



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

Case Reference : **MAN/00CG/LSC/2023/0010 and 0014**

Property : **KELHAM WORKS, 4 ALMA ROAD, SHEFFIELD,
S3 8SA
(1) Apartment 101
(2) Apartment 110**

Applicants : **(1) JEMIMA MUSSON
(2) LISA ANN PRECIOUS**

Respondent : **GUNES ATA**

Type of Application : **Application for orders under sections 27A and
20C, Landlord and Tenant Act 1985 and
paragraph 5A of Schedule 11 to the Commonhold
and Leasehold Reform Act 2002**

Tribunal Members : **A M Davies, LLB
S Kendall, MRICS**

Date of Decision : **6 November 2023**

DECISION

1. The service charge payable in respect of the apartment of each of the Applicants at Kelham Works for the years ending 31 December 2021 and 31 December 2022 is the amount shown in the service charge account served on them by the Respondent for each of those years.
2. To the extent that the Applicants' leases might otherwise enable the Respondent to add his costs of this application to their service charge accounts, he may not do so.
3. Should the Applicants' leases provide for the imposition of administration charges, no administration charge may be applied to the Applicants' service charge accounts in relation to their withholding service charge payments pending receipt of this determination.

REASONS

1. The Applicants are long leaseholders of apartments at Kelham Works, Alma Road, Sheffield ("the Property"). Mrs Musson owns flat number 101 and Mrs Precious owns flat number 110. The apartments are sub-let. The Property was constructed and occupied from 2017. The Respondent is the freeholder and appointed his company Fix1st Limited ("Fix1st") to manage the Property on his behalf. The work of management was carried out by the Respondent's daughter Ms Jade Ata. In January 2023 management of the Property was transferred to a Right to Manage Company which appointed Horizon as the leaseholders' property manager.
2. The Applicants queried items on the Respondent's annual service charge account and required further information prior to agreeing to pay the sums demanded for the years ending 31 December 2021 and 2022. Information provided by the Respondent being in their view insufficient, they applied to this Tribunal for a determination as to the amount and payability of service charges under the terms of their leases. The Applicants' cases to the Tribunal are identical and the Tribunal ordered that the applications be dealt with together.

THE LAW

3. Section 18(1) of the Landlord and Tenant Act 1985 (“the 1985 Act”) defines a service charge as
 - “18(1) 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.....
 - (3) For this purpose –
 - (a) “costs” includes overheads.....”
5. Section 19 of the 1985 Act limits service charges as follows:
 - “(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.”
6. In the case of *Schilling v Canary Riverside Development PTD LTD* [2005] EW Lands LRX_26_2005 the leaseholders appealed against a first-tier tribunal decision which, in respect of some 50 items of service charge costs, stated “*No sufficient evidence was furnished to enable the Tribunal to conclude that the Applicants’ challenge to this item was justified.*” The appellants claimed that the respondent landlord was responsible for explaining and justifying these items on the service charge account. His Honour Judge Michael Rich QC, having considered *Yorkbrook Investments Ltd v Batten* [1985] 2EGLR 100, confirmed at paragraph 14 as follows: “... *if the tenant seeks a declaration [that a service charge is not payable] he must show that either the cost or the standard was unreasonable*” The rule is, that a leaseholder seeking to challenge service charges has the initial responsibility of demonstrating that they appear to be unreasonable. Once this is shown, the burden of proof shifts so that the reasonableness of those service charges must be proved by the landlord.

7. In considering what service charges are payable, the Tribunal first examines the wording of the lease which sets out the contractual obligations entered into by the landlord and tenant.

THE LEASES

8. The Applicants' leases have the same definition of "Service Charge", namely *"such proportionate part (calculated to provide the Landlord with 100% reimbursement when combined with the service charge contribution(s) attributable to other parts of the Building whether they are let or not) to be conclusively determined from time to time by the Landlord or the Surveyor (provided always that in determining the Service Charge...the Landlord or the Surveyor shall be entitled... in relation to any expense falling to be apportioned between the Lessees in the Building to take account of the respective benefits accruing to such Lessees from such expense and to adjust the proportional part of such expense to be borne by the Tenant as the Landlord or the Surveyor shall properly determine) of all costs and expenses...incurred or expended by the Landlord in connection....with the heads of expense for the Building referred to in the Fourth Schedule Parts 2 and 3..."*
9. The Applicants' leases differ as regards the procedure governing service charge accounts. Both leases provide at paragraph 1.1 of Schedule 4 that the tenant is to pay an advance yearly payment notified to him by the Landlord, the payment to be made quarterly on the usual quarter days. Mrs Precious' lease provides that such advance payment shall be equal to one sixth of the anticipated cost relating to the structure of the Building and one quarter of the cost incurred in respect of all other matters. Mrs Musson's lease provides that the payment is to be equal to 1/56th of the landlord's anticipated costs. In practice, as there are 56 apartments in the Property the Respondent has calculated each of the Applicant's contributions as 1/56th of the whole.
10. Paragraph 1.2 of Schedule 4 to each of the leases provides that the Tenant shall make a further payment within 14 days of demand to meet his contribution to the actual cost incurred by the Landlord in the previous year. In the event that the actual cost incurred is lower than the anticipated cost, the difference is credited to the Tenant's service charge account. The leases provide that *"a true copy of the statement of the Service Charge certified as such by the Surveyor or the Landlord shall in the*

absence of manifest error be conclusive evidence of the amount of the Service Charge” and further provides that the Tenant may within 2 months after receipt of the Service Charge statement request in writing an opportunity to inspect “vouchers invoices and receipts evidencing the calculation of the Service Charge.”

THE PROPERTY

11. The Property was purpose built in or about 2017 and comprises 5 floors, the fifth floor being partly a roof terrace. On the ground floor the building includes a commercial unit together with the following facilities for residential occupiers: a small gym, laundry with three washers and three dryers, bin store and plant room. There is one lift and a staircase to all upper floors. Each upper floor contains two corridors off the landing and self contained apartments of various sizes. There is a bike store accessed externally. The commercial unit does not share any services with the residential part of the building.
12. Heating and hot water are provided by 3 auger-fed biomass boilers in the plant room. There is no gas supply. There is a CCTV system which is monitored from offices of the Respondent.
13. The Property is situated in an area of Sheffield which attracts young professionals. Although it is some distance from the university, it appears that some of the apartments are let to students.

THE HEARING

14. The Applicants seek a determination of the service charges payable for the years 2021 and 2022. The applications were heard by video link. The Tribunal did not inspect the Property but had a comprehensive bundle of documents provided by the parties. The Applicants appeared in person and the Respondent was represented by Ms Grey of counsel. The Respondent was unable to attend the hearing otherwise than by telephone connection, which was acceptable to the Tribunal as he did not intend to give oral evidence to support his written witness statement. Ms Ata gave evidence on behalf of the Respondent.

15. At the outset of the hearing the Applicants sought to have additional documents added to the bundle. These were said to be an interim service charge report from Horizon and a witness statement from a director of Horizon. These documents had been sent to the Respondent on 1st November, giving the Respondent not more than 3 days to consider and respond to them. Ms Grey objected to the documents being accepted in evidence. The Tribunal determined that these additional documents were not to be added to the bundle and that the Applicants were not to adduce the evidence in them for the following reasons: (1) they had been produced too late for the Respondent to be able to deal with them properly prior to the hearing, although a sample of current service charges must have been known to Horizon for some time (2) the Horizon director who had made a witness statement was not present to support it (ie to answer questions about it) and (3) costs incurred by Horizon for part only of 2023 were in any event unlikely to have any useful bearing on the issues before the Tribunal. Despite this ruling Mrs Precious several times quoted from the barred documents during the hearing, but the information thus provided has not been taken into account by the Tribunal.

16. The Applicants referred to a case heard in September 2023 by the same tribunal members. The case related to an application for determination of service charges at the Property, brought against the Respondent by two other leaseholders. The Applicants told the Tribunal that they intended to rely on the evidence in that case. The Tribunal explained that the circumstances of this present hearing were very different: in the previous case the Respondent had been debarred from producing any evidence and the decision was made solely on the basis of papers produced by the applicants – there had been no hearing. The previous case was not binding on the Tribunal, who would be hearing this application afresh.

THE APPLICANTS' CASE

17. The Applicants accepted all service charges relating to sums paid to service providers other than Fix1st, the company owned by the Respondent. No evidence was adduced that the relationship between Fix1st and the Respondent was a sham. The Applicants did not challenge the Respondent's evidence that Fix1st operated a website to advertise its services and provided estate management services to people other than the Respondent.

18. During the hearing the Applicants were taken through each item of the Scott Schedule they had prepared, and were invited to explain why they objected to each item of expenditure paid to Fix1st. In every case, the Applicants said that they had no evidence as to whether the work had been done or not, or as to the standard to which it had been done. They acknowledged that they had no evidence as to the proper costs of any of the work, and no alternative quotations were produced. The Applicants produced some photographs said to show areas of dirt or neglect and litter at the Property, but they were unable to say when the photographs had been taken save that they dated from 2021. They confirmed that the photographs were all taken by a person not present at the hearing, and all on one day. They produced no witness statements from tenants. The Applicants produced no direct evidence that Fix1st had overcharged for any of the work, but relied on the service charge budget for 2023 prepared by the new managers Horizon which, for some items, anticipated a considerably lower cost.
19. The Applicants' case rested on the fact that they did not trust the Respondent or Ms Ata, and that the Respondent had not provided them with job-sheets, hourly rates etc which would have enabled them to examine the service charge accounts more minutely. The source of the Applicants' mistrust was a history of disputes over Ms Ata's management of their sub-lettings at the Property. Similar problems arising between the Respondent and Ms Ata and a number of the long leaseholders had led in 2022 to a transfer of management functions to the leaseholders' RTM company, of which Ms Precious was a director.

THE RESPONDENT'S CASE

20. The Respondent's witness Ms Ata managed the Property for her father from 2017 until January 2023. Her witness statement amplified the responses set out in the Scott Schedule. The bundle contained all the service cost invoices, including those of Fix1st.
21. Ms Ata explained that in order to attract good rents her aim had been to maintain the common parts of the Property to a high standard. As the apartments were generally let to young people and many of them moved on after relatively short tenancies, the manager had to deal with leaks, the after effects of parties on the roof terrace and elsewhere, and damage to decorations caused by leaving and incoming tenants.

There was a problem with unauthorised entry by homeless people, and Ms Ata said that on two occasions there had been police raids with consequent damage to the front door. Consequently the common parts of the Property, all painted white, were redecorated quarterly. The bin area was jetwashed regularly. The cleaning rota allowed for 12 hours' cleaning of the common parts per week plus additional cleaning of the roof terrace. During the covid pandemic the internal cleaning was increased to 15.5 hours per week, to allow for daily visits to wipe down all areas likely to have been touched. Ms Ata also explained that by 2022 the warranties attaching to the lighting system, gym equipment, water pumps etc had expired and as a result the repairs bill had increased.

FINDINGS

22. The Tribunal found Ms Ata to be a credible witness with detailed knowledge of the Property. She was able satisfactorily to answer all points put to her in support of the service charge costs and her management of the building.
23. The Applicants, who unfortunately had not had the benefit of any legal advice, failed to show that their concerns about the service charges were such as to require the Respondent to explain them in more detail. Their own knowledge of the Property was limited. Their photographs only proved that regular cleaning and redecoration was indeed required in order to keep the Property in good order. The Tribunal heard no evidence of unreasonable charges or unreasonably low standards of work, other than the Applicants' general suspicions and the budget prepared by the incoming property managers.
24. In view of the fact that the Applicants were unable to present any evidence of unreasonableness, and in view of the evidence nevertheless given by Ms Ata, a detailed analysis of each service charge item is unnecessary. The Tribunal finds that there is no reason to adjust the service charge figures as presented by the Respondent.

SECTION 20C COSTS AND ADMINISTRATION CHARGES

25. An order under section 20C of the Act is appropriate. The Tribunal accepts that the Applicants were not shown supporting invoices, despite requests, until in or around August 2023. Ms Ata's witness statement is dated 26 October 2023 by which time the Applicants may well have considered that they were committed to the hearing. There has clearly been a history of dispute and mistrust during the period when the Respondent and Ms Ata were managing the Applicants' sub-lettings. Given that the Applicants were his clients, the Respondent must bear considerable responsibility for this. The Applicants genuinely considered that the service charges were high and should have been better explained. The Tribunal does not expect all parties to have taken legal advice, and as lay people the Applicants were justified in applying to the Tribunal for a determination. For this reason, to the extent that the Applicants' leases might otherwise enable the Respondent to add his costs of this application to their service charge accounts, he may not do so. For the same reason, should the leases provide for the imposition of administration charges, no administration charge may be applied to the Applicants' service charge accounts in relation to their withholding service charge payments pending receipt of this determination.

Tribunal Judge A Davies

8 November 2023