



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

Tribunal Case reference	:	LON/00BK/LSC/2023/0251
Property	:	Flat 2, Astor House, 27 Craven Hill Gardens, W2 3EA
Applicant (Claimant)	:	Astor House Limited
Respondent (Defendant)	:	Opeoluwa Oluwayinka Adewale Amanda Patricia Adewale
Type of application	:	Transfer from County Court
Tribunal	:	Judge Martyński Mr J Naylor FRICS FIRPM
Date of hearing	:	24 November 2023
Date of decision	:	6 December 2023

DECISION

Decision summary

1. Service Charges in the sum of £12,133.45 are reasonable in amount and payable by the Respondents for the periods in question in these proceedings
2. Administration Charges in the sum of £574.00 are reasonable in amount and payable by the Respondents.
3. The Administration Charges claimed in respect of legal costs, those being, £2976.63 are reserved to the County Court.

Background

4. The subject flat is contained within a converted row of terraced houses containing 18 flats in total. All the flats in the buildings are supplied with heating and hot water by way of two boilers.
5. The freehold interest in the buildings is owned by the Applicant, Astor House Limited ('the Company'), in which all leaseholders in the buildings hold one share (per flat). The Company is managed by directors drawn from the leaseholders. The Company employs managing agents, Warwick Estates, to manage the building.
6. The Respondents' lease is dated 28 September 1998 and is between Fujita Company UK Limited as lessor, Madelaine Mary du Vivier as tenant and the Applicant.
7. The lease splits the Service Charge payable by leaseholders into two categories; 'Direct Charges' and 'Universal Services'. The Respondents are obliged to pay 5.02% of the costs of Direct Charges and 5.82% of the costs of Universal Services. In fact, the Respondents are only charged a 5.02% share of all Service Charges.
8. The Respondents have owned the leasehold interest of the subject flat since, in or about, 2000. However they do not live in the building. Their flat is sublet on Assured Shorthold tenancies.
9. There have been a number of previous proceedings between the parties concerning arrears of Service and Administration Charges. From evidence given by Mr Adewale, it appears that the reason for this is that, in recent years, he has refused to pay the charges until forced to by court proceedings because of his concerns regarding the maintenance and running of the buildings and his frustration at not being able to join the Applicant's board of directors.
10. The Applicant issued proceedings in the County Court against the Respondent on 19 October 2022 making the following claims:

Service Charges	£12,678.55
Administration Charges	£754.00
Administration Charges (costs)	£2,100.00
Contractual costs	£to be assessed

The charges in question cover the period of 1 July 2019 to 31 March 2022.

11. On 5 July 2023, D.J. Jarzabkowski made an order transferring the proceedings to the tribunal to assess the payability of the Service and Administration Charges.
12. After transfer to the tribunal, the matter was considered by Tribunal Judge Martynski who took the view that the issues between the parties

were not clear and who give directions which included a direction to the parties to set out the objections to the Service and Administration Charges and the responses thereto. Both parties helpfully complied with these directions.

13. The case came to a final hearing on 24 November 2023.

The issues and the tribunal's decisions

Buildings insurance

14. It was the Respondents' case that it had come to his attention that, for the period June 2021 to June 2022 the building was uninsured and that this raised the suspicion that there may be other periods where insurance premium was claimed on the service charge without insurance being in force.
15. Mr Adewale stated that he had tried to obtain a certificate of insurance for the June 21-22 period without success. He also stated that the premiums for the insurance 'seemed high' but was unable to produce any alternative quotes.
16. Ms Hazemi-Jebelli gave evidence for the Applicant. Ms Hazemi-Jebelli is a leaseholder and lives in the building and is one of the Applicant's directors. It is clear from her evidence, both written and oral, that Ms Hazemi-Jebelli is actively involved in the running of the building. Ms Hazemi-Jebelli's evidence was given carefully and in considerable detail. She was clearly at pains to make her evidence as full and accurate as possible.
17. As to insurance, Ms Hazemi-Jebelli produced a schedule of insurance for the period 8 June 2021 to 7 June 2022. This left the period of 31 May to 7 June in question. Ms Hazemi-Jebelli said that at this time she had been checking the insurance obtained by Warwick Estates, she had found a cheaper alternative and arranged the insurance,
18. Mr Pearce gave evidence that that the insurance market was tested each year to seek out the most competitive quote.
19. Exhibited to Ms Hazemi-Jebelli's witness statement were photographs of the buildings insurance certificates for June 2021/22 and 2022/23 displayed in the common parts. Mr Adewale claimed that these were not there, and he had not seen them.
20. In the light of the evidence, we conclude that the insurance premiums charged to the Service Charge account are reasonable and payable. On the balance of probabilities, accepting the evidence given by Ms Hazemi-Jebelli, we conclude that the building was insured in the period 2021/22.

Management fees

21. The Respondents contended that the standard of management was not reasonable and that the management fees charged were excessive. The evidence presented to support these assertions was scant and mainly irrelevant to the period in question.
- (a) Mr Adewale relied upon an email dated 11 August 2023 chasing an earlier email dated 6 July 2023 regarding the sighting of mice (the disputed period in these proceedings ends in March 2022).
 - (b) In his witness statement, Mr Adewale stated; *‘there is a general lack of repair and maintenance within Astor House’*. This statement was based on;
 - i. the issue of the carpets within the communal areas (see separate section on this later in this decision).
 - ii. A complaint that Mr Adewale had to call out a drainage company to clear the main sewage pipe for the building after sewage had begun seeping into his flat in July 2023 (outside of the period concerned in these proceedings).
 - iii. The building being without heating and hot water for a period of approximately 10 days in October 2023 (outside of the period concerned in these proceedings).
 - iv. A lift being out of operation for over a week in October 2023 (outside of the period concerned in these proceedings)
 - v. The turnover of property managers from Warwick Estates that had been managing the building

In summary, Mr Adewale, in his witness statement said; *‘Consequent to all of the above and as a result of the failure to undertake upkeep works in accordance with the terms of the lease, and/or replacement works (where necessary), the “general minor repairs” would not be necessitated to such high sums as those that are being claimed or I would, at least, expect the building to not be in such a poor state of disrepair. Further, when upkeep and/or maintenance works are undertaken, the costs for the same would be lower’*.

22. The Respondents produced some material from communications Mr Adewale had (at the last moment in these proceedings in mid-November 2023) with alternative managing agents, Ringley. Despite the very late production of this material, it was admitted and considered. The material consisted of an email from Ringley which opened as follows; *‘Thank you for sending across the attached, it is a little difficult to advise on cost savings without knowing more about the property’*. So, clearly the agents had not seen the building (although they had previously managed the building several years ago – but it is clear that the response from Ringley is not based on any previous experience of the building). The email goes on to describe the various levels of (basic) management fee charged by Ringley. The information from Ringley suggests that the appropriate level of fee charged by them would be in the region of £200 per flat, amounting to £3,600 (plus VAT) per year.
23. The accounts and budget documents for the building show that the management fees were;
- | | |
|--------------|-----------------|
| 2019: £4,575 | (£254 per flat) |
| 2020: £6,000 | (£333 per flat) |

2021: £3,000 (£166 per flat)
2022: £6,180 (£343 per flat)

24. The Applicant's evidence, by way of Ms Hazemi-Jebelli, was that by and large the service they were getting from the managing agents was acceptable and reasonable in price. The directors did keep an eye out as to alternative management companies but there were obvious advantages to keep consistency of management with one firm. There had been a period when there had been an unacceptable turnover in property managers for the buildings and Ms Hazemi-Jebelli had negotiated a reduced management fee for the year in question.
25. In the tribunal's own knowledge and experience¹, the management fees were easily within a reasonable range of fees that might be expected to be paid for a building of this type in this location.
26. We conclude that; (a) the fees charged for the period in question were, generally speaking, within a reasonable range; (b) any failings of management (which manifested themselves in the turnover of staff and the delay in the replacement of internal carpets) had been adequately dealt with by the negotiated reduction in the fees.
27. The alternative figures from Ringley Managing Agents are not based on an inspection of the building and do not seem to take into account the facts that the building has two lifts and two communal boilers. It has to be borne in mind that Ringleys had previously managed the building and their management had been found wanting. There is a distinct advantage in maintaining a consistency of management year-on-year with the same company. Even if Ringley were able to manage the building for less, given that the fees of Warwick were within a reasonable range, there is no obligation upon the Respondent to use the cheapest supplier.
28. Overall therefore, we are satisfied that the fees were reasonably incurred and are payable.

Boiler maintenance/excess heat/gas charges

29. The Respondents' objection was that, since 2014, there had been significant heat problems within the buildings and that the Applicant had failed to deal with those problems. It appears that the communal boilers in the building are sending hot water/heat to the individual flats via risers/pipes that travel through the common parts of the building. The effect of this is that the communal parts of the building, and perhaps the flats themselves are warmed (to an excessive level according to the Respondents). It appeared that the Respondents considered that the charges for gas supplied to the building were unreasonably high as a result.

¹ This was put to the parties during the course of the hearing and the parties were given the opportunity to comment upon it

30. Mr Adewale produced an extract from a report on the heating from 2015. That report stated; *'None of the valves are insulated so installing insulating jackets should reduce the heat output from them to a degree'*, and; *'I believe this issue is something of a characteristic of the building due to the design and the route of the pipes. The issue is not something that can be easily dealt with and may not be possible to get rid of.'* The report recommended the installation of jackets on each of valves.
31. Ms Hazemi-Jebelli stated that the pipes from the boilers running through the building had been fully lagged in order to try to prevent heat escaping from them. The common parts radiators had been turned off for a number of years. She had inspected the valves and most had insulation jackets, those that didn't, she assumed, lacked them in order to facilitate access to them.
32. She stated that the building benefited from a commercial rate for the gas supply and that the gas contract was monitored annually by the directors. The fact that heat from the pipes in communal parts escaped and heated the building would not affect the amount of gas used. The amount of gas used would be driven by the use of heat and hot water in the individual flats.
33. There was no evidence from the Respondents as to what more could reasonably be done. Mr Adewale suggested that thought may be given to ways of dispersing the heat from the building. The Respondents did not produce any evidence of any other resident complaining of the issue.
34. We find that there is no evidence of a connection between the excess heat issue and the costs of gas. It seems to us, on the evidence presented, that suitable measures have been taken to deal with the issue of excess heat in the building.
35. The Respondents raised a further issue on the costs of boiler maintenance as follows; *'As such, it is asserted that until sufficient remedial works are undertaken to the communal heating system to resolve the ongoing excess heat issue, any boiler maintenance is futile, unnecessary and unreasonable.'*
36. Ms Hazemi-Jebelli gave evidence to confirm that the boilers were regularly maintained and repaired when necessary. She was not aware of any times when there had been longstanding outages of heating and hot water. Each flat had a separate hot water heating system which could be used if there was a failure of the communal boiler serving that flat. She was not aware that anyone's water supply had ever been cut off.
37. We conclude that there is no evidence to support a challenge to the costs of boiler maintenance.

Communal carpets

38. It was admitted by Ms Hazemi-Jebelli that the carpeting in the communal areas required replacement and had been in a poor condition for some years. This, she explained, was due to a number of reasons. First, it was discovered that the flooring underneath the carpets was in a poor condition and needed to be attended to. Second, she said that the Covid pandemic had slowed matters. Third, she admitted that the turnover of property managers had not helped matters. She stated that the carpets were now due to be replaced by the end of this year.
39. The Respondents' objections on this matter can only relate to the standard of management. Mr Adewale stated that he was unable to let the flat for the rental sum asked due to the conditions of the internal common areas, there were missing skirtings and some issues with the decorative state as well as the carpets. He did not provide any evidence from the letting agents regarding this but did provide an email dated 26 March 2022 from 'another leaseholder' regarding the state of the carpets. This person was, it transpired, in fact the Respondent's tenant at the time. Mr Adewale produced another email from a lettings company dated 1 July 2022 stating that the communal areas needed to be improved and that the management company involved had been '*rather slow*'.
40. It cannot, and was not, denied that there had been failings on the part of the Applicant regarding the carpet in the communal areas (there was no real evidence regarding any other issue). We consider that this failing is more than compensated for by the reduction in management fees negotiated by Ms Hazemi-Jebelli.

General minor repairs

41. The Respondents' objection was put as follows; '*It is unclear what "repairs" were undertaken given that the block is in a, very poor, general state of disrepair, and requires significant and specific works which the Applicant has historically failed, and continues to fail, to address.*' No details were supplied for this sweeping statement or any evidence in support. The subject flat had been recently advertised by the Respondents' letting agent as; '*a well maintained period building...*'.

Cleaning

42. The Respondents' case was that there was no regular cleaning of the communal areas within the block and that the communal areas were in a very poor and dirty state. A complaint was made (for a time outside of the period dealt with in these proceedings) that mice were seen at the building and that there was an unpleasant smell.
43. In support of his case, Mr Adewale exhibited;
 - (a) an email dated 4 October 2023 from a Pia Maehr, a former tenant of the subject flat who rented the property from mid-2022 to mid-2023

(therefore outside of the period in question in these proceedings), stating; *'I have never seen anyone clean the communal areas of the building and it never looked as it had been cleaned (very dusty and dirty still from the carpets)'*.

(b) A letter/email from a letting agent at John D Wood & Co dated 1 July 2022 stating; *'As you have most likely noticed the communal areas in this block need to be improved. The management company have been rather slow'*.

44. Ms Hazemi-Jebelli, who as previously stated, lives in the building, stated that she and her husband are personally aware that the cleaner attends every week as they see and hear the cleaner and can see the results when the cleaning has been done. An attendance record is kept at the building confirming the attendance of a cleaner on site. She describes the cleaning as very thorough. The cleaning costs are approximately £60 per week and are reviewed annually. Ms Hazemi-Jebelli made the point that they have no control over the mess that may be caused in the communal areas in the week after the cleaning had been completed. She stated that there were now many short-term tenants occupying the building under sub-lets who may not have the same care and concern as those long leaseholders who live there.
45. We accept Ms Hazemi-Jebelli's evidence and conclude that the cost of the cleaning is remarkably low and that it is done to a reasonable standard. We cannot rely on the email from Ms Maehr as it relates to a period outside of the proceedings and is not supported by a witness statement. As to the letter/email from the lettings company John D Wood, there is no context to the contents of the letter and no witness statement from its author explaining the basis on which he made this observation.

Communal mailbox

46. The Respondent's referred to *'numerous issues surrounding the delivery of postal mail to the block'* (no further detail given) and complained that a new communal mailbox which had been promised had not materialised. It is unclear as to what head of Service Charge this complaint relates, possibly the management fee.
47. Ms Hazemi-Jebelli admitted that in or about 2020 there was a statement issued that the mailbox would be replaced. However, it then transpired that the matter was not so straight-forward and that alternative mail storage arrangements may be just as problematic. Ms Hazemi-Jebelli stated that there had been a huge increase in items being delivered following the pandemic. She stated that the matter was under review.
48. Our view is that the actions of the Applicant in relation to this matter are entirely reasonable.

Company secretary fee

49. Mr Pearce from Warwick Estates explained that the Applicant Company has to file returns and has internal matters to deal with and this explains the fee for this item.

Year-end balancing charge

50. Mr Adewale had asserted that he had not received any valid demand for this sum. The Applicant provided evidence that the demands had been posted and that generally, demands were accompanied with the requisite statutory prescribed information and accordingly this issue was not pursued.

Service charge demand for £545.10

51. This was conceded by the Applicant at the outset of the hearing.

Administration charges

52. The Administration Fee of £180.00 was conceded by the Applicant at the outset of the hearing.
53. The Respondents had contended that none of the Administration Charge demands had contained the statutory rights and obligations. This was not pursued at the hearing after the Applicant had demonstrated that this information had been included.
54. Mr Pearce, a Regional Manager employed by the managing agents, Warwick Estates, gave some information in the hearing as to work that was done and which formed the subject of the Administration Charges.
55. Given our findings above, and the fact that the Respondents were not, and still are not, paying their Service Charges, we find the following Administration Charges incurred in dealing with the Respondents' failure to pay Service Charges to be reasonable and payable:
Preparation & processing of Arrears Referral - £186
Review & Reconciliation of outstanding payments - £108
PDC instruction fee - £240
Additional costs - £10
Lease - £30
56. The remainder of the Administration Charges refer specifically to the legal costs of the proceedings. We consider that these charges are best left to the County Court to determine along with the Applicant's other legal costs so that all the costs can be determined at the same time and in the same place.

Additional comments/costs

57. The Respondents have adopted an extreme approach to their obligations under the lease regarding Service Charges over the past years. They have paid nothing despite subletting the flat for a considerable monthly sum. They have done this in the clear knowledge that, even if some or all of their objections were upheld, there would still be a balance to pay for Service Charges, obviously there is always going to have to be some payment for insurance, gas, maintenance, management fees etc., yet they have paid nothing leaving the other leaseholders to pay and putting the (unpaid) directors of the Applicant company to a good deal of additional work and cost. As previously stated, we formed the view that Ms Hazemi-Jebelli approached her role as Director with diligence and care.
58. The Respondents' position could only be justified if it were backed up with cogent evidence. Instead, they made general sweeping, almost wholly unsubstantiated assertions. The evidence produced by the Respondents was flimsy and much of it appeared to be obtained at the last moment. It appeared that no real effort had been made to put together an evidenced serious case in opposition to the claim.
59. Mr Adewale's justification for his position when giving evidence to the tribunal was that there was no clarity in the management and Service Charge, that he had been denied a role as a Director and that he had been excluded from the running of the building and the information regarding the running of the building. He stated that the Applicant company did not hold annual general meetings. He complained that when he had asked to become a Director, he was asked to confirm that he had no previous criminal convictions or bankruptcies. Mr Adewale produced an email from Warwick Estates dated 4 May 2023 which stated; *'Unfortunately, given the current impending legal action against you in relation to your service charges, I cannot share any detail on current projects at Astor House'*.
60. Ms Hazemi-Jebelli stated that there was no requirement for an AGM and that all prospective directors were asked to confirm their history regarding criminal convictions and bankruptcy. She stated that Mr Adewale could not be considered as a Director whilst he maintained a position of not paying his Service Charges.
61. We did not find Mr Adewale to be a particularly convincing witness (e.g. his assertion that the insurance certificates were not displayed and that he had not seen them, his denial of receipt of lawful demands for Administration Charges). Mr Adewale did appear to be genuine in his frustration at not being able to become a Director and, it seems to us, it would be at least good practice for the Directors to hold AGM's and to share information regarding the running of the building with the Respondents regardless of their arrears, however, Mr Adewale failed to provide any evidence that he had been unfairly rebuffed in his attempts at directorship.

62. Mr Adewale claimed to be unaware that one option to him, if he had a genuine case in respect of Service Charges, was to pay, at least some of those charges and to issue an application direct to the tribunal to challenge those charges which he felt were unreasonable. He claimed to be unaware that this was a possibility. We find that surprising given that he has had the benefit of legal advice.
63. As to costs, no application was made by the Respondents for any order preventing the costs of these proceedings being placed on the Service Charge or for any order preventing those costs being charged to them directly. We would have dismissed such applications in any event. Had this case been dealt with under the Deployment pilot (with the legal member of the tribunal sitting as a Judge of the County Court to deal with matters solely within the jurisdiction of the Court), subject of course to any representations made on behalf of the Respondent, it is likely that an order would have been made against the Respondents in respect of all the Applicant's costs of the proceedings – that however is a matter that we are leaving to the discretion of the Court.

**Deputy Regional Tribunal Judge Martynski
6 December 2023**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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. 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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).