



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

Case reference : **CAM/11UB/LSC/2022/0066**

Property : **Flat 4, 132 Mandeville Rd, Aylesbury,
Bucks HP21 8AJ**

Applicant : **Mr Joe Naughton**

Respondent Landlord : **Goodwyn Realty Ltd**

Type of application : **Application for payability and
reasonableness of service charges,
pursuant to s.27A Landlord and Tenant
Act 1985**

Tribunal : **Tribunal Judge Stephen Evans
Mr Adarsh Kapur**

**Date of paper
determination** : **9 August 2023**

DECISION

DECISION

The Tribunal determines that:

- (1) The estimated costs challenged by the Applicant are all costs which were reasonably estimated and reasonable in amount, and the Applicant's 1/3 proportion of such costs is therefore payable;**
- (2) The application by the Applicant under s.20C of the Landlord and Tenant Act 1985 is refused.**

REASONS

Background

1. The Applicant, by his application dated 28 November 2022, seeks a determination as to the payability and reasonableness of estimated service charges, for the service charge year 1 October 2022 to 30 September 2023, pursuant to s.27A of the Landlord and Tenant Act 1985.

Relevant Law

2. See Annex 1 to this decision.

The Property

3. The Property is flat 4, 132 Mandeville Rd, Aylesbury HP21 8AJ. This is a 2 bedroom flat in a block of purpose built block of 4 flats, said to be built in the mid 1980s.
4. The Property is on the first floor, along with flat 3. The other 2 flats are on the ground floor.

The Parties

5. The Applicant is Mr Joe Naughton, who acquired his leasehold interest in the Premises on 1 September 2022, it appears for £161,000.
6. The landlord is Goodwyn Realty Limited, but the management of the premises is the responsibility of 132 Mandeville Road Right to Manage Company Ltd, who have appointed Foster Kemp as their managing agent.

The Lease

7. The Lease is dated 14 February 2011 but is a surrender and re-grant of an earlier lease.
8. The original lease is dated 2 September 1987. The following are express covenants amongst others on the part of the Lessee:

“2. The Lessee covenants with the Lessors as follows:

- (1) To pay the reserved rent at the times and in the manner aforesaid.
- (2) To pay and contribute to the Lessors a 1/3 proportion of the cost incurred by the Lessor of the items set out in sub clause (i) to (iii) below (or the cost reasonably estimated by the Lessor as being likely to be incurred in any relevant financial year of the Lessor):
 - (i) the cost of maintaining repairing redecorating and renewing the Building in accordance with clause 5(1) hereof;
 - (ii) the cost of insuring throughout the term hereby created the Building in accordance with clause 5(2) hereof;
 - (iii) the proper fees and disbursements paid to any Managing Agents appointed by the Lessors for the general management of the Building PROVIDED THAT so long as the Lessors do not employ Managing Agents they shall be entitled to add the sum of 15% to any of the above items set out in (i) hereof.
- (3) to pay and contribute a 1/3 proportion of the cost of making repairing renewing rebuilding and cleansing all yards ways sewers drains water courses party walls party structures fences and car parking areas and other things which shall belong to or be used for the flat in common with the remaining parts of the Building or any adjoining or other premises and to keep the Lessors indemnified against such cost and in the case of dispute to be determined by the Lessor or their surveyor whose decision shall be final.”

9. The following are express covenants amongst others on the part of the Lessor:

“5. The Lessors hereby covenant with the Lessee as follows:

- (1) Subject to the payment by the Lessee of the contributions hereinbefore provided to maintain repair redecorate and renew and light as often as may be necessary:
 - (a) the main structure and exterior (including without prejudice to the generality thereof the main walls foundations roofs chimney stacks timbers and the main drains gutters and rainwater pipes) of the Building
 - (b) the gas and water pipes and tanks and electric cables and wires in under or upon the Building and enjoyed and used by the Lessee in common with the owners and Lessees of the other parts of the Building and
 - (c) the main entrance communal hallway landings and staircase enjoyed or used by the Lessee and the occupiers of the other flats in the Building Together with any other communal parts of the Building

(2) to keep the Building insured against loss or damage by fire storm tempest and (if possible) aircraft and explosion and such other risks is the Lessor shall deem fit...”

10. The Lease terms immediately thereafter consist of service charge machinery as follows, so far as material to this application:

“(3)(a) As soon as practicable after the end of each of the Lessors financial years the Lessors shall furnish to the Lessee an account of the cost incurred by the Lessors in the due performance of their obligations hereunder for the relevant financial year due credit being given therein for any advanced payment made by the Lessee in respect of the said financial year and upon the furnishing of such account there shall be paid by the Lessee to the Lessors any balance or difference found to be payable or there shall be allowed by the Lessors to the Lessee any amount which may have been overpaid by the Lessee by way of advanced payment for the following year as the case may be

(b) the amount of the cost incurred by the Lessors in the due performance of its obligations hereunder shall be ascertained and certified annually by a certificate signed by the Lessor’s auditors as soon after the relevant financial year of the Lessors as may be practicable...”

Background

11. Shortly after he acquired his legal interest in the premises, on 12 October 2022 the Applicant was sent a demand for service charge for the year 1 October 2022 until 30 September 2023, in the sum of £1684.16.
12. This was an estimated sum on account of service charge, and was due by 1 November 2022.
13. The above sum is calculated as follows:
14. A budget certificate dated 12 October 2022 provided a service charge budget for the following items in the following sums:

Item	£
General repairs	600
Grounds maintenance	860
Electricity	250
Accountancy fees	250
Management services	720
Fire and safety inspections	350
Fire alarm and emergency lighting	275
Buildings insurance	1000
D&O insurance	210
Sundry charges	25
Confirmation statement	13
General reserve fund	500
TOTAL	5053

15. The Applicant's proportion, being 1/3 of the above total, is the reason for the sum in the demand of £1684.
16. On 17 October 2022, a document showing the actual expenditure for the year ending 30 September 2022 was prepared.
17. On 8 November 2022 the Applicant emailed Foster Kemp to complain of very unreasonable service charges.
18. On 29 November 2022, the Applicant filed the instant application under section 27A of the Landlord and Tenant Act 1985.
19. In December 2022 there was a fairly serious leak from flat 3 (the Lessee of which is a Mr Wells, who happens to be a director of the right to manage company). This led to an insurance claim in respect of damage to flat 1, flat 3 and the communal area.
20. The Application came before the Tribunal on 11 January 2023, when the procedural judge imposed a stay of 3 weeks for the parties to try and narrow the issues.
21. On 21 February 2023 the Applicant states that he was informed by Foster Kemp that no reserve fund account had been opened.
22. On 14 March 2023 solicitors for the right to manage company wrote to the Applicant because he had not paid the demand made on 12 October 2022.
23. On 15 March 2023 an e-mail was sent by the occupier of flat 1 to Foster Kemp regarding the service charges and the water leaks.
24. On 20 March 2023 the Applicant paid his arrears; not only the sum within the demand of 12 October 2022, but also costs of £295 and £6 for obtaining an official copy of entry of title.
25. On 22 May 2023 directions were given by the procedural judge towards the hearing in this matter. The judge considered the matter to be suitable for a paper determination unless either party requested an oral hearing, which neither has done.
26. At some point in time thereafter the Applicant filed in his part of the standard form Tribunal Scott Schedule, for the disputed service charge year 1 October 2022 to 30 September 2023, as follows:

Item	Cost	Tenant's Comments
Flat 4	1/3 cost	Flat 4 paying 1/3 cost
Reserve fund	£500	None set up
General repairs	£600	None carried out
Management Services	£720	High

27. The Respondent has not completed the column for landlord's comments in the Scott Schedule, but has provided a detailed response to the disputed service

charges, in the form of a 3 page letter from Foster Kemp. This is marked at the top as having been received on 3 July 2023, presumably by the Applicant.

28. On 10 July 2023 the Applicant settled a document which would appear to be his response to the Respondent's statement of case, although it is not entitled as such.

The Competing Arguments

The Applicant's proportion

29. This is not a matter raised in the Application form itself. Nor is it specifically mentioned in the Tribunal directions. The Scott Schedule details (such as they are) are set out above. The Applicant's response does not mention it being an issue either.
30. The issue of apportionment appears to have been raised by the Applicant on or about 7 February 2023 in an email timed at 16:53 to Foster Kemp, which we do not have.
31. We have the response of Foster Kemp in our papers. In that response, Foster Kemp said that they had previously advised that the first floor flats pay a higher proportion of the overall service charge budget than the ground floor flats; that they had checked this, and to be sure had engaged Kevin Lever of KDL Law, who is a specialist in leasehold matters, to confirm this; neither Foster Kemp nor the directors were responsible for the drafting of the leases.
32. In their statement of case, the Respondents add that they had provided the Applicant both the original lease and the new deed (granting a new extended term to the Applicant), and explained the situation that clause 4 of the new deed clearly states that all terms set out in the 1987 lease remain for the new term.

Reserve fund

33. In his Application form, the Applicant does not specifically mention the reserve fund, but the Tribunal notes that he alleges that when he had requested a list of planned future works, there were no details provided. In his response to the Respondent's statement of case, the Applicant complains that there was no reserve from the account set up. Hence, we assume, his comment in the Scott schedule of "none set up." He also states that he had been trying to get information about the status of the reserve fund since he received the first application for payment from Foster Kemp.
34. In an email in the Applicant's disclosure, the Respondent's agents Foster Kemp had explained that the service charges and reserves are held in one ring fenced client account with Metro Bank. Foster Kemp seemingly attached a letter from

the bank confirming that the account is ring fenced. Further, they added that they hold client money protection insurance, are registered for anti-money laundering with HMRC and are members of the property ombudsman scheme. Finally, for these purposes, Foster Kemp stated that they had built funds slowly over time and spent them to make sure the scheme is compliant with relevant fire safety and health and safety requirements, as well as try and deal with reactive works that have arisen: see email of 19 October 2022.

35. In their Statement of case, the Respondents echo this. They say the reserve is held in the service charge client account and is typically used to ensure that they have funds on account to address any exceptional costs that might arise, or to meet costs which exceed the amounts budgeted for; that is why it is referred to in the budget as a general reserve fund.
36. They refer to the December 2022 escape of water, which had led to an increased cost in insurance over and above the budgeted cost of £1000 by some £641.21; they say that drawing funds from the general reserve fund to cover this expenditure was the only way of meeting these costs without raising additional funds from leaseholders.
37. They further write that that in the period when the Applicant was not paying the demand made of him in October 2022, they needed the general reserve fund to meet ongoing costs for the scheme.

General repairs

38. In his Application form, the Applicant queries whether it would be a better option for each of the 4 flat owners to insure and do their own maintenance, given that maintenance has never been carried out by the current companies, and indeed since the building had been built in the mid 1980s, he alleges. He claims that this budgeted amount for repairs would be an unnecessary cost, with nothing to show for it.
39. In his response to the Respondent's Statement of Case, the Applicant also says that the general repairs work charges should not apply as no repairs whatsoever have been carried out on the original staircase, and the recently repaired top staircase ceiling (following the water leak) was of a very unprofessional standard; he repeats that the e-mail exchanges highlight that the building in question was never maintained, as clearly shown in his photographs.
40. In their statement of case, the Respondent states that the escape of water had been the subject of a claim under the buildings insurance policy; that the initial urgent works were covered by the general repairs provision along with a drawdown of general reserve funds. They add that they are currently awaiting the funds from the insurers, less the excess on the policy, to cover those costs. In a table they then set out costs which have been included, which we take to mean already incurred. These incurred costs include an emergency attendance following significant damage caused by the escape of water, leading to an electrical condition report to assess the state of the communal electrics (£350);

plus supply and fitting of 10 year optical smoke alarm, and replacing a conduit system removed after the flood (£228); and a faulty external light (148.50).

41. The Tribunal notes that these costs, incurred just over half way in the year 2022/2023, already exceed the budgeted cost of £600.

Management Costs

42. Foster Kemp explain in the Respondent's statement of case that they charge £720 including VAT per annum to manage the communal areas of flats 1 to 4, equating to £60 including VAT per month; they consider this to be a very competitive management fee, which would compare well when benchmarked against other block management companies. They note that the Applicant has not provided any other supporting evidence in relation to his claim that the figure for management fees is high.
43. In his Application form, the Applicant does not specifically challenge management fees. In his response to the Respondent's statement of case, the Applicant does not mention them either. We are left essentially with his bald assertion in the Scott Schedule that the fees are "high", save perhaps for some further insight in the email exchanges, wherein the Applicant alleges, "I can't see the point of your association with the building as the only thing I see is the building insurance which can easily be arranged by individuals and cheaper" and that "as a leaseholder I do have the right to terminate your services".

Determination

44. We remind ourselves that all the costs in this application are estimated costs. 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. See s.19(2) of the Landlord and Tenant Act 1985.
45. Moreover, a leaseholder may always challenge the actual costs when the landlord has given them the final account, by application under s.27A of the Act, including any challenge as to whether they were reasonably incurred, reasonable in amount or (as regards works) whether they were to a reasonable standard.

The Applicant's proportion

46. Whilst the proportion of 1/3 may seem harsh on the Applicant, the Tribunal has no jurisdiction to vary this contractual proportion, fixed as it is. The Tribunal cannot re-write the terms of the Lease on a s.27A application.

Reserve fund

47. It would appear that the Applicant's complaint is that the reserve fund is not in a separate account. Whilst this might possibly be beneficial for the leaseholder/landlord relationship in terms of greater transparency, the jurisdiction of this Tribunal under s.27A is limited to determination as to 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. See s.27A(1) of the Act.
48. There is no complaint here that the reserve fund estimate was not reasonably estimated as being likely to be incurred, or that it was unreasonable in amount, and accordingly we find that it was. The Applicant's proportion of the £500 is therefore payable, we determine.

General repairs

49. We note that the figure for the previous year was also £600. It was reasonable for the landlord to estimate that a figure for general repairs was likely to be incurred in the year ending 2023. This figure need only be reasonable. Given this, and the fact that the landlord has already incurred a greater sum than the estimate in under half a year, we consider the sum of £600 was reasonable in amount, and the Applicant's proportion is payable.
50. We understand the Applicant's concern about the state of repair of the communal parts, and his anxiety as to whether works have been of a reasonable standard. We note that the Respondent would appear to be waiting for insurers to pay out to complete the works. So, without any encouragement, we would reiterate that the Applicant has the right to challenge the quality of the workmanship when the final account is made at the end of the service charge year, if the repairs have not been completed satisfactorily.

Management fees

51. The Right to Manage Company, which has stepped into the shoes of the lessor, is entitled under the Lease to use a managing agent, and to recharge the proper fees and disbursements of the same in the general management of the building. For clarity, the Applicant alone does not have the right to terminate that managing agent's employment.
52. This is a small block, and the management fee works out at £200 plus VAT for the Applicant, given his proportion of 1/3.
53. The Applicant has not provided an alternative figures for management fees, instead making an assertion they are "high", unsupported by evidence. In *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC) the Upper Tribunal held at paragraph 28:

“Much has changed since the Court of Appeal’s decision in *Yorkbrook v Batten* but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach. In this case it might quite reasonably have taken the view that Mr Adam had failed to establish any ground for thinking the sums claimed had not been incurred or were not reasonable, which would have left only the question whether any item of expenditure was outside the charging provisions.”

54. In the Tribunal’s experience, the sum claimed of the Applicant (and in total for the 4 flats) does not seem unreasonable, even if it may be on the “high” side – therefore, we are not required to adopt a sceptical approach.
55. Accordingly, we determine that the estimated cost of the management fee for this block of £720 is reasonable, and the Applicant’s proportion is therefore payable.

Application under Section 20C/Paragraph 5A to CLARA

56. In *Tenants of Langford Court v Doren Ltd* (LRX/37/2000), HHJ Rich held:

"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 arise.....In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that makes its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a Tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them."

57. In the instant case, the Applicant has not been successful on any of his challenges. 2 were not within our jurisdiction under s.27A. One did not raise a prima facie case. The fourth was ostensibly premature. Accordingly, we do not find it just and equitable to make a s.20C order in favour of the Applicant.

Judge:

S J Evans

Date:

9/8/23

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written Application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. 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.
3. If the Application is not made within the 28-day time limit, such Application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the Application for permission to appeal to proceed despite not being within the time limit.
4. 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 1

Landlord and Tenant Act 1985

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 20C

- (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 a court, a First-tier Tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, 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 or any other person or persons specified in the application.
- (2)

(3)

(4) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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.