



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

Case reference : **LON/00AL/LSC/2022/0365**

Property : **11 Courtauld Close, London SE28
8RH**

Applicant : **Holding & Management (Solitaire)
Ltd**

Representative : **Ms Rebecca Ackerley (counsel),
instructed by JB Leitch Ltd**

Respondents : **(1) Maksims
Rudenko**
**(2) Maryna
Kulikova**

Representative : **In person**

Type of application : **Application under S.27A Landlord
and Tenant Act 1985**

Tribunal : **Judge Rosanna Foskett
Mr Kevin Ridgeway MRICS**

Date of video hearing : **25 March 2024**

DECISION

SUMMARY OF DECISION

1. The Tribunal has made findings in relation to the payability and reasonableness of service charges, as set out in this Decision.
2. Ms Kulikova accepted orally at the hearing that the Respondents are liable to pay all outstanding ground rent to the Applicant and indicated that she would pay after the hearing. Ground rent does not form any part of the Tribunal's determination.
3. The overall decision on service charges and administration charges is that:

- a. The Respondents are liable to pay £75 by way of administration charge raised on 19 December 2018 (shown on page 433 of the hearing e-bundle);
- b. The Respondents are liable to pay the 5x £60 administration and legal review fees dated 27 November 2018, 6 December 2018, 10 December 2019, 23 January 2020 and 8 July 2020 (shown on page 434 of the hearing e-bundle);
- c. The Respondents are liable to pay £5,316.68 by way of service charges (ie the service charges shown on page 434 of the hearing e-bundle which total £5,316.68 when you deduct 5x £60 from the total of £5,616,68 shown on that page);
- d. The Tribunal cannot deal with the Applicant's claim to interest of £680.13 because what is relied on in that regard is the County Court's power under section 69 of the County Courts Act 1984 (and not some power or jurisdiction vested in the Tribunal);
- e. The Respondents are liable to pay the legal costs of £1,560 incurred up to the date of issue of the County Court claim in January 2021 and the Tribunal considers those to be reasonable in the circumstances. The Tribunal has been provided with no figures for legal costs incurred in these section 27A proceedings beyond that date and whilst it notes that there are provisions in the relevant lease which appear to provide for legal costs to be recoverable as service charge, the Tribunal cannot determine reasonableness or payability in the absence of submissions or evidence on that matter.

BACKGROUND

4. The Applicant landlord seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable and reasonable.
5. The dispute concerns the two-bedroom flat at 11 Courtauld Close, London SE28 8RH ("**the Property**"). The Property is in a block of six flats.
6. The Applicant is the freeholder of the Property. Its title is registered at HM Land Registry under title number TGL110824.¹
7. The Respondents purchased a long lease of the Property in April 2018. Their title is registered at HM Land Registry under title number TGL502154 and they were registered as proprietors on 9 October 2018.² The original long lease dated 8 February 1989 was for 99 years from 25 March 1988³ and was varied by deed of variation on 17 October

¹ Page 145 of the e-bundle.

² Page 131 of the e-bundle.

³ Pages 1144-1172 of the e-bundle.

2017 to extend the term to 128 years from 25 March 1988.⁴ The deed of variation incorporated the terms of the original long lease and it is therefore that original long lease which contains the service charge provisions. In this Decision, the two documents together will be referred to as “**the Lease**”.

8. The Applicant is the “Lessor” under the original long lease and the “Landlord” under the deed of variation.
9. The Applicant appointed FirstPort Property Services Ltd (“**FirstPort**”) as its managing agent for the block in which the Property is situated and, more widely, for the estate on which the block is situated. FirstPort is appointed to collect service charges. Further, the Applicant appointed Homeground Management Ltd (“**Homeground**”) to meet the Applicant’s obligations under the Lease and to collect ground rent.
10. The Applicant issued a claim in the County Court in January 2021 (following pre-action correspondence dating back to August 2020) claiming rent, service charge arrears (for 1 October 2018 to 30 September 2020), administration charges and interest. A Defence was filed in which the Respondents admitted that they owed £2,797.13 (although it was not explained how this sum was broken down/made up).
11. A County Court Judge transferred the matter in September 2022 to the Tribunal “*to determine the reasonableness and payability, excluding costs, of the sums claimed pursuant to section 27A Landlord and Tenant Act 1985, and as to agreed rents and costs pursuant to the extended jurisdiction*”.⁵ The Tribunal then issued Directions on 17 October 2023 stating that the Tribunal would “*only deal with the payability of the Service and Administration charges (these charges include all legal costs claimed). Once the tribunal has made its decision, the matter will be returned to the County Court.*”⁶

THE HEARING

12. The hearing took place via video hearing over the course of most of a day.
 - a. The Applicant was represented by Ms Rebecca Ackerley, counsel, instructed by JB Leitch solicitors, who sent a representative to the hearing. One witness attended for the Applicant (Mr Danny Foster, property manager) and gave oral evidence, in addition to their written witness statement included in the PDF hearing e-bundle.

⁴ Pages 135-143 of the e-bundle.

⁵ Page 89 of the e-bundle.

⁶ Page 100 of the e-bundle.

- b. The Respondents attended⁷ themselves (although Ms Kulikova could not return in the afternoon due to childcare commitments) and Ms Kulikova gave oral evidence, in addition to the written statements included in the hearing e-bundle from both Respondents.
13. The Tribunal had before it, and has read, the 1246-page hearing e-bundle.
14. Ms Ackerley, for the Applicant, produced a helpful skeleton argument and made oral submissions on behalf of the Applicant. She asked some limited questions by way of cross-examination of Ms Kulikova, based on certain points which were raised orally at the hearing. The Tribunal also asked some questions of clarification of Ms Kulikova. Ms Ackerley confirmed at the outset of the hearing that page 433 of the hearing e-bundle contained a breakdown of the administration charges claimed by the Applicant and that the Applicant was withdrawing its claim for 2x £75 charges dated in 2020 because in fact no demands had ever been sent for those charges. That brought to total sum of administration charges claimed to £275 (ie the £425 shown on page 433 less 2x£75).
15. Ms Kulikova presented the majority of the Respondents' case, although Mr Rudenko summarised the Respondents' position in closing in the afternoon. Both Respondents presented their submissions clearly and concisely. Ms Kulikova gave some evidence orally. She was also given the opportunity to ask Mr Foster questions by way of cross-examination on matters in his witness statement and which came up at the hearing. The Tribunal also asked some questions of clarification of Mr Foster. In response to those questions, Mr Foster provided 3 invoices after the hearing (copying the Respondents). The Tribunal has reviewed those invoices and accepts them into evidence, there being no prejudice to the Respondents in allowing them to be adduced. The Tribunal notes that they have been provided late and should have been provided earlier but does not consider that those problems mean they should not be considered.

THE PARTIES' POSITIONS

16. It appeared from the paperwork filed by the Respondents that their position was that:
 - a. They had been informed by their conveyancing solicitors when they purchased their long leasehold interest that service charges would be £99 per month paid in advance at six monthly intervals.⁸

⁷ For the avoidance of doubt (and bearing in mind what was said in the Tribunal's email to the parties dated 13 February 2024 at page 1228 of the e-bundle), the Tribunal asked the Respondents to confirm where they were at the start of the video hearing and they both confirmed that they were in England.

⁸ See, for example, page 108 of the e-bundle in the document titled "Defence".

However, at the hearing, the Respondents clarified that they did not contend that this was fixed for all time (which was a sensible concession given the terms of the Lease and the fact that the Respondents have provided no evidence that the conveyancing solicitors gave this advice in 2018 in any event). Instead, the Respondents argued that a rise from £99 per month in 2018 to the levels of service charge charged in later years was a good indication of unreasonableness.

- b. They had not received certain service charge demands because the incorrect address had been used to communicate with them. However:
 - i. A chaser for service charge payments was sent to the Respondents at the Property by the Applicant's solicitors as early as 3 January 2019 (page 22 of the hearing e-bundle);
 - ii. At the hearing, the Tribunal asked Ms Kulikova whether she had received the demands and, if so, when and she could not remember. In light of Mr Foster's evidence that the FirstPort's electronic records show that the demands were sent to the address which the Respondents' solicitors had given to them (page 193 of the e-bundle), until they were notified in August 2019 of the need to send the demands to the Property itself, which the Tribunal accepts, on the balance of probabilities the Tribunal finds that the demands were appropriately served. Further, the Tribunal notes that the hearing e-bundle contained the service charge demands, which comply with relevant legislation (pages 804-821), the administration charge demands, which also comply with relevant legislation (pages 228-262) and the audited service charge accounts, such that this deals with actual figures, not "on account" service charges.
 - iii. The Applicant's position is supported by two responses provided by FirstPort to a formal complaint by the Respondents dated 20 December 2019 and 6 February 2020 (pages 30 and 24 of the hearing e-bundle respectively) which indicates that all invoices had been provided to the address provided to FirstPort.⁹ There is no reason to suppose that that is inaccurate.
17. The Respondents did not complete a Scott Schedule of the items challenged as directed by the Tribunal. This was not helpful (and the Respondents had been reminded of their obligation to do this in emails from the Tribunal dated 5 February and 13 February 2024¹⁰), but at the hearing, the Respondents confirmed that they considered that the charges for gardening, cleaning and internal redecoration to the

⁹ Stated in the Statement of Claim to have been sent to FirstPort on 16 May 2018 by the Respondents' conveyancing solicitors: page 119 of the e-bundle at paragraph 19. There is no reason for the Tribunal to doubt this evidence.

¹⁰ Page 1230-3 of the e-bundle.

communal areas at the block were unreasonable in amount for the service provided. Given the availability of Mr Foster (the property manager) and his ability to deal with the questions raised and the provision by the Applicant of invoices in relation to these services, the Tribunal considered that it could deal fairly and justly with these challenges to reasonableness at the hearing, despite the lack of articulation of the issues in a Scott Schedule. The Applicant did not object to this course.

REASONS FOR THE TRIBUNAL'S DECISION

Relevant terms of the Lease

18. The terms of the Lease that are relevant to the issues before the Tribunal are set out in this section.
19. First, the Respondents covenanted as follows:
 - a. To pay the rents hereby reserved at the times and in manner aforesaid without any deduction (clause 2, paragraph 1).
 - b. To pay and discharge all rates taxes duties assessments charges and outgoings whatsoever whether parliamentary parochial or of any other description which now are or during the term hereby granted shall be imposed or charged on the Demised Premises or the Lessor or the Lessee or occupier in respect thereof (clause 2, paragraph 2)
 - c. At all times during the said term to pay and contribute a fair proportion of the costs of:-
 - i. maintaining repairing renewing cleansing and decorating:-
 1. all party walls and other walls and structures common to the Demised Premises or any part or parts thereof and any adjoining or adjacent property or any part or parts thereof
 2. all water pipes channels gutters sewers and drains in on under or over the Demised Premises or any part or parts thereof
 3. the gas electricity water telephone and other pipes lines wires cables cisterns and mains within or serving the Building and all easements and appurtenances therein or any of them belonging to or used or capable of being used by the Lessee in common with the Lessor or the tenants owners or occupiers of the other premises situate within the Building
 4. the Management Arrears as hereinafter defined

5. all other facilities within the Building used or capable of being used by the Lessee Jn common with the Lessor and the owner or owners for the time being of the whole or any part or parts of the Building

AND to keep the Lessor indemnified against all costs and expenses as aforesaid (clause 2, paragraph 7)

- d. Pay to the Lessor on the thirty-first day of December in every hereafter of the said term (whether or not legally demanded):-

- i. in connection with the performance and observance by the Lessor of its obligations relating to the Building and the Management Areas under this Lease and under the respective Leases to which the Lessor is or shall be a party of (inter alia) the other flats in the Building a sum equal to one sixth part of the aggregate of-

1. The amount properly expended by the Lessor during the year ended on the then previous Thirtieth Day of September and the amount of the difference between the amount properly expended and the amount then estimated by the Lessor to be reasonably required to be expended by the Lessor during the then current year from the said Thirtieth day of September and the amount of any reserve fund then estimated by the Lessor to be reasonably and properly required by it.

2. the remuneration of any Managing Agents of the Lessor and any employees of and/or contractors to it and postage administrative office and other expenses and the audit fees incidental to and incurred by the Lessor in the performance and observance of its obligations under the terms of this Lease and the Lessees of the other flats in the Building.

3. the gross annual rental or costs of hiring and/or the costs of maintenance of the installations therein specified payable under any agreement or agreements or any renewal of the same entered into by the Lessor relating to the provision and/or maintenance of any communal television and/or radio aerial system and/or any entry phones or other security system within or upon the Building"

- ii. a "due proportion" of the costs and expenses incurred by the Lessor in repairing and maintaining (i) any service installations visitors parking spaces (insofar as the same are not within the arear hatched black on the said plan)

boundary structures retaining walls footpaths Landscaped Areas and all other areas of the Estate and (ii) the arears coloured green referred to in Clause 3(4) of the registered Transfer dated 18th March 1988 which fall outside the Management Area and the Building which are not the responsibility of any individual purchaser or Lessee of a dwelling on the Estate such "due proportion to be calculated by the Lessor by dividing such costs and expenses by the number of properties (whether freehold or leasehold) capable of benefiting from such expenditure and the decision of the Lessor shall be final and binding upon the Lessee as to the number of properties defined as capable of such benefit as aforesaid (clause 8)

- e. To pay to the Lessor all expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor incidental to the preparation and service of a notice under Sections 146 and 147 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court (clause 2, paragraph 21).
20. Secondly, by the Lease, it was agreed that on any default by the Lessee in payment when due of the whole or any part of the sums payable by the Lessee to the Lessor under this Clause (whether or not legally demanded) such sum as remains outstanding and payable to the Lessor shall bear interest at the rate of either sixteen per centum per annum of four per centum per annum above the base rate of Barclays Bank Plc for the time being in force whichever shall be the higher of such rates and such interest shall be a debt due from the Lessee to the Lessor and the Lessor shall be entitled to distrain for such payment and re-enter the Demised Premises. (clause 8)
21. Thirdly, administration charges are recoverable under clause 3 of the deed of variation dated 17 October 2017: "THERE SHALL BE DEEMED to be inserted as a Tenant Covenant the following Clause: "To pay and indemnify the Landlord against all reasonably incurred costs and expenses including (without prejudice to the generality of the foregoing) Solicitors' costs and Surveyors' fees in respect of or incidental to any advice sought or any action contemplated or taken by or on behalf of the Landlord in order to prevent or procure the remedying of any breach or non performance by the Tenants of any of the covenants, conditions or agreement to be observed or performed on the part of the Tenants in the Lease".¹¹

Relevant authorities

22. The relevant authorities were summarised in the Applicant's skeleton argument and were not challenged by the Respondents.

¹¹ Page 140 of the hearing e-bundle.

23. Section 19(1)(a) of the Landlord & Tenant Act 1985 requires an objective assessment of the decision-making process and a consideration of whether the sum to be charged is reasonable in light of market evidence: Forcelux v Sweetman [2001] 2 EGLR 173.
24. It is the outcome, overall, that is to be considered; where a landlord chooses a course of action that leads to a reasonable outcome, the costs of pursuing that course of action will have been reasonably incurred even if there was a cheaper outcome which might also have been reasonable: Waalder v Hounslow LBC [2017] 1 WLR 2817.
25. In deciding whether a particular decision is reasonable, a landlord will always be afforded a margin of appreciation; it is not for the Tribunal to substitute its own view of what it would have done. Where the method adopted by the landlord is objectively reasonable, it is not valid to argue that services could have been supplied / goods could have been procured in a way that is 'more reasonable': Haverling v MacDonald [2012] UKUT 154 (LC).
26. The question whether a sum has been reasonably incurred for the purpose of section 19(1)(a) of the Act cannot be equated to whether or not a cost might have been lower if procured by a different route or supplier.

Assessment of the evidence

27. The Respondents have not alleged that any of the items contained in the service charge claim or the administration charges are not in principle recoverable under the terms of the Lease.
28. The Respondents have not adduced any evidence (whether documentation, photographs or comparables) to show that the costs of the works in relation to gardening, cleaning and internal redecoration is excessive/unreasonable in amount or the quality of the works as detailed within the audited accounts were below standard. The only complaint that appears to have been sent was on the 26 March 2019 when the Respondents emailed FirstPort stating that they were not satisfied with the quality of the internal redecoration work, in particular the painting of the wood rather than varnishing it. FirstPort responded on 18 April 2019 to state that painting had been recommended to give the staircase a brighter and more modern appearance.¹²
29. The Tribunal notes that the Respondents had adduced in the hearing e-bundle a number of letters from other leaseholders who live on the estate of which their block forms part complaining about FirstPort's charges, but the Tribunal does not consider that evidence relevant and has not given any weight to it because: (i) the individuals did not attend

¹² Evidence at page 344 of the e-bundle at paragraph 48.2 which was not challenged by the Respondents.

to have that evidence tested by cross-examination; and (ii) importantly, this dispute is limited to the cost of provision of services at the Respondents' block, not on the estate more widely, where the situation (and, indeed, the lease terms) may be different and as to which the Tribunal has no evidence.

30. Ms Kulikova gave some oral evidence at the hearing in respect of the lack of cleaning or gardening but this was based on her having been able to observe the position whilst at home full time on maternity leave. The Tribunal accepts that Ms Kulikova did not see any cleaning or gardening at the time, but it cannot accept that this means that none took place, as Ms Kulikova cannot reasonably be thought to have been able to see all parts of the communal areas or gardens during all working hours. The fact that invoices have been produced by the contractors who completed the works suggests that work was carried out, as there is no basis to conclude that those invoices are false. The Tribunal also accepts Mr Foster's evidence that he visited the block on regular enough occasions to determine whether any work had been done and he concluded that it had.
31. Further, it was put to Ms Kulikova in cross-examination that in fact the service charges which are the subject of this dispute were not significantly higher than the figure which the Respondents were charged early on in their ownership. For example, page 210 has a service charge statement for the period 1 October 2018 to 31 March 2019 with the half-yearly demand being £1,248.22 (which, when divided by 6 months, amounts to £208.03 per month). At page 209 is a service charge statement for the period one year later, ie 1 October 2019 to 31 March 2020 and the figure is £1,295.14 (which, when divided by 6 months, amounts to £215.86 per month).
32. On the basis of the evidence before it, the Tribunal therefore finds that the service charges and the administration charges set out in the County Court claim are reasonable and payable to the extent summarised at the start of this Decision.

Name: Judge Foskett, Mr Ridgeway MRICS

Date: 21 May 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).

Appendix

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.