



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

Case reference : **LON/00AR/LSC/2024/0321**

Property : **Flat 2, Sanders Court, 21 Fullerton
Avenue, RM8 1FG**

Applicant : **Adriatic Land 10 Limited (1)
Lymington Mew Management Company
Limited (2)**

Representative : **JB Leitch Ltd Solicitors**

Respondent : **Abu Musa Jahir**

Representative : **Naylor Solicitors**

Type of application : **Transfer from the County Court**

Tribunal members : **Judge H Carr
Mr A Fonka**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **November 11th 2024**

Date of decision : **November 19th 2024**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum of £3,837.91 is payable by the Respondent in respect of the service charges for the years of the claim, ie service charge year ended 2021 and 2022
- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) This matter should now be referred to the County Court at Romford for the determination of outstanding matters including costs.

The application

1. Proceedings were originally issued in the County Court under claim no. K62YX481. The claim was transferred to the County Court at Romford and then in turn the service charges element of the dispute were transferred to this tribunal, by order of District Judge Shackleton on 25th June 2024.
2. The First Applicant is the registered freehold proprietor of the property.
3. The Second Applicant is the named management company within the Lease and is responsible for carrying out the management function at the development.
4. The Respondent is the registered leasehold proprietor of the property.

The hearing

5. The Applicant was represented by Ms Ackerley of Counsel at the hearing and the Respondent, who was in attendance, was represented by Mr Dawson of Counsel. For the Applicant Mr Randall of Rendall and Rittner Limited, managing agents appointed by the Second Applicant was in attendance. He has been the property manager of the property since May 2024 and was assistant property manager of the property from November 2023.
6. Immediately prior to the hearing the tribunal was informed by Ms Ackerley that her witness Mr Skipp, from Rendall and Rittner Ltd had been taken ill on the way to the tribunal and was currently in hospital with a suspected heart attack. Mr Skipp has been with Rendall and Rittner for 13 months and supervises Mr Randall.
7. Ms Ackerley on behalf of the Applicant requested an adjournment as proceeding without Mr Skipp would put the Applicant at a disadvantage.

8. The Respondent opposed the application on the basis that adjourning would cause him a great deal of stress as the service charge demands had put him under extensive financial pressure. He also considered that the Applicant would not be prejudiced as it had another witness from Rendall and Rittner who would be able to speak to the issues arising. He asked that the matter be resolved as soon as possible.

The decision of the tribunal

9. The tribunal refused the request for an adjournment.

The reasons for the decision of the tribunal

10. It considered that Mr Skipp had very little personal knowledge of the dispute before it and that Mr Randall would be an adequate substitute.
11. It had the benefit of a witness statement from Mr Skipp to which some weight could be given regardless of his non-attendance.
12. The tribunal allowed a 2-hour adjournment to enable Mr Randal to become familiar with the file.
13. It also informed the Applicant that if it became clear during proceedings that the absence of Mr Skipp was putting it at a disadvantage that its application for an adjournment could be renewed.

The background

14. The property which is the subject of this application is a 2 bedroom property in a building, Sanders Court, comprising 4 flats and 2 houses completed in 2017. The building has no lifts or concierge service.
15. Sanders Court is part of a larger development known as Lymington Mews. This comprises 3 blocks of 100 leasehold properties in total along with 415 houses on the estate.
16. The service charges are divided into estate costs, shared costs for the building and internal costs.
17. Neither party requested an inspection, and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
18. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

19. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of on account service charges for the service charge years ending December 2021 and December 2022
20. The Applicant clarified the amount of service charges that were in dispute. Having considered the figures carefully the amount of service charges demanded is £4555.56. The Applicant is to apply £717.65 credit to this. Therefore, the total amount in dispute is £3837.91, and it is in connection with this amount that the Applicant requires a determination from the tribunal.
21. The Respondent originally included in his defence a claim of promissory estoppel and at the commencement of proceedings it was decided that determining the claim of promissory estoppel was pertinent to the determination of the reasonableness of service charges. However, before proceedings concluded the Respondent withdrew his argument that the Applicant is estopped from demanding higher on-account service charge sums.
22. The Applicant in its County Court application had included a claim for administration charges totalling £360. The Applicant informed the tribunal that it was no longer pursuing this sum.
23. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The Respondent's argument

24. The Respondent purchased the property from the developer in July 2017. There has been no work carried out to the building other than the usual occasional cleaning and routine maintenance work.
25. The Respondent's principal concern is that he signed a reservation document with the developer, Lovell Homes, which confirmed that the anticipated annual Service charges would be in the region of £1510 per annum. The Respondent provided this as evidence to his mortgage provider which made a mortgage offer based on the estimated Service Charges.
26. He received further reassurance from someone from Lymington Mews Management Company at the point of sale in 2017 that the service

charges would remain something similar to £1510 per annum for years to come as the property was a newbuild.

27. The lease for the property stated a fixed Service Charge of £1677,24 for the first accounting year which was paid in full at the time.
28. The Respondent says he was also told that an audit for services charges of a calendar year would be carried out no later than 6 months after the end of the year and that once the audit was carried out the actual Service Charge bill would be provided and the difference either refunded or demanded as appropriate.
29. Despite all these reassurances the estimated Service Charges relating to the property have risen consistently to the region of £3500. This is more than double the amount paid in 2017.
30. The Respondent says that he has received no explanation or documentation to explain the sudden increase in Service Charges.
31. In September 2018 the Respondent spoke to Gemma Welsh Property manager at Rendall & Rittner querying the amount of service charges. She told him that the accounts relating to service charges for the Building were not in order. It was therefore agreed that the Respondent would pay £400 per quarter, until the accounts had been 'sorted out'.
32. The Respondent provided the tribunal with copies of emails where he outlined his concerns.
33. On 24th September 2018 the Respondent was advised in writing that the serve charge estimates for 2018 were still under review and that he should continue to pay the original Service Charge estimate which was around £400 per quarter.
34. In October 2019 the Respondent says that it was agreed with Denisha Wallace a property manager with Rendall & Rittner and it was agreed at this point that he would pay £200 pcm in respect of the service charge until the claimants had the accounting 'sorted out'.
35. The Respondent says that he has only received service charge accounts for the year ended 2018 and not for the other years.
36. The Respondent's review of the 2018 service charge accounts leads to him believing that he has been overcharged. He has also noted discrepancies with the service charge accounts. For example, he says that some of the amounts he paid did not fully correspond to the amounts received according to their statement. For example, on 17 April 2020, he made a payment to Rendall and Rittner for the sum of £800, but this

amount was not displayed as a credited amount on the statement they provided. He also says there were inconsistencies with the dates on their statement. On one instance he made a payment to Rendall and Rittner on 18 September 2020, however, the statement from them states that he made the payment on 17 September 2020. This raises further concerns for the Respondent about the robustness of its process.

37. The Respondent argues that it cannot be reasonable that service charges have more than doubled since he purchased the property.
38. He asked for explanations from the Applicant and applied to their solicitors to inspect the service charge accounts. These requests have been ignored.
39. In addition, the Respondent argues that the Applicant has failed to comply with the requirements of the lease in that the service charge demands were not sent to him by post.

The Applicant's argument

40. The Applicant argues that the Respondent has failed to prove by way of comparative evidence or the like that the service charges and administration charges claimed are unreasonably high or that unnecessary costs have been incurred.
41. Further the Applicant says that the Respondent has raised no specific grounds for disputing certain items of expenditure, despite having been provided with the relevant service charge budgets.
42. The Applicant has not provided disclosure of underlying invoices because there has been no specific challenge.
43. Mr Skipp's statement exhibited the service charge budgets for the years 2018 and 2023 which were served on the Respondent together with the covering letters.
44. The service charge accounts for the years 2018 – 2020 together with the covering letters are also exhibited in Mr Skipp's statement.
45. The tribunal was informed that the service charge accounts for 2021 are due to be finalised shortly and that the accounts for the years 2022 and 2023 will follow.
46. The tribunal asked Mr Randall questions about how the on-account service charges were calculated and apportioned. He explained that the accounts were divided into three parts, estate charges, shared block charges and internal charges.

47. The estate charges which included external provision for the three blocks, lighting on the estate and car parks etc was divided between the 515 properties on the estate and apportioned via floor area of the property. The Respondent pays 0.201924% of the estate charges. These charges include the maintenance of the garden at the property.
48. The shared block charges include expenses related to the exterior of the building block
49. The internal block charges include the maintenance and lighting of the internal block area.
50. Mr Randall explained that the ground floor communal area was around 5 square meters, there were stairs, double doors a long corridor and a plant room, a front door and a rear door.
51. Mr Randall says that the budget is prepared via a template which is based on the previous year's budget and invoices received. This is then further informed by a quarterly financial report, which covers the previous year's financial information, contracts from the previous year, fire risk assessments etc. The on-account amount for the reserve fund is based on the expertise of the property manager.
52. This information is used to prepare the s.20B statements which are provided to leaseholders.
53. On further questioning from the tribunal Mr Randall explained that the estate has a caretaker who until this year has carried out caretaker roles and additional cleaning. The wages for the caretake are split, 50% for the estate, 15% for the shared block charges and 35% for the internal charges.
54. The tribunal also asked about the managing agents' costs. When these were totalled from the three budgets it came to around £300 per annum for management charges which in the opinion of the tribunal was reasonable. The Respondent did not challenge the management charges.
55. The tribunal also asked about the different sizes of the blocks. It was a little concerned that estimated electricity charges were the same across different sizes of blocks but considered that overall, the charges were not unreasonable.
56. Mr Randall further explained that for the years in question he was not personally involved but practice is that the initial budget is worked out, demands are issued along side s.20B notices which provide a lot of information. In effect the s.20B notices operate in lieu of finalised accounts.

57. Mr Randall provided some explanation for the escalation of the service charge costs. He pointed out that insurance costs have gone up, the warranty period for items on the development will have expired, there are wear and tear costs, and contractor costs have gone up. In light of all these changes it is not surprising that the costs have escalated.
58. The Respondent asked questions about the amount of service charges and suggested that an increase of more than 100% even in the light of these changes is not reasonable.
59. The Respondent also said that he had been excluded from the portal, but Mr Randall explained that that was because of a system upgrade and only after the commencement of proceedings and did not cover the period of the claim.

The Respondent's submissions

60. The Respondent argued that the initial service charge set out on the lease was reasonable but the increase was not reasonable. His requests for information on the calculation of the sum were not forthcoming and no genuine attempt has been made to explain the figures.
61. He submits that the burden of proof falls upon the applicant and that the charges must be reasonable to an objective standard.
62. He also said that the Applicants were in breach of clause 8 of his lease in that they had not served service charge demands by post.

The Applicant's submissions

63. The Applicant submits that the Respondent requested that his service charge demands were provided electronically and to insist on other means of service at this point is unconscionable and the Respondent is estopped from doing so.
64. The budgets have been certified as being reasonable. The information used to calculate the on-account charges is full, drawing on invoices, financial reports, budgets and s.20B notices. On that basis the on-account service charges are reasonable.
65. Whilst there has been some failure to provide information, that is of limited relevance to the determination of reasonableness.
66. Once the Applicant has shown that there was a reasonable system for calculating the on-account charges, the burden moves to the Respondent to show what is unreasonable.

67. The Applicant reminds the tribunal that on-account charges attract a lower threshold of reasonableness than actual charges and the Respondent has not raised any objection to any specific service charge.

The tribunal's decision

68. The tribunal determines that the amount payable in respect of on-account service charges is £3,837.91 .

Reasons for the tribunal's decision

69. The tribunal was impressed with the information provided by Mr Randall who answered questions fairly and openly. The tribunal is grateful to Mr Randall for stepping in at short notice.
70. The tribunal considers that the doubling of the service charges from the initial amount discharged the Respondent's burden of showing a prima facie case of unreasonableness.
71. The Applicant however has demonstrated to the tribunal that the system used to calculate the on-account charges was a sensible and reasonable system. Once that is done the tribunal agrees with the Applicant that the burden falls to the Respondent to demonstrate unreasonableness of the on-account service charges.
72. The Respondent has failed to provide any substantive challenge to the service charges in dispute. In the light of this failure the tribunal determines that the on-account service charges of £3,837.91 are reasonable.
73. The Respondent will have another opportunity to consider reasonableness when the actual service charge costs are demanded.

The next steps

74. The tribunal has no jurisdiction over the remaining issues in dispute. This matter should now be returned to the County Court sitting at Romford.

Name: Judge H Carr

Date: 19th November 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 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).