FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : CAM/22UH/LSC/2022/859

Property :1029 and 1033 High Road, Chadwell Heath, Romford , Essex, RM6 4AU

Applicants : Catherine Spiers

Representative : In person

Respondent : Mario Kyprianou

Representative : Mark Davies of Counsel

Type of application :Payability and reasonableness of service charges

Tribunal:
Judge Shepherd
Sarah Redmond MRICS
Date of Hearing: 13th June 2024 via CVP

ReviewedDECISION

1. The Applicant in this case is the leaseholder of two premises at 1029 and 1033 Chadwell Heath, Romford, Essex, RM6 4AU (The premises). Her landlord is the Respondent, Mario Kyprianou.

2. Ms Spiers represented herself. She is to be congratulated for her skilled and mature advocacy. The Respondent was represented by Mark Davies of Counsel who conducted himself in the skilful and professional manner we would expect.

3. There were a limited number of issues between the parties. These were outlined in written submissions and additional oral evidence and submission was provided at the hearing on 13th June 2024. The Applicant challenged her service charges from 2013 onwards.

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.*

The issues

7. The lease terms and their application were not in issue and were in any event uncontentious save for the recoverability of the "Freeholder charge". The main point of challenge by the Applicant was the fact that no formal demands had been served and the reasonableness of charges. Taking each challenge in turn.

Freeholder charge

8. This was a fixed charge of £80 that had been made from 2013- 2022. No formal demands had been made for the charge. The Respondent said that it was an agreed annual fee which the Applicant agreed to pay the Respondent for managing her two flats and dealing with issues arising with her tenants. The Applicant lives in France. The Respondent concedes in his witness statement that this is not a service charge but is a private agreement between the parties. We find that the charge is not a service charge because it is fixed and falls outside the Tribunal's jurisdiction under s.19 Landlord and Tenant Act 1985. We make no determination on this charge.

Communal lighting (Oct 2017, Sept 2018, Sept 2019, Oct 2020, Oct 2021, Sept 2022).

9. These charges were challenged by the Applicant on the basis that they were not formally demanded and the sums were inconsistent. She also said there was no provision in the lease. Mr Davies accepted that demands had not been made but relied on the case of *Cain v Islington* [2016]L & TR 13.

10. The starting point is s 27A Landlord and Tenant Act 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).
(7) 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. […]3

11. In *Cain* the Upper Tribunal found that an agreement or admission for the purposes of s.27A(4) may be express, or implied or inferred from the facts and circumstances. The agreement or admission must be clear, the finding being based upon the objectively ascertained intention of the tenant. The effect of subs.27A(5), to preclude the finding of agreement or admission by reason only of the tenant having made any payment, is that the making of a single payment on its own will never be sufficient, but the making of multiple unqualified payments even of different amounts over a period of time may suffice. The longer the period over which payments have been made, the more readily the court or tribunal will find an agreement or admission. It is the absence of protest or qualification that provides the additional evidence from which agreement or admission can be implied or inferred. The FTT had been entitled to find that the tenant had agreed or admitted the service charge items based purely upon the series of payments throughout the six-year period and subsequently, without reservation, qualification or other challenge or protest.

12. Mr Davies said that in the present case the evidence of consistent payment of the service charges including the communal lighting represented an admission of liability that could be inferred. He was not aware of the recent decision in *G&A Gorrara Ltd v Kenilworth Court Block E RTM Ltd* [2024] 4 WLUK 37 in which it was held that *Cain* was wrongly decided to the extent that it found that

a series of payments was insufficient without more to indicate agreement. In other words payment alone is not enough (see subs (5)).

13. In the present case there was an email exchange between the parties which suggested that there was a level of agreement as to the charges but it did not relate to every charge and the Applicant said she did not know about the requirement to make formal demands. On balance we consider there that there was no real evidence other that consistent payment and we do not consider that an admission can be inferred in relation to any of the charges made. It was common ground that there were no valid demands made. Under s.21B Landlord and Tenant Act 1985 a failure to include a summary of rights and obligations means that the Applicant is not liable to pay the sum. This is suspensory. In other words liability to pay is suspended until the proper demands are served. In the present case the Respondent chose to fight the case instead of serving correct demands. Accordingly, we find that the charges for communal lighting are not owing. If they were due we would have found that the communal lighting charges were reasonable.

Buildings insurance (2017,2018,2019,2020,2021,July 2022)

14. Responsibility for the insuring of the two flats fell with the Respondent by agreement between the parties. The Applicant would recover the variable sums from the Applicant. Although the Respondent refers to this as an informal variation of the lease the fact remains that it was effectively a variable service charge made by the landlord. A service charge does not have to be reflected in the lease : see *Chuan Hui v K Group Holdings Inc* [2021] EWCA Civ 403. As identified already there were no formal demands made accordingly the sums are not due. We considered the alternative quotes provided by the Applicant but overall we determine that had the charges been due they were reasonable.

Tree cutting (2019)

15. This relates to a one off charge made in 2019. Having considered the evidence on this issue we determine that the sums are not payable not just because they were not formally demanded but also because most of the tree cutting work related to the Respondent's own land and was not recoverable under the service charge.

New fence (2021)

16. There was no issue here as the sum was not being charged.

Drains and drain gully (2021)

17. This was not a matter within our jurisdiction as it related to a disrepair claim which ought to be dealt with by the County Court.

Communal front door (2021)

18. Similarly this was not within our jurisdiction as it related to a disrepair claim which ought to be dealt with by the County Court.

Fly tipping (2022)

19. There was a dispute as to responsibility for this charge. The total charge was £450. There is no liability as the sum was not formally demanded. In any event we would have allowed £225 as the total sum had not been apportioned by the Respondent.

Communal door lock (2022)

20. This sum was not formally demanded and is therefore not due although if it were we would allow £50.

Rear garden gate (2022)

21. Taking account of the written and oral evidence given. The gate was replaced when the wall was demolished without any reference to the Applicant. If the sum was due at all we would have disallowed it.

Man hole (2022)

22. As above, The works resulted from the wall removal – if the charge was due we would have disallowed it.

Property valuation costs (2022)

23. This was not within our jurisdiction.

Communal door repairs (2022)

24. This was not within our jurisdiction.

Freeholder's administration (2022)

25. If this sum was due we would have considered it reasonable in any event it was conceded.

Insurance administration (2022)

26. If this sum was due we would have considered it reasonable.

Dynorod (Oct 2022)

27. This was outside our jurisdiction as it related to a disrepair claim .

Wall works (Second application)

28. The Respondent carried out a s.20 consultation in relation to works to demolish the wall in 2022. The wall works cost £2800 and the Respondent sought to recover 50% from the Applicant.

29. The problem here was that the wall was knocked down unlawfully. Much of it lay within the Applicant's demise. There was therefore a trespass. In these circumstances it is not reasonable to charge anything from the leaseholder and we disallow the sums claimed.

Roof repairs

This was not in the application.

Summary

30. We determine that at present no sums are due because no formal demands have been made. We have indicated what determination we would make if the sums were due. It is of course open to the Respondent to formally demand the sums and make them due. We would hope that he will bear in mind our determinations when doing this.

s.20C Landlord and Tenant Act 1985 and fees

31. This was a genuine application which was cogently argued by the Applicant. The Applicant has been successful. We have no hesitation in exercising our discretion under s.20C and disallowing the Respondent from recovering his costs of the proceedings from the service charge. We also order the Respondent to repay the Applicant her application and hearing fee which total £300

Judge Shepherd

20th August 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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. The application should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).