



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

Case reference : **LON/00BE/LSC/2020/0127**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **22b Furley Road, London SE15 5UQ**

Applicant : **Cassie Philpin**

Representative : **In person**

Respondent : **Thi Gai Quach**

Representative : **Mr D Hua of Hua Property Management Limited**

Type of application : **Determination of the payability and reasonableness of services charges**

Tribunal member(s) : **Judge Dutton
Ms F Macleod MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR by remote video**

Date of decision : **22 October 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in a bundle of 100 pages, the contents of which have been noted.

DECISION

The tribunal finds that the respondent is not entitled to recover the sums that have been claimed in two demands, one dated 4 February 2021 and a second demand dated 21 June 2021 claiming a total due for the two periods 1.7.20 to 30.6.22 of £2,581, for the reasons set out below.

The tribunal orders that the respondent should reimburse the applicant the application and hearing fees totalling £300 within 28 days of the date of this decision.

The tribunal makes orders under s20C of the Landlord and Tenant Act 1985 (the Act) and schedule 11 paragraph 5A of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) for the reasons set out below.

Background

1. By an application dated 29 March 2021 the applicant Cassie Philpin sought a determination in respect of service charges claimed by the respondent, initially for the year 1 July 2020 to 30 June 2021 in the sum of £1,635. However, on 21 June 2021 the respondent, though its purported managing agents Hua Property Management Limited (HPM), sought to claim service charges for the period 1 July 2021 to 30 June 2022 in the total amount of £2,581, which included the sum of £1,635 claimed for the earlier year. This demand post-dated the first set of directions issued, which was dated 4 June 2021.
2. As a result, the applicant sought to extend the remit of the tribunal to attend to this later demand as well, which was not objected to by the respondent.
3. Further directions were issued on 27 August 2021, when the matter was listed for a hearing on 20 October 2021. The directions appear to have been complied with for we were delivered with a bundle of relevant documents running to some 100 pages.
4. The bundle contained the application, which stood as the applicant's statement of case, responses from the respondent made by Mr Dave Hua of HPM, which included a Service Charge Agreement dated 18 April 2020 between the respondent and HPM. Interestingly it appears that HPM was not registered at Companies Registry until 22 February 2021. We were provided with a copy of the lease of the property 22b Furley Road, London SE15 5QU (the Property) and the lease extension dated 15 December 2016. There were other documents that we will refer to as necessary, but all have been reviewed by us.
5. The essence of the applicant's case is that the lease makes no provision for the recovery of items set out in the two demands. They are follows:

- Audit and accountancy charges of £35
- Landlords' insurance administration of £100
- Repairs and maintenance of £150
- Profession fee of £200
- Legal advice phone calls of £100
- Management fee of £250
- Landlords fee for filling out LPE 1 and enquiry letter in the sum of £350
- Legal advice and work done for questions & replies to buyers solicitors in the sum of £450

For the following year 1.7.21 to 30.6.22;

- Audit and accountancy charges in the sum of £36
 - Landlord's insurance administration in the sum of £450
 - Gutter cleaning estimates of £200
 - Management fee of £260
6. The total of these two demands was £2,581. As a matter of comment neither demand appeared to comply with s21B of the Act, but this is of no relevance for the reasons we will state.
 7. For the respondent Mr Hua sought to argue that his company had taken over the management of the Property on behalf of the respondent who has retired. He was of the view that HPM had the right to charge for services as they could not look after the landlord's interest for nothing'. Mr Hua was asked at this point whether he had read the lease, which is dated 21 December 1989 and was at pages 84 onwards in the bundle. It seemed that he did not have the bundle available to him. The case worker sent him a copy of the lease and we adjourned the hearing for 10 minutes to enable him to review the lease, he having told us that he had previously read it.
 8. In respect of the landlord's right to charge service he relied on clause 2(20) of the lease which says this "*At all times during the said term to pay and contribute to the Lessor the cost or a due proportion of the costs and expenses (if any) incurred by the Lessor and for which the Lessee is liable in relation to the Building such proportion in the case of dispute to be settled by the Surveyor to the Lessor whose decision shall be final and binding and to keep the Lessor indemnified against all costs charge and in respect thereof*". He was not able to refer to any other clause within the lease which supported the respondent's claim for service charges as listed above.
 9. There are a number of responses made by HPM on behalf of the respondent. One is entitled Replies to Tribunal application which refers to an earlier FTT decision and a High Court decision of Williams v Southwark LBC, although no reference is provided nor a copy of either decisions. There are allegations that the applicant had wrongly parked bicycles so as to block a fire entrance door and that the

respondent had instructed a contractor to inspect the Property and report. This appears to be an invoice of +Victor maintenance in the sum of £400 at page 46 of the bundle listing 5 matters discovered following an inspection. We have noted the contents both of this limited report and the response which sought to justify the charges raised.

10. A further response was lodged dated 15 September 2021 specifically for the hearing on 20 October 2021 This response said that the respondent had not managed the Property for 10 years and that the tenant had not been charged nor required to pay a management fee. The response went on to address the enquiries raised by solicitors involved in the applicant's attempted sale of the Property. Reference is made to an intention to develop the basement at the building, for which it would seem as evidenced by other documents in the bundle, planning had been refused. The response went on to say, "*It is our expertise and we have experience in buying flats to let, as investment properties and managing them over 25 years in London UK*". The statement ended with what purported to be a statement of truth. It should be recorded that during the course of the hearing Mr Hua told us that this was the first property that HPM had managed.
11. Copies of the LPE1 form that had been completed, it would seem by the respondent, were included as were exchanges of letters and emails between solicitors acting for the applicant on her sale and the respondent and HPM, the contents of which we have noted. In particular a response to questions raised of the respondent, by Vivash Brand LLP acting for the applicant is noted, to which Mr Hua replied, which contains a threat to increase the service charges by 10% for late payment. It would seem that this response prompted the applicant to apply to the FTT.
12. Once Mr Hua had read the lease, he was asked about certain charges. On the Insurance administration charge he told us that this was carrying out research into the insurance provisions. It was pointed out to him that the insurance for this period had been dealt with by the respondent directly with the applicant and that Mr Hua had no involvement in the cover obtained. Without explanation it appeared that HPM sought to increase this element from £100 in 2020/21 to £450 in the following year. There was no challenge to the premium by the applicant. He confirmed that he could see no provisions in the lease enabling the recovery of audit and accountancy charges and that the repairs and maintenance charges were, in any event, anticipated costs. During the process of discussing the charges of +Victor, Mr Hua became disconnected. Attempts were made to contact him. He told the case worker that he had lost internet connection although it appeared that his email was still active. A call to the number on the HPM invoice went to voice mail. He was told by email that the tribunal would adjourn for a further period until 11.00am to give him the chance to reconnect or to use his telephone. Neither option was taken up and we had no further contact with Mr Hua.

13. Ms Philpin, the applicant had responded to Mr Hua's documents in letter form dated 26 September 2021. She said no invoices had been produced to support any of the charges sought to be recovered. We have noted all that she has said. The question of bikes was raised by Mr Hua as partial justification for the inspection. However, the applicant said this had been resolved in 2014. She told us of her time at the Property and her adherence to the terms of the lease.
14. The applicant did not understand the involvement of HPM. It was said that Mr Hua did not appear to understand the lease of her Property and was charging for matters he could not recover. His actions had frustrated the sale of her flat and she was concerned that there would be a repeat of demands being made without substance. She sought reimbursement of the application and hearing fee.

Findings

15. This case rests on the terms of the lease. Where there is conflicting evidence, we prefer that of Ms Philpin to Mr Hua. There are two flats at the property and some office accommodation in the basement. The lease provides that the applicant is responsible for internal and external repair of the Property, to include the roof and roof space. There is no provision for the respondent to charge for the items we listed above. Indeed, until HPM took over the landlord had not been levying service charges, other than the contribution to the insurance, which the applicant is obliged to pay and does. There was, for example, no management fee or accounting charges. The lease makes no provision for the calculation and or recovery of service charges.
16. It appears that HPM, through Mr Hua are under the misapprehension that this is a lease where service charges can be levied. He is wrong. We are not convinced that he had read the lease, for if he had it should have been clear to him that there was no entitlement to seek to recover the charges as set out in the two demands at paragraph 5 above. He told us that this was the first property he had managed, contrary to the response we have referred to above. If he is intending to pursue a career in Property Management, he would be well advised to undertake some training.
17. There is no legal justification for the two demands we have been asked to consider and any future demands made would be irrecoverable for the same reasons. The applicant could ignore them.
18. The only matter that may be recoverable was the costs of preparing the form LPE1, which would seem to be an administration charge within the provisions of schedule 11 of the 2002 Act and are recoverable but must be reasonable. In our finding the charges HPM seek to recover are not reasonable and we disallow them in full. In any event no demand has been properly served. The LPE1 is incorrectly completed. There should be little information to impart for there will be no accounts only insurance details for which a reasonable charge could be made. We

consider that if the respondent properly deals with another LPE1 a charge of between £100 and £150 would be reasonable, the higher level to include a copy of the insurance schedule and policy, as is required to be produced under the terms of the lease.

19. We hesitate to describe the actions of Mr Hua as illegal. However, he appears to have taken no cognizance of the lease terms and attempted to include costs which he should have known were not recoverable, the more so at the time that the applicant was seeking to sell. Given our findings we order that the costs incurred by the applicant in respect of tribunal fees totalling £300 should be paid by the respondent within 28 days of this decision. Although the lease makes no provision for the recovery of costs as a service charge, nonetheless we consider it is just and equitable in the circumstances to make an order under s20C of the Act so that the landlord cannot recover the costs of these proceedings as a service charge. We also find that an order should be made under schedule 11 paragraph 5A of the 2002 Act for the same reasons.

Judge Dutton

22 October 2021

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 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).

