



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

Case Reference : CHI/29UL/LSC/2023/0009

Property : Flat 3, 103 Victoria Grove, Folkestone,
Kent CT20 1BX

Applicant : Mr Fergus Wilson

Representative : N/A

Respondents : Southern Land Securities

Representative : Ms Stehrenberger, Counsel

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

Tribunal Member(s) : Tribunal Judge Lal, Ms Carolyn Barton
MRICS

Date of Hearing : 10 July 2023

Date of Decision: 18 July 2023

DECISION

Background

1. By way of an application received by the Tribunal on 12 January 2023, the Applicant seeks a determination of liability to pay and the reasonableness of service charges for the years 2016-2017 to 2023-2024 inclusive.

2. The total value of the dispute is said to be some £3900.
3. The Applicant also seeks orders pursuant to Section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing the Respondent from recovering the costs of these proceedings either through the service charge or by way of an administration charge.

Directions and Procedural History

4. It was noted at the Directions Hearing on 6 March 2023 that the Applicant had provided no details whatsoever in relation to the disputed items such as a list of the service charges that are in dispute or their value. The Application was deemed not to be in a fit state to be distributed to the Respondents.
5. Directions were made addressed to the Applicant to file and serve additional and better information by 17 March 2023.
6. The matter came back on 11 April 2023 for a further Directions hearing where it was noted that although the Applicant had responded in time the response concerned payments made by the Applicant prior to a court judgement in 2014 and a failure for those to be credited to his account.
7. It was pointed out to the Applicant that this is a question of money owed or not owed and not the reasonableness of service charges and would have fallen outside the jurisdiction of the Tribunal. It was noted that *“much of the matters which concern the Applicant..... is at least unclear that there is anything which the tribunal can determine.”*
8. The Judge directed a CMH so that appropriate directions could be given. Further directions were issues to progress the CMH.
9. The CMH took place by telephone on 26 April 2023. The following were determined as proper issues for adjudication. In summary they are:
 - The reasonableness of the cost of accountancy, electricity, fire safety/emergency lighting, insurance premium, terrorism cover and repairs during the 2016-2022 service years.
 - Whether works were of a reasonable standard during the years 2016-2022.
 - Whether the interim service charges for 2022-23 and 2023-24 were reasonable.
 - Whether administration charges for various letters were reasonable.
 - Whether a Section 20C Order should be made.

- Whether administration charges should be reduced or extinguished.
 - Whether the application fee should be reimbursed.
10. At the above CMH the Tribunal made further directions so that the matter would be made trial ready. The directions required the Respondent to send an initial Scott schedule setting out the relevant costs in respect of the matters to be adjudicated upon. The Applicant was then to respond with a Statement of Case by 31 May 2023 to which the Respondent would have a right of reply with their own Statement of Case. The Respondent was directed to prepare the hearing Bundle.
 11. Despite the matter having had directions made on three separate occasions, the actual Statement of Case received from the Applicant dated 19 May 2023 is no more than his comments on the various items that are mentioned in the Scott Schedule. There are also attached various documents some of which relate to other legal proceedings.
 12. The Tribunal notes the above procedural history in detail because even with the production of a written Skeleton Argument by the Applicant on the morning of the hearing, the Applicant has still not particularised matters in the detail that is required.
 13. Therefore, the Tribunal has assessed as best it can the submissions and evidence relied upon by Mrs Wilson assisted at times by Mr Wilson. It has at all times confined itself to the issues that were identified at the CMH noting the parties continue to have ongoing County Court litigation in respect of the subject premises dating back to 2014. For example, the Tribunal was informed that a set aside judgment application in the County Court is to be heard at Maidstone County Court in January 2024.
 14. The case has always been listed as Flat 3, 103 Victoria Grove Folkestone Kent CT20 1BX. However, Victoria Grove is a short street and the numbers do not run anywhere near to 103. The lease included in the bundle at page 24 refers to 16 Victoria Grove and this appears to refer to the subject property. There is certainly a number 16 Victoria Grove matching the description given by Mr Wilson in court which is visible via Google Streetscene. The Tribunal did not inspect the subject premises but was assisted by the parties as to the type of premises it is. In summary it is a mid-terraced four storey Victorian era building divided into 3 self-contained flats in the centre of the coastal town of Folkestone. These share pedestrian access over a pathway leading from the front pavement, steps up to a front entrance door, through a hall, stairs and landings. The lower flat is split level with some accommodation in the basement. The subject flat is at second (top) floor level. There is no outside space allocated to the subject flat and no off street parking

The Application

15. In summary, the Applicant stated that their case had common themes which applied to each of the 2016-2022 service years. The first head of dispute was in respect of accountancy fees which Mrs Wilson suggested were too high for each of the years in question. She suggested a sum of £60 for the three flats. Mrs Wilson accepted that she did not have alternative quotes and was content to leave the matter to the expertise of the Tribunal.
16. In respect of insurance premiums for each of the 2016-2022 service years, Mrs Wilson submitted that a block insurance policy purchased by the Respondent and mindful of the economies of scale achievable would more likely result in an insurance liability of 0.7 pence in the pound rather than the 10 pence in the pound or higher that was reflected in the actual insurance. Mrs Wilson did not produce any evidence as such but asked the Tribunal to note that in her experience as a former large landlord this was the type of reduction that could be obtained. She argued that adopting this approach would result in an approximate 25% reduction in the yearly insurance premium for the service charges years in dispute.
17. Her third objection was in respect of terrorism cover; she said it was simply not necessary and references in the lease which referred to “explosion” was not an example of the need for potential terrorism cover but would cover for example an oven exploding.
18. The next item of expenditure related to interest payments in respect of late payments as she maintained that both her and Mr Wilson had always paid on time and that as a result of the 2014 settlement they had started from a nil sum amount.
19. The last item was in respect of legal fees in respect of the ongoing litigation. The Applicant stated that he had a set aside application in the County Court in January 2024 and that these fees could not be incurred until that application was finally determined.
20. In relation to the sum of the above main contested heads there were some minor miscellaneous amounts in respect of the invoice amounts which are dealt with below.

The Respondent's Case

21. Counsel for the Respondent replied to the above by stating that in respect of accountancy fees no alternative quotes had been provided and that the accountancy fees were evidenced by the relevant invoices in the Bundle.
22. In respect of insurance premiums, she submitted that there was no evidence for the alleged 0.7 pence in the pound economy of scale reduction and she again referred to the actual insurance certificates and costings in the Bundle.

Likewise, she asked the Tribunal to determine that terrorism cover was completely normal for subject premises such as this.

23. Dealing with the issue of interest payments she submitted that her instructions were that Mr Wilson had always paid late and in respect of legal fees she stated that this was recoverable under the lease.

The Tribunal's Decision

24. The Tribunal noted as was usual in a case of this type that some of the contested amounts have fallen away with the production of invoices, so the Tribunal has addressed the main heads of dispute as identified above.
25. The Tribunal has reminded itself as to the approach to be adopted in assessing reasonableness. The notion of something being reasonable has been held to mean that the landlord does not have an unfettered discretion to adopt the highest standard and to charge the tenant that amount; neither does it mean that the tenant can insist on the cheapest amount.
26. The proper approach and practical test were indicated in **Plough Investments Ltds v Manchester City Council [1989] 1 EGLR 244** that as a general rule where there may be more than one method of executing in that case repairs, the choice of method rests with the party with the obligation under the terms of the lease.
27. Further the tenant cannot insist on the cheapest method and a workable test is whether the landlord himself would have chosen the method of repair if he had to bear the costs himself.
28. Ultimately it is for the court or tribunal to decide on the basis of the evidence before it and exercising its own expertise. In that regard the Tribunal is an expert tribunal and is able to bring its own expertise and experience in assessing the evidence before it.

Accountancy Fees

29. In respect of accountancy fees, the Tribunal noted the Applicant conceded that she had provided no evidence for her reduced amount submission and she was content to leave the matter to the Tribunal. Having adopted that approach the Tribunal determined that the accountancy costs for the service charge 2016-2022 service years were reasonable. The Tribunal was directed to the relevant invoices from the accountant and was satisfied that the sums invoiced were reasonable for the provision of such professional services.

Insurance Premiums

30. In respect of the alleged 0.7 pence in the pound insurance premium rate claimed as reasonable the Tribunal was unpersuaded the Applicant had made out her case. The Tribunal appreciated the Applicant was a former large landlord but there was simply no evidence, as opposed to assertion, that 0.7

pence in the pound was the going market rate for an economy of scale block purchased insurance policy. This may have been something the Applicant had been able to achieve historically with their own property portfolio but the Tribunal was provided with no evidence that that was the applicable rate for the subject premises thus making the actual insurance paid unreasonable.

Terrorism Cover

31. In respect of terrorism cover, the Tribunal noted this type of cover is now sadly de rigueur for premises that have been converted to flats and is also industry standard outside of London or other big cities. It covers more than domestic oven or gas explosions but the specific context of a tenant or occupier mixing, preparing and storing substances related to terrorism.

Interest Payments

32. In respect of interest payments, the Tribunal noted the position of the parties; the Applicant has stated that they had always paid on time with the counter assertion that Counsel had been instructed to inform the Tribunal that they were always late. On balance the Tribunal accepted the evidence of the Applicant as the submissions that they were always late was unsupported by any actual evidence and these items just appear as costs in the service charge amount but without any discernible paper trail.

Legal Fees

33. In respect of the contested legal costs incurred for 2023-24, the Tribunal determined that they were both recoverable and reasonable pending the conclusion of the set aside application yet to be heard in January 2024. If the Applicant succeeds and judgment is set aside that will take those matters back to the start; ultimately if the Applicant succeeds then the issue of costs can be dealt with at that time. To do so now is outside the scope of the Tribunal's jurisdiction.

Miscellaneous

34. In respect of certain miscellaneous items, the Tribunal reduces the qualifying works for 2018-19 to £685.79 from £722.39 as this was the actual invoiced amount. It also finds that the estimated electricity amount for 2022-23 is reasonable as it reflects a substantial rise in energy costs. It reduces the estimated repair costs for 2022-2023 to £150 from the estimated £485 as it was unclear as to what this potentially related to.
35. In conclusion and for the reasons above, the Tribunal does not find in favour of the Applicant in respect of accountancy fees, insurance premiums, terrorism cover and estimated court and legal fees. It does find in favour of the Applicant in respect of interest payments with additional minor reductions for the items noted at paragraph 34 above.

36. Having regard to the guidance given by the **Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000**, the Tribunal considers it just and equitable to make no order under s.20C of the Landlord and Tenant Act 1985. This would be consistent with its findings above.

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.