



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

Case Reference: MAN/36UG/LSC/2022/0004

Property: Kenwood House, 83-85 Queen's Parade,
Scarborough, North Yorkshire, YO12 7HH

Applicants: Kenwood House RTM Company Ltd

Respondent: Mr Paul Ablett

Case number: MAN/

Type of Application: S27A Landlord and Tenant Act 1985

Tribunal Members K M Southby (Judge)
J Platt (Expert Valuer Member)

Date of Decision 23 January 2023

DECISION AND REASONS

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DECISION

- 1. The Respondent is to pay to the Applicant the sum of £3736.45 in respect of the on-account costs for the service charge years 2018-2022**
- 2. No determination is made in respect of the actual costs payable for the service charge years 2018-2022**
- 3. There is no order as to costs**

BACKGROUND

1. The Tribunal has received an application under s27A of the Landlord and Tenant Act 1985
2. There was no inspection of the property
3. The application before the Tribunal was for the determination of the reasonableness and payability of service charges for the years 2017 to 2022, although the detail in the papers makes it clear that in fact the application is for 2018 to 2022 only. The Tribunal notes that the previous determination in case MAN/36UG/LSC/2018/0024 was for the years 2015 to 2018. However, the Tribunal declined to make a determination in respect of 2018 previously due to the absence of a budget for that period. The Tribunal notes that *'This however does not preclude the final service charge accounts for 2018 being the subject of future scrutiny as no determination has been made in this respect.'* We are therefore satisfied that we are being asked to determine the period 2018 to 2022 and that the reasonableness and payability of the service charges for these years have not previously been determined and therefore we have jurisdiction to do so.

THE PROPERTY

4. The Property is a mid-terrace double fronted property comprising 9 apartments over five floors. The top four floors comprise two apartments and the basement comprises one apartment occupied by the Freeholder. The property fronts onto the road at both sides, and has a communal entrance hall, lift, and exterior paving and small grassed area.
5. The Tribunal has been provided with plans which show that there is a shared entrance hall and staircase. The Tribunal has also been provided with the previous Tribunal decision from 2019 which records that at the inspection carried out at that time the Tribunal were shown the railings on the balcony outside Mr Ablett's flat. These were observed to be severely rusted and in a poor state of repair.

THE LEASE

6. The Tribunal was provided with a copy of the Applicant's lease. The relevant provisions of the Lease for the purposes of the Tribunal are as follows:

(1) *In this Lease the following expressions shall have the following meanings:*

- a. *“The Building” shall mean the property known as Kenwood House 83/85 North Marine Road Scarborough aforesaid consisting of nine flats*
- b. *“The Demised Premises” shall mean ALL THAT flat known as Flat Number [] aforesaid situate on the [] floor of the Building and shown edged red on the plan annexed hereto including*
 - i.
 - ii.
 - iii.
 - iv. *The windows window frames glass sash cords doors frames pipes and electrical and heating installations in the Demised Premises*
- c. *“The Other Flats” shall mean the other flats in the Building not demised by this Lease*
- d.
- e.
- f.
- g.
- h.
- i. *“The Service Expenses” shall mean the costs expenses outgoings and matters set out in the Third Schedule hereto*
- j. *“The Common Parts” shall mean all parts of the Building apart from the Demised Premises and the Other Flats and including (but without prejudice to the generality of the foregoing):*
 - i. *The entrance hall staircases passages lift and landings of the Building*
 - ii. *The front paths front steps the car parking area and bin storage area of the Building and the boundary walls thereof (so far as the same belong to the Building)*
 - iii. *The roof and roof voids of the building and the basements and foundations thereof*

- (2) (a) *The service rent shall consist of one ninth of the service expenses*
(b) *The Service Expenses for each calendar year shall be estimated by the Lessor’s managing agents...as soon as practicable after the beginning of the year and the Lessee shall pay the contribution on the first day of January in that year*
(c) *As soon as reasonably may be at the end of each calendar year when the actual amount of the Service Expenses for that year has been ascertained the Managing Agents...shall give notice thereof to the Lessee and the Lessee shall forthwith pay the balance due to the Managing Agent...within seven days after being demanded or be*

credited in the books of the Managing Agents...with any amount overpaid.'

The Third Schedule

- 1. The expense of maintaining repairing redecorating and renewing the Common Parts*
- 2. The expenses of lighting and cleaning the entrance hall lift staircases passages and landings of the Building*
- 3. The expenses of maintaining the lift at the Building EXCEPTING that the Basement Flat Number 1 and the Ground Floor Flats 2 and 3 shall not be responsible for any proportionate part of such maintenance thereof*
- 4. The expenses of decorating the exterior of the Building heretofore or usually painted*
- 5. All rates taxes outgoings (if any) payable in respect of the Common Parts*
- 6. The costs of insuring the Building against the Insured Risks*
- 7. The fees disbursements paid to any managing agents appointed by the Lessor in respect of the Building and in connection with the collection of rent and service rent from the Lessee and from the lessees of the Other Flats*
- 8. The fees and disbursements paid to any accountant solicitor or other professional person in relation to the preparation auditing or certification of any accounts of the costs expenses outgoings and matters referred to in this Schedule and the rents and service rents reserved by this Lease and the lease of the Other Flats*
- 9.*
- 10.*
- 11. Such sum as shall be estimated by the managing agents or if none the Lessor to provide a reserve to meet part or all of all or some or any of the costs expenses outgoings and matters mentioned in the foregoing paragraphs of this Schedule which the Managing Agents or if none the Lessor anticipate will or may arise during the following three years and the reserve fund shall be placed on an interest bearing Bank or Building Society Deposit Account*
- 12. So long as the Lessor does not employ managing agents he shall be entitled to add the sum of Fifteen per cent to any of the above items for administration expenses.*
- 13. All such sums as may be paid by the Lessee being sums mentioned in paragraph 11 of this Schedule shall on payment be credited to him in the books of the managing agents or if none of the Lessor and shall be held in trust for him until applied towards the Lessee's contributions towards the costs expenses outgoings and matters mentioned in paragraphs 1 to 9 of this Schedule and all such sums only be so applied*

THE LAW

7. S47 of the Landlord and Tenant Act 1987 states as follows:
Landlord's name and address to be contained in demands for rent etc.
(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
(a) the name and address of the landlord, and
(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.
(2) Where—
(a) a tenant of any such premises is given such a demand, but
(b) it does not contain any information required to be contained in it by virtue of subsection (1),
then (subject to subsection (3)) any part of the amount demanded which consists of a service charge (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.
8. Section 27A(1) of the 1985 Act provides:
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.
- The Tribunal is “the appropriate tribunal” for these purposes, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
9. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It 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.

In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.

10. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:

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.

ISSUES

11. The issues the Applicants have raised before the Tribunal for determination are as follows:

- a) Determination of Service Charge for 2018, 2019, 2020, 2021 and 2022

HEARING

12. Having reviewed the written evidence and noted the parties’ consent, the Tribunal concluded that it is able to decide the matter without a hearing.

EVIDENCE

13. The Applicant claims that the Respondent owes £5172.52, of which £3736.45 is comprised of the service charge on account demands for 2018 to 2022 and £1436.07 are additional charges for works carried out during the years in question. The Respondent accepts that he has not paid any service charge for this period.

	Date Payment Due	Service charge on account demands	Addition major works/charges demanded during the year
2018	1 January 2018	718.14	661.95
2019	1 January 2019	714.41	
2020	1 January 2020	750.55	157.46 + 588.89 + 22.77
2021	1 January 2021	730.57	
2022	1 January 2022	822.78	

14. The Lease states at Clause 2 that
‘(b) The Service Expenses for each calendar year shall be estimated by the Lessor’s managing agents...as soon as practicable after the beginning of the year and the Lessee shall pay the contribution on the first day of January in that year

(c) As soon as reasonably may be at the end of each calendar year when the actual amount of the Service Expenses for that year has been ascertained the Managing Agents...shall give notice thereof to the Lessee and the Lessee shall forthwith pay the balance due to the Managing Agent...within seven days after being demanded or be credited in the books of the Managing Agents...with any amount overpaid.'

15. It is clear from the documentation that notwithstanding the clarification set out in the previous Tribunal decision, the Lease has not been administered in the manner set out in the Lease – or if it has, the information to support this has not been provided to the Tribunal.
16. The Applicant has provided to the Tribunal the service charge budgets and on account demands for the years 2018 – 2022 – i.e. documents produced in accordance with clause 2(b) of the Lease.
17. The Respondent does not, in his witness statement, suggest that the sums set out in the budget which form the basis for the on account demands are unreasonable. We have considered these amounts and in our view considering both the specific requirements of this particular property and our knowledge of an appropriate service charge for a property of this type, we consider the budget to be reasonable, to be properly demanded in accordance with the terms of the Lease and to be payable by the Respondent on 1 January in each of the years 2018-2022 as detailed within the above table, in accordance with the terms of the Lease.
18. For the avoidance of doubt, the structure of the payment mechanism for Service Charges under the Lease is that an estimated demand is provided at the start of the year and is payable by the Lessee. This is to ensure that there are funds available for the actual expenditure to manage and maintain the Property. It is not open to the Lessee to simply decline to pay this sum when properly demanded as in this case.
19. Clause 4(a) of the Lease is explicit on this point and includes a Lessee's covenant *'to pay the Rent and the Service Rent during the said Term at the times and in the manner aforesaid without any deduction.'*
20. However, there is no evidence provided to the Tribunal that the second stage of the process has taken place – i.e. the provision of a balancing statement which would either require payment by the Lessee of additional sums if actual expenditure had exceed that budgeted, or would result in a crediting back to the Lessee if the Budget exceeded the sums spent. It is at this stage that the analysis of supporting invoices to justify the levying of additional charges or the requirement to credit back sums paid would be expected to be possible. This stage is entirely missing from the information provided to the Tribunal.
21. The requirement for this second stage is further made explicit as a Lessor's covenant at clause 5(h) *'to supply to the Lessee not less frequently than once in every year a summary of the Service Expenses for the previous calendar year which summary shall also incorporate a statement of the amounts (if any) standing to the credit of the Lessee in the books of the Managing*

Agents...pursuant to paragraph 12 of the Third Scheduler hereto after deducting any amounts appropriate in accordance with the said paragraph 12 and of the Lessee's share of the amount of interest (if any) credited to the reserve fund referred to in paragraph 10 thereof during the year covered by the summary.'

22. At present therefore we can only make a determination on the on-account costs as the other charges have not been demanded either as on-account costs as part of the budget or captured and demanded within the end of year statements as part of the annual balancing exercise. We therefore make no finding as to the reasonableness and payability of the items in Column 2 of the table above, as in our view they have not as yet been correctly demanded.
23. It is of course open to the parties to progress resolution of the items in Column 2 by the Applicant issuing demands in a form which complies with the mechanism set out under the Lease supported by the relevant invoices. It is then of course a matter for the parties whether these charges are accepted or subject to challenge and for the avoidance of doubt, this decision does not preclude either party seeking a determination of the reasonableness and/or payability of any of the charges listed in Column 2 or the reasonableness of the sums actually expended and demanded for the items listed within column 1, as they have not been considered as part of this decision.
24. We note that the Respondent's witness statement raises a number of concerns and questions about the specific sums listed under Column 2. For the reasons above, we do not make any findings in respect of these assertions and it is open to Mr Ablett to raise any such concerns in due course if the sums are properly demanded. Until that time, for the avoidance of doubt, the Respondent's obligation is to pay the sums listed under Column 1.
25. Mr Ablett also raises a number of concerns about issues of fraud, dishonesty, collusion and criminal intent. We have considered Mr Ablett's written representations with care but we find that they do not assist us in respect of the specific issues of reasonableness and payability of the service charge for 2018-2022 which are before us and therefore we do not address these claims any further on this occasion.
26. Mr Ablett also raises the issue of set-off against decorating costs – as this relates to sums which we have determined above have not as yet been properly demanded this is not an issue for the Tribunal to consider at this time.