



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

Case reference : **LON/00BK/LSC/2023/0222**

Property : **Flat 8, Monroe House, 7 Lorne Close,
NW8 7JN**

Applicant : **Samantha Seelanatha**

Representative : **Ms Hicks**

Respondents : **Monroe House RTM Limited**

Representative : **Ms Reynolds**

Type of application : **s.27A Landlord and Tenant Act 1985**

Tribunal : **Judge Shepherd
Oliver Dowty MRICS**

Date of Decision : **30 May 2024**

Decision

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1. This is an application under s. 27A of the Landlord and Tenant Act 1985 (“LTA 1985”) for a determination of liability to pay and reasonableness of service

charges. An application has also been made for the determination of whether an administration charge is payable. The Applicant is Samantha Seelanatha, (“The Applicant”). She is the leaseholder of premises at Flat 8 Monroe House, 7 Lorne Close, London NW8 7JN (“The premises”). Monroe House is managed by a Right to Manage Company called Monroe House RTM Limited (“The Respondents”).

2. The Respondents took over management on 19 October 2016 from A2 Dominion Limited following the sign up of over 50% of current residents. The Applicant is not a member of the RTM.
3. The Respondents engaged the services of a property management company, Urang Property Management (“Urang”), to act as their agent in performing the covenants of the Lease.
4. On 6 April 2023, the Applicant issued an application in the First Tier Tribunal against A2 Dominion Limited for determination of liability to pay and reasonableness of service charges under s. 27A of the Landlord and Tenant Act 1985. Directions were issued but subsequently varied after a Case Management Hearing on 12 September 2023 when the FTT decided that the Respondent was the appropriate party to respond to the claim. Additionally, the Applicant’s claim was limited to the service charge years 2017-2022.

The law

5. Section 18 of the Landlord and Tenant Act 1985 defines a service charge as:

“(1) ... 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.”

6. Section 19, LTA 1985 limits the recoverability of service charges as follows:

“(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 provision 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...”

7. Commonhold and Leasehold Reform Act 2002 (“CLRA 2002”), Schedule 11 paragraph 1 defined “administration charge” as:

“An amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.”

The lease

8. The Lease dated 6 July 2001 includes the following relevant provisions:

‘PARTICULARS

....

Service Charge Specified

Proportion of Service

Provision (Clause 7) : 1.04%

.....

5. THE Landlord HEREBY COVENANTS with the Leaseholder as follows –

...

(2) That the Landlord will at all times during the term...keep or procure that the Building is kept insured...and whenever required will produce or procure the production to the Leaseholder of the insurance policy and the receipt for the last premium for the same...

....

7.(1) IN this Clause the following expressions have the following meanings:-

(a) "Account Year" means a year ending on the 31st March or such other date as the Landlord has from time to time stipulated

(b) "Specified Proportion" means the proportion specified in the Particulars

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(c) "the Service Provision" means the sum computed in accordance with sub-clauses (4), (5) and (6) of this Clause

(d) "the Service Charge" means the Specified Proportion of the Service Provision

...

(2) The Leaseholder HEREBY COVENANTS with the Landlord to pay the Service Charge during the term by equal monthly payments in advance on the first day of each month ...

(3) The Service Provision in respect of any Account Year shall be computed before the beginning of the Account Year and shall be computed in accordance with sub-clause (4) of this Clause.

(4) The Service Provision shall consist of a sum comprising:

(a) the expenditure estimated by the Surveyor as likely to be incurred in the Account Year by the Landlord upon the matters specified in sub-clause (5) of this clause together with

(b) an appropriate amount as reserve...the said amount to be computed in such manner as to ensure as far as is reasonably foreseeable that the Service Provision shall not fluctuate unduly from year to year..

(5) The relevant expenditure to be included in the Service Provision shall comprise all expenditure reasonably incurred by the Landlord in connection with the repair management maintenance and provision of services...and shall include...:

...

(c) all reasonable fees charges and expenses payable to the Surveyor any solicitor accountant surveyor valuer architect or other person who the

Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building...and the cost of preparation of the account of the Service Charge

...

(6) As soon as practicable after the end of each Account Year the Landlord shall determine and certify the amount of which the estimate referred to in paragraph (a) of sub-clause (4) of this Clause shall have exceeded or fallen short of the actual expenditure...and shall supply the Leaseholder with a copy of the certificate and the Leaseholder shall be allowed or...shall pay forthwith upon receipt of the certificate the Specified Proportion of the excess or the deficiency

...

(9) (a) If in the reasonable opinion of the Surveyor it shall at any time be necessary or equitable to do so the Landlord may increase or vary the Specified Proportion

(b) The Specified Proportion increased or decreased ...shall be endorsed on this Lease and shall throughout be substituted for the Specified Proportion set out in the particulars of this Lease.

The issues

9. At the start of the hearing the parties agreed the following issues which were included in the Scott Schedule and repeated over the years in question.
 - a) Brought forward charges.
 - b) Monthly payments.
 - c) Car parking spaces.
10. Other issues in relation to alleged failures to provide information etc were not within our jurisdiction under a s.27A application.
11. During the hearing the issue of apportionment also became relevant and the parties were invited to make further submissions. In fact this was probably the most important issue and that is why it is dealt with first.

Apportionment

12. The apportionment provisions in the lease state the following:

‘PARTICULARS

....

Service Charge Specified

Proportion of Service

Provision (Clause 7) : 1.04%

.....

7.(1) IN this Clause the following expressions have the following meanings:-

(a) “Account Year” means a year ending on the 31st March or such other date as the

Landlord has from time to time stipulated

(b) “Specified Proportion” means the proportion specified in the Particulars

(c) “the Service Provision” means the sum computed in accordance with sub-clauses

(4), (5) and (6) of this Clause

(d) “the Service Charge” means the Specified Proportion of the Service Provision

...

(9) (a) If in the reasonable opinion of the Surveyor it shall at any time be necessary

or equitable to do so the Landlord may increase or vary the Specified Proportion

(b) The Specified Proportion increased or decreased ...shall be endorsed on this Lease

and shall throughout be substituted for the Specified Proportion set out in the

particulars of this Lease.’

13. The Respondent’s managing agent Urang is charging 3.70370% of the total service costs despite the apportionment amount being expressed in the lease at 1.04%. It is said by the Respondent that:

a) the Specified Proportion (1.04%) of the Service Provision provided by the Lease relates to the Service Charge for the entire Estate of which A2Dominion Ltd is Landlord. That proportion does not apply to the Service Charge for Monroe House, for which the Lease is silent. Instead, the FTT must consider whether an apportionment of 3.7% is reasonable.

b) In the alternative, if the FTT determines that the Lease provides for an apportionment of 1.04% for the Service Charge at Monroe House, those provisions of the Lease should be set aside on the basis that circumstances have radically changed since the Lease was entered into, following the creation of Monroe House RTM.

14. There is no reference to 3.70370% in the lease. It appears to be a figure derived by Urang's accountants. The only figure in the lease is 1.04% that is the apportionment. If 3.70370% has been applied instead by Urang this is an error and the service charges will need to be recalculated which may involve sums being reimbursed to leaseholders. It is wrong to say that this issue was raised as a novel argument at the hearing as the service charges generally were put in issue and fundamental to that issue is the apportionment. There is no reason to set aside the apportionment of 1.04% and it is quite wrong to suggest that the creation of an RTM is a radical change. Quite the contrary it has become common place for the Tribunal to deal with RTMs in service charge disputes. The fact that they are an RTM does not excuse them from charging the wrong service charge. The application of the caselaw by the Respondent is misguided.
15. The Tribunal can do no more than determine that the appropriate apportionment should have been 1.04% and the parties will have to agree the effect of this on the resultant service charges. If they can't agree it is open to them to make a further application to the Tribunal.

Brought forward charges

16. The Applicant challenged various brought forward charges. At least a proportion of these charges related to late payment fees incurred under the lease as administration charges. Whilst late payment fees are on its face recoverable under the lease it is questionable whether the fees were owed in this case. Firstly, proper demands had not been sent. Secondly the lease payment provision allowed monthly payments: *(2) The Leaseholder HEREBY COVENANTS with the Landlord to pay the Service Charge during the term by equal monthly payments in advance on the first day of each month ...*

17. The Applicant gave evidence that she had continued to make monthly payments as required under the lease. Despite this Urang sent her demands for the whole year requiring payment within 14 days. Non-payment resulted in penalty charges. This was contrary to the lease payment provisions. On occasions penalty charges have been imposed when the account is clear. The Respondent stated in the Scott Schedule that once an RTM took over it can sign an agreement with the management company to do things differently. This is wrong as the leaseholders were not party to such an agreement and payment conditions could not be imposed on them.
18. It is tolerably clear that the penalty fees and therefore the Brought Forward amounts are not reliable. We conclude that the penalty fees are not payable and adjustments will be required to remove them from the service charge account.

Car parking spaces

19. The Respondent sought to argue that these charges were not service charges and therefore the Tribunal did not have jurisdiction to determine them. The charges relate to licenses to park given by the landlord A2 Dominion to residents. They are now administered by Urang. None of the charges feature in the lease.
20. It is too restrictive to say that a service charge must be included in the lease. In *Chuan-Hui v K Group Holdings Inc* [2021] EWCA Civ 403, the Court of Appeal considered the application of s.18 LTA 85. As noted by Henderson LJ at para 49 of the judgment, the effect of s.18 is that a service charge must satisfy the following conditions:
 - a. it must be payable by a tenant of a dwelling, whether as part of or in addition to the rent;
 - b. it must be payable for one or more of the matters specified in s.18(1)(a)
 - c. it must be variable in amount, according to the “relevant costs”; and
 - d. the relevant costs must be “the costs or estimated costs incurred or to be incurred by or on behalf of the landlord” in connection with the relevant matters.
21. Henderson LJ held (paras 50 – 56) that the effect of s.18 was that any charge which met these criteria was a ‘service charge’ for the purpose of ss.18 – 30 LTA 85 (and thus s.27A, under which this application is made).

22. In Chuan-Hui the charges in question arose not under the terms of the lease but rather had been imposed by the Tribunal. Henderson LJ held at para 51 that it would be “absurd” if such charges were not subject to the “detailed scheme enacted by Parliament in relation to service charges”.

23. Applying the above criteria the car parking charges are plainly service charges. Despite this we consider that the charges are reasonable in amount. Parking in London is at a premium and the leaseholders are fortunate to have designated spaces in which they can guarantee to park.

S20C Landlord and Tenant Act 1985

24. The Application was largely successful. Accordingly, we do exercise our discretion under s.20C, the effect of which is to prevent the Respondent from recovering the cost of the proceedings from the service charges. In addition we order the Respondent to repay the Applicant the hearing and application fee (£300 in total).

Judge Shepherd

30th May 2024

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.