FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/38UE/LIS/2023/0004**
Property	**:**	**9 Sweetbriar, Marcham, Abingdon OX13 6PD**
Applicant	**:**	**Rosemary Siebert**
Representative	**:**	**Mrs Siebert together with Mr Peter Rogers and Mrs Mary Hill, both residents at Sweetbriar**
Respondent	**:**	**GreenSquareAccord**
Representative	**:**	**Miss Tina Conlan, Counsel and Miss Elizabeth Richards, Head of Housing Finance for the Respondent and Hannah Cairns, Service Charge Team Leader**
Type of Application	**:**	**Determination as to the reasonableness and payability of service charges pursuant of section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Dutton** **Mrs M Wilcox BSc MRICS**
Date of Hearing	**:**	**13th June 2023**
Date of Decision	**:**	**21 June 2023**

DECISION

DECISION

1. The Tribunal makes the determinations as set out below under the various headings in this decision.
2. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.
3. The Tribunal determines the Respondent shall pay the Applicant the sum of £200 within 28 days of this decision in respect of the reimbursement of the hearing fee paid by the Applicant.

APPLICATION

1. The Applicant seeks a determination in respect of two years. The first is the year 2021/2022 ending 31st March 2022 and in respect of estimated service charges for the following year ending 31st March 2023. The application is dated 25th January 2023 and relates to a number of invoices during that period.

2. In respect of the year ending March 2023, the attack is aimed at the increase in the monthly estimated contributions towards the service charge. In fact it was agreed between the parties that insofar as this year was concerned, proceedings would be stayed to give the Respondents the opportunity to prepare final accounts so that those could be reviewed by the Applicant and a decision made as to whether or not the challenge remained. Miss Richards on behalf of the Respondents agreed that she would endeavour to arrange for the accounts to be available by 18th August 2023 and immediately sent to the Applicant so that she can review them with her colleagues of the resident's association and decide at that time whether or not it is necessary to continue with the application. If they are satisfied with these accounts, then it was agreed that the application would be withdrawn. In the meantime, it remains stayed until the 1st September 2023 when the Applicant is expected to notify the Tribunal of her intentions.

BACKGROUND

3. The property in question is a flat in a development we were told of 30 flats all aimed at providing accommodation for people who are 55 years, or over. It would appear that the properties were built somewhere in the mid to late 1980s and were originally provided for the Oxford Citizens Housing Association Limited. That has now changed, and the present landlord is GreenSquareAccord.

4. The lease was provided to us, but the terms are not in dispute. It provides for monthly payments in advance towards service charges and contains the landlords' covenants of repair and the usual obligations one would expect. The lease also includes a provision to provide a warden service but that seems to have been withdrawn, but there was not complaint about this.

5. The first schedule contains the service charge provisions indicating that they should be certified by the Association accountants at the end of each financial year and that the certificate should contain a summary of expenses and the service charges, which would include contributions to the reserve fund. In this regard, the question of the level of the reserves had been raised and it would be

appropriate for the Respondents to provide the Applicant and other leaseholder with the current level of reserve, although we did note within the papers that there was documentation leading to this information. It is also provided the costs of management should not exceed the sheltered management allowance permitted from time to time which we understand for the year 2022/23 was £501 per unit rising to £557 per unit depending upon whether or not VAT is chargeable.

THE HEARING

6. The Applicant appeared in person together with Mr Rogers and Mrs Hill who were also members of the resident's association. The Respondent who had played little or no part in the proceedings attended the hearing with Counsel (Miss Conlan) as well as Miss Richards and Miss Cairns.

7. At the start of the hearing an application was made by Miss Conlan for the matter to be adjourned. The reason that she gave to us is that the Respondents would not be able to respond to the application as they had only just located the bundle. It appeared from the submissions made that the bundle had been correctly sent by Mrs Seibert to the Respondents, but they had not dealt with it appropriately. It was accepted that they could have prepared for the matter in a better way and sought legal advice far earlier than they did. It was said to us by Counsel that the Respondents did not have a full copy of the bundle and therefore she was in some difficulties in dealing with the matter. She asked that the case be adjourned so that better documentation could be reviewed and provided.

8. Mrs Seibert's response was that she had little confidence that the Respondent would get his case in order if the case were adjourned.

9. We were able to ascertain from Miss Richards that the Scott Schedule was available and that in fact a good deal of the bundle was in the possession of the Respondents and that they could therefore deal with matters. We discovered that Miss Conlan had a copy of the Scott Schedule.

10. After a short adjournment we decided that it would not make financial sense to adjourn the matter given that the sums involved were fairly small and the costs to the parties and to the taxpayer would be disproportionate.

11. A Scott schedule had been prepared by the Applicant following the directions made by the Tribunal on 8th March 2023. The Scott Schedule was at page 40 of the bundle and did have responses from the Respondent. We can record that a number of items were agreed, and we will set those out first.

    1. The costs of the repair to the downpipe at two properties, which appear to have been dealt with on separate days when it should and could have been dealt with on one day was conceded by the Respondents and the sum of £132.48 is no longer claimed by the Respondent in respect of this service charge item.

2. The fire alarm testing has been resolved and the Respondents have agreed to make a refund of £268.23 in respect of this matter, which appeared at item 3 on the Scott Schedule.

3. At item 4 on the Scott Schedule was legionella testing. The Applicant together with Mr Rogers and Mrs Hill agreed that they would not seek to challenge this matter any further and therefore we do not need to make any findings.

4. The next matter in dispute was the telephone equipment, which has been resolved and agreed by the Applicants, as was the same with item 6 on the Scott Schedule in respect of the pest control.

12. This left the complaint that invoices for outside contractors had not been supplied and we will return to that in due course. In that regard page 77A of the bundle gave assistance.

13. The two matters that were not agreed were the costs associated with removing the warden control system and the costs associated with the emergency call system monitoring.

Warden control Call system

14. We will deal firstly with the costs of removing the warden call system. It appears from the bundle that on the 5th May 2021 the Respondent sent a notice under section 20 the Act setting out the charge for the removal of the warden call system indicating that it was qualifying works for which consultation would be required. The two contractors that the Respondent considered would be appropriate were Oreston Controls Limited (OCL) who estimated the costs at £5,700 and George Henry Relay (GHR) who estimated the costs at £3,113.10. It is not clear from these figures whether VAT is included but the estimated costs stated in the letter of 5th May 2021 inclusive of VAT and an administration fee of 8%, came to £205.20 and on the face of it therefore did not require consultation.

15. The Respondents chose the more expensive estimate from OCL. Their reasons for this were that the company were members of the Fire Industry Association and in addition also, specialised in the installation and removal of warden call systems and were CAT B asbestos trained. The reason for this is that the Respondents were not clear whether the Property contained asbestos. It was said to us by Mrs Seibert that a survey had been carried out on behalf of the Respondents some time ago when appeared that there was the possibility of some asbestos but was not wholly clear where that might be. She told us that OCL came ready to investigate the possibility of asbestos but discovered by means that are not wholly clear that that was not the case and that they did not therefore need to make use of their asbestos expertise. It was said by Mrs Seibert that this therefore should have resulted in the cheaper estimate being used and that the Applicants had therefore overpaid for this service.

16. The Respondents contention was that they were not sure whether asbestos was present and that in those circumstances as OCL specialised in the removing of warden-controlled wiring and dealing with asbestos it was appropriate to proceed with them. The point was made that if they had proceeded with GHR, and

asbestos had been found, that company would have had to stop and another contractor called in to deal with the issue. It is said therefore that the costs were reasonable.

DECISION

17. Our finding on this point is that the Respondents are entitled to instruct whom they wish to carry out the works. This was not a case where on the face of it section 20 applied given the costs estimated by the Respondent per property was £205.20 inclusive of VAT and administration fee. Whilst we note the concerns expressed by Mr Seibert on her behalf and behalf of the other leaseholders, it does seem to us that the choice of a contractor who could deal with asbestos if the issue arose, was not an unreasonable one to make. It is also noted from the OCL invoice that the costs had been reduced at £3,750 plus VAT. We find that sum is reasonable and is payable.

Call system monitoring

18. The only other issue on the Scott Schedule that we needed to consider related to the emergency call system monitoring. It appears that this was removed part way through the contract. We were told by Miss Richards that the costs charged to the Applicants were £296.34 for the development, which represented the pro rata costs until the removal of the wiring at the beginning of September 2021. In fact, the Respondents had paid £494.83, as they were required to meet the contractual agreement and what appeared to be a notice period, which was applicable to the contract. Miss Richards told us that the average monthly cost of the monitoring was circa £50 and that accordingly the figures were based on that and were correct and were payable.

DECISION

19. We heard all that was said. As with so much of this case, the Respondents could have made life much easier for themselves if they had produced invoices that they were asked to do as well as any other documentation, in this case for example, the monitoring contract. Be that as it may, Mrs Siebert did not cast any aspersions as to the honesty of the Respondent and in those circumstances, we accept that the sum of £296.34 does represent, on the evidence available to us, the pro rata costs of the monitoring system and it is therefore fair and reasonable and is payable by the Applicant.

Outside contractor invoices.

20. We were then asked to consider those expenses for which invoices had not been produced but limited to external contractors. In this regard at page 77A of the bundle we had an analysis of repair costs, which showed seven occasions in which outside contractors had been engaged. Mrs Seibert did not challenge the costs of Lees Locks of £66. In truth she did not seem to be too concerned about the charges for Drain Wizard of £120 each; the costs of Street Space relating to a bin store area of £114; the costs of A&E Fire and Security Limited to provide a bracket for fire extinguishers for the price of £145.16; the survey for the external ceiling lining in all blocks for fire risk purposes at £600 and what would seem to be the

recommended works relating to a meter cupboard following the fire risk inspection of which a charge of £144 was levied.

21. It was said to us by the Respondents that a number of these invoices formed continuing works on other developments and accordingly the production of the invoices would not greatly assist the Applicants. There was accordingly no specific challenge to the invoices other than a wish to see the documents which supported the sums involved. Certainly, Mrs Seibert made it clear that she was not making any suggestion that the invoices were false.

DECISION

22. Insofar as these additional invoices are concerned, given that the challenge to them was really limited to whether or not there was some documents to support them but an acceptance that they would not have been falsely included, we have come to the conclusion to bring this matter to an end that the costs do not appear on the face of them to be unreasonable and are therefore payable. However, we do agree with Mrs Seibert that the lack of documentation provided by the Respondents has not helped her cause.

Submissions

23. We invited Miss Conlan to make any submissions she wished to do so, particularly with regard to the question of costs being the refund of fees, and whether or not a section 20C order should be made. Her submissions were directed towards the refund of the application and hearing fee. She suggested the application had not been wholly successful and admissions had been made by the Applicant and the Respondents. It was a small claim and some of the matters fell outside our jurisdiction. She considered it to be disproportionate to make a costs order.

24. Mrs Seibert's response was it would be proportionate to do so. They had not sought legal advice and had dealt with matters themselves.

25. Insofar as the costs are concerned, it was accepted by the Respondents that they had not performed well. We think the correct way of dealing with this is to require the Respondents to refund to the Applicant the hearing fee of £200. The application fee is something that we would let lie with the Applicant. However, if the Respondents had engaged in a more meaningful way and produced the documentations that were requested, it may well be that the hearing would not have been required. In those circumstances we consider it appropriate to order that the Respondents refund the hearing fee of £200.

26. Insofar as the costs, if any, payable under the terms of the lease, we conclude that it would be appropriate to make an order under section 20C of the Act. This covers the named individuals in the application which appear to most if not all of the leaseholders. The problems in this case have been largely brought about as a result of the Respondents not engaging with Mrs Seibert and her colleagues on the Association and not really engaging in these proceedings. In those circumstances we consider it to be just and equitable to make an order under

section 20C that the costs of the proceedings incurred by the Respondent are not recoverable through the service charge regime.

27. We confirm all that we said earlier in the decision concerning the stay of proceedings in respect of the year 2022/23. It is hoped that upon production of the actual accounts within time, the Applicants can go through those and see whether there are costs that they wish to challenge. Hopefully the Respondents will also provide the Applicants with all documentation to support the figures and in those circumstances, we would hope that there would be no need for these proceedings to go any further and that the Applicant can withdraw them. We did ask that the Respondents gave the Applicant a name that they could contact if they had issues concerning matters, and we were told by Miss Cairns that that would be done. We did indicate that we hoped that that could be resolved within the next 7 days.

28. We would like to thank all concerned for their assistance in dealing with the matter and for the responsible attitude shown by both sides at the hearing which enabled the matter to be considered notwithstanding the difficulties.

Andrew Dutton

Judge: A A Dutton

Date: 21 June 2023

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.