicant seeks a determination of the Respondent's liability to pay and the reasonableness of service charges for the year 1 December 2021 to 30 November 2022. Further, the Applicant seeks a determination of the Respondent's liability to pay and the reasonableness of the estimated service charges relating to the service charge year 1 December 2022 to 30 November 2023.
2. On 13 March 2023 the Tribunal considered that this application was likely to be suitable for determination on the papers alone without an oral hearing and issued directions accordingly. However on review of the bundle the Tribunal determined that the matter should be listed for a hearing.
3. The Applicant had provided an electronic hearing bundle which ran to 156 pages and references in [] are to pdf pages within that bundle. The Applicant also provided a separate video and photograph which all parties had seen.

The Law

4. The relevant law is contained in Sections 19 and 27A of the Landlord and Tenant Act 1985 which is set out in the annex to this decision.

The Lease

5. The lease was within the bundle [21-42]. It was agreed by the parties that the correct proportion chargeable to the Property is 39.38%. The relevant clause of the lease for our determination was:

“Clause 1 (2) There shall also be paid by way of further or additional rent a fair and reasonable proportion (as hereinafter defined) of the amount which the Landlord may from time to time expend and as may reasonably be required on account of anticipated expenditure:-

(a) in performing the Landlord's obligations as to repair maintenance and insurance hereinafter contained

(b) in payment of the proper fees of the surveyor or agent appointed by the Landlord in connection with the carrying out or prospective carrying out of any of the repairs and maintenance herein referred to and the apportionment of the cost of such repairs maintenance and collection between the several parties liable to reimburse the Landlord for the same and such fees for collection of

the rents hereby reserved and the other payments to be paid by the Tenant under this clause”

The Hearing

6. Mr Thompson as Director of the Applicant attended the hearing together with his wife. The Respondent attended in person.
7. The hearing took place at Medway Magistrates Court on 21st June 2023. Mrs Willens was supplied with a hearing loop but this did not appear to work with her hearing aids and during the course of the hearing the desks were moved to enable the parties to all be closer to ensure all could hear the proceedings. The proceedings were recorded.
8. At the commencement the issues to be determined were agreed. Mrs Willens confirmed she agreed that the interim charges for the year 2023 were agreed by her as to be reasonable and payable.
9. By reference to the Scott Schedule [102-106] supplied by the Applicant it was agreed that the items for determination were:
 - The cost of replacement missing bricks to the external flank wall;
 - Ivy removal;
 - Legal fee;
10. The Tribunal reminded the parties that these were the only items it would determine. Whilst the lease allowed for interest this was not a matter within the Tribunal’s jurisdiction to determine. At the conclusion of the hearing the Tribunal again checked with all parties that these were the only matters to be determined and it was confirmed this was correct.
11. Mrs Willens during the course of the hearing conceded that following hearing Mr Thompson’s explanation she was satisfied that the cost of the ivy removal from the garden (total cost £350, invoice [130]) was payable and the cost reasonable and she was liable to pay her proportion of such cost.
12. Mr Thompson presented the case for the Applicant. He was questioned by Mrs Willens and the Tribunal. Subsequently Mrs Willens presented her case and she was questioned by Mr Thompson and the Tribunal. The below is a precis of what took place.
13. Mr Thompson explained he relied upon clause 1(2) of the lease which he said allowed the Applicant to recover the disputed items. In respect of the legal fees claimed he relied upon clause 1(2)(b) which he stated allowed recovery of the costs of collection of service charges.

14. Mr Thompson referred to the video which he said showed that bricks were missing from the inside of a flank wall. Work was being undertaken to flat C involving dry lining and insulating the same. The contractor discovered that along the flank wall certain bricks appeared hollowed out. In Mr Thompson's opinion this could have caused structural difficulties and needed to be remedied.
15. RSA Property Maintenance undertook the works [131]. The works were undertaken, Mr Thompson said, to about 12 feet of the wall. It was he believed an awkward job which took a long time as each brick had to be cut individually and then cemented into place. He had no photos taken after the work was completed. He had no idea as to the cause.
16. Mr Thompson confirmed the contractor was undertaking the dry lining of the whole flat which was a larger job for which he was to be paid about £5000. The contractor had produced the invoice for this one wall but Mr Thompson accepted the invoice contained items which were not the responsibility of the Applicant under the service charge. He had in consultation with the contractor agreed that only £634.84 should be charged to the service charge account. This meant that Mrs Willens share of the cost would be £250 which Mr Thompson accepted was the level at which consultation would be required.
17. In respect of the legal costs Mr Thompson was seeking to recover the balance of the legal costs incurred with TWM Solicitors [126] which had not been allowed by the Tribunal in case CHI/29UM/LAC/2022/0003 [108-111] as payable by Mrs Willens as an administration charge. In that decision the Tribunal determined that as an administration charge Mrs Willens was liable to pay to the Applicant £3,600.
18. Mr Thompson submitted all the costs had been incurred by the freeholder with TWM Solicitors in conducting works on behalf of the Applicant to collect service charges due from the Respondent. Upon questioning Mr Thompson accepted he had copies of the ledger sheets making up the 20 hours 36 minutes spent but had not produced the same as part of his evidence.
19. Mrs Willens stated she felt the information as to the works to the cavity and replacement of the bricks was vague. For the purposes of this application she accepted the works were necessary and required. She accepted they had been done.
20. She was concerned that the calculation as to the amount to be charged was arbitrary and there was no transparency. She was concerned that the amount being charged meant that the her proportion was £250 and so no question as to statutory consultation arose. She did accept in her words there was "something dodgy" with the flank wall. She would have preferred if a section 20 consultation was undertaken even if that had resulted in a higher amount payable by her so she could understand what was done.

21. In respect of the legal costs she believed she had been ordered to pay the £3,600 and that should be the very most she should pay. Any balance should be paid by the freeholder. She confirmed she had not yet applied to the Upper Tribunal to appeal that decision. She was considering making an application to appeal the decision out of time but had not yet done so.
22. She did not believe the costs were reasonable. In her view certain of the works undertaken were not necessary or payable as they related to dealing with the Upper Tribunal. Until the decision was final and any application for appeal she was pursuing was determined in her view no costs should be paid. Those costs should not in her submission be recoverable.
23. At the conclusion of the hearing the Tribunal checked with all parties that they had opportunity to make all points they wished.

Decision

24. This is the latest decision in a long history of decisions made relating to the subject property and the service charges payable for the same. It has been said before but the parties would certainly benefit from trying to work together to ensure these disputes do not arise which frankly benefit neither party.
25. We do however thank the parties for the constructive way the hearing was conducted and the fact the issues were narrowed to two remaining issues.
26. For the avoidance of doubt we confirm that save for the two issues we determined below Mrs Willens conceded and accepted that all other sums claimed within the service charges for the year ending 30 November 2022 were payable and reasonable as demanded by the Applicant. Further Mrs Willens conceded the interim charge for the year ending November 2023 were payable and reasonable.
27. On the evidence we find that works to replace bricks to the flank wall were required. Mrs Willens accepted this and we had regard to the video provided. We are satisfied that such works are works the cost of which can be recovered under the terms of the lease. As a result in principal these sums are payable.
28. We turn to the amount. Mrs Willens has no alternative quote and did not suggest any other figure. We accept it may be that Mr Thompson determined a figure which meant he did not have to consult and was effectively capped at recovering £250. We accept this is his prerogative as landlord.

29. We accept his explanation that the works would have been awkward and time consuming. We are satisfied that £634.84 is a reasonable total sum of which Mrs Willens is liable to pay 39.38%.
30. In respect of the legal fees we accept the argument of Mr Thompson as to Mrs Willens liability to pay. We accept he was entitled to try and recover the total amount as an administration charge. In so far as any balance relates to recovering service charges this is in our determination a sum he can then look to recover as a service charge under clause 2(1)(b) of the lease.
31. We have considered the earlier decision relating to the administration charge and also the TWM invoice. The later refers to some 20 hours and 36 minutes being spent. This is a very considerable period of time for a firm of solicitors to spend on a debt collection exercise. We do not have the breakdown.
32. Taking the total sum and the hours spent indicates the hourly rate charged was £225 per hour plus vat. We are satisfied this is a reasonable hourly rate to be charged. It certainly appears from the narrative to the bill that a certain amount of time was spent on liaising with matters relating to a potential appeal by the Respondent to the Upper Tribunal. We are not satisfied that this is recoverable as costs relating to collection of funds. As a result we believe a modest discount should be applied as to what is reasonable.
33. We find that two hours would have been spent on such matters. We reduce the costs by £450 plus vat leaving a total sum of £1,422 payable of which the applicant must pay her proportion.
34. In conclusion we find that all sums were payable. It is reasonable for the Respondent to contribute £250 towards the cost of the brick replacement. The Respondent is liable to pay £559.98 towards the legal fees (this is in addition to the sums she was required to pay under case reference CHI/29UM/LAC/2022/0003).

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
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.