



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

Case Reference : **LON/00AH/LSC/2023/0404**

Property : **110 Brigstock Road, Thornton Heath,
Surrey CR7 7JB**

Applicants : **Mrs Bonnita Nwosu and Mr Chidi
Nwosu**

Respondent : **Cyntra Properties Limited**

Representative : **Wildheart Residential Management
Limited**

**Type of
Application** : **Determination as to reasonableness and
payability of service charge**

Tribunal Members : **Tribunal Judge H Lumby
Ms. R Kershaw BSc**

Date of Decision : **22 April 2024**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the amount of £204 included in the 2022/2023 service charge accounts in respect of fire alarm testing is reasonable but only £102 is payable, with the balance being payable when the Respondent provides a copy of the invoice for the 28 March 2023 visit to the Applicants.
- (2) The tribunal determines that no on account payment in respect of common parts electricity should be charged to the Applicants in the 2023/2024 service charge year and any such payments made should forthwith be refunded to the Applicants in accordance with clause 1(c)(i) of the Applicants' lease.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the Applicants as lessee through any service charge.
- (4) The tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under the Applicants' Lease.

Background

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of the two service charges item levied by the Respondent on the Applicant for the service charge years 2022/2023 and 2023/2024. They also seek an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
2. The Property comprises a two storey converted Victorian building comprised of three flat; a ground floor 1.5 bedroom flat, a first floor one bedroom flat and a top floor studio flat. The freehold is vested in the Respondent, represented by its managing agents Wildheart Residential Management Limited. The Applicants are leaseholders pursuant to a lease dated 26 June 1987 for a term of 99 years from 25 March 1987.

3. The Applicants' complaints relate to a charge of £204 from the 2022/2023 service charge year in relation to fire alarm testing and an on account charge of £300 in respect of common parts electricity charges from the 2023/2024 service charge year.

The Lease

4. The Lease provides at clause 1(c)(i) that:

“During the said term by way of further additional rent the lessee will pay on demand two fifths of the costs and expenses reasonably incurred or to be incurred by the Lessor in complying with the obligations imposed by Clause 3 (1) (5) (6) and (7) hereof (hereinafter called the “service charge”) and will on demand pay to the Lessor such sum or sums as he shall reasonably require in advance of such service charge Provided that the Lessee shall be entitled before making any such payments to have sight of the estimates for any such demand and in the case of demands for costs and expenses already incurred of invoices for the amounts demanded and in the case of costs and expenses not yet incurred shall be entitled to have sight of the invoices for the same as soon as available and to be forthwith refunded any excess contribution previously paid in respect of each such cost and expense”

5. Clauses 3 (1), (5), (6) and (7) cover landlord's repair, maintenance and insurance obligations, as well as covenants in respect of cleaning and lighting the common parts of the Property.

Tribunal determination

6. This has been a determination on the papers. The documents that the tribunal was referred to are in a bundle of 91 pages, the contents of which the tribunal have noted. The bundle contained the application, the tribunal's directions in the case, the Applicants' statement of case, a copy of the lease, the Respondent's statement of case and evidence as to fire alarm testing together the Applicants' Reply and service charge accounts and budgets. The decisions reached and the reasons for them are set out below.
7. Extracts of the relevant legislation are set out in the Appendix.

2022/2023 service charge year – fire alarm testing

8. The amount in dispute in relation to fire alarm testing amounts to £204, arising from two tests purportedly carried out at the rate of £102 including VAT per test. There is no dispute between the parties as to whether testing is required.
9. The Applicants initially argued that there was no evidence that the tests had occurred or invoices for them. The Respondent replied with an invoice for one of the two tests although explained that this had not been paid whilst awaiting the accompanying service records. The second

invoice had not been received. The Applicants responded by stating that the works were not of a proper standard and asking for the payments made by them towards this be refunded.

10. The tribunal considered the submissions made by both parties and the evidence submitted. It concluded that it was reasonable and proper for the alarms to be tested, noting that the Applicants sought more rather than less testing. It considered that two charges of £102 including VAT each was a reasonable charge.
11. However, the tribunal also noted the provisions of clause 1(c)(i) of the Lease referred to previously, especially the proviso. This says that when sums have been incurred, the lessee is entitled to see the invoices for the sums demanded before making payment. The Applicants argued that the invoice for the second payment has not been provided and there is missing paperwork relating to the first payment (where the invoice was provided).
12. The tribunal determines that the costs for both sets of the fire alarm testing had been incurred as the works had been carried out. It also finds that the effect of the proviso to clause 1(c)(i) is that until the invoice from the contractor is provided to the Applicants, they are not liable to pay their share of the costs. This means that the Applicants' share of the cost of the second set of testing is not payable yet as no invoice has been provided. Upon its provision, the share will be payable.
13. An invoice has been provided for the first set of testing. The Applicants' argument that there is other paperwork missing so their share of this invoice is not yet payable is not accepted. The proviso to clause 1(c)(i) only refers to invoices not other paperwork. The tribunal therefore finds that the Applicants' share of the cost of the first set of testing is payable.
14. The Applicants have argued that amounts not payable should be forthwith refunded pursuant to clause 1(c)(i). However the tribunal finds that the express obligation only applies to sums paid on account, not in respect of sums incurred. It is therefore within the discretion of the lessor as to how to refund the amount that is not yet payable, whether by way of direct refund or credit against future charges.

The tribunal's decision

15. The tribunal determines that the amount of £204 included in the 2022/2023 service charge accounts in respect of fire alarm testing is reasonable but only £102 is payable, with the balance being payable when the Respondent provides a copy of the invoice for the 28 March 2023 visit to the Applicants.

2023/2024 service charge year – on account payment for electricity

16. The position on charging for electricity to the common parts of the Property is a little unusual in the case. The Applicants have a sub-meter to measure usage in their flat and settle the costs direct to the electricity provider. They then invoice the Respondent or the managing agents who recover three fifths from the other leaseholders (on the basis that the applicants are liable for two fifths) and reimburse the Applicants.
17. In the 2023/2024 service charge year the Respondent made a provision of £300 towards this in the service charge budget. The Applicants have objected on the grounds that this is substantially more than the likely costs. In addition, they argue that requiring an on account payment from them towards this means they are having to pay twice – once to the supplier for the whole cost and secondly to the landlord for a share of an inflated on account sum.
18. The Respondent has accepted that the real cost is likely to be considerably lower than the £300 it budgeted for. However, it considers that this was a reasonable estimate based on comparable properties and the Applicants will get the excess back in due course pursuant to clause 1(c)(i).
19. The tribunal considered these submissions as well as the evidence provided. Clause 1(c)(i) does allow for the lessor to request on account payments, the lessee having to pay such amounts as the lessor shall reasonably require. Applying this to the issue in question, the Applicants will be incurring the full cost of the utilities and recovering the other leaseholders' shares through the lessor. The lessor will not itself be incurring the full cost and so is not reasonable in demanding any on account payment from the Applicants for this. The amount that it reasonably requires from the Applicants on account of electricity supplied to the common parts is zero.
20. That conclusion is consistent with section 19(2) of the 1985 Act, which provides:

“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”

Given the Applicants are bearing the full costs of this in advance of recovery rather than the Respondent, there is no reasonable amount that can be demanded.
21. The tribunal is also aware of the requirement in the proviso to clause 1(c)(i) that requires that any excess payment towards future expenditure shall forthwith be repaid. As the full amount of the Applicants' share of the on account payment is in excess of zero, the Respondent should forthwith repay the full amount paid by them on account of this item.

22. The tribunal determines that no on account payment in respect of common parts electricity should be charged to the Applicants in the 2023/2024 service charge year and any such payments made should forthwith be refunded to the Applicants in accordance with clause 1(c)(i) of the Applicants' lease

Applications under s.20C and paragraph 5A

23. The Applicants have applied for cost orders under section 20C of the Landlord and Tenant Act 1985 ("**Section 20C**") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**").

24. The relevant part of Section 20C reads as follows:-

(1) "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ... the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant..."

25. The relevant part of Paragraph 5A reads as follows:-

"A tenant of a dwelling in England may apply to the relevant ... tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".

26. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge of the Applicants or other parties who have been joined. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be charged direct to the Applicants as an administration charge under the Lease.

27. In this case, the Applicants has been successful on the majority of the issues, being the on account payments in relation to electricity and half of the fire testing costs. The tribunal also noted the unreasonable stance taken by the Respondent in relation to the on account costs. Having read the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act. The tribunal therefore make an order in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge.

28. For the same reasons as stated above in relation to the Section 20C cost application, the Applicants should not have to pay any of the Respondent's

costs in opposing the application. The tribunal therefore makes an order in favour of the Applicants that none of the costs incurred by the Respondent in connection with these proceedings can be charged direct to the Applicants as an administration charge under the Lease.

Name: Tribunal Judge H Lumby **Date:** 22 April 2024

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

APPENDIX

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (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

- (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 provisions 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.

Section 27A

- (1) An application may be made to the appropriate 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.
- (3) An application may also be made to the appropriate tribunal 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.