FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	**:**	CAM/33UD/LSC/2023/0033
Property	**:**	Flat 5, 43 King Street, Great Yarmouth, Norfolk, NR30 2PN
Applicant	**:**	Miodrag Markovic
Applicant's Representative	**:**	In person
Respondent	**:**	Eduardo Sant'anna
Respondent's Representative	**:**	In person
Type of application	**:**	Application for determination of liability to pay and reasonableness of service charge
Tribunal members	**:**	Mr Max Thorowgood and Roland Thomas MRICS
Venue	**:**	CVP
Date of Decision	**:**	8 October 2024

DECISION

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1. The application

1.1. The Applicant landlord seeks a determination as to the Respondent's liability to pay and the reasonableness of the service charges which he has demanded pursuant to the Respondent's lease of Flat 5, 43 King Street, Great Yarmouth in respect of the years 2022/23 and 2023/2024, the year end being 1st April.

1.2. In respect of 2022/23 the sums presently unpaid are:

1.2.1. A management charge of £350.00; and

1.2.2. A repairs and maintenance charge of £421.00 in respect of which the Respondent's 17.5% share equates to £73.67.

After it emerged in the course of the hearing that Applicant had deducted (after making his initial claim) the costs of two cleaning visits at a cost of £110.00 and not charged in respect of any electricity consumption during the period, it became apparent that the only sum in issue was the management charge.

1.3. In respect of 2023/24 the sums presently unpaid, which had been demanded in advance on an estimated basis at the time of the application but have now been quantified, are:

1.3.1. The insurance premium of £86.93;

1.3.2. The management fee of £350.00; and

1.3.3. The repairs, maintenance and bills charge of £485.79 of which the Respondent's 17.5% share amounts to £85.01.

The Respondent confirmed in respect of these costs that neither the insurance premium nor the charges in respect of bills and maintenance

were challenged. This emerged once it was established that the electricity charges did not relate to any part of the period during which the Applicant was carrying out works of refurbishment to his three flats in the building.

1.4. It is thus clear that the only item sought to be recovered which is actually in issue is the management charge. The Respondent, however, challenged the payability of that charge on the ground that the Applicant had refused to provide him with statements for the end of year service charge account which had been certified by an accountant. It will therefore be necessary to consider both the payability of the management charge and the reasonableness of that charge.

2. Management charge - payability

2.1. The lease defines the "Annual Maintenance Cost" as: "The total of all sums *spent* by the Landlord in any Financial Year in connection with the management and maintenance of the Property in accordance with clause 4 hereof."

2.2. Clause 4 provides, materially, as follows:

> "In this clause:
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> 4.1.1. "Annual Maintenance Cost" shall *without prejudice to the generality of its definition in the Particulars* include:
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> i) The cost of procuring or providing any sums required in connection with the same where they exceed the moneys for the time being held by the Landlord as Advance Payments
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> ...
>
> v) All fees charges and expenses payable to any solicitor accountant surveyor or architect *or other professional or competent adviser or agent whom the Landlord may from time to time reasonably employ in connection with the management and/or maintenance of the Property* (but not in connection with lettings or sales of any of the flats in the Building or the collection of rents payable by any tenant hereof) and in or in connection with enforcing the performance and observance by the Tenant and all other tenants of

> flats in the Building of their obligations and liabilities." (Emphasis added)

The regime created by the lease provides, in the usual way, for the landlord to demand payment of the estimated costs of providing services in advance as follows:

> 4.5.1 As soon as practicable after 1st March in every year of the Term the Landlord or his Surveyor will serve on the Tenant a Statement giving full particulars of the Annual Maintenance Cost and certifying the amount payable as the Tenant's Share for the preceding Financial Year, and setting out the estimated sums to be paid for the succeeding year"

So, the 'Statement', as envisaged by the Lease, performs a double function: it estimates and thereby sets the monthly amount of the service charge payable in advance for the upcoming year and confirms the final position as at the close of the previous year. The Lease then further provides for the Tenant to set up a standing order in the monthly amount of the estimated charge and that if those sums are not paid within 14 days for the payment by the tenant of interest thereon. It then further provides, at clause 4.7, as follows:

> "The Landlord will keep a detailed account of all expenditure to be included in the Annual Maintenance Cost and ensure that the Statement for every Year is prepared by an independent accountant to whom all necessary accounts and vouchers will be produced."

2.3. It is upon this latter provision that the Respondent's bases his case that the management charge is not payable; although the same objection might have been made to the payability of any sum demanded, since the objection is the same – no valid demand has been made.

2.4. It had appeared to us from the Respondent's entries in the Scott schedule that he might also be contending that, because the Applicant was purporting to charge for his 'time' rather than in respect of monies which he had paid out to an agent, he was not claiming in respect of monies

spent by him within the meaning of the term 'Annual Maintenance Cost'. However, after some discussion, he confirmed that that was not his case. It seems to us that the Respondent was correct not to pursue this point for the following reason. It is clear from clause 4.1.1. (v) that, had the Applicant chose to instruct a local agent to manage the property on his behalf, he would be entitled to recover that managing agent's fee by way of service charge. It therefore seems to us that it would be an undesirably narrow construction of the word, 'spent', to say that time and effort spent by a landlord was not chargeable. In our view, time and effort spent by the landlord managing the property is properly recompensable under the Lease by the service charge and that the expression "sums spent" should be taken to comprehend valuable time and effort expended.

2.5. Turning then to the point which the Respondent did take, it is perhaps most attractively put on this basis – unless and until a valid Statement has been prepared and served, no valid demand for payment of any outstanding balance or any monthly payment in advance has been made. Clause 4.7 requires that Statement to be prepared by an independent accountant, "to whom all necessary accounts and vouchers will be produced." Thus, unless and until a Statement has been prepared by an independent accountant, i.e. unless and until clause 4.7 has been complied with, no monies are due.

2.6. It seems to us that the requirement for 'certification' of the Statement by an accountant relates to the previous year, hence the refence to accounts and vouchers. The projection going forward is properly a matter for the landlord and/or his surveyor as clause 4.5.1. provides. Thus, it does not seem to us that it is a condition of payability of the estimated Annual Maintenance Cost under the Lease that the Statement should have been prepared by an accountant. Aside from the undesirable formalism of the construction contended for by the Respondent, it seems to us to give rise to highly undesirable possible consequences. It is possible to imagine, for instance, that if it should emerge at some point well down the line from the service of an apparently valid Statement that some necessary account or voucher had not in fact been provided to the accountant, that the

Statement would be invalidated so rendering it suddenly a non-Statement. That would be particularly undesirable given the terms of the limitation period prescribed by s. 20B Landlord & Tenant Act 1985.

2.7. Thus, it is our view that the better construction of the Lease is that, although it is a term of the Lease which might be enforced by way of injunction, it is not a *condition* (i.e. an absolute requirement) of the service of a valid Statement that it should have been prepared by an independent accountant.

2.8. We need also in this connection to consider the provisions of ss. 21 and 21A of Landlord & Tenant Act 1985 the relevant parts of which are as follows:

> (1) A tenant may require the landlord in writing to supply him with a written summary of the costs incurred—
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> (a) if the relevant accounts are made up for periods of twelve months, in the last such period ending not later than the date of the request, or
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> (b) if the accounts are not so made up, in the period of twelve months ending with the date of the request,
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> and which are relevant costs in relation to the service charges payable or demanded as payable in that or any other period.
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> ...
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> (6) *If the service charges in relation to which the costs are relevant costs as mentioned in sub-s (1)* ***are payable by the tenants of more than four dwellings****, the summary shall be certified by a qualified accountant* as—
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> (a) in his opinion a fair summary complying with the requirements of subsection (5), and
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> (b) being sufficiently supported by accounts, receipts and other documents which have been produced to him. (Emphasis added)

It is our understanding of this provision that a landlord is only required to provide a summary of costs which is certified by an accountant if it is making service charge demands of the tenants of more than 4 dwellings.

In this instance the Applicant is not because, although there are six flats in the building, he owns 3 of them in his own name and is not therefore making any service charge demands of himself.

2.9. Section 21A then provides that

> "(1) A tenant may withhold payment of a service charge if—
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> (a) the landlord has not supplied a document to him by the time by which he is required to supply it under section 21, or
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> (b) the form or content of a document which the landlord has supplied to him under that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under subsection (4) of that section."

However, because the Applicant has provided the Respondent with the summary of costs which he was required to provide and because he was not required to provide a certificate pursuant to s. 21(6), it seems to us that the Respondent was also not entitled to withhold payment pursuant to s. 21 and 21A Landlord & Tenant Act 1985. It follows that the sums claimed are payable, subject to the question of reasonableness.

3. Management charge – reasonableness

3.1. We draw heavily in assessing this question upon the professional expertise of Mr Thomas, as a Chartered Surveyor, in assessing the reasonableness of the fee charged.

3.2. It is trite that there are considerable economies of scale in block management, so that the cost per unit of managing a 100 unit block will be considerable less than the costs of managing a small property such as this one.

3.3. In principle, therefore, we consider that if the service provided had met the standard set by RICS in its Service Charge Residential Management Code and/or ARMA's similar code the fee claimed by the Applicant would have been reasonable.

3.4. However, as the Respondent pointed out, the service provided by the Applicant was in fact very limited. Cleaning services were provided for only a very limited part of the period with which we were concerned, no works of repair were even proposed to be carried out until January/February of 2024 when the Applicant served a s. 20 notice in respect of repair to the roof but only that part above one of his flats not to the roof above the Respondent's flat which was also in disrepair. The lighting of the communal parts was not maintained, fire extinguishers were not serviced, there was no security lock on the door and the state of the property generally was poor.

3.5. Although the Applicant did attend the property on three occasions in late 2022, shortly after he bought the property, there is no evidence that any of the matters discussed as being necessary were carried forward thereafter or that any plan was developed to bring the property into a reasonable state of repair. The only works which were proposed by the Applicant were ones referable to his flat. Some services were provided, the property was insured, service charge demands were made and some repairs have now been done but as the Applicant himself acknowledged in his evidence, he had done the bare minimum because the Respondent had refused to pay his service charge.

3.6. Whilst we have some sympathy with this explanation on the part of the Applicant, we do not think it explains the failure to provide any cleaning services for the large part of the period when he was letting his three flats to tenants nor the failure to engage with the lessees in order to try to bring them on board for a programme of refurbishment in the manner which we would have expected to see had the property been managed to the standard we would expect.

3.7. The Applicant's lack of engagement is also evident in the impasse reached over the provision of accounts certified by an accountant which lies at the root of the Respondent's refusal to pay. The Applicant's approach to this was both intransigent as well as being wrong in law. It was his position that if the Respondent wished to have the accounts certified he and the other lessee would have to bear the whole cost of that

process. He naturally felt that the process would be a waste of time so far as he was concerned, since the accountant would only be certifying what he already knew. However, that approach ignores: a) the fact that he is required by clause 4.7 of the Lease to have the Statement prepared by an accountant; and b) that he is only entitled to defray the cost of satisfying that requirement pursuant to the terms of the Lease which provide in Schedule 5 to the Lease that the Respondent is liable to pay 17.5% of the cost.

3.8. That misguided approach and the failure to provide anything but the most basic services which flowed from it were significant failures of management and, for that reason, we find that it is appropriate to reduce the amount of the management charge claimed by 25% to £262.50.

4. Conclusions

4.1. Our conclusions are therefore as follows:

4.1.1. That the landlord is entitled to make a management charge in respect of work done by him to manage the property;

4.1.2. That it is not a condition of the payability of the sums demanded in advance that the Statement should have been prepared and/or certified by an accountant;

4.1.3. It is, however, a requirement that the landlord should pay an accountant to prepare the Statement and his only entitlement to recover the cost of that exercise is via the service charge provisions of the Lease, consequently, the lessees are only liable to bear their specified proportion of that cost;

4.1.4. A management charge of £350.00 might in principle be justified if the services provided were to the RICS/ARMA standard; but

4.1.5. In this case they were not. Although the Applicant was by no means solely responsible for the breakdown of communications which has

sadly affected the parties in this case, he, as the person responsible for the management of the property, was the person who bore the heaviest responsibility for endeavouring to resolve the impasse in order to ensure that the property was being properly managed for the benefit of both the tenants and the lessees. It is therefore appropriate to reduce the amount of the charge by 25% to £262.50.

4.2. Otherwise, the sums claimed were not disputed and are reasonably incurred and reasonable in amount.

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.