



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

Case reference : **LON/OOBA/LSC/2023/0034**

Property : **Flats 1 and 2 Hamilton Road, London
SW191JG**

Applicant : **Allan Meldrum and Erica House**

Representative : **In person**

Respondents : **Assethold Ltd/Eagerstates**

Representative : **Richard Granby of Counsel**

Type of application : **Determination of payability and
reasonableness of service charges pursuant
to s27A LTA 1985**

Tribunal : **Judge Shepherd
Kevin Ridgeway MRICS**

Date of Decision : **23rd August 2023**

Decision

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1. This case was heard on the on 10th July 2023 . The Tribunal is grateful to the Lessees (The Applicants) for preparing the bundle and Scott Schedule. They

represented themselves at the hearing. The landlord (The Respondents) were represented by Richard Granby of Counsel.

2. The Applicants are leaseholders at Flats 1 and 2 Hamilton Road, London SW191JG (“The premises”). The premises consist of a three floored property with a commercial unit on the ground floor and residential use above.
3. The issues between the parties were helpfully summarized by the Applicants in a Scott schedule. Service charges were challenged for the period 2021- 2022. The Applicants initially challenged estimated costs for 2023 but decided to withdraw the challenge however this does not prejudice their ability to challenge the actual costs once they are known.

The relevant law

4. The law applicable in the present case was limited. It was essentially a challenge to the reasonableness of the costs. There was no challenge in relation to payability under the lease, an alleged failure to consult or limitation.
5. The Landlord and Tenant Act 1985,s.19 states the following:

19.— Limitation of service charges: reasonableness.

(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;

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.

....

6. The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

27A Liability to pay service charges: jurisdiction

(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]² 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on [the appropriate tribunal]² in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

The hearing

7. In relation to the insurance charge challenged for 2021- 2022 the Applicants submitted alternative quotes from Landsdowne Insurers (£280) and First Point (£788.29). Mr Granby said the Respondents' policy was a block policy with Aviva. He challenged the Applicants' comparators and said they were not like

for like. First Port did not provide alternative accommodation and there was no employers liability insurance.

8. The Applicants challenged the window cleaning charge for 2021- 2022 (£252). They provided an alternative quote of £60. The window cleaner has eight windows to clean. Mr Granby maintained that the cost was reasonable in context.
9. The Applicants challenged the cost of the Fire Health and Safety Assessment as the assessment did not need to be carried out every year. Mr Granby said the assessment was carried out every two years within fire brigade guidelines.
10. The Applicants challenged the cost of the repair of a hole (£750). This was a hole in the brickwork that birds were nesting in. The Applicants said it had been there since prior to their purchase and that they should not be responsible for the cost. They sought comparable costs from Reynolds Construction (£480 inc VAT). Mr Granby said the cost was reasonably incurred.
11. The Respondents conceded the fact that felt roof repairs had been inaccurately accounted for. The sum due should be £3900 and the relevant amendments to the service charge account need to be made.
12. The Applicants challenged the cost of a door lock (£373.56). Mr Granby said the new lock had been recommended in a fire risk assessment and was reasonable.
13. The Applicants challenged the cost of a fire door inspection (£187.93) questioning if it was actually necessary.

14. The Applicants challenged the charge for a visit by a pest control company because the cost had already been met by Erica House and the landlord had been told of this.
15. The Applicants challenged an internal redecoration cost on the basis that the sum should be apportioned three ways rather than two.
16. The Applicants challenged the cost of the inspection by a building network operator (£198). They said an annual visit was excessive. Mr Granby maintained it was a prudent expenditure.
17. The Applicants also challenged a visual inspection to ensure the safety of electrical items in the common areas. The test was failed in the first instance because the contractor could not gain access because the leaseholders had not been told of the visit.
18. The Applicants challenged the cost of a fire and safety test of the common areas (£48). Mr Granby maintained that this was a reasonably incurred cost.
19. Finally, the Applicants also challenged the management fee for the period 2021-2022 (£ 878.40). They said that the high fee was not reflected in the service received. They said there was poor communication with the Respondents. Mr Granby said there were no comparators provided and the charges were within the market band for the area.

Determination

20. Taking each of the contested issues in the Scott Schedule in turn:

Insurance (£2609.78)

21. The comparators put forward by the Applicants were not strictly like for like and Aviva are a recognised firm. In addition, the Respondents are entitled to use block insurance indeed it is prudent to do so. Nonetheless we consider the cost is too high and we reduce the amount due to £1500.

Window cleaning (£252)

22. We accept the comparator provided by the Applicants and reduce the sum due to £60.

Fire Health and Safety assessment (£400.25)

23. We consider this charge is excessive as there was only one corridor to inspect. We allow £200.

Hole repair (£750)

24. The sum was recoverable as the nesting of birds was causing an ongoing problem and had to be dealt with. Nonetheless the sum claimed is excessive. We allow £480.

Additional insurance (£121.71)

25. This sum is disallowed. There was no evidence that it had been paid.

Door lock (£373.56)

26. This sum is allowed.

Fire door inspection (£187.93)

27. The inspector made an abortive visit which was not the fault of the leaseholders who had not been told of the visit. Accordingly, we disallow the cost of the abortive visit but allow the remainder of the cost.

Pest control (£ 480)

28. We accept that this sum was paid by Ms House and cant be recovered from the service charge.

Redecoration cost (£650)

29. This sum is due. We were not provided with the commercial unit's lease and could not therefore assess the apportionments.

BNO annual inspection (£198)

30. This sum is allowed.

Electrical visual (£304.42)

31. This is a call out charge only following an abortive visit for which the leaseholders bear no responsibility. The sum is disallowed in full.

Fire health and safety (£48)

32. No invoice was provided. The sum is disallowed.

Management charge (£878.40)

33. We accept that the Respondents are entitled to use Eagerstates and charge for their services even though they are closely related entities. This is a small property therefore its difficult to achieve economies of scale. Nonetheless the leaseholders should expect a reasonable level of service. Here the Applicants

demonstrated that the level of service was poor with bad communication as evidenced by the attempt to recharge for the pest control cost and failing to notify leaseholders of contractor's attendance at the premises but still seeking to recover the cost. Although the charge is reasonable in normal circumstances, here the performance was poor and we allow £450.

s.20C Landlord and Tenant Act 1985

34. The Tribunal will exercise its discretion and make an order under s.20C preventing the Respondents from claiming their legal fees through the service charge. The Applicants' challenge was validly brought and they won on a number of challenges. The Respondents are also ordered to reimburse the Applicants with their application and hearing fees totalling £300.

Judge Shepherd

23rd August 2023

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 Tribunal 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 for 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.