FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00DA/LSC/2022/0042**
Property	:	**Flat 4, 38 Nursery Lane, Leeds LS17 7HN**
Applicant	:	**Mattley, Mattley, & Mattley Trust**
Respondent	:	**Ademola Davidson Ade Fabaro**
Type of Application	:	**Landlord & Tenant Act 1985 s.27A; CLRA Sch.11 Pt.1**
Tribunal Members	:	**Tribunal Judge Phillip Barber** **Mr N Swain (Valuer Member)**
Date of Decision	:	**23 November 2023**

DECISION AND REASONS

Decision

1. **The Tribunal find that the administration charges in the sum of £526 are not payable but that the service charge is payable less the costs of the fire risk assessment for the year 2019 £651.02 - £55 = £496.02.**

Reasons

Background

2. The applicants own the freehold of 38 Nursery Lane, Leeds LS17 7HN a development of 4 flats in north Leeds and the respondent is one of the long leaseholders holding a 99-year lease (which has been extended) of flat 3, dated 17 April 1973.

3. In June 2020 the applicants brought a claim against the respondent in the County Court for unpaid service charges and administration costs in the sum of £3584.48 made up of £2218.48 service charge, £526 administration charges and £840 costs. At a small claims track hearing before Recorder Armstrong the claim for service charge was amended down to £651.02 (as payments had been made by the respondent but seemingly to the wrong account) and on the 28 May 2021, District Judge Goldberg referred the matter to the First-tier Property Tribunal under CPR PD56 and section 176A of the Commonhold and Leasehold Reform Act 2002 (CLARA).

4. Unfortunately, that Order directed the Claimant to refer the matter to the F-tT whereas in the ordinary course of events it should be the court which transfers the matter to the F-tT and it seems that as a result considerable delay occurred.

5. The two matters which are within the scope of the Tribunal's jurisdiction for the purposes of this transfer are whether the relevant costs which comprise the service charge are (a) reasonable under section 19 and whether the service charge is payable under section 27A of the Landlord and Tenant Act 1985; and whether any administration charges are (b) reasonable and payable under schedule 11 of CLARA.

Our Assessment of the Issues

Administration Charges

6. As to (b) the only scope for recovery of administration costs within the terms of the lease is clause 2(13) which requires the respondent to "pay all expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor incidental to the preparation and service of a notice under section 146…". The administration charges relate to processing fees for additional work carried out by the applicants' agents as a result of the applicant's non-payment of the service charge and as Mr Hardman rightly concedes, clause 2(13) of the lease is not wide enough to capture these charges as they are not incidental to the preparation and service of a section 146 notice and accordingly they are not payable under schedule 11 as there is no contractual basis for them to be charged. £526 is therefore not payable.

Service Charges

7. As to (a), the respondent has raised a number of reasons why he challenges to the reasonableness and payability of the service charge during the course of the county court proceedings and before this Tribunal, some of which are a little hard to understand but we have done our best to consider them and to arrive at a decision which reflects the scope of the respondent's objections and the jurisdiction of the Tribunal to adjudicate upon them.

8. It is a little difficult to equate the debt claimed with the actual service charge account due to the fact that the claim was issued part way through an accounting year, but an idea of the accounts can be gained from the 2019 accounts on page 440 and in particular 441 of the applicant's bundle. When asked about which items he objected to at the hearing, the respondent told us that he thought the reserve fund was too high and also indicated a general challenge to the expenses in the service charge, telling us that accountancy fees, out of hours emergency, postage and sundries should be part of the management fee; that there should be no charge for general minor repairs and that risk management was unnecessary and in fact had not taken place.

9. In relation to each of these challenges we found as follows. It is easiest to take them in the order shown on page 441.

10. Accountancy fees of £260 are reasonable and payable. The lease requires annual accounts and in our expert view there is nothing problematic about in-house accountants preparing and charging to produce accounts as a separate item to general management. In fact, given the cost of instructing external accountants to prepare accounts, the leaseholders are paying very little.

11. General minor repairs as an item, appears in the 2019 budget but is not an actual expenditure in 2019 (or in 2020) and so does not form part of the service charge claim.

12. Management fee. The amount here is a reasonable and payable sum for the management of a 2-storey purpose build development of 4 flats. It works out at less than £15 per leaseholder per month and in our expert opinion is well within the scope of the range of management charges applicable to this type of development.

13. Out of hours service. This is a nominal sum, and we accept that the service would have been provided, even if not utilised and given it is only £24, we think it reasonable and payable. We accept that it could be subsumed within the management fee but given that we think the management fee is well within industry charges we think it perfectly reasonable to identify this as a nominal separate charge.

14. Postage costs. Again, £19 for postage is 30 pence per leaseholder per year and again might have been included in the management fee but we

see no reason why we should decline to confirm this as payable and reasonable given our comments on the out of hours fee.

15. In terms of risk management in the sum of £220 we have decided that this is an unreasonable amount and is not payable. We heard that this reflects the costs of a fire safety inspection. At the hearing the respondent told us that as far as he was aware, no site inspection had been carried out and no fire safety inspection had been undertaken. Ms Rich for the applicant told us that this is a risk assessment for the common parts and external areas. We note that the development is a 2-storey purpose-built block surrounded by a communal garden and each flat has a separate entrance. We note that a fire risk assessment had been carried out and charged for in 2018 and prior years and we could see no reasonable reason why a fire risk assessment was required every year on this type of development, given that in our view the risk of fire is low and that there are no significant common parts. We therefore decided that this element of the service charge for the year in question was neither reasonable nor payable insofar as it is incorporated into the respondent's service charge account.

16. As to the reserve contribution, this is within the scope of the service charge provisions in the lease and is reasonable. We note that in 2019 the reserve fund was £400 for major works and in 2020 it was £800 building up at the rate of £100 per leaseholder per year. This is perfectly reasonable give the age and scope of the development and strikes us as a modest mechanism to build up a reasonable amount to guard against future works.

17. Accordingly, the service charge payable by the respondent arising out of the service charge demand dated 08 January 2019 should be reduced by the respondents, contribution to the fire risk assessment in the sum of £55. All other payments which represent the service charge and reserve fund remain payable.

Signed  Phillip Barber

Judge of the First-tier Tribunal