FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference : LON/00AY/LSC/2023/0313

Property :All Units in Yorks House, 5 Coal Lane , London SW9 8GG

Applicants : Leaseholders of Yorks House

Representative : Amy Cameron

Respondent : Calibri GR Limited

Representative : Gateway Properties Management Limited

Type of application : Payability and reasonableness of service charges

Tribunal:

Judge Shepherd

John Naylor FRICS

Date and Venue of Hearing: 7th March 2024

10 Alfred Place, London WC1E 7LR

DECISION

1. The Applicants in this case are the leaseholders of Yorks House, 5 Coal Lane , London SW98GG ("The Applicants"). The Respondent is freeholder of the premises. The Applicants were ably represented by Ms Cameron who is one of the leaseholders who lives in Flat 19 . The Respondents were represented by Ms Coleman their solicitor.

2. The building is made up of 1 and 2 bedroom flats in a purpose built block built in 2019. The estate is made up of three blocks, namely Yorks House, Leno House and Antiopa House. The only block involved in the application was Yorks House a block of 24 flats of whom 15 are Applicants. Service charges for the period 2020 – 2023 inclusive were challenged. It was said at the time of the application that the value of the dispute was £187027. The parties prepared a Scott Schedule. For future reference they should include details within the schedule rather than making reference to other documents which made evaluation difficult. We were however assisted by Ms Cameron and Ms Coleman. In addition Michael Admas gave evidence on behalf of the Respondent.

The relevant law

3. The law applicable in the present case was limited. It was essentially a challenge to the reasonableness of the costs. There was no challenge in relation to payability under the lease, an alleged failure to consult or limitation.

4. The Landlord and Tenant Act 1985,s.19 states the following:

> *19.— 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 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.*

....

5. The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

27A Liability to pay service charges: jurisdiction

(1) An application may be made to [the appropriate tribunal]2 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]2 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.

The issues

6. The lease terms and their application were not in issue and were in any event uncontentious. It is not intended to rehearse the terms here. The main point of challenge by the Applicants was the reasonableness of charges. Taking each broad challenge in turn.

Maintain bin cycle and frontage

7. There was general dissatisfaction with the cleaning service. The cleaning was done by GFM. The head of this firm had attended site and expressed dissatisfaction with the service. The Respondents said GFM attended once a week. The Tribunal were shown photographs. It is clear that the service is not the best and we make a deduction across all relevant years of 20%.

Account management fee

8. The Applicants conceded this challenge and the sums are allowed.

Gate maintenance

9. The gate in question had been out of action since 2021 when it was taken off its hinges by the rubbish collectors. One of the four gates was not therefore working throughout the period in question. Accordingly, we reduce the gate maintenance charge by 25% for each year in question.

Lighting protection

10. No decision was required.

Water - landlord

11. This is the cost of the communal water supply. This was not seriously challenged and is allowed in full

Electricity external areas

12. The leaseholders wanted to know how the sum was calculated but no serious challenge was brought. The sum is allowed in full.

Electricity light flick testing

13. This sum is allowed in full as it was reasonable.

Gate telephone lines

14. No decision was required as no charge made.

Repairs and renewals

15. The leaseholders said that a box had been left by Taylor Wimpy, the developers at the front of the estate. It was an eyesore. Eventually the box was removed and they were recharged. In addition, there was a charge for a fence repair which from photographs looked like a poor repair. The leaseholders said the repairs were carried out by the cleaners. The cleaners had charged for a jet wash which did not take place. The Tribunal deducts a third of the invoice for the jet wash and box removal and 50% of the fence repair cost.

Gate entry system

16. No decision was required as no charge made.

Emergency service

17. The leaseholders said they had rung the number but it had not been answered. There was general dissatisfaction with the service and 50% deduction is made for the years in question.

Health and safety fire risk

18. The leaseholders conceded this sum.

Management fees

19. The leaseholders said the service was poor. The gardens were in a state. There had been 5 property managers in 5 years. Money had been spent when it was not needed. The example of a replacement PIB box was given which in the leaseholder's view was overpriced. The leaseholders did not provide comparators yet the service did seem wanting accordingly we reduce the unit cost of the management fee from £262.65 to £240 for each of the years in question.

Accounting fees

20. This was conceded by the leaseholders.

Bank charges

21. No decision required.

Postage

22. This is allowed in full.

Building insurance

23. This was conceded by the leaseholders.

Insurance valuation

24. This sum is reasonable and is allowed in full.

Site inspections

25. This is a prudent task and the charge is reasonable and allowed in full.

Podium A/B Maintenance

26. The leaseholders said that the service was poor and this had been accepted by the head of GFM. The Respondents said the charge was for a 45 minute visit to each Podium. The Respondents conceded a 10% deduction for this item and we agree with this across the years in question.

Internal cleaning

27. The leaseholders said the service was poor and there had been a number of complaints. We accept the criticism and allow a 20% deduction over the years in question.

Window cleaning

28. No decision required as not challenged.

Refuse strategy

29. This charge met the cost of moving the bins after they had been collected at the estate. This is an essential task and the sum is allowed in full

Lift maintenance

30. This sum was conceded by the leaseholders.

CCTV

31. Not in dispute.

Solar panel maintenance

32. No decision required as not challenged.

Abseil points

33. Not in dispute.

Plant pump and substation, boiler maintenance, tank maintenance, gas safety certificate.

34. These were conceded by the leaseholders

HIU servicing

35. Not in issue.

Sprinklers, electricity, lift lines, plant room phone and routers

36. Conceded by leaseholders.

Repairs and renewals

37. The leaseholders disputed three invoices from Drainscan (drain investigation), GFM (missing glazing beads) and Enterprise (bike store). These works were reasonable save that GFM didn't carry out any works accordingly we deduct the charge of £150.

Communal satellite, ROSPA, Fire safety, dry risers and engineering insurance

38. Conceded by leaseholders.

s.20C Landlord and Tenant Act 1985

39. This was a genuine application which was cogently argued by Ms Cameron on behalf of the leaseholders. The Applicants have been successful albeit partially. We have no hesitation in exercising our discretion under s.20C and disallowing the Respondents from recovering their costs of the proceedings from the service charge.

Judge Shepherd

18th April 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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.

If the application is not made within the 28-day time limit, such application must include a request for 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.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. 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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).