



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

Tribunal Case Reference : **LON/00AC/LSC/2022/0353**

Property : **Flats 5 & 6, 1-4 Promenade Mansions, The Promenade, Edgwarebury Lane, HA8 7JZ**

Applicant : **Roger Fine**

Respondent : **David Eisner**

Type of Application : **Payability of service charges**

Tribunal : **Judge Nicol
Mrs F Macleod MCIEH**

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

DECISION

- (1) The claimed service charges of £4,069.17 are reasonable and payable by the Respondent to the Applicant.**
- (2) The Respondent shall further pay the Applicant's costs in the Tribunal only, summarily assessed at £390.**
- (3) The remaining matters of interest and court costs are left to be determined in the county court.**

Relevant legal provisions are set out in the Appendix to this decision.

Reasons

1. The Applicant is the freeholder of 1-4 Promenade Mansions, The Promenade, Edgwarebury Lane, HA8 7JZ, a 4-storey purpose-built block of 6 flats with 5 commercial units on the ground floor. The Respondent is the lessee of two of the flats.

2. The Applicant issued proceedings in the county court for alleged unpaid service charges of £4,069.17 for the year January to December 2021. The Respondent filed and served a Defence in Form N9B. On 10th June 2022, the court allocated the claim to the small claims track. On 1st November 2022 DJ Sterlini ordered, “Transfer to First-tier Tribunal”.
3. On 14th December 2022 the Tribunal issued directions which confirmed that the Tribunal would only consider the charges in dispute. Other matters, such as interest and costs must return to the court after this decision.
4. The Applicant complied with the direction to provide a breakdown of the charges, accounts and demands but the Respondent then didn’t comply with the direction for his statement of case and documents, even after the directions were amended with extended time limits on 22nd March 2023. By letter dated 1st June 2023 the Tribunal asked the Respondent to explain why he should not be barred from defending the proceedings. The Respondent’s response was for his representative, Seaboard Consulting Ltd, to apply on 13th June 2023 for further amendments to the directions, although no explanation was given for the lack of action to date.
5. The matter was considered at a case management hearing on 22nd August 2023. Judge Prof R Percival barred the Respondent from taking any further part in the case under rule 9(3)(a) and (b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and made directions for the matter to be determined on the papers, without a hearing.
6. The documents before the Tribunal were contained in a bundle of 150 pages compiled by the Applicant.
7. The service charges of £4,069.17 were demanded on 7th January 2021. The service charge accounts for the year ended 31st December 2021 showed the total charges of £23,760 were for electricity, management fees, insurance, repairs and maintenance, cleaning, a reserve fund, and accountancy. The lease contains the usual type of provisions for the landlord to provide services and for the lessee to pay service charges in respect of them. The Respondent’s share is fixed under the Fourth Schedule of the lease at 17.72% which produces a figure slightly more than the amount claimed – the Applicant says the difference will be carried forward to the following year.
8. It is incumbent on a lessee challenging service charges to specify what service charge items they challenge and why, as the Court of Appeal, in *Yorkbrook Investments Ltd v Batten* (1985) 18 HLR 25, stated,

Having examined [the relevant] statutory provisions, we can find no reason for suggesting that there is a presumption for or against a finding of reasonableness of standard or of costs. The court will reach its conclusion on the whole of the evidence. If the normal rules of pleadings are met, there should be no difficulty. The

landlord in making his claims for maintenance contributions will no doubt succeed, unless a defence is served saying that the standard or the costs are unreasonable. The tenant in such a pleading will need to specify the item complained of and the general nature – but not the evidence - of his case. ... If the tenant gives evidence establishing a prima facie case, then it will be for the landlord to meet those allegations and ultimately the court will reach its decisions.

9. In his county court defence, the Respondent had identified several matters which he disputed and the Applicant addressed them in his statement of case.

Insurance

10. The Applicant obtains insurance, through a broker, for the whole building, including the commercial elements, and then divides it between the respective parts. The service charge account shows a figure of £9,292. There is no reason to think that the broker did not provide a service so as to secure a reasonable premium. In the absence of any evidence otherwise, the Tribunal is satisfied that it is reasonable and payable.

Lack of provision in the lease

11. The Respondent alleged that the lease did not permit the Applicant to charge for certain items:
 - (a) Charging on account and a reserve fund. Paragraph 1 of the Fourth Schedule requires the Respondent to pay a sum equal to 17.72% of the amount the Applicant may from time to time expend. The language is not limited the amounts expended in the past. The Tribunal is satisfied that it is wide enough to include reasonable estimates of future expenditure.
 - (b) Maintenance of the service road and management. Under paragraph 2.1 of the Sixth Schedule, the Applicant is obliged to maintain the structural parts of the Building and the media which serve the building. Under paragraphs 1.2 and 1.3 of the Fourth Schedule the Respondent is obliged to pay a share of the costs incurred under those provisions. There is no evidence that the service road does not come within the areas which the Applicant is obliged to maintain. Further, the language is wide enough to encompass more general management functions in support of the various services expressly mentioned. The Tribunal dismisses this complaint.
 - (c) Accounts and banking charges. Paragraph 31 of the Fifth Schedule is a wide obligation for the lessee to pay all proper costs, charges and expenses, including professional fees. Again, without any contrary argument, the Tribunal is satisfied that accounts and banking charges are recoverable.

12. For these reasons, the Tribunal holds that the claimed service charges are reasonable and payable. As referred to above, the county court may deal with interest and court costs. However, the Applicant has applied for his costs in the Tribunal pursuant to the Tribunal's powers under rule 13(1)(a) and (b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
13. Unlike the courts, the Tribunal has no general power to order one party to pay the costs of the other. The relevant parts of the Procedure rules state:
 - (1) ... the Tribunal may make an order in respect of costs only—
 - (a) under section 29(4) of the [Tribunals, Courts and Enforcement Act 2007] (wasted costs) and the costs incurred in applying for such costs
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings; ...
14. Section 29(4) of the 2007 Act refers to disallowing wasted costs or requiring a legal representative to pay them. This does not apply here.
15. The Upper Tribunal considered rule 13(1)(b) in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 (LC). They quoted with approval the following definition from *Ridehalgh v Horsefield* [1994] Ch 205 given by Sir Thomas Bingham MR at 232E-G:

"Unreasonable" ... means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable.
16. The Upper Tribunal in *Willow Court* went on to say:
 24. ... An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in *Ridehalgh* at 232E, despite the slightly different context. "Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in

the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?

26. We ... consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these cases are often fraught and emotional; typically those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense. ...

17. The Respondent has failed to engage meaningfully in these proceedings, causing delay and, ultimately, his own debarment. He has not provided any explanation for his lack of action, even when he had the opportunity to do so. In the circumstances, the Tribunal is satisfied that the Respondent acted unreasonably in these proceedings and should be ordered to meet the Applicant's reasonable costs.
18. The Tribunal may summarily assess the Applicant's costs. The Applicant has provided a schedule of costs. However, some items must be disallowed:
 - (a) The Applicant has given the time he allegedly spent on conducting this case in the Tribunal as 10 hours plus a further 3½ hours on the debarring application. That is too much. The Tribunal estimates it should have taken no more than 10 hours in total.
 - (b) The Applicant has charged his time at £250 per hour. No justification has been given. It is more than some fully-qualified lawyers charge for their time. The rate for litigants in person in the county court where there is no evidence of lost income is £19 per hour. The Tribunal sees no reason to depart from this.
 - (c) The Applicant has charged VAT on his time but there would seem to be no basis for this – the Tribunal is not even aware that he is registered for VAT.
19. As well as his time (10 hours x £19), the Applicant incurred a Tribunal fee of £200, for a total costs figure of £390. The Tribunal orders the Respondent to pay that sum to the Applicant in addition to the service charges.

Name: Judge Nicol

Date: 18th October 2023

Appendix of relevant legislation

Landlord and Tenant Act 1985

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.