FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LSC/0279**
Property	**:**	**Flats 1, 2 and 3, 5 Buckingham Gardens, Thornton Heath, Surrey CR7 8AT**
Applicants	**:**	**Kulwant Mankoo (Flat 1), Lauren Nicholls (Flat 2), Stephanie Mejlaq and Shanice Maree Gauci (Flat 3)**
Applicant's representative	**:**	**Ms Mejlaq**
Respondent	**:**	**Assethold Ltd**
Respondent's representative	**:**	**Ronnie Gurvits of Eagerestates Ltd**
Type of application	**:**	**Determination of service charges**
Tribunal	**:**	**Judge Adrian Jack, Tribunal Member Mel Cairns MCIEH**
Date of decision	**:**	**29th May 2024**

DECISION

Procedural

1. By an application received by the Tribunal on 1st June 2023, the tenants sought determination of their liability to pay service charges for the past service charge years 2021 and 2022 and the current and future service charge years 2023 and 2024. (What constitutes the service charge year is not straightforward and we consider this separately below.) The tenants also sought orders under section 20C of the Landlord and Tenant Act 1985 and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

2. The respondent was originally named as Eagerestates Ltd, but this was corrected in directions given by the Tribunal, so that the landlord is named as Assethold Ltd ("Assethold"). Directions also clarified that the lessees of all three flats were applicants.

3. The application raised matters concerning the ground rent payable in respect of the premises, but these matters are outwith the jurisdiction of the Tribunal and are not considered further.

4. The landlord has been represented throughout by Mr Ronnie Gurvits. Compliance with the Tribunal's directions has been poor. There has been no evidence adduced by the landlord on many relevant matters. On the morning of the hearing on 24th May 2024, the four tenants appeared at the Tribunal in Alfred Place, but Mr Gurvits did not. Telephone enquiries of Eagerestates Ltd resulted in confirmation that he did not intend to attend. The receptionist passed on his apologies for his non-attendance, but no explanation was given. There was no request for an adjournment, so we proceeded to hear the matter with only the tenants present.

The leases

5. The tenants each hold their flats under virtually identical leases granted in 2020 by SIFA Investments Ltd ("SIFA") for a term of 125 years from the feast of the birth of St John the Baptist. The only material difference is that the service charge proportion paid by Flat 1 is 37 per cent; that of Flat 2, 33 per cent; and that of Flat 3, 30 per cent.

6. The service charge provisions of the leases are defective. Whilst they adequately define the landlord's duties, the landlord's entitlement to reimbursement by the tenants is poorly designed. The subject of a tenant's covenant in paragraphs 2 and 3 of Schedule 4, is "[t]o pay to the Landlord the Service Charge demanded by the Landlord under paragraph 4 of Schedule 6 by the date specified in the Landlord's notice" and "[t]o pay to the Landlord… the Insurance Rent demanded by the Landlord under paragraph 2 of Schedule 6 by the date specified in the Landlord's notice."

7. Paragraph 4.2 of Schedule 6 requires the landlord "[t]o serve on the Tenant a notice giving full particulars of the Service Costs and stating the Service Charge payable by the Tenant and the date on which it is payable as soon as reasonably practical after incurring, making a decision to incur, or accepting an estimate relating to, any of the Service Costs." This last reference to "an estimate" must refer to an actual quote, rather than (as is usual in leases) to a landlord's reasonable estimate of what future costs might be incurred for a particular item.

8. The absence of any power for the landlord to demand monies on account for estimated future costs is coupled by the absence of any duty to provide final accounts. The near-universal procedure for a landlord to ask for monies on account with a balancing sum at the end of the service

charge year is not implemented in these leases and there is no means of implying such a system.

9. A consequence of this is that there is no defined service charge year. Instead the landlord must raise service charge demands as soon as reasonably practicable after incurring the expense.

Pre-20th December 2022 service charge liabilities

10. SIFA sold the freehold of the premises to Assethold with completion on 20th December 2022. There is no evidence of the terms of the transfer. In particular, there is no evidence that SIFA assigned any claims it had against the tenants to Assethold. Notwithstanding this on 6th March 2023, Assethold served a demand for "[i]nsurance up to 31/8/21" and "[i]nsurance up to 20/12/22". Despite numerous requests from the tenants, the landlord has failed to produce the relevant policies or any other evidence that insurance had in fact been effected.

11. We find as a fact that there was no assignment of any claim in respect of insurance (or any other service charge claims) from SIFA to Assethold. Accordingly there is nothing owing in respect of service charge liabilities incurred prior to 20th December 2022.

12. Even if Assethold were able to claim against the tenants in respect of service charges incurred prior to 20th December 2022, Assethold have failed to show that the sums claimed were reasonably incurred and are properly payable. The only sums claimed are the insurance monies and the landlord has failed to show that there were policies in force or what the premium payable was. Further the sums claimed up to 31st August 2021 are barred by section 20B of the Landlord and Tenant Act 1985.

The right to manage

13. It is common ground that the tenants established a right-to-manage company called 5 Buckingham Gardens RTM Co Ltd. On 17th April 2023 it served a notice seeking to exercise the right-to-manage. The landlord's case is that it served a valid counternotice on 9th May 2023. If no counternotice was served, then it is not in dispute that the RTM company took over management of the premises on 15th August 2023.

14. Assethold's case is that counternotices were served by both SIFA and by Assethold. These counternotices were both signed by Mr Gurvits, purportedly on behalf of each company. The only counternotices adduced in evidence are dated 22nd April 2024. It is likely that this is a computer generated date, but there is no evidence as to the true date on the counternotices or any evidence of service.

15. The landlord has produced two emails of 9th May 2023 between Mr Gurvits and Mr Scott Cohen of Scotts Solicitors, who were acting for the landlord. The tenants question the authenticity of these emails on the following grounds:

> "1. There are clear differences between the subject line of the original email and the reply. The reply inserts a space between SC & 5467 and deletes a space between 5 & Buckingham Gardens.
> 2. Mr. Gurvits replies within 12 minutes. Can the printing and arranging of next day delivery be done so quickly?
> 3. Attachments are mentioned yet there is no evidence of them being attached to this email. They should appear as an attachment but they do not."

16. It may be that Mr Gurvits had a good explanation for these matters, however, he did not give evidence. In these circumstances, on balance of probabilities we find as a fact that no counternotice was served.

17. It follows that the RTM company acquired the right-to-manage on 15th August 2023. All rights to claim service charges after that date passed to the RTM company.

Service charges between 20th December 2022 and 15th August 2023

18. The only service charges are therefore those due in respect of the period from 20th December 2022 and 15th August 2023. The management fee of Eagerestates Ltd has been agreed in the sum of £236.70. The tenants concede liability for the clearance of the guttering and window cleaning in the sum of £72.00.

19. The landlord originally sought to recover the costs of a debt recovery agency. Since this firm was instructed in respect of the claim for reimbursement of the insurance premiums, where no monies were owing, so these costs stood to be disallowed. In the event, however, the landlord has not pursued this claim. We disallow this claim.

20. As to other sums, the tenants say:

> "Monthly testing of emergency lighting and smoke detectors - No invoice was ever provided… Additionally, since they lost the key to access the property as per the letter evidence, Eagerstates had no access to the building until June 2023. Hence fair to state that if worked out payment from June to September (37.50 monthly) onwards should be given, i.e. a refund of £75 should be acquired. In addition, monthly testing is unnecessary as we now have the RTM and can arrange our own testing.
>
> Bin Area - as per picture evidence - No one has ever come to clean the area as there is no area to clean. £87.5 refund should be given.
>
> Gutter Cleaning - No invoice was ever sent, and no one has ever been seen. (One of the residents of the flats is house bound and is present in the property 24/7). The only workers that ever came to the property were the window cleaners and hence that fee is not

disputed. (Although see below re their continued attendance post RTM)

Window Cleaners - We acquired the RTM on the 15th of August 2023. Eagerstates Ltd continues to send window cleaners to our property despite our instructions that they stop immediately. We have sent two letters already, the most recent dated 5th March 2024, reminding them that we have the RTM, and they must stop sending window cleaners…

Fire health and safety risk assessment - no invoice ever sent to us not even through the FTT. The health and safety officer came in without notice using the key on the 3rd July 2023. We were present and all he did was stick a sticker stating, "No Smoking" and another stating "High Voltage". He did not carry out any assessment or inspection at the property. We feel it is unfair for someone to turn up and stick 2 stickers on and expect £225 for that."

21. We find these points convincing. By reason of Mr Gurvits failure to appear, there is no evidence to gainsay what is alleged by the tenants. We accept that no proper fire health and safety inspection was carried out. We disallow all these items.

22. It follows that the only sums payable by the tenants are £236.70 in respect of the management fee and £72 in respect of guttering/window cleaning, a total of £308.70.

Costs

23. The Tribunal is non-costs jurisdiction, but with two relevant exceptions. As to the fees payable to the Tribunal, the Tribunal has a discretion. Here the tenants have had overwhelming success. It is accordingly right in our judgment to order the landlord to pay the tenant the £300 fees payable to the Tribunal.

24. As to the legal costs of the tenants, the Tribunal only has jurisdiction to make a costs order in the tenants' favour if the landlord "has acted unreasonably in bringing, defending or conducting proceedings": see The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 rule 13(1)(b). In our judgment the landlord has acted unreasonably. It never responded to the tenants' reasonable requests for sight of the insurance policies. It failed to comply with the Tribunal's directions timeously. Mr Gurvits' failure to appear was unexplained and meant that the tenants' case was not challenged.

25. In our judgment this was a bad case of a landlord acting unreasonably. Assethold are very familiar with the Tribunal and its procedures. There is no proper excuse for its failure to have regard to the Overriding Objective.

26. The tenants have acted as litigants in person. Accordingly their legal costs are limited to £19 per hour. In our judgment it was reasonable to spend 10 hours on preparation of the application, 6 hours on the bundle and 5½ hours on attendance at the Tribunal on 24th May 2024. This is a total of 21½ hours, which at £19 per hour gives a figure of £408.50.

27. The tenants seek order under section 20C of the Landlord and Tenant Act 1985 and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, so as to prevent the landlord recovering its legal costs from them, either by way of service charge or by way of administrative charge. In our judgment this is an appropriate case for us to exercise our discretion to make such an order. As we have said, this was a bad case and it would not be right to allow the landlord to make such a charge against the tenants.

DECISION

(a) The applicants owe the respondent nothing in respect of service charges pre-dating 20th December 2022.

(b) The applicants owe the respondent £308.70 in respect of the period from 20th December 2022 to 15th August 2023.

(c) The applicants owe the respondents nothing in respect of service charges after 15th August 2023.

(d) The respondent shall pay the applicants £408.50 in respect of their legal costs and £300.00 in respect of the fees payable to the Tribunal.

(e) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 preventing the respondent recovering its legal fees by way of service charge or administrative charges from the applicants.

Judge Adrian Jack **29th May 2024**

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.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.