



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

Case Reference : **MAN/ooCM/LSC/2022/0020**

Property : **Apartment 52 River Quarter, Lambton Street, Sunderland, SR1 1TP**

Applicant : **George Wilson**

Respondent : **Gentoo Group Limited**

Type of Application : **Landlord and Tenant Act 1985 – s 27A
Commonhold and Leasehold Reform Act 2002 – Schedule 11 paragraph 5A**

Tribunal : **Tribunal Judge W L Brown
Mr I R Harris MBE FRICS (Valuer Member)**

Date of Decision : **25 March 2024**

DECISION

Regarding the two elements of service charge expenditure for which the Tribunal was required to make determinations:

- (i) The charges for the caretaking element were reasonably incurred and reasonable in amount for the years 2018 – 2022 (inclusive);
- (ii) The reasonable expense for water for the Respondent to charge to the Applicant are £236.89 for 2021 and £277.72 for 2022.

REASONS

Background

1. The Tribunal received an application dated 11 February 2022 from the Applicant (the Application) for a determination under Section 27A of the 1985 Act as to reasonableness and payability of service charges for service charge years 2018 - 2022 inclusive. The Application was also for an order reducing or extinguishing the Applicant's liability to pay administration charges in respect of costs incurred in connection with these proceedings.
2. Directions were made by the Tribunal on 28 April 2022.
3. A hearing took place on 25 January 2024 at Gateshead County Court. The Applicant appeared in person, supported by Mr N Stoddart and Mrs C Nicholson. The Respondent was represented by Mr P Marcus, Counsel and its witnesses were Ms H Coldron, Leasehold Manager, Mr S Gordan, Head of Neighbourhoods and Ms K Smethurst, Service charge Manager.
4. The building in which the Property is located comprises commercial premises on the ground floor and 53 residential apartments.

Issues

5. At the hearing there was presented to the Tribunal for determination only two matters remaining in dispute from the Application, being charges relating to caretaker services and water charges. Errors in calculations of service charges identified by the Applicant through this process have been corrected by the Respondent and adjustments made to the service charge record of the Applicant.

The Principal Law for the Application

6. Section 18 of the 1985 Act states

Meaning of "service charge" 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.*

Section 19 of the 1985 Act states

Limitation of service charges: reasonableness

(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 for the services or works or are of a reasonable standard: and the amount payable should be limited accordingly.*

(2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than as reasonable as so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise.*

7. Section 27A of the 1985 Act states

Liability to pay service charges: jurisdiction

(1) *An application may be made to the appropriate tribunal for a determination whether 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 service, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the cost and, if it would, -*

- 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.

8. Also of relevance is Schedule 11 of the 2002 Act which states

Meaning of “administration charge”.

1(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,*
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,*
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or*
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.*

.....

(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—

- (a) specified in his lease, nor*
- (b) calculated in accordance with a formula specified in his lease.*

Reasonableness of administration charges.

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable

.....

Liability to pay administration charges

5 (1) An application may be made to the appropriate tribunal for a determination whether an administration 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.*

The Lease

9. The Tribunal was provided with a copy of the lease of the Property dated 11 September 2013 between the Respondent as lessor and the Applicant as lessee for a term of 125 years from 1 January 2009, recording an escalating ground rent. The lease terms and interpretation of them were not in dispute between the parties. The Tribunal was satisfied that the services provided by the Respondent, which are the subject of these proceedings, and recovery for the cost of them from the Applicant, were provided for in the lease. The Applicant's liability to contribute to the cost of the particular services in accordance with the terms of the lease was not in dispute.

The respective cases regarding the two issues.

10. The parties agreed the content of a bundle of documents for the hearing, comprising 401 pages. In addition to the parties' statements of case the Tribunal had before it a statement, including a statement of truth, dated 16 December 2023 from Ms Coldron of the Respondent.

11. The service charge year is 1 April to 31 March.

Caretaking

12. The Applicant did not disagree that caretaking charges were relevant expenditure. He complained that caretaker/cleaning charges had risen from £175 in 2014 to £533.03 in 2021, despite a reduction in the working hours of the caretaker to one third of the number of hours in 2018. He further stated that the quality of cleaning of decking had deteriorated.

13. The Respondent has already agreed an error was made in its accounting of charges for 2022 and has accepted a necessary adjustment of the related amount demanded of the Applicant for this element of expenditure (the correct sum for that year should be £341.48).

14. The Respondent's position was that variations in charges across the years at issue were due to:

- (i) the Respondent phasing in recovery of materials and equipment;
- (ii) recovery of apportioned concierge charges (principally for monitoring the car park entry system and for out of hours cover)
 - both of which had not been reclaimed from leaseholders in the past, but were recoverable under the terms of the lease (the last year in which there had been such a subsidy from the Respondent being 2021/22); and
- (iii) reduction in number of hours devoted by the caretaker to the River Quarter premises (36 hours reduced in May 2021 to 27 per week).

Water charges

15. The Applicant's position was that he could negotiate to obtain water supply and sewerage services from a main supplier, such as Northumbrian Water, at a significantly lower cost for his usage than the sum apportioned to him for supply to the block arrangement.

16. The Respondent maintained that the charges were actual sums incurred. At the hearing the actual charges were clarified for the two years challenged by the Applicant, as £296.11 (2021) and £347.15 (2022) – page 309 of the hearing bundle.

17. It was presented that while the lease apportions services to the Applicant at 1.89% of the total, the Respondent has been charging him only

1.33%. In fact, at the hearing it was established that regarding the Applicant, water supply charges have been calculated on floor area of the apartments (1.31%), but sewerage charges on the number of bedrooms (1.33%). From 2022 the Respondent has been apportioning charges to the Applicant at 1.33% for both elements.

18. Ms Smethurst indicated that in advance of the hearing she had spoken to “Wave”, the Respondent’s supplier, and been informed that commercial, not domestic, rates were charged because the premises formed a “block”.

19. The Applicant presented a letter to him dated 12 May 2022 from Northumbrian Water recording its fresh and waste water charges between 2026/17 and 2022/23. The Tribunal understood these figures to relate to supply to a domestic consumer customer.

20. The Applicant stated that his charges were higher than those charged by the Respondent to a social housing tenant, occupying accommodation similar to the Property – charged £4.37 per week (i.e. £227.24 per year). The Applicant considered he should not pay in excess of £204 for each of the years at issue.

The Tribunal’s Findings and Determinations

21. The Tribunal first considered the rights and obligations under the lease of the Property and we found no evidence to contradict the parties’ understandings as set out in paragraph 9 above. We found that:

“Services” are set out in the Second Schedule Part I and include “....employing such persons as the Landlord may in its absolute discretion consider desirable or necessary to enable them to perform or maintain the said services or any of them or for the proper management or security of the Residential Common parts” – which would include the work of the caretaker and concierge.

“Service charge” means “...the tenant’s proportion properly certified....as being payable by the Tenant.....” – which gives discretion to the Respondent (subject to the lessee’s right to make application to the Tribunal with an application such as the Applicant has brought) regarding the amount apportioned to the Applicant for those elements of expenditure which are identified as “Services”.

“Structural Services” (Second Schedule Part III) includes “....any other amenities that the landlord deems reasonable or necessary for the benefit of the development” – which would include provision of water and sewerage services

the “Tenant’s Structural Proportion” is recorded as 1.89%.

22. The Tribunal learned that the parties have worked hard to improve transparency regarding service charges and provision of information to

leaseholders, one of the factors leading to the Application. Further, that certain operational matters giving rise to concern from the Applicant also had been resolved.

Caretaking

23. The Tribunal had no evidence to contradict the Respondent's position regarding the demands for contribution by the Applicant for caretaker and concierge fees as being accurately calculated and in accordance with the explanation it provided (see paragraph 14):

2018 - £335.64

2019 - £471.45

2020 - £485.58

2021 - £533.03

2022 - £341.48

24. The Applicant did not pursue an argument about quality of service and there was no evidence before us of poor quality of work such as to justify any reduction in costs.

25. We found that approximately £30,000 for 27 hours of caretaking, plus concierge work and materials was reasonable for the size of the residential element of the building in which the Property is situated. We determined that the sums set out in paragraph 23 were reasonably incurred and reasonable in amount.

Water charges

26. The Respondent acknowledged at the hearing that it had not tried to negotiate a better charge for water supply, but intended to do so. The Tribunal found that it had not sought to obtain price comparisons and had not challenged designation of the whole building as "commercial" for supplier charges. The Tribunal found on a balance of probabilities that the rates charged were in excess of those which were reasonably obtainable for a domestic user. We accepted that some of the charges are for use of water in communal areas of the building, but that is a factor to be dealt with during negotiations. We found on the facts that it is reasonable for the Applicant to expect that the Respondent would seek to price-check its supplier for water charges and negotiate where possible to obtain a better price than the standard commercial rates being applied. While that may be a point going to management, the challenge was brought only against the actual charges for water. We found the sums charged to the Applicant in 2021 and 2022 were unreasonable. In consequence was determined there should be a reduction of each sum by 20%, i.e. the charges deemed to be reasonable for the Respondent to charge to the Applicant are £236.89 for 2021 and £277.72 for 2022.

27. While the Applicant brought into issue the estimated service charges for 2023 for caretaking, given our finding of reasonableness for earlier years

we make no finding for that year, although it remains open to the Applicant to pursue a challenge once a final sum is known.

28. As to the element of the Application concerning administration charges, none were drawn to our attention as having been demanded of the Applicant and therefore we have no determination to make.

29. No order was applied for pursuant to section 20C 1985 Act preventing the Respondent recovering any costs of these proceedings through the service charge, but we have noted that the Respondent confirmed at the hearing no proceedings-related costs would be charged through the service charge.

Tribunal Judge Leslie Brown.

25 March 2024