



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

Case Reference : BIR/00GA/LIS/2023/0040

Property : Flat 4, Gwynne Gate
Catherine Street
Hereford
HR1 2ED

Applicants : Mr Alain Lenain

Respondent : Gwynne Gate Management Limited

Representative : Mr Michael Williams, Company Secretary to Respondent

Type of Application : (1) Under section 27A Landlord and Tenant Act 1985 for determination of the reasonableness and payability of service charges in respect of the subject property.
(2) Under section 20C Landlord and Tenant Act 1985 for an order for the limitation of costs.
(3) Under paragraph 5 Schedule 5A Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing liability to pay administration charges in respect of litigation costs.

Tribunal Members : Mr I.D. Humphries B.Sc.(Est.Man.) FRICS
Mr W. Jones FRICS

Determination : By on-line Hearing, 12 June 2024

Date of Decision : **20 June 2024**

DECISION

Disclosure

- 1 On receiving the case papers, the Chairman, Mr Humphries, discovered the Respondent was represented by Mr M. Williams who had instructed him on a case elsewhere in January 2021 to value a Freehold interest for prospective purchase. Mr Williams was acting as agent to Lessees at the time and had no personal interest in the property. Mr Humphries provided a valuation but there had been no prior or subsequent contact with Mr Williams since that instruction.
- 2 Although the terms of reference were completely different, one being a Freehold valuation and the subject case a service charge determination, Mr Humphries disclosed the previous contact at the site inspection on the morning of the Hearing and at the start of the Hearing and invited the parties to make any representations they wished to make within seven days to ensure complete transparency.
- 3 At the Hearing, the parties confirmed their request for Mr Humphries to proceed. Mr Williams subsequently confirmed by email received on 13 June 2024 that he had no objection. Accordingly, Mr Humphries continued to act in the Tribunal with Mr W. Jones FRICS.

Introduction

- 4 The Applicant, Mr Lenain, holds a long leasehold interest in Flat 4, Gwynne Gate, Hereford, HR1 2ED. The flat is subject to service charges and since 2021 Mr Lenain has objected to the cost of painting joinery in three stairwells for which that element of the service charge had been budgeted at £7,500 over a 3 year period although later reduced to £6,240, for which the Freeholder had paid an invoice for £2,900 just for 2021. The Freeholder is a company owned jointly by the 16 Lessees of Gwynne Gate.
- 5 Mr Lenain agreed the work needed to be carried out and had obtained three contractors' quotes in 2021 from which he estimated a fair cost at the time to have been £900. He therefore considered the additional £2,000 to have been unreasonably incurred.
- 6 As a consequence, he objected to an increase in the service charge from £600 per annum to £720 per annum with effect from 1 July 2020.
- 7 Mr Lenain applied for the Tribunal to determine the service charge for the years ending 30 June 2021, 2022 and 2023, and to determine budget estimates for three future years ending 30 June 2024, 2025 and 2026. The application was made on 16 November 2023.
- 8 At the same time, he applied for an Order under section 20C of the Landlord and Tenant Act 1985 to limit the costs and under paragraph 5, Schedule 5A to the Commonhold and Leasehold Reform Act 2002, to reduce or extinguish the liability to pay administration charges in respect of litigation costs.
- 9 The Tribunal held a Case Management Conference on 1 March 2024 and issued Directions.
- 10 The Tribunal inspected the property at 10.30 am on the day of the Hearing, 12 June 2024, with Mr H. Todd representing Mr Lenain, the Applicant, and Mr M. Williams and Mr R. Williams representing the Respondent Freeholder.
- 11 The Hearing was held on-line at 2.00 pm.
- 12 The issues are considered separately below.

Issue 1

Application under section 27A Landlord and Tenant Act 1985 ('the Act') to determine the reasonableness and payability of service charges in respect of the subject property.

Relevant Law

- 13 The Tribunal's powers derive from statute.
- 14 Section 27A(1) of the Landlord and Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal ('LVT'), now the First-tier Tribunal (Property Chamber) ('FTT'), to determine whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.
- 15 Section 18 of the Act defines 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 16 Section 19 of the Act provides that relevant costs shall be taken into account in determining the service charge payable for a period (a) only to the extent that they are *reasonably incurred* and (b) where incurred on the provision of services or carrying out of works, only if the works are of a *reasonable standard* and in either case the amount payable is limited accordingly.
- 17 These are the statutory criteria for the Tribunal's jurisdiction but it is also bound to take account of precedents set by the Courts to interpret the standards applied.
- 18 The Lease of the property was granted between Perfection Homes Ltd. (1), Gwynne Gate Management Ltd. (2) and Alain Lenain and Fran Lenain (3) dated 10 February 2017, granting a 999 year term from 24 June 2015 at a peppercorn ground rent. The Lessee is required to pay a service charge under clause 3.7 and the Fifth Schedule which refers to the Sixth Schedule and includes among other points:
 - '2. The decoration of
 - i) the exterior render at least every 10 years;
 - ii) the interior Common Areas every 5 years;
 - iii) *the stairwell newel posts to be painted with 60 minute retardant paint every 5 years'* (Our italics)

Facts Found

- 19 Gwynne Gate is an attractive development of 16 self-contained flats with courtyard parking in Hereford city centre. It was developed around 2015 by converting a former public house, the Nell Gwynne, into 3 flats and constructing 13 flats on land to the rear. It is located just off Commercial Road, near the central shopping area with the station and Hospital nearby.
- 20 The new build units are two and three storey construction with a range of facades including rendered, brick and clad elevations and various types of roof design. The flats are accessed from three stairwells leading from a courtyard. Stairwell 1 leads to Flats 10,11 and 16; Stairwell 2 to Flats 4,8,9 and 15 and Stairwell 3 to Flats 6,7,12 and 14.

- 21 It is at this point worth describing the stairwells in detail because the primary issue is the cost of painting joinery in the stairwells in 2021. They are essentially similar in design. They each have doors from the courtyard which lead to ground floor halls and stairs rising to half landings with another short flight up to the first floor landing and a similar design up to the second floor. The stairs are attached to the two side walls that each have handrails, and the left side of each staircase has a handrail supported by a timber newel post adjacent a central stairwell. There are no balustrades as there are glazed panels under the stairwell hand rails. The exposed joinery therefore comprises the newel posts, hand rails, window cills, strings to the stairs and some panels attached to the walls. The landing floors, stair treads and risers are surfaced with man-made carpet tiles secured by adhesive.

Submissions

The Applicant

- 22 Mr Lenain explained that he received a budget service charge from the Freeholder in 2021 showing an annual figure of £2,500 for painting the three stairwells on a three year rolling programme. In response, he sent the Freeholder his own estimates. In May 2021 the Freeholder revised the budget down from the £7,500 total over 3 years to £6,240 but this still produced a budget service charge rising from £600 p.a. to £720 p.a.
- 23 He queried the proposal but paid the £720 requested in July 2021 while objecting.
- 24 Due to covid restrictions, the AGM was not held until October 2021 at which point there was reference to a Decorator quoting £15/hr for the work which was confirmed at a meeting with one of the Directors on 22 December 2021. Mr Lenain obtained 3 quotes for the decoration from his own sources which were £1,940 from Paul Watkins, £4,400 from Hereford Decorators and £4,500 from SWS. However, he was told the Freeholders had reached a final decision on the appointment of a preferred contractor who was a different party.
- 25 On 30 January 2022 Mr Lenain wrote to the Directors asking to discuss the cost but heard nothing and in September or October 2022 received a letter advising that the work would not be carried out by the original proposed contractor but by a different contractor, ATC Building Services. Mr Lenain said the work subsequently carried out took 42 hours for which he estimated the cost should have been the £15/hour figure quoted by the first contractor, plus 3 x 2.5 litre tins of fire retardant paint at around £80 / tin at a total cost of around £900.
- 26 He then discovered that on 1 April 2023 the Freeholders paid an invoice of £2,900 for the work. When he queried this on 14 April 2023 he was unable to find anyone representing the Freeholder who had authorised the payment or had any knowledge of the instruction.
- 27 As a result of his own enquiries, Mr Lenain discovered the painting had not been carried out directly by the second contractor, ATC, but by a sub-contractor who had been paid £780 and he obtained and produced a copy of the sub-contractor's paid invoice as evidence.
- 28 He therefore considered the £2,000 discrepancy unreasonable and his own service charge estimate of £600 two years earlier to remain valid.

The Respondent

- 29 Mr M. Williams spoke on behalf of the Freeholder as Company Secretary. He explained that the joinery needed decoration which was acknowledged by all parties but due to covid restrictions he had been unable to obtain three quotes in 2021 and a contractor he had employed on other properties had quoted £15 / hour which was considered reasonable. The Contractor was known to be reliable and accordingly instructed.

30 However, for personal reasons, the first contractor was unable to carry out the work and a second contractor was instructed. As the decoration was needed to comply with the terms of the Lease, the second contractor was instructed, the decorations were carried out, the contractor submitted an invoice for £2,900 and was paid.

31 During the Tribunal discussion Mr Williams said the £780 paid to the sub-contractor would have excluded paint. He said the Freeholder may have been over-charged, however the work needed to be carried out and it was too late to object.

Tribunal Decision

32 As a preliminary point the Tribunal finds that although the lease refers only to the 'newel posts' requiring fire retardant paint, this would necessarily include all the exposed stairwell joinery such as the hand rails, window sills and skirtings because there would be no point having the newel posts finished in fire retardant paint and leaving the other joinery exposed to fire risk.

33 The three quotes obtained by Mr Lenain related to the total costs of redecorating each stairwell which included not only the joinery but also the walls and ceilings and set the upper limit of estimates at the time. The joinery elements comprised only part of these estimates.

34 The key figure relevant to the decision is the amount paid to the sub-contractor of £780 to paint the three stairwells. Although not specifically mentioned on the invoice, the Tribunal finds it highly likely to have excluded the cost of paint which all parties agree would have been expensive at around £80-£100 / tin. Mr Lenain says 3 tins were used and submitted a photograph of one of the 2.5 litre tins in evidence.

35 It is possible the sub-contractor may have charged less than the average contractor but even allowing for this, the Tribunal finds the reasonable cost of the work to have been £1,200 (One Thousand Two Hundred Pounds) including paint in 2021, rather than the £2,900 paid by the Freeholder.

36 The excess payment is therefore £1,700 which divided by 16 flats is £106.25 p.a. which the Tribunal rounds to £100 / flat p.a. The Tribunal therefore deducts £100 from the new service charge of £725 p.a. per flat as the other items comprising the service charge were not disputed, and assesses the service charges for years ending 30 June 2021, 2022 and 2023 at £625 p.a.

37 The Tribunal will not at this stage set the budgets for subsequent years as costs are rising and the Lessees will have an opportunity to raise any concerns in the future when service charge demands are submitted.

Issue 2

Application under section 20C of the Act for an order for the limitation of costs

Section 20C of the Landlord & Tenant Act 1985 ('Section 20C')

38 This grants tenants the right to apply for an order that all or any of the costs incurred, or to be incurred, by a landlord in connection with proceedings before a court or tribunal, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenants.

Applicant

39 At the Hearing the Applicant briefly re-stated his request.

Respondent

40 The Respondent objected, partly on the ground that when the Applicant Mr Lenain had been a Director of the Freehold company he had himself set the service charge at £600 p.a. at some date prior to 2020. An increase was due as costs had risen and it was partly to cover the additional cost of £100 / flat p.a. plus VAT paid to Mr Williams to manage the scheme.

Tribunal Decision

41 The Applicant contended for £600 p.a. and the Respondent £725 p.a. The Tribunal determines that part of the costs were unreasonably incurred and finds a reasonable charge to have been £625 p.a. which is substantially closer to the Applicant's figure than the Respondent's. Accordingly, the Tribunal grants the section 20C Order that no part of the costs of litigation are to be paid by the Applicant.

Issue 3

Application under paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002 for an order reducing or extinguishing liability to pay administration charges in respect of litigation costs

Paragraph 5A of Schedule 11, Commonhold and Leasehold Reform Act 2002

42 This grants tenants the right to apply to a court or tribunal for an order reducing or extinguishing a tenant's liability to pay administration charges.

Applicant

43 At the Hearing the Applicant briefly re-stated his request.

Respondent

44 The Respondent objected for the same reasons as issue 2 above.

Tribunal Decision

45 The Tribunal grants the Order under paragraph 5A that no part of the costs of litigation are to form part of administration charges for the same reasons as issue 2.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal Procedure

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property). Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).