



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

Case Reference : **MAN/00CM/LSC/2022/0078**

Premises : **Bonnors Raff, Chandlers Road, St Peters Wharf,
Sunderland, SR6 0AD**

Applicant : **Freehold Properties 23 Ltd.**

Representative : **Stevensons Solicitors**

Respondents : **Various leaseholders**

Type of Application : **under s.27A of the Landlord and Tenant Act 1985**

Tribunal Member : **Judge P Forster
Mr J Faulkner FRICS**

Date of Determination : **1 February 2024**

Date of Decision : **7 February 2024**

DECISION

Decision

The service charge payable in respect of Bonners Raff, Chandlers Road, St Peters Wharf, Sunderland, SR6 0AD for the 2021 service charge year is £8,949.02, and in respect of the 2022 service charge year to 31 March 2022 is £11,573.76.

Introduction

1. The Tribunal is asked to determine the reasonableness of the service charges that have been made in respect of Bonners Raff, Chandlers Road, St Peters Wharf, Sunderland, SR6 0AD (“the Premises”). The application concerns the 2021 service charge year and part of the 2022 service charge year to 31 March 2022.
2. Freehold Properties 23 Ltd. (“the Applicant”) is the registered proprietor of the freehold of the Premises registered at HM Land Registry under title number TY511990. The Applicant’s title is subject to the leases noted in the Schedule to the Charges Register.
3. The Respondents are leaseholders of the Premises identified in the Annex 2.
4. A specimen lease has been produced in respect of Loft No.1 dated 8 June 2007 made between Akenside Quays Ltd., as landlord and Errol Floyd Powell as tenant. The terms of this lease are common to the other subject leases.
5. The Premises is a modern block that includes at least one commercial unit in the basement and 63 apartments. It is situated next to the River Wear in Sunderland. The original developer was Akenside Quays Ltd.
6. The application originally related to 37 apartments in the block but is now limited to the 13 apartments owned by the remaining Respondents.
7. In 2021, the Bonners Raff leaseholders sought and subsequently acquired the right to manage the Premises. At that time, the managing agent was LIV Group Ltd. Since 1 April 2022, the Premises have been managed by Bonners Raff RTM Company Ltd. For this reason, the claim for services charges in 2022 is limited to 31 March 2022.
8. The Applicant is represented by Mr Glenn Stevenson of Stevensons Solicitors. Throughout the proceedings, Mr Stuart Curry has purported to represent the Respondents. He is a director of Bonners Raff RTM Company Ltd. but this company is not a party to the proceedings. The Tribunal has not received a written notice from the Respondents appointing Mr Curry to act on their behalf. The Tribunal has not received submissions from any of the individual Respondents. Mr Curry was one of the original 37 Respondents but after he paid the service charge demand in full, albeit as he says, under protest, the Applicant withdrew the proceedings against him and 22

of the other original Respondents. Notwithstanding this, the Tribunal decided to hear from Mr Curry and Mr Stevenson did not object.

9. The Tribunal issued directions on 3 March 2023 and additional directions following a case management hearing on 25 August 2023. The parties were required to exchange statements of case, copies of all documents on which they intend to rely for the years in dispute and any witness statements. Each party has provided the Tribunal with a bundle of documents. The Tribunal considered the available evidence on 24 October 2023 and decided that a hearing was required to determine the application. The Tribunal has not inspected the Property. The hearing was held by video on 30 January 2024.

The Applicant's case

10. The Applicant asks the Tribunal to determine the amount of the service charges payable by the Respondents in accordance with the terms of their respective leases. The Applicant has provided copies of relevant invoices to support the claim.
11. The claim is made up as follows:

<u>2021</u>	<u>maintenance expenses</u>	
	Computer Services class M	£672.00
	CCS November concierge	£2,119.03
	CCS December concierge	£2,104.63
	CSS Window Cleaning 12/21	£141.36
	Right Homes repairs	<u>£3,912.00</u>
		<u>£8,949.02</u>
<u>2022</u>	<u>maintenance expenses to 30/03/22</u>	
	CCS January concierge	£2,088.50
	CCS February concierge	£2,071.22
	CCS March concierge	£2,071.24
	CSS Window Cleaning 01/22	£141.02
	CSS Window Cleaning 02/22	£141.16
	CSS Window Cleaning 03/22	£139.22
	Right Homes pipe repair	£540.00
	Right Homes internal repairs	<u>£4,382.40</u>
		<u>£11,573.76</u>

The Respondent's case

12. None of the individual Respondents has provided any evidence or made written submissions to the Tribunal. Mr Curry is no longer a party to the proceedings, but he has provided a bundle of documents and made both written and oral submissions. The issues identified by Mr Curry relate to (1) the payment of the contractors' invoices, (2) late payment charges, (3) window cleaning, (4) the role of "Simarc", (5) lift repairs, (6) contribution to the service charge by the "businesses in the basement" and (7) the work carried out by Right Homes was not necessary.

13. The Applicant's response

14. The Applicant states that the work invoiced to the Applicant was for work that it was obliged to carry out under the terms of the leases, the invoices were paid by the Applicant and reimbursement is now due from the Respondents.

The Law

15. The law relevant to the case is set out in the Annex 1.

Reasons for the decision

16. The Respondents' liability to pay the service charges to the Applicant is set out in clause 2, clause 3.1 and clause 1 of Part One of the Seventh Schedule to the leases. The Respondents do not deny that they are liable to pay the Applicant under the terms of their respective leases. The question is how much is payable to the Applicant.

17. The proportion of the service charges payable by each of the Respondents varies in accordance with the relevant provision in their respective leases. No issue has been raised about the proportion that is payable.

18. Mr Curry's submissions are based on a fundamental misunderstanding. He believes that he and the Respondents are being asked to pay twice because some of the other leaseholders have not paid their share of the service charge. This is not correct. The service charges that have been levied represent the costs incurred by the Applicant. They do not represent the shortfall between what was incurred and what was paid by some but not all of the leaseholders. Mr Curry does not want to pay any extra and he is not being asked to do so.

19. Each item that makes up the service charges for 2021 and 2022 is supported by invoices issued by the various contractors. Mr Curry suggested that at least some of these invoices had not been paid but this assertion is not supported by any evidence. The Tribunal finds that these costs have been incurred by the Applicant.
20. Mr Curry objects to the payment of charges on some of the invoices for late payment. The Applicant's liability to pay late charges and therefore the Respondent's liability to reimburse the Applicant depends on the terms of the agreement between the Applicant and the individual contractors. Mr Curry has noted some differences between different versions of some of the invoices and alleges that they have been "doctored". This is a serious allegation to make but he has not backed it up with any evidence. It would be usual practice for a contractor to reissue an invoice to include late charges if the terms of the agreement allow such charges to be made. The Tribunal finds that to the extent that late charges have been incurred by the Applicant they can be recovered from the Respondents.
21. It is alleged by Mr Curry that the windows in the block have not been cleaned and therefore the invoices from the contractor, CSS Window Cleaning, are not payable. Mr Curry points to a "signing in list" to demonstrate that the contractor did not attend in December 2021 or in January, February and March 2022. The Tribunal only has Mr Curry's evidence for this. It accepts the point made by Mr Stevenson that there would be no need for the window cleaners to sign in because they were only cleaning the outside of the building. Mr Curry conceded that he had not complained about matters at the time and there is no evidence from other leaseholders to support the submission. On the balance of probabilities, the Tribunal finds that the charges for window cleaning were incurred by the Applicant.
22. Mr Curry raises a question about the role of "Simarc". This company is the Applicant's national managing agent. There is no dispute that there was a shortfall between the amount of money paid by leaseholders and the amount that had to be paid to the contractors. This was because some of the leaseholders did not pay the service charge. The evidence is that Simarc made up the shortfall on behalf of the Applicant and in follows that the funds stand to be reimbursed. There is no element of "double charging" as suggested by Mr Curry.
23. The costs of repairing the lifts are raised by Mr Curry but this is not an issue for the Tribunal because they do not form part of the service charges under review here.

24. Mr Curry complains, perhaps with some justification, that the occupiers of the business premises in the basement are not asked to contribute to the service charge of the whole block. This is not a matter for the Tribunal. The terms of the Respondents' leases are such that they and not the occupier of the basement are liable to contribute to the service charge.

25. Mr Curry argues that work undertaken by Right Homes in December 2021 and in the first three months of 2022 should not have been done because the right to manage company was to take over responsibility for the Premises from 31 March 2022. This is a sweeping statement and one not supported by any detailed argument. Mr Curry simply said that he did not have enough time to go deeper into matters. This is not sufficient for these proceedings. The Tribunal was satisfied that the Respondent was obliged under the terms of the leases to repair and maintain the Premises and this obligation extended until 30 March 2022. The works claimed for were properly undertaken and the costs are properly recoverable from the Respondents.

26. The Tribunal has listened to Mr Curry's submissions even though he is no longer a party to the proceedings, and he does not represent the Respondents. The Tribunal does not accept the points Mr Curry has made. The Tribunal finds that the service charges made for 2021 and part of 2022 are payable as claimed.

Dated 30 January 2024

Judge P Forster

RIGHT OF APPEAL

A person wishing to appeal against this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 1

S.18 of the Landlord and Tenant Act 1985 defines “service charges” and “relevant costs”:

- (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.

S.19 of the 1985 Act deals with limitation of service charges:

- (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 provision 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.

S.27A of the 1985 Act deals with the liability to pay service charges:

- (1) An application may be made to a leasehold valuation 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.

ANNEX 2

Respondents

(1)	Richard Kilgour	Flat 2
(2)	K Callender	Flat 4
(3)	Harriet B Owen	Flat 7
(4)	Dina & Rayan Eskandanari	Flat 8 & 17
(5)	AH & IB Wimpenny	Flat12
(6)	M Sanderson	Flat 20
(7)	LD Curry	Flat 24
(8)	K Ross	Flat 34
(9)	P Stephenson	Flat 41
(10)	JM & PJ Preston	Flat 43
(11)	G Maguire	Flat 49
(12)	D M Powell	Flat 53
(13)	F Christelow	Flat 63