



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

Case Reference : **LON/00BK/LSC/2023/0245**

Property : **Flat 2, 56 St George's Drive,
London SW1V 4BU**

Applicant : **Janice Dinsdale**

Representative : **In person**

Respondent : **Sanctuary Housing**

Representative : **Not present and not represented at
hearing**

Type of Application : **For the determination of the
liability to pay a service charge**

Tribunal Members : **Judge P Korn
Mr A Harris LLM FRICS FCI Arb**

Date of hearing : **30 October 2023**

Date of Decision : **7 December 2023**

DECISION

Description of hearing

The hearing was a face-to-face hearing.

Decisions of the tribunal

- (1) The Applicant's £326.56 share of the charge for **door entry, lifts, engineering inspection, TV aerials, fire alarms, smoke detectors, emergency lighting** is payable in full.
- (2) The Applicant's share of the charges for **communal electricity, repairs to communal lighting, bulbs** is reduced from £169.48 to £152.53.
- (3) The Applicant's share of the charges for **internal cleaning, pesticides, pest control** is reduced from £283.40 to £262.60.
- (4) The following amounts are not payable by the Applicant:-
 - The **administration charge**.
 - The charge for **use of scheme assets**.
- (5) Pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, we order the Respondent to reimburse to the Applicant the **application fee of £100 and the hearing fee of £200**.

Introduction

1. The Applicant seeks a service charge determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**").
2. The Property is a one-bedroom flat within a block of 18 flats. The Applicant is the leaseholder of the Property under a tenancy agreement ("**the Tenancy Agreement**") which is dated 29 October 1993 and was originally made between the Respondent (1) and Kenneth Rodie (2). The Tenancy Agreement was later assigned to the Applicant, and the Respondent remains the landlord.
3. The disputed service charge issues relate to the following service charge items for the 2023/24 year:
 - communal electricity, repairs to communal lighting, bulbs;
 - internal cleaning, pesticides, pest control;
 - door entry, lifts, engineering inspection, TV aerials, fire alarms, smoke detectors, emergency lighting;
 - administration charge; and

- charge for use of scheme assets.

The Applicant's written submissions

Communal electricity, repairs to communal lighting, bulbs

4. The Applicant states that no accounts or estimates have been provided by the Respondent and there has been an increase of over £1,500 from the previous year. In addition, corridor and garden lights are left on all day and all night.

Internal cleaning, pesticides, pest control

5. The Applicant again states that no accounts or estimates have been provided by the Respondent and says that there has been an increase of nearly £375 from the previous year. She also argues that she is not liable for pest control and pesticides under the Tenancy Agreement and that in any event the pest control has been very infrequent and ineffective.

Door entry, lifts, engineering inspection, TV aerials, fire alarms, smoke detectors, emergency lighting

6. The Applicant again states that no accounts or estimates have been provided by the Respondent and says that there has been an increase of over £250 from the previous year. She also argues that she is not liable for engineering inspection, smoke detectors or TV aerial maintenance under the Tenancy Agreement.

Administration charge

7. The Applicant again states that no accounts or estimates have been provided by the Respondent, and she is unsure what this charge relates to. There has also been an increase of over £330 from the previous year.

Charge for use of scheme assets

8. The Applicant is unsure what this charge relates to.

The Respondent's written submissions

9. The Respondent states that the Applicant pays a fixed service charge and therefore that the tribunal has no jurisdiction in respect of the reasonableness and payability of the service charge. The Respondent adds that it sets what it considers to be a reasonable level at the start of each year and that any differences between the estimated amount and the actual amount are not recoverable.

10. Specifically in relation to the electricity charge, the Respondent states that it increases its estimates in line with the advice of its energy brokers. In relation to pest control it states that an order has been raised for three treatments. As regards the Applicant's question as to what the 'administration charge' relates to, the Respondent states that this is its management fee. As for what the 'charge for use of scheme assets' relates to, the Respondent states that it is for use of all internal assets such as the lift, emergency lighting, fire alarm and door entry system.

The hearing

11. The Applicant attended the hearing. The Respondent did not attend and was not represented at the hearing. After the hearing, Ms Scott of Sanctuary Housing emailed to say that she had been unaware that it was intended to be a face-to-face hearing, but the tribunal's directions were extremely clear in this regard and do not appear to have confused the Applicant.
12. At the hearing, the Applicant re-emphasised that the Respondent has produced no copy invoices to justify the level of the electricity charges. She also said that she has not seen any emergency lighting. In relation to the administration charge which the Respondent has clarified is a management fee, the Applicant accepted the principle of paying a management fee but felt that it was too high.
13. The Applicant also said that she had no access to the area behind the block of flats and therefore received no benefit from the lighting of that area. Specifically regarding the door entry system, she said that tenants break this by kicking in the door. The Applicant also said that she would be happy to pay service charge at the previous year's rates.

Tribunal's analysis

Jurisdictional issue

14. The Respondent submits that the service charge is fixed, but this is patently not the case. Even on the Respondent's own case the service charge varies every year; for example, the Respondent states that it increases its estimated electricity charges in line with the advice of its energy brokers.
15. It seems that the Respondent operates a system whereby it makes a fresh estimate of the service charge costs in each year but then fails to make an adjustment to reflect the actual cost. Under clause 5 of the Tenancy Agreement the service charge must be "*a fair proportion of the costs incurred or to be incurred in the provision of services during the accounting period and any reasonable provision for replacement*

or renewal of equipment and furniture. The service charge shall be reviewed annually on the first Monday in July of each year on the basis of costs incurred during the previous accounting period and any reasonably anticipated or known increase in costs, including any overpayment from previous accounting periods". Based on the Respondent's description of how the service charges are calculated it would appear that the requirements of clause 5 are not fully adhered to, but we are conscious that the Respondent was not present at the hearing to explain its brief written submissions in detail (albeit through its own fault) and therefore we are not in a position to say – and we do not need to decide – that the Respondent has definitely not been complying with clause 5.

16. However, what is clear is that the Tenancy Agreement envisages a variable service charge and that in practice the Respondent operates a variable service charge. It chooses not to adjust the charge to reflect the actual cost, but that is just bad practice; this does not turn the charge into a fixed one. A fixed service charge would be one which simply remains the same each year or which increases according to a specific formula, for example if the tenancy agreement in question were to provide that the service charge will increase by a specified percentage each year. Accordingly, the service charge under the Tenancy Agreement is a variable service charge and the tribunal has jurisdiction under section 27A of the 1985 Act.
17. Based on the Respondent's and the Applicant's respective submissions, it would also seem that both parties are treating the disputed service charges as actual charges.

Communal electricity, repairs to communal lighting, bulbs

18. The Applicant has provided some evidence to indicate that lighting is left on all day and all night and that she receives no benefit from certain lighting due to problems with access. On this basis we consider that it is appropriate to reduce the charges by 10%. As to whether the charges can be reduced by more than that, we recognise that there has been a large increase but utility prices have increased and we have no evidence to indicate that the increase is unreasonable save insofar as is appropriate to compensate for the specific issues identified by the Applicant. Accordingly, the Applicant's share of this charge is reduced from £169.48 to £152.53.

Internal cleaning, pesticides, pest control

19. We agree with the Applicant that the charges for pesticides and pest control are not recoverable under the Tenancy Agreement as the service charge provisions are not wide enough to cover them. However, that does not help with the calculation of the reasonableness of the overall charge.

20. In relation to the internal cleaning, we have very little information on which to calculate a reasonable charge. However, despite requests for information, culminating in a warning from the tribunal that the Respondent might be debarred from giving evidence, the Respondent has provided no information or evidence justifying the increase from the previous year. The Respondent should not be able to benefit from its own default and it has been given ample opportunity to justify its charges, and therefore in the circumstances we consider that it is reasonable to peg back these charges to the previous year's figures. Therefore the Applicant's share of this charge is reduced from £283.40 to £262.60.

Door entry, lifts, engineering inspection, TV aerials, fire alarms, smoke detectors, emergency lighting

21. We note the Applicant's comments on this head of charge, but the cost to her has only increased from £312.52 to £326.56. In the absence of any evidence as to what would be reasonable, we are not in a position to say that this modest increase is unreasonable. Accordingly, the charge of £326.56 is payable in full.

Administration charge

22. This is a management fee according to the Respondent, despite it being labelled as an administration charge. However, whilst a reasonable management fee would be recoverable if the Tenancy Agreement provided for it, there is no mention in the Tenancy Agreement of the Respondent being entitled to charge a management fee. This charge is therefore disallowed.

Charge for use of scheme assets

23. The Respondent has sought to charge the Applicant separately for the mere use of 'assets' such as the lift, emergency lighting, fire alarm and door entry system. There is no justification for charging a separate amount simply for the use of these items in the absence of clear wording in the Tenancy Agreement permitting the Respondent to levy such a charge on top of any of the more usual charges, and there is no such wording in the Tenancy Agreement. This charge is therefore also disallowed.

Cost applications

24. The Applicant has applied for an order for the Respondent to refund her application and hearing fees under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**Paragraph 13(2)**").

25. Paragraph 13(2) reads as follows: *“The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor”*. In this case, the Applicant has been successful or partially successful on most issues and was therefore fully justified in making the application. In addition, the Respondent has not engaged properly with the application; it has been very reticent in providing information, it has not offered a proper statement of case and it did not attend the hearing. In the circumstances it is appropriate that the Respondent be ordered to reimburse to the Applicant the application and hearing fees.

Name: Judge P Korn

Date: 7 December 2023

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

APPENDIX

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" 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.
- (2) The relevant costs are 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.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (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 provisions 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.

Section 27A

- (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 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 ... is void in so far as it purports to provide for a determination – (a) in a particular manner, or (b) on particular evidence.