



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

Case Reference : **LON/OOBD/LSC/2021/0378**

Property : **9 St. Richards Court, Ashburnham
Road, Richmond, Surrey, TW10
7NS**

**HMCTS code (paper,
video, audio)** : **V: CVPREMOTE**

Applicant : **New Hill Limited**

Representative : **Rebecca Cattermole of Counsel**

Respondent : **Brian Godfrey Tench**

Representative : **Not represented, and not present at
hearing**

Also present : **Timothy Richards of Aston Rose
(West End) Limited, Applicant's
managing agents**

Type of Application : **For the determination of the
liability to pay a service charge**

Tribunal Members : **Judge P Korn
Mr R Waterhouse FRICS**

Date of hearing : **8 June 2022**

Date of Decision : **17 June 2022**

DECISION

Description of hearing

This has been a remote video hearing which has been agreed to by the Applicant and not objected to (as a type of hearing) by the Respondent. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we have been referred are in two electronic bundles, the contents of which we have noted. The decisions made are set out below under the heading “Decisions of the tribunal”.

Decisions of the tribunal

- (1) The service charges to which this application relates are payable in full, except that the amount payable by way of estimated service charges for 2021 is reduced from £2,698.16 to £2,591.13.
- (2) Pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“**the Tribunal Rules**”) the tribunal orders the Respondent to reimburse to the Applicant the application fee of £100.00 and the hearing fee of £200.00.

Introduction

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of the outstanding service charges for the calendar and service charge years 2018 to 2021 inclusive.
2. The Respondent is the leaseholder of the Property pursuant to a lease (“**the Lease**”) dated 1 June 1978 and originally made between Biskeep Nominees Limited (1) and Kathryn Margaret Whatmough (2). The Applicant is the Respondent’s current landlord. The Property is a flat within a purpose-built block of flats.
3. The service charge amounts stated by the Applicant to be outstanding are as follows:-
 - 2018 – £565.89
 - 2019 – £1,848.35
 - 2020 – £2,054.44
 - 2021 – £2,698.16 (*estimated amount only*)

Applicant's case

4. In a witness statement given on behalf of the Applicant, Mr Richards of Aston Rose (West End) Limited, the Applicant's managing agents, notes that the Respondent has not provided a statement of case as per the tribunal's directions, and he concludes that therefore the Respondent is not disputing liability for the unpaid sums. Mr Richards has attached to his witness statement copies of all invoices on which the Applicant seeks to rely.
5. In her skeleton argument, Ms Cattermole for the Applicant states that it became necessary to produce a supplementary bundle of documents shortly before the hearing as it transpired that some documents had been omitted from the main bundle and that some draft – as opposed to finalised – documents had inadvertently been included in the main bundle. She also notes in her skeleton argument that on 7 June 2022 the Respondent emailed the Applicant's solicitors following the service of a costs schedule stating that he would have "*some money by the end of the month*". Ms Cattermole also sets out the Lease provisions relevant to the payability of these service charges and briefly summarises how and when each sum was demanded.
6. At the hearing Ms Cattermole stressed that the supplementary bundle did not change any of the figures. As regards the Respondent's email of 7 June 2022 referred to above, whilst she accepted that it did not constitute a clear general admission of liability for all unpaid service charge amounts, she noted that there was no specific challenge from the Respondent before the tribunal and that the Respondent had not paid anything at all since 2019.
7. The tribunal cross-examined Mr Richards on his evidence. He said that a junior colleague had wrongly included within the hearing bundle draft internal documents containing markings and that the purpose of the supplementary bundle was simply to replace these items with the correct documents.
8. Mr Richards talked the tribunal through the key documents in the hearing bundles. In relation to the Respondent's share of the estimated service charge for 2021, Mr Richards noted that there were two separate figures in circulation - £2,698.16 (the amount sought) and £2,591.13 – and he conceded that he was unable to explain why there were two figures or to confirm which was the correct one. The tribunal put it to him that, in the circumstances, the Applicant could only rely on the lower figure and he accepted this.
9. Ms Cattermole was then asked to take the tribunal through the service charge provisions in the context of the various categories of charge, which she did, and the tribunal asked certain questions – for example in relation to the Applicant's ability to seek contributions to the reserve

fund. Finally, the tribunal picked out certain items from the yearly service charge summaries, for example ones that might be considered by a leaseholder in the absence of explanation to be on the high side or ones that had risen sharply. Mr Richards answered the tribunal's questions on these items. Specifically in relation to the management charges, Mr Richards said that the building was quite management-intensive.

Respondent's case

10. The Respondent has made no written submissions and was not present or represented at the hearing.

Tribunal's analysis

11. In relation to the estimated service charge amount for 2021, as noted above there are two separate figures in circulation and Mr Richards was unable to explain why. The Applicant is seeking confirmation that the higher of the two figures is payable, but we cannot give that confirmation in the absence of any clarity as to which is the correct figure.
12. In relation to the remainder of the unpaid service charges, there has been no challenge from the Respondent and no engagement by him with this process. The Applicant has therefore been placed in a position where it does not know which amounts, if any, are disputed.
13. In the circumstances, aside from the point noted above in relation to the estimated service charge amount for 2021, we are satisfied that the Applicant has done what it needed to do to make its case as to the payability of the various outstanding service charge amounts. The Applicant has provided relevant copy invoices, budgets and reconciliations. The Applicant's representative has taken the tribunal through the Lease in the context of the various heads of service charge claimed, and Mr Richards has answered the tribunal's questions on a range of points.
14. On the basis of the uncontested written submissions before us, and the oral submissions made at the hearing, we are satisfied that the service charges which form the subject matter of this application are reasonable in amount and payable in full, save that the estimated service charge amount for 2021 is reduced from £2,698.16 to £2,591.13. As that amount is only an estimated amount there can still be a balancing adjustment after the end of the year to reflect the actual cost, although subject to relevant case law it will in principle be open to the Respondent to challenge the actual amount once demanded if he considers that the actual amount charged has not been reasonably incurred.

Cost applications

15. The Applicant has applied for an order under paragraph 13(2) of the Tribunal Rules for the Respondent to reimburse its application and hearing fees. Under that paragraph the tribunal “*may make an order requiring a party to reimburse to any other party the whole or part of any fee paid by the other party ...*”.
16. The Applicant has been almost wholly successful in its substantive application and the Respondent has failed to engage with this process. It is entirely appropriate in the circumstances for the Respondent to reimburse these fees, which would not have needed to be incurred if the Respondent had either paid the outstanding service charges or made a clear admission of liability.

Name: Judge P Korn

Date: 17 June 2022

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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.