FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AD/LSC/2021/0285**
Property	:	**Flat 1 Kings Court, 38 Hatherly Road, Sidcup, Kent DA14, 4AT**
Applicant	:	**Triplerose Limited**
Representative	:	**Scott Cohen Solicitors**
Respondent	:	**Richard Charles Grove and David William Fedrick as executors of Aleen Frederick Hart Deceased**
Representative	:	**Braund & Fedrick Solicitors**
Type of application	:	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	:	**Judge Dutton** **Mrs A Flynn MA MRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR (Paper)**
Date of decision	:	**1 September 2023** **Varied 15 January 2024**

DECISION

Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) This decision has been reviewed and amended under the provisions of rules 50 and 55 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 as stated on the attached permission to appeal decision dated 15 January 2024

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 2009-20010 to 2019-2020 .

The background

2. The property which is the subject of this application is, we believe a one bedroomed flat in what is now a converted block of 12 flats.

3. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate. The lease is dated 10 July 1969 and appears at page 71 of the hearing bundle (the Lease). Somewhat unusually it would seem that Mr Hart passed away in December 2002 and a grant of Probate to his estate was issued to the Respondents on 25 June 2003 but it appears that the Respondents did not become the registered proprietors of the flat 1 Kings Court, 38 Hatherly Road, Sidcup, Kent DA14, 4AT (the Property) until 23 July 2014. It is not known what the situation was in the intervening period.

4. However, in 2006 proceedings were commenced by the Applicant against the Respondents in the County Court at Barnet (transferred to Dartford) for the service charge years January 2004 to January 2006. Although repeated reference to these proceedings is made by the Respondents, they are not relevant to the period we must decide and, in any event, they remain with the Court, although we again have no idea what has happened to these proceedings.

5. We have been provided with a jumbled and unhelpful bundle of papers. These include the application dated 16 August 2021, the original directions dated 14

September 2021 subsequently amended no less than five times, the last being 4 July 2023 and the parties' statements of case and responses. There are witness statements from Mr Daniel Green of Y & Y Management and from Mr Fedrick, one of the named respondents. We have noted what has been said.

6. Exhibited to the statements of case and responses are numerous exhibits for which there is no index, and which therefore made the navigation of the bundle unnecessarily cumbersome. Hidden away in the exhibits was a Scott Schedule to which the Respondents had added handwritten comments. For each year there was a challenge to the Management fees and in most of the years a challenge to reserve fund payments as well as legal fees. In 2016 there is also a query raised with regard to legal and maintenance and internal and external maintenance. In the following year in addition to Management fees and reserve fund payments there is a challenge to General Maintenance.

7. The handwritten comments included the following comment, *"The Respondents' completion of this Scott Schedule for this and subsequent years is provisional only and without prejudice and subject to paragraph 11 (iii) of their response dated 19 November 2021. Please refer to the Respondents' solicitors' letter of 2nd June 2020 in Exhibit 2"* . Paragraph 11(iii) of the Response refers back to the Applicants statement of case at paragraphs 10 – 12 inclusive which says as follows:

"*Items of Expenditure*

10. The headings of expenditure differ in each year and given the period involved the Applicant would contend that it would be disproportionate to provide all copy invoices in absence of specific query by the Respondent and may unnecessarily increase costs. Enclosed at exhibit 7 is a copy of the expenditure listing covering the periods from 1 April 2010 to 13 October 2021. The expenditure listing provides the various headings which are found under the accounting records. The expenditure listing lists the various individual invoices under the headings.

11. It is the Applicant's position that the items of expenditure subject of this application are reasonable, and the Respondent is liable to pay same under the terms of the Lease.

12. A summary of the charges that occur in these periods is set out below. The Applicant has prepared the enclosed Scott Schedule referring to the heads of expenditure in each year and detailing the sums due in each year to enable the Respondent's response to the individual items in dispute."

The issues

8. We have endeavoured to understand the complaints the Respondents make. By reference to the Scott Schedule, they are relatively limited. In addition, there is a challenge to a sum of £8,574.57 said to be arrears owing to Avon Estates the

former managing agents for which it is said there are no details. They also allege that number of contracts are QLTA, although this is denied by the Applicant, both in its statements of case and by Mr Green.

9. Having considered the various statements of case and responses thereto and considered some of the correspondence relevant to the period before us and the witness statements from the parties and exhibits provided the tribunal has made determinations on the various issues as follows.

Claim for arrears owing to Avon Estates

~~10. So far as we can tell this sum of £8,574.57 appears to be for a period prior to 2009. No explanation appears to be given for this sum. The best seems to be a comment in an email from Lorraine Scott of Scott Cohen dated 1 December 2020 replying to the Respondents' letter of 2 June 2020 where she says at 1a "*The sum shown as arrears owed to Avon Estates remains the figure of £8574.57*" With respect this is not a good enough response. The figure falls outside the period in dispute and no attempt to justify same has been made. It should be noted that the Applicant does not refer to this figure in the application and it is assumed that the sum is not being claimed. However, for the sake of closure we make the finding below.~~

The tribunal's decision

11. ~~In the absence of any explanation the tribunal determines that the amount of 8,574.57 is not payable~~.

The sum of £8,574.57 relates to a period before the application and our attempt to reach closure is not accepted. Accordingly, we delete reference to this sum from our decision.

Service charge item & amount claimed

12. We then move on to the question of the **reserve fund monies**. Whilst we accept that this is a preferred route, the lease must make provision. It is said that clause 12 of the Sixth Schedule allows the creation of such a fund. This says *"If in the opinion of the Lessor the state of the Maintenance Fund shall justify it the Lessor shall dispose of such part of the Maintenance Fund as is not in the opinion of the Lessor likely to be required for the purposes hereinbefore mention by refunding to the Lessee one ninth part of such surplus part or may suspend payment of all or any part of the sums payable by the lessees in respect of the repair maintenance management and lighting Provided Always that no refund or suspension of payment shall at any time be made to or in favour of any lessee of any flat in the Block of Flats unless an equivalent refund or suspension of payment shall be made to or in favour of all other lessees of any Block of Flats"*

13. The Maintenance Fund is defined at paragraph (14) of the First Part of the Fifth Schedule to the Lease. Our interpretation of this clause is that it provides for quarterly payments on account of service charges, originally at £8 per quarter, to cover the costs of items set out at clauses (7), (8) and (10) of the Sixth Schedule to the lease. (7) These are the upkeep of external areas to the development, including car parking gardens, drying areas and bin stores. (8) lighting of common parts (10) the cost of employing persons/companies for the repairs, maintenance and generally managing the development. There is provision for a balancing charge to be made if there is a shortfall but does not seem to cover the situation where too much has been paid on account.

14. It maybe that this position was intended to be covered by clause 12 of the Sixth Schedule. It is noted also the clause 11 of the Sixth Schedule, subject to Clause 12, states that the Maintenance Fund is to be used for the sole purpose of clauses (7), (8) and (10) of the Sixth Schedule.

The tribunal's decision

15. The tribunal determines that regrettably the Lease does not make provision for a reserve fund. However, given that the Respondents, it is said, have not paid service charges for a number of years we make no refund. In reality this means that the Respondents cannot be asked to contribute going forward. We have had to reflect the lack of contribution by the Respondents where there has been a credit from the reserve fund in the year 2017/18.

16. We find that the lease makes no mention of a reserve/sinking fund. We do not consider that the clauses we have referred to above create such a fund, although we have no doubt that such a fund would be good and it seems to us that the monies have been separately marked in the accounts, although who has contributed to same cannot be said.

Service charge items and amount claimed

17. The next question is **management fees**. The Respondent says that the wording of clause (10) of the Sixth Schedule limits the sum that can be charged for management to 15% of the sums expended in clauses (1),(2),(3),(5), (6), (7) and (8) of Schedule 6. These represent payments for rates, water rates, insurance, general repairs, decorating external; maintenance of grounds etc and lighting.

The Tribunal's decision

18. The Applicants responded to this allegation at paragraph 11 – 13 of its Response Statement, with which we agree. We interpret the clause as providing for the Landlord to employ someone to manage the development but if they wish to do so themselves their charges are limited to 15% of the sums expended as above. The question is whether the costs of the managing agents is outside the industry norm. The fee has been £4,000 for most years during the period of dispute, save

for one year when it was £3,512 (2010) rising to £3,544 in 2011 rising to £4,060 in 2012 and settling at £4,000 for the remaining period in dispute. There are 12 flats and therefore the charge of £334 per unit would not seem excessive and is allowed for each year. We therefore allow the management fees for the period in dispute but would not allow any element being added to that by the Landlord for his own costs. The management is conducted by Y & Y and we see no need for the Landlord to levy an additional charge, whatever that may be. The Service Charge reconciliation at page 178 of the bundle refers to the fees of Y & Y only and on the face of it there is no extra charge by the Landlord.

Service charge item and amount claimed and decision

19. The next issue relates to **legal and professional fees**. It is said by the Respondent that the lease does not allow the recovery of this. The clause (10) of the Sixth Schedule was originally put forward by the Applicant but this makes no mention of legal fees, and accordingly would not in our finding enable the recovery of any costs in respect of items sought under this clause. However, we are told that £610 relates to a Court fee. We are not told what Court action this relates to. If it is the one between the parties that has not been resolved and the court fee would not yet be recoverable. If it is against another lessee, it should be that lessee who pays. Accordingly, we disallow that sum of £610. There is, apparently no attempt to recover legal fees as an administration charge. The legal fees are therefore disallowed for the years in dispute.

General

20. It is not clear from the Scott Schedule, the Respondents Response and the witness statement of Mr Fedrick, what items remain in dispute, what sums are admitted and if there be a dispute whether the total sum is challenged, or part is allowed. We are referred by cross reference to correspondence which predates the statements and responses within the bundle. His witness statement is, with respect, somewhat verbose and contains much which is of no relevance to these proceedings. Indeed, it would seem that the first 10 paragraphs deal with historical/irrelevant issues. Little attempt has been made to clarify issues and as we have said, the bundle prepared by the Applicant is unhelpful in its format. We did consider issuing yet further directions to ensure the Scott Schedule was properly completed and issues were clarified but this case has been rumbling on for over two years and has already taken up a good deal of tribunal resources and we have therefore considered the matter on the papers before, us as it was listed.

21. We would add that there is some confusion as what percentage the lessees pay in respect of the service charges. The Lease refers to 1/9th. However, there are 12 flats and the estimated service charge demand at page 140 refers to 1/12th share. Mention is made by the Respondents of a Deed of Variation changing the share from 1/9th to1/12th but when asked to produce a copy they have failed to do so. The HM Land Registry entries do not reveal the existence of this alleged variation. If the service charges as provided for in the Lease remain as 1/9th but there are 12 flats an application to vary the lease could be made. In the light of

the Service charge budget and the use of $1/12^{th}$ share by the managing agents, without apparent demur on the part of the Applicant, we adopt that as being the correct proportion.

Conclusion

22. Doing the best we can and taking the figures from the Service charge details annexed to the Application we find the following are payable (as highlighted):-

- 1.4.09 - 31.3.10 Claimed £16,915 less £2,677 = £14,238 x 8.33% **£1,186.50**
- 1.4.10 – 31.3.11 Claimed £17,702 less £5,000 = £12,702 x 8.33% **£1,058.00**
- 1.4.11 – 31.3.12 Claimed£16,151 less £2,000 = £14,651 x 8.33% **£1,220**
- 1.4.12 – 31.3.13 Claimed £16,221 less £500 and £300 = £15,421 x 8.33% **£1,284**
- 1.4.13 – 31.3.14 Claimed £17,025 less £500 = £1,6525 x 8.33% **£1,376**
- 1.4.14 – 31.3.15 Claimed £18,797 less £610 and £500 = £17,687 x 8.33% **£1,473**
- 1.4.15 – 31.3.16 Claimed ~~£18,978~~ £19478 less £500 = £18,~~478~~ 978 x 8.33%
  ~~£1,539~~£1580.86
- 1.4.16 – 31.3.17 Claimed £16,938 less £500 = £16,438 x 8.33% **£1,369**
- 1.4.17 – 31.3.18 Claimed £13,694 less £500 but add $1/12^{th}$ of £1000 transferred from reserves as the R has not contributed (£83.33)= £13,277
  £1,106
- 1.4.18 – 31.3.19 Claimed £13557 + £540 legal fees as these have been disallowed and thus avoids double counting = £14097 less £500 = £13,594 x 8.33% = **£1,132**
- 1.4.19 – 31.3.20 (budget only as no final account was produced) Claimed £15,362 less £500 = £14,862 x 8.33% = **£1,238**

23. We understand that the Respondents have made no payments towards these costs, even those that were not contested, for example insurance. Accordingly, we understand that the sums set out above are due and owing and should be paid within 28 days.

Name:	Judge Dutton	**Date:**	1 September 2023 15 January 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 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).