



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

Case Reference : **MAN/00BY/LSC/2021/0072**

Property : **Apartment 7, 5, Hardman Street
Liverpool L2 9AS**

Applicant : **Kate Sullivan**

Respondent : **Zoe Ashton Limited (represented by mr D
Green of Counsel)**

**Type of
Application** : **Reasonableness of Service Charges Sections
20C and 27A Landlord and Tenant Act 1985**

Tribunal Members : **Mr J R Rimmer
Mr A Hossain BSc, MRICS**

Date of Order : **10th August 2023**

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Order : **Those service charges set out and considered herein and disputed between the parties are reasonably incurred at reasonable cost for the reasons set out.**

Preliminary

1. Apartment 7 is one of several contained within a building at 5, Hardman Street, Liverpool and contributes to the service charge costs of the building under the terms of a lease dated 5th December 2005 and made between Property Regeneration Commercial Limited (1) and the Applicant (2). They are no longer parties to the lease, the landlord's interest having passed to the Respondents and Miss Sullivan has now disposed of her interest, although she was the leaseholder at the time the issues now before the Tribunal arose.
2. The Property at 5, Hardman Street comprises two commercial units on the ground floor and nine residential flats occupy the upper floors. The building is also known by the name of St Lukes Court.
3. Within the lease the service charge is described as the costs, expenses and outgoings relating to the provision of the matters found in Part 1 of the 5th Schedule to the lease. These are apportioned in accordance with the Seventh Schedule to the lease which has been determined by the Respondent as being 1/9th of the charges relating to the residential aspect of the building and 1/11th of the charges relating to the whole building, including the commercial parts.
4. The lease contains a covenant at Clause 2(a)(1) to pay these charges as part of the rent.
5. The lease also contains a number of provisions that deal with the certification of the charges prior to apportionment and for the collection and repayment of charges in the event of the actual costs incurred differing from the charges levied on the basis of the budget for any particular year.
6. The Tribunal has been provided with a copy of the lease for flat 2 which grants a term of 125 years from 12th March 2017 at a premium and an initial rent of £349.00 per annum. There is a mechanism for increasing the rent within the lease. The lease contains a covenant by the tenant at clause 2.3 to meet the costs of the services provided in accordance with Schedules 7 and 8. The charges are to be apportioned on a basis assessed by the landlord, as noted in paragraph 3, above.

7. The Applicant has provided a statement of case that raises a number of issues in respect of the service charges relating to the period from 2012-2017 and thereafter subsequent matters relating to charges in later years. These are set out in due course below.

8. In view of the nature of the concerns raised by the Applicant and the charges to which they related. It was not considered necessary on this occasion that an inspection of 5, Hardman Street by the Tribunal should take place.

9. It should also be noted that the original application invited the Tribunal to consider administration charges in a similar manner to the way in which it considers service charges, under its powers conferred by paragraph 5, Schedule 11, Commonhold and Leasehold Reform Act 2002. None of the charges to which the attention of the Tribunal was in due course drawn was an administration charge, as opposed to a service charge and it proceeded in relation to service charges only.

Hearing

10. The Tribunal did conduct a video hearing on the morning of 14th July 2023 to hear from the parties as the issues that remained outstanding between them.

The law

11. It is useful here to set out the provisions of the Landlord and Tenant Act 1985 (“The Act”) that relate to the matters raised by the Applicant.

Section 18(1) of the Act provides the definition of a service charge as ...

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, improvement, 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

12. The law relating to jurisdiction in relation to service charges, falling within Section 18, is found in Section 19 of the Act which provides:

(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 or the carrying out of works, only if the services or works are of a reasonable standard.

13. Further, Section 27A Landlord and Tenant Act 1985 provides:

(1) An application may be made to a (First-tier 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

and the application may cover the costs incurred in providing the services etc and may be made irrespective of whether or not the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)

- (4) No application under subsection (1)...may be made in respect of a matter which-
 - (a) has been agreed or admitted by the tenant

- (5) but the tenant is not to have been taken to have agreed or admitted any matter by reason only of having made any payment

14. Section 21B Landlord and Tenant Act 1985 provides:

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) ...
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) has not been complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

15. Section 20C Landlord and Tenant Act 1985 provides that:

- (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... the First-tier Tribunal... 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) The application shall be made...
 - (ba) in the case of proceedings before the First-tier Tribunal, to the Tribunal
- (3) The...tribunal to which the application is made may make such an order on the application as it considers just in the circumstances.

Evidence, Submissions and determination

16. Both parties provided statements of case to the Tribunal and a substantial bundle of documents had been supplied to it. These proved to be of considerable assistance in identifying the subject matter of the dispute and the parties are to be thanked for their efforts in this regard.

17. It is useful to consider at this point one preliminary matter raised by the Applicant. The Respondent was late in complying with a direction provided to it. She was of the view that she was entitled to seek to have the Respondent's case struck out. The Respondent's submissions were late and it made an application for an extension of time for compliance and had provided its statement by the time the application became before the Tribunal. In the circumstances the Tribunal explained to the Applicant that although she had been correct in pointing the delay out, steps were taken by the Respondent to remedy the position and it was not in those circumstances appropriate to consider striking out the Respondent's case, or otherwise barring the Respondent from further participation in the proceedings, given the short time within which the required information was then provided.

18. Thereafter the Tribunal was able to explore with Mr Green, for the Respondent, and the Applicant the issues that had arisen in the course of their submissions and it would appear most useful to deal with each in turn in its entirety.

19. The effect of Section 21B Land Tenant Act 1985

The Applicant avers that Section 21B was not complied with in the period from 2012 to 2017 in that no statement of rights and obligations accompanied the service charge demands made by the Respondent. The charges were not therefore payable.

Although the Respondent disputes the fact that statements did not accompany demands this is not the fundamental issue. The effect of Section 21B is to prevent the recovery of service charges whilst there is a breach of the Section. It is not a provision that entitles a leaseholder to recover payments that have been made.

In the Applicant's case she has made payment of those charges when she cleared all outstanding arrears in order to effect the sale of her apartment. Those payments are not now recoverable. In real life Section 21B does not assist those leaseholders who make payment, only those who refuse, within the terms of the Section.

20. Fraud in respect of invoices numbered 0005 for 2012

There are two copies of this invoice: firstly, one for £600.00 relating to ground rent and service charge for the year and secondly, one including an additional amount of £1643.77. The discrepancy is explained by the second amount relating to arrears in respect of charges for the previous year after a final account had been taken.

This explanation defeats the allegation of fraud. The Respondent appears to be upset by the allegation. It may well be the case that the Applicant would have been happier if that explanation had been proffered sooner.

21. Effect of Limitation Act 1980

The Applicant suggests that by virtue of this Act she is able to reclaim a sum which she calculates at £4275.31, She is referring to Section 19 Limitation Act 1980 which prevents recovery of a sum forming rent after a period of 6 years (The service charge in relation to her flat is referred to as additional rent). Although she refers to Section 2 of the Act, the Tribunal and the respondent are aware of the section to which she should be referring.

Again, however, she is not assisted by Section 19. It relates to preventing action for the recovery of rent, (or service charges forming part of rent), not to recovering rent already paid. The Applicant is effectively in a similar position as in paragraph 14, above. She would have a defence to efforts by the Respondent to recover outstanding monies. She is not given a cause of action to recover monies already paid.

22. Outstanding account to Andrew Louis of £1,485.08

Andrew Louis was the previous agent managing the property on behalf of the Respondent. The Applicant was concerned about an outstanding debt that she did not believe she owes.

She doesn't. It may simply be that an unfortunate timescale adopted by the Respondent forwarded an old invoice, duly paid was received by her after an indication that all outstanding accounts had been settled.

23. Data breaches by the Respondent

These were not considered by the Tribunal, if such breaches have occurred then the Applicant's remedy lies elsewhere.

24. Management fees

These were of considerable concern to the Applicant. Miss Sullivan takes the view that the management fee recoverable by the Respondent is a maximum of 10% of the service charge outgoings this is provided for by Schedule 5 paragraph 23 of the lease.

The Respondent takes the view that the managing agents fees are recoverable as part of the cost of the services to which 10% could notionally be added. To the extent that the managing agent's fees are recoverable as an integral part of the service charge, rather than a percentage add-on and that appears to be what is provided for in paragraph 23 in that it refers to the 10% being an addition to the preceding paragraphs which includes paragraph 4.2, it is the Tribunal's task to determine if those costs are reasonably incurred at reasonable cost. See section 19(1) of the Act, paragraph 9 above.

In the years from 2012-2017 they appear to amount to £1,100.00 for the whole building. Or £100.00 for each tenant under the 1/11th apportionment.

To the extent that the Tribunal is very familiar with fees for managing agents, whether calculated on a percentage basis or fee basis, the latter being preferred by the Royal Institution of Chartered Surveyors, an amount of £100.00 per flat, per year is considered reasonable and therefore appropriate.

The same principle applies, in the Tribunal's mind to the subsequent addition by the Applicant of a claim in relation to the charges for 2018-20. If, which is not necessarily accepted by the Tribunal, the Applicant was allowed to extend the scope of her claim to those years the overall managing agents fees are also reasonable in those years.

25. Fire alarm costs

Upon receiving further information as to how the fire alarm charges had been incorporated into the service charge accounts the Applicant did not seek to pursue this matter before the Tribunal.

26. Section 20C Application.

Although an application under section 20C of the Act is before the Tribunal the section can have no relevance to this case. The essence of Section 20C is to avoid professional fees incurred in tribunal proceedings on behalf of the landlord from being added to service charges in future years in respect of the Applicant (and she alone in these proceedings as the application is made only on her own behalf). As Miss Sullivan is no longer a leaseholder, responsible for the payment of the service charge for flat 7, those charges may not be passed on to her in any event.

**Tribunal Judge J R Rimmer
10 August 2023.**