FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AL/LSC/2019/0424**
Property	:	**43 Erebus Drive, London SE28 0GB**
Applicant	:	**Holding & Management (Solitaire) Ltd**
Representative	:	**JB Leitch**
Respondent	:	**Ngwefah Akum Amang**
Type of Application	:	**Service and administration charges**
Tribunal Members	:	**Judge Nicol** **Mr S Johnson MRICS**
Date and venue of Hearing	:	**12th December 2022** **10 Alfred Place, London, WC1E 7LR**
Date of Decision	:	**14th December 2022**

DECISION

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(1) The Tribunal has determined that the full service and administration charges sought by the Applicant from the Respondent in these proceedings, in the sum of £4,932.04, are reasonable and payable.

(2) The Tribunal has refused to make an order under section 20C of the Landlord and Tenant Act 1985.

(3) The remaining issues of ground rent, interest and costs now return to the county court for final determination.

The relevant legal provisions are set out in the Appendix to this decision.

The Tribunal's reasons

1. The Applicant is the freehold owner of and management company for a development which includes 39 to 49 (odd) Erebus Drive. The Respondent is the lessee of the subject property within that block.

2. On 20th May 2019 the Applicant issued a claim in the county court for unpaid service and administration charges for the years 2017-18 and 2018-19. The Respondent filed a Defence. The court transferred the case to the Tribunal. On 17th December 2019 the Tribunal issued directions. Amongst other matters, the directions specified that the Tribunal would only decide matters within its jurisdiction and any other matters would have to return to the county court for determination.

3. There then followed an unfortunate delay, principally due to the COVID pandemic. Eventually, by further directions made on 25th August 2022, the time limits in the original directions order were extended.

4. The Respondent was originally directed to produce her statement of case and supporting documentation by 18th February 2020. The further directions extended that date to 6th October 2022. The Respondent did not attempt to file or serve her bundle of documents, including her statement of case, until Thursday 8th December 2022, one clear working day before the hearing listed for Monday 12th December 2022. The Applicant did not receive the bundle until Friday 9th December 2022. The Respondent did not apologise or seek either a further extension of the time limit or permission to rely on the bundle.

5. The Tribunal heard the application on 12th December 2022 at the Tribunal. The attendees were:

   - Ms Ceri Edmonds, counsel for the Applicant
   - Mr Danny Foster from the Applicant's agents, Firstport.

6. On the morning of the hearing, the Respondent sent the Tribunal an email showing that her daughter had a dental appointment at Guy's Hospital at 8:30am. She said that the appointment would take about 1½ hours although she did not explain why she needed to be there. She seemed to be under the impression that the Tribunal had other cases to be getting on with but, in accordance with the Tribunal's regular practice, this was the only case allocated to this Tribunal. The Tribunal waited until 11:30am which, on the Respondent's own account, should have been plenty of time for her to attend. The Tribunal received no further message, so the Tribunal proceeded with the hearing. The Respondent had not attended by the time the hearing ended at 12:05pm.

7. The Tribunal had before it the following documents:

- In accordance with the directions, the Applicant had provided an indexed and paginated bundle of relevant documents, in both paper and electronic form, totalling 411 pages.
- The Respondent's late bundle was too large to be sent by email and she used a file transfer service. Neither Tribunal member could open it. Ms Edmonds excised some without prejudice correspondence (which should not have been before the Tribunal anyway) and a large number of photos which were already in the Applicant's bundle, leaving a bundle which could be printed out. It is not normally just or fair to allow a party to rely on documents produced outside the directions and so late in the proceedings but, in the Respondent's absence and having seen the smaller version of the bundle, the Applicant had no objection to the Tribunal taking it into account and the Tribunal did so.

8. The Respondent's statement of account to the end of the 2019 service charge year showed a negative balance of £4,970.66. However, that included interest which is a matter for the county court. The county court claim also included claims for ground rent and costs but they are also not matters for the Tribunal. The amount that the Tribunal had to adjudicate on was £4,932.04, made up of the balance of unpaid service charges for the years 2017-18 and 2018-19 and two administration charges of £60 each incurred by the Applicant's agents in chasing the Respondent for her service charge arrears.

9. Due to the delay, the Applicant also wished to include further service charge arrears incurred in later years. However, the Tribunal is limited to adjudicating on the matters transferred to it by the court. It is possible for a landlord applicant in this situation to issue fresh proceedings for the later years and apply for the two cases to be heard together but the Applicant had not done so here. This does not mean that the Respondent is in any way relieved of those arrears – if she does not pay them, the least that will happen is that further costs and interest will be incurred which she is likely to have to pay on top.

10. The Applicant had produced accounts and a narrative showing how the service and administration charges were incurred. The Tribunal's job is not to carry out some kind of audit of the accounts but to consider any objections to them raised by the Respondent. Therefore, the Tribunal went through the matters raised in the Respondent's late statement of case.

11. Another part of the development had had an automatic gate installed to regulate entry onto the grounds, principally in order to address a problem of fly-tipping by outsiders. The Applicant proposed the same solution for the Respondent's block at an estimated cost of around £7,000. Sums were included in the 2019 and 2020 budgets, £1,000 for each year, in anticipation of this expenditure. The Respondent and some of her fellow lessees objected. The gate has never been installed and no expenses were incurred out of the budgeted amounts.

12. The Respondent appears to be under the impression that this meant that she and her fellow lessees were entitled to some kind of immediate credit. That is not how it works. The budget is used to calculate the amount which each lessee is to pay in advance service charges for that year. It is not a commitment to use the money collected for any particular service or cost. The money collected from advance service charges is used to pay for whatever expenses are incurred on the services provided in accordance with the leases. If one lessee fails to pay, the money from another lessee may be used to cover that shortfall and, although budgeted for, some other expenditure might not be incurred.

13. At the end of the service charge year, the accounts are prepared and there will be either a surplus, to be credited to the service charge account in the following year, or a deficit. If there is a deficit (as there was in both years in this case), the lessees are asked to pay a balancing charge. If money has not been spent on something which was budgeted for, such as the gate, the lessees are effectively credited with that amount within the balancing charge.

14. The inclusion of an estimated amount for the gate in the advance service charges for 2019 (and 2020) was entirely reasonable given that the Applicant at that stage intended to install the gate. The Respondent has not had to pay any more money in service charges than she would otherwise have had to pay. The service charges sought from her do not need to be further adjusted due to the decision not to proceed with the installation of the gate.

15. The Respondent complained that an amount of £1,314 was recorded in the accounts for 2020 in relation to pest control because no pest control operative had come to her property. This is outside the years the Tribunal is considering but it is useful to clarify this for the Respondent. The primary responsibility of pest control employed by the Applicant is to attend to the common parts. Lessees are invited to notify the agents if they have a pest problem within their own property but, absent of any such notification, there is no reason to expect an operative to attend that property. This expenditure has been recorded in the accounts and there is no reason to question it, even if the Respondent never saw a pest control operative.

16. The Respondent objected to the sum of £1,500 in the 2016-17 accounts for TV distribution. This refers to the communal system for access to a TV aerial and Sky TV. Again, this is outside the years under consideration but, again, it is useful to clarify the issue. The Respondent asserted that modern TVs have internal aerials and the system is unnecessary. In fact, such internal aerials would not provide access to Sky TV for those who want it. Also, some residents may prefer to use the communal system rather than rely on an internal aerial which might not be as effective. The system is provided in accordance with the lease and lessees are obliged to meet their share of the cost even if they choose not to make any use of it.

17. In 2019, the Applicant decided to increase the contribution to the reserve fund from £2,000 to £4,000, principally to ensure that there would be sufficient funds to pay for the aforementioned gate. When they decided not to proceed with the gate, Mr Foster told the Respondent in an email that the reserve fund contribution would be reduced back to £2,000 for the year. In fact, it became apparent that the additional money would be needed for other long-term projects and the contribution was not reduced.

18. Again, the Respondent has mistakenly thought that Mr Foster's statement meant that she would be entitled to some kind of immediate refund. There is no basis on which to regard Mr Foster's statement as legally binding. A reserve fund contribution is reasonable if it is based on plans for long-term projects which are themselves reasonable. Ms Edmonds pointed to the accounts which showed that the reserve fund for the Respondent's block was running low. It was entirely reasonable for the Applicant to seek to boost the amount in the reserve fund to a level which could provide the funds for projects which needed them.

19. Again, it is important to point out that reserve funds are not lost to service charge payers but are used to pay for later expenditure. This is a means to smooth out the amounts to be paid. If the Respondent did not pay into a reserve fund now, she would have to pay more at the end of any project, the cost of which would otherwise have been met from the reserve fund.

20. For these reasons, the Tribunal has rejected the objections set out in the Respondent's statement of case and determined that the claimed service charges are and always were payable.

21. The Respondent has objected to only a minor part of her service charges. She chose not to pay the amounts to which she has never objected. She had no grounds for doing so. It is entirely understandable that the Applicant's agents would have chased her for payment of her arrears and incurred costs in doing so. Therefore, the two administration charges of £60 are also reasonable and payable.

22. The Tribunal has the power under section 20C of the Landlord and Tenant Act 1985 to order that the Applicant's costs may not be added to the service charge. However, the Applicant has succeeded. The Respondent has not put forward a credible case and has been in flagrant breach of the Tribunal's directions. In the circumstances, the Tribunal declined to make a section 20C order.

Name: Judge Nicol **Date:** 14th December 2022

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
   (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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.