



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

Case reference : **LON/00AB/LSC/2021/0289**

Property : **Flat 302 Leslie Hitchcock House, 21
Minter Road, Barking, Essex, IG11 0TH**

Applicant : **Niqueta Coelho**

Representative : **N/A**

Respondents : **Adriatic Land 3 (GRC1) Limited**

Representative : **Residential Management Group Limited**

Type of application : **For the determination of the
reasonableness of and the liability to
pay a service charge**

Tribunal : **Judge Shepherd
Stephen Mason FRICS**

Date of Hearing : **4th and 5th September 2023**

Date of Decision : **18th October 2023**

Decision

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1. This case was heard over two days on 4-5th September 2023. The Tribunal is grateful to the representatives on behalf of the parties, Ms Coelho who represented herself and Yassir Jamal Khan for the Respondents. Mr Jamal

Khan is employed by Residential Management Group (“RMG”) the Respondents’ managing agents. He made an application to strike out the claim at the start of the hearing. This was rejected by the Tribunal because it had no real basis. The Applicant had failed to properly define her case despite repeated opportunities to do so but this did not justify striking her case out. The Respondents had taken a gamble by assuming that they would be successful in their strike out application and failing to comply with any directions themselves. In the event they were given the opportunity to respond to most of the Applicant’s allegation at the hearing. With the assistance of Kerry Baxter of RMG Mr Jamal Khan responded to the situation well.

2. The case concerns Leslie Hitchcock House which consists of three blocks. There is a further block, John Miller House. Seventy one flats contribute to the service charge. There are block charges and estate charges. There are also five houses who don’t contribute to the service charge.
3. The Applicant brought challenges to a number of service charge items over the years in question (2017-2022). The Scott schedule she prepared is unhelpful because despite being given repeated opportunities she had failed to properly define her case. The schedule is vast, contains much repetition and in places is undecipherable. Despite this we were able to focus in on the real issues during the hearing.

The relevant law

4. The law applicable in the present case was limited. It was essentially a challenge to the reasonableness of the costs. There was no challenge in relation to payability under the lease, an alleged failure to consult or limitation.
5. The Landlord and Tenant Act 1985,s.19 states the following:
 - 19.— Limitation of service charges: reasonableness.*
 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.*

....

6. The Tribunal's jurisdiction to address the issues in s.19 is contained in s.27A Landlord and Tenant 1985 which states the following:

27A Liability to pay service charges: jurisdiction

1. *An application may be made to [the appropriate tribunal]² 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]² 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.*

6. *An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—*

(a) in a particular

manner, or (b) on

particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

The jurisdiction conferred on [the appropriate tribunal]² in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

The lease

7. Under the lease which is a tripartite lease the tenant covenants (Sch 3 para 2):

To pay the tenants Proportion of the Estate Service Charge Costs and all existing and future rates assessments charges and outgoings of every kind and description payable by law in respect of the Property or any part thereof and whether by the owner lessor tenant or occupier thereof and to pay a fair and reasonable proportion of any such expenses which are assessed or charged on the Estate or any premises of which the Property forms only part.

8. The manager covenants amongst other things (Schedule 11):

To maintain renew replace and keep in good and substantial repair and condition save in so far as damage has been caused by a risk against which the Landlord able to insure and insurance monies are irrecoverable by any act or default of tenant):

The Estate Communal Areas which shall include:

1.1.1. The regular cutting of any grass renewing replacing and maintaining any flower beds shrubs and trees forming part thereof as necessary and maintaining repairing and where necessary reinstating any boundary wall hedge or fence or other structures (if any) on or relation thereto including any benches seats garden ornaments sheds structures or the like (if any)

1.1.2. The repair and replacement from time to time and wherever necessary of the surface of any accessways roads kerbs or footpaths within the Estate Communal Areas...

1.1.3. The repair and replacement from time to time and whenever necessary of any fences and structures forming the boundaries of the Estate and pipes and all other types of Service Installations and related apparatus for the supply of gas electricity water and other services the Estate Communal Areas (excluding the CIC Areas)...

...the cost of providing a supply of water and/or electricity to the Estate Communal areas (excluding the CIC Areas)

The cost of maintaining a reserve fund to meet the costs set out in this Part...

(BLOCK COSTS)

(Apartments only)

To maintain renew replace and keep In good and substantial repair and condition save in so far as damage has been caused by a risk against which the Landlord is able to insure and insurance monies are irrecoverable by any act or default of the tenant:

The main structure of the Block including the roofs gutters rainwater pipes foundations floors and walls bounding individual dwellings therein and external parts of the Block including all the main structural parts of balconies on the Block (if any) together with all decorative parts....

...The cost of maintaining a reserve fund to meet the costs set out in this Part

The challenges brought and the decisions made.

9. The Tribunal only had documentation for the period 2018 onwards which is the tenure of Residential Management Group. The previous managing agents were Pinnacle. There were no documents for the period under their tenure. There was no information to justify the deficit of approximately £121 owed by the Applicant. This sum is disallowed.

2018-2019

Estate Service Charge - £28325

The Applicant said she did not know what the charge was for. Mr Jamal Khan said it was the charge for the estate costs. This is allowed in full.

Caretaking /security services -£12800

The Applicant said a caretaker had not been present. Mr Jamal Khan said caretaking services were provided. This sum is allowed.

Accountancy - £600

This is a reasonable sum and is allowed.

Lightning protection - £292

The Applicant said there was no provision in the lease for this charge. The service charge provision was wide enough to cover this cost and the sum is allowed in full.

Pest control - £2944

It was accepted by the Respondents that the sum of £685.70 needed to be deducted from this sum as one of the contractors had failed to supply an adequate service. The remaining sum of £2258.30 is allowed.

Man safe equipment - £746

This sum is allowed in full.

Gate and barrier maintenance - £9797

These costs were high in view of the fact that the scheme is only four years old. Mr Jamal Khan said the cost was due to vandalism but there was no evidence of this. The sum of £3340 is allowed.

Fire equipment maintenance - £3338

This cost was to cover testing the smoke vents, emergency lighting, signage etc. There was a maintenance contract. The sum is allowed in full.

Water pumps and tanks - £7114

The Applicant argued that there was no provision in the lease to cover this cost. The Tribunal finds that the lease service charge provisions are wide enough to cover this cost. The sum is allowed in full.

Water treatment - £1176

This is a water hygiene contract which includes the cleaning of the tanks. The sum is allowed in full.

Grounds maintenance - £436

This sum is allowed in full.

General repairs and maintenance - £509

This sum is allowed in full.

Management fees - £14544

The Applicant said it was an increase on the Pinnacle charge. In fact the annual charge is £204.84 per flat which is reasonable. The sum is allowed in full.

Health and safety - £1493

This is a health and safety check for the external areas. The sum is reasonable and is allowed in full.

Dry riser test - £780

Allowed in full.

Bulk refuse - £2178

This covers call outs for removal of fly tipping and is allowed in full.

Cleaners - £8325

The Applicant said that there had been complaints about the cleaning. There was a contract for the cleaning services. The Applicant failed to provide any comparator costs. The sum is allowed in full.

Window cleaning- £1064

The Applicant said she had not seen any window cleaners. The Respondents said that the windows are cleaned on a quarterly basis. The sums are allowed in full.

Door entry - £1368

This covered general reactive repair works and is allowed in full.

Lift maintenance - £11299

The Respondents explained there were two lift contracts. The charges included servicing and call out costs. The sum is allowed in full.

Electrical maintenance - £7325

This covered annual inspections and emergency works. The cost is allowed in full.

Lift telephone - £688

Allowed in full.

Engineering insurance - £3050

This covers the cost of mechanical and electrical insurance and is allowed in full.

Management fees - £5325

Allowed in full.

Health and safety - £5944

Allowed in full.

Venue hire - £49

Allowed in full.

Electricity - £16450

The Applicant failed to provide any real basis for challenging the costs incurred. The sums are allowed in full.

Reserves - £4000

The collection of a reserve is a prudent measure which is allowed under the lease. This sum is allowed in full.

Fuel usage recharge - £27451

Allowed in full.

Sundry expenses - £1871

Allowed in full.

Boiler maintenance and waking watch

These sums were not included in the accounts and therefore are not in issue.

Balancing charge from Pinnacle - £545.45

Allowed in full.

Reminder fees and legal fees - £516.50

There was no evidence of work done for these charges. We allow 50% = £258.25.

2019-2020

Estate service charge- £40035

This was a superior landlord debt and is recoverable in full.

Gate and barrier maintenance - £4714

It was surprising that there was so much expenditure on the gate and barrier when the scheme is relatively new. There was speculation by the Respondents that this was due to there being social housing on site but this was just speculation. We allow 50% of this cost - £2357.

Reserves - £601

Allowed in full.

Cleaners - £3213

There had been a reduction on the cleaning cost since the current managers took over. This sum is allowed in full.

Window cleaning - £979

Allowed in full.

Caretaking/security services -£6098

The Applicant sought to argue this was not covered by the lease but this is patently not the case. The sum is allowed in full.

Insurance claims - £1540

This was the excess following a leak. It is allowed in full.

CCTV - £90

Allowed in full.

Door entry - £422

Allowed in full.

Lift maintenance - £11649

This was a maintenance contract as well as reactive works. There were five lifts covered. Allowed in full.

Bulk refuse - £4512

This covered call outs to collect bulk rubbish, cleaning the bin stores etc. Allowed in full.

Fire equipment maintenance - £6161

There is a contract in place. There were also a large number of LED lights replaced which formed part of this cost. Allowed in full.

Water treatment - £1152

Preventative work to avoid Legionnaires disease. Allowed in full.

Electrical maintenance - £5659

Sensor lights were replaced. There were also wiring issues. Allowed in full.

General repairs and maintenance- £12024

Fire security boxes had been fitted along with other work. Allowed in full.

Pest control - £1560

Allowed in full.

Lift telephone - £870

Allowed in full.

Dry riser test - £720

Allowed in full.

Key fobs and transmitters - £371

Allowed in full

Engineering insurance - £1370

There had been a reduction on the previous year- allowed in full.

Health and Safety- £575

Allowed in full.

Internet provision- £625

It was not clear what this cost was for- disallowed.

Electricity - £12882

Allowed in full.

Reserves- £9269

Allowed in full.

Water (pumps and tanks)- £221

Allowed in full.

Electrical maintenance- £3834

Cost of replacing external lighting – allowed in full.

Lighting protection - £159

Allowed in full.

General repairs and maintenance- £2273

External costs – allowed in full.

Man safe equipment - £396

Allowed in full.

Management fees- £21181

Fee set in 2018-2019 based on the Pinnacle fees. Approximately £370 per flat. Allowed in full.

Accountancy - £1186

Allowed in full.

Legal and professional fees - £420

Allowed in full.

Postage expenses- £274

Allowed in full.

Reserves- £1553

Allowed in full.

Fuel usage recharge- £27451

Allowed in full.

Postage expenses- £380

Allowed in full.

Reminder fee- £34

This is not part of the service charge – disallowed.

2020-2021

The expenditure items were largely the same as the previous year and they are allowed in full save that the reminder fee of £34 is again disallowed.

2021-2022

The accounts for this year had not yet been finalised. It was agreed that this should happen before any challenge to this years' service charge was considered.

S20C Landlord and Tenant Act 1985

The Applicant was largely unsuccessful in her challenge which was scattergun. She had understandable frustrations with the way that the Respondents had responded to her requests for information. On balance the Tribunal will exercise its discretion under s.20C and prevent the Respondents from recovering their costs from the service charge. No reimbursement of fees is given.

Judge Shepherd

17th October 2023

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.