FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	**:**	CAM/00MD/LSC/2020/0041
Property	**:**	11 Haynes Close, Slough SL3 8NA
Applicants	**:**	Geetavani Tripurari
Applicant's Representative	**:**	Mr Tripurari
Respondent	**:**	Elmdene Estates Limited
Respondent's Representative	**:**	Francesca Vickery and Michael Sinclair of Townends Lettings
Type of application	**:**	Application for the determination of liability to pay and reasonableness of service charges
Tribunal members	**:**	Judge Max Thorowgood and Mr Michael Ayres FRICS
Venue	**:**	By CVP on 4th February & 10th June 2021
Date of Decision	**:**	2 September 2021

DECISION

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1. The application

1.1. By her application pursuant to s. 27A Landlord & Tenant Act 1985 dated 22nd September 2020 Mrs Tripurari seeks to challenge her liability to pay and, principally, the reasonableness of the service charges demanded of her in respect of the years ending 31st March 2016, 2017, 2018, 2019 and 2020.

2. Background

2.1. Haynes Court is a small, 9 flat, flat-roofed, purpose-built block in Slough.

2.2. Mrs Tripurari purchased her flat on 19th August 2015. At that point a fixed service charge contribution of £50.00 pcm had been in place for a considerable time under the management of Middlesex Property Management. However, at the time of Mrs Tripurari's purchase substantial works were in the course of being carried out to the roof of the building for the purposes of which an exceptional service charge contribution had been levied and the seller was in arrears. It was a condition of her purchase that she clear those arrears and she paid the sum of £5,914.95 on 19th August 2015.

2.3. Mrs Tripurari purchased Flat 11 as an investment. She has never lived in it but her husband has been liaising with some of the residents and the residents' association. He complained that in response to demands by the Respondent for payment of arrears of service charge he had made demands on numerous occasions that the Respondent address the various challenges now raised by this application. We saw no documentary evidence of these demands but do not doubt that oral queries or challenges were made or that when they were made, they were not properly addressed by the Respondent.

2.4. In 2017 the Respondent appointed Townends to manage the building in place of Middlesex Property Management and it has been the landlord's agent for the period with which we are concerned and we are grateful to Ms Francesca Vickery of Townends, in particular, but also those who

assisted her, for the careful measured way in which she presented the Respondent's case as we are to Mr Tripurari for the submissions which he made on behalf of his wife.

3. Applicable law

3.1. The relevant provisions of the lease are as follows:

3.1.1. By Clause 2 it was a condition of the lease that the Lessee pay,

> "... Secondly by way of further rent to pay on the first day of April in each year in advance (a proportionate part from the date hereof) a sum equal to one ninth part of the sum which the Lessor shall from time to time pay by way of premium (including any increased premiums payable by reason of any act or omission of the Lessee or the Court and the surveyors' fees in connection with the repairing or rebuilding) to keep the same insured under a comprehensive householder's policy under the covenant hereinafter contained"
>
> "and Thirdly the expenses payable by the Lessee set out in the Fourth Schedule"

3.1.2. Those expenses are expressed in the Fourth Schedule as follows:

> "On the first day of April in every year to pay to the Lessor in advance one ninth of the estimated cost to be required to maintain first the entrance driveway lawns footpaths and area surrounding the Court (excluding the garages) which is edged in blue on the said plan and secondly the common entrance hall and staircases coloured yellow And also the building land edged and hatched green on the said plan in good repair and condition for the following twelve months and of the Lessor's third party insurance and other managerial expenses. On the signing hereof the Lessee shall pay in advance a fair proportion of the Lessor's estimated expenditure for the period from 1st April 1967 to the date hereof and both for such preliminary period and the subsequent annual periods the contributions shall be

> calculated by the Lessor's Surveyor for the time being whose decision shall be final and binding on the Lessee and any balance in hand or deficit shall be brought into account in the following year. Managerial expenses shall be calculated on the basis of cost plus ten per cent."

3.2. Reasonableness is an objective standard. The first question when considering 'reasonableness' for the purposes of s. 27A Landlord & Tenant Act 1985 is whether the process by which the landlord arrived at its decision to incur the costs in issue was a reasonable one. In this respect the primary questions are generally: whether to take a particular step or secure a particular outcome ? If so, how it is to be secured ? And finally, the period within which it is to be secured ? The second aspect of the matter is whether the sum charged is reasonable in light of the market evidence. Thus, it is clear that reasonableness does not require the landlord to choose the cheapest available option. Quite the reverse in fact, as the second criterion which concerns the quality of the services provided emphasises.

3.3. As an expert Tribunal we are entitled, bound even, to use our professional knowledge and experience in determining issues of reasonableness. If evidence has been led by the parties in relation to the questions of reasonableness and market price, we have had regard to that as the primary evidence upon which to base our conclusions. Where, however, as has largely been the case here, there is no comparable evidence we have relied upon our knowledge and experience in reaching our conclusions.

4. The matters in issue

4.1. We shall take each year of account in turn and the issues identified by the Applicant.

2016

4.2. *Shortfall of £636.72* – The Applicant's position in this regard was that she believed she had cleared any arrears of service charge upon completing her purchase and that the service charge payable was £50.00 per month.

4.3. This challenge seems to have resulted from a misunderstanding of the position by the Applicant insofar as: a) the £50.00 pcm charge was not fixed; and b) the Landlord was entitled to recover any deficit which might appear. In the absence of any specific challenge to any particular item of expenditure, there is no substance to this dispute.

4.4. The only specific item she identified for challenge was to charge of £345.77 in respect of block insurance. We will need to consider the question of insurance in respect of several subsequent years of account. Ms Vickery explained that there had been three significant escapes of water in respect of which claims for £5,679.00, £7,130.00 and £500.00 were made in 2013, 2014 and 2015 respectively and she suggested that those claims might well explain the increased premium. She also said and we are aware that the insurance market is quite volatile for reasons which are not directly connected to any specific risks affecting the property.

2017

4.5. *Gardening & cleaning of the internal communal areas* – The Applicant raised a number of challenges under this head. First, she challenged whether any gardening took place. Second, she challenged the cost. She said that she could get the grass cut for £100.00 per month in the summer months only. Thirdly, she said that the cleaning of the internal common parts was very limited in scope, due to the nature of the common parts, and that she could have that work done for £10 p/hr.

4.6. As to whether any gardening was done, we considered some photographs of the gardens which showed that the garden was not extensive, being

laid essentially to lawn. There are also some shrubs, ivy and a tree at the front of the building. Mr Tripurari said that he had spoken to a number of occupants who had told him that they had never seen any gardening being done. The picture which we were shown shows clearly that the grass had been cut and that the garden was reasonably tidy. We are therefore disinclined to accept on the basis of the slender anecdotal evidence presented by Mr Tripurari that no work was done. We do not believe that Rose Property Services, whom the landlord has retained over a number of years, would have been retained if no work was being done. The fact that Ms Vickery said there have been no other complaints from tenants is strongly suggestive that the work is being done and to a satisfactory standard.

4.7. As to the possibility that alternative quotes/contractors could have been identified and retained, we are mindful that an agent has only a certain amount of time to devote to the identification and retention of reliable, insured competent contractors. *Ad hoc* arrangements might possibly be cheaper per unit of work but would also be less reliable and more expensive in terms of management time. As we have already noted a landlord is not obliged to retain the cheapest possible contractor. For these reasons we reject the Applicant's challenge to the charge in respect of gardening.

4.8. *Cleaning of the interior common parts* – This contract was also performed by Rose Property Services and the same arguments apply in relation to its cleaning charges. We accept that the cleaning of the common parts was limited in scope but there was/is work to be done and the costs do not strike us as being in any way excessive. They were reasonable in all the circumstances of this block.

4.9. *Window cleaning* – Mr Tripurari said that there were only 6 windows comprised within the common parts. Ms Vickery suggested that all the external windows The charge in question is £123.00 bi-monthly or £61.50 per month. Again, there are a number of competing considerations here. The management time necessary to find an appropriate contractor and retain him for a reasonable period is also a

legitimate consideration. Unfortunately for the Applicant, whilst the fact that this building is a small one has advantages, it also has disadvantages one of which is that it is unlikely to attract a great deal of competitive interest from substantial contractors.

4.10. For these reasons, whilst we accept that the work done was of limited scope, it needed to be done and the finding and retaining of a contractor willing to do it needed to be achieved without undue expenditure of management time. The charge was reasonable.

4.11. *Gutter cleaning* – This apparently significant charge of £1,875.00 arises from the nature of the building's roof and its internal guttering. As we have already noted, substantial works were carried out to the building's roof at around the time of the Applicant's purchase of her flat. Ms Vickery informed us that it was a condition of the 20-year guarantee offered by the contractor in respect of that work that the gutters and roof be cleaned once a year. In order for that work to be done it is necessary for scaffolding to be erected, which obviously increases the cost. We accept that in order to preserve the benefit of the guarantee and more generally in order to prevent damage to the roof and the building as a result of leaks caused by blocked roof gutters it was appropriate for this work to be done and that the charges are reasonable in the circumstances.

4.12. Mr Tripurari also said in relation to this work that save in respect of the year ending 31st March 2020, in respect of which the Respondent produced a photograph showing the scaffolding in place, that he did not accept that the work had actually been done. We reject this claim. The fact that neither the Applicant nor Mr Tripurari saw the work being done or the scaffolding in place is not a sound basis for such a finding, not least because they were not in occupation.

4.13. *Rubbish clearance* – Complaint was also made in general terms about the cost of removing rubbish tipped on the property, £540.00 & £524.00. Whilst we accept that these costs are high and that it is frustrating that they should have had to be incurred, it is not suggested

that it was unnecessary to incur these costs and there was no evidence that the costs were unreasonable.

4.14. *Professional fees* – The Respondent accepted that, save and insofar as the charges of its solicitors (Prince Evans) who were retained to collect arrears of service charge were attributable to arrears on the Applicant's account, they should be recovered from the lessees to whom the charges related and not charged as service charges to the lessees generally. Although these charges appeared in the final year end accounts, Ms Vickery said and we accept that they have in fact been attributed to the accounts of the applicable lessees.

2018

4.15. The challenges raised by the Applicant in respect of this year of account are the same as those raised in relation to the previous year, we reject them to the extent and for the reasons given above.

4.16. As previously noted, the Respondent accepted that Prince Evans' charged should be applied to the accounts of the particular lessees in relation to whom the fees were incurred. In this year of account, however, one of those lessees was Mrs Tripurari. It seems the arrears on Mrs Tripurari's account arose from the fact that under Townends' management the monthly charge increased from £50.00 per month to £86.74 in order to deal with the deficits which there had been on the account for the previous two years. Mrs Tripurari continued to pay £50.00 per month until 24th August 2018 when she paid £440.88 and began to pay the monthly sum being demanded. Even so, the arrears on her account stood at £1,309.95 following her payment.

4.17. It was Mrs Tripurari's case (as presented by her husband) that he had been asking for explanations from Prince Evans and/or the agents consistently since they started chasing him for payment of the arrears and that he had never received any satisfactory explanations. We do not doubt that Mr Tripurari questioned the charges, even though there is no documentary evidence to support that claim. We do doubt, however, that

if he had questioned the charges in a structured way (as he has in these proceedings) rather than just saying that he had been told when his wife purchased the property she had been told the charges were £50.00 per month and he didn't see any reason why he should pay any more (which he was somewhat inclined to do even in these proceedings) that he would have received a coherent response from Townends. The fact that there is no documentary evidence of requests for explanations of the service charge accounts is indicative we believe that any complaints of Mr Tripurari's were not of a legally coherent character and for that reason we seen no reason why Mrs Tripurari should not bear the costs which the landlord incurred with Prince Evans in chasing payment of her outstanding service charge contributions.

2019

4.18. The challenges to the charges in respect of gardening and window cleaning are rejected for the reasons set out above.

4.19. Mrs Tripurari also challenged the charge of £6,773.05 made in respect of 'General Maintenance'. Ms Vickery explained that of that sum £4,391.20 was attributable to the costs of effecting a repair in respect of a leak from the flat above Mr Venu Andem which affected both the common parts and Mr Andem's flat. We heard evidence from Mr Andem who explained that his kitchen had been damaged by the leak and that the works of repair had been effected by the management company. Ms Vickery explained that although the cost of these works had been attributed to the service charge account for the y/e 2019, a claim on the policy of insurance had been made successfully by the previous agent Middlesex Property Management and that the sum of £3,387.20 had now been credited to the service charge account in respect of this claim. That left costs of £2,381.85 which she said were attributable to charges for the removal of rubbish fly-tipped on the common parts totalling £648.00, the irrecoverable costs of effecting the repairs associated with the leak and other maintenance.

4.20. Mr Tripurari criticised both the general maintenance costs and the costs of removing the rubbish. He said that the landlord/managing agent ought to have taken steps more quickly to install CCTV and other preventative measures in order to prevent tipping.

4.21. In terms of the general maintenance costs, a part of the explanation for the increase under this head is the inclusion within it of the costs of clearing the roof gutters in the sum of £1,380.00 which was previously listed as a separate item. As for the costs of removing the rubbish, it does not seem to us that the landlord can be criticised for its response at this stage. Fly tipping seems to have become a problem at this property which increased into y/e 2020 at which point the landlord has proposed to install CCTV, albeit at a cost greater than Mr Tripurari would wish. Ms Vickery told us that this investment had been held up because of the arrears on the account.

4.22. In all these circumstances, we consider the charge to 'General Maintenance' to be reasonable subject to the credit which we have mentioned having been made.

4.23. Mrs Tripurari also complained about Prince Evans fees in the sum of £1,191.00 but Ms Vickery explained that this figure related to the previous year of account and the sum of £535.00 had been applied to the account of 17 Haynes Court, although unless and until that sum was recovered, the cost was one which had to be shared between the lessees communally. We consider that to be correct.

2020

4.24. In the first instance Mrs Tripurari's challenge was to the budgeted charges for this year of account but by the time of the second hearing on 10th June 2021 actual figures were available. The analysis which we set out below relates to the actual costs.

4.25. Again, we reject the challenges to gardening and internal cleaning costs and window cleaning for the reasons which we have explained above.

This year did not encompass the pandemic and in any event gardening was able to continue.

4.26. As to the general maintenance costs:

4.26.1. Costs relating to rubbish removal climbed further but for the reasons explained we do not consider they could or should reasonably have been avoided or carried out for a lesser price;

4.26.2. There were various exceptional costs for drain clearance;

4.26.3. The main oddity in this year of account is the P&R Roofing's charge for Roof Maintenance appears twice. The explanation for this appears to be that the work was done and an invoice rendered on 10th May 2019 and then again at the end of the following year on 23rd March 2020.

For these reasons and those which we explained in relation to the y/e 2019, we are satisfied that these costs are reasonable.

4.27. The final contentious item in relation to this year of account falls under the heading of insurance. There are two elements to this cost: i) an insurance valuation by Tyser Greenwood Surveyors at £1,500.00; ii) £2,474.01 which comprises the insurance premium. The fact that insurance year is not synchronised with the service charge year explains the apparently significant increase in the premium as against the previous year.

4.28. It is sensible and potentially beneficial to have the property's insurance valuation reviewed periodically and we consider that it was reasonable to incur that cost.

4.29. Likewise, the health, safety and fire risk assessment was a sensible precaution and the costs of the report itself and of complying with its recommendations, which fall into the subsequent year of account are properly recoverable.

2021

4.30. Only a budget for this year of account was available even for the purposes of the hearing on 10th June 2021, therefore a number of Mrs Tripurari's complaints related to proposals for expenditure which did not occur for a variety of reasons including the pandemic.

4.31. The projected costs to be incurred in this year of account were affected by the substantial arrears on the service charge account which by this point exceeded £10,000.00. A good example of this is the provision in the budget of a £2,500.00 reserve for internal decorations. The 2020 budget also included provision for these works which are still to be carried out.

4.32. The was also a provision of £2,100.00 for electrical works. That figure was comprised of £600.00 for communal electricity, which included provision for an upgrade to the car park lighting, £500.00 for electrical repairs based on the experience of previous years and £1,000.00 for an upgrade to the emergency lighting as recommended by the Health, Safety and Fire Risk Assessment. All of these items are unexceptionable in our opinion, although we were told that in fact, although the tenants want the work to be done it had not been done as at the conclusion of this year of account but now has been undertaken by the new managing agents.

5. Conclusions

5.1. The crux of Mr Tripurari's submissions on behalf of his wife was that when he bought Flat 11 in 2015 the service charge contribution was £50.00 pcm and now it is £175.00 pcm.

5.2. Whilst we are sympathetic to a degree to that submission, the facts appear to be that the service charge account was substantially in arrears at the time of her purchase and not well managed. It may well be that Townends have sought to put the management on a more profession footing and that the costs of that are unwelcome to some of the tenants.

5.3. We are less sympathetic to the submission, unsupported by any evidence, that Mr Tripurari could readily find alternative competent contractors for a fraction of the price being paid to the existing contractors.

5.4. If Mr Tripurari is convinced of the rightness of that claim there is a simple solution: apply for the right to manage the block. We understood that such an application was in progress and hope that it will prove to be possible to manage the block at a lower cost. Even if it is, that does not mean the costs incurred by the Respondent are unreasonable in the circumstances.

5.5. For these reasons save to the extent indicated above we consider that the sums claimed by the Respondent landlord by way of service charge are payable under the lease and are reasonable.

Name: Judge M Thorowgood **Date:** 2 September 2021

APPENDIX 1- 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.

APPENDIX 2

RELEVANT LEGISLATION

18 Meaning of "service charge" and "relevant costs"

(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.

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.

[27A Liability to pay service charges: jurisdiction]

[(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.

(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).

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