



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

Case Reference(s) : **BIR/44UD/LSC/2024/0001**

Property : **Flat 7 Gilshaw Lodge 26 – 28 Bilton Road
Rugby CV22 7AL**

Applicant : **Gilshaw Lodge (Management) Limited**

Representative : **Graham Watson**

Respondent : **David Roberts**

Type of Application : **Service Charges**

Tribunal Members : **V Ward BSc Hons FRICS - Regional Surveyor
Deputy Regional Judge M K Gandham**

Date of Decision : **07/01/2025**

DECISION

Background

1. The Applicant Landlord made an application seeking a determination under section 27A of the Landlord and Tenant Act 1985 (“the Act”) as to whether or not service charges are reasonable, due and payable for the service charge year 2023 to 2024.
2. Specifically, the Landlord had requested the Tribunal to answer the following question:

Does the tribunal agree that it is incumbent upon, and the responsibility of, the Respondent (David Ian Roberts) to pay the agreed service charges in accordance with the lease (including but not limited to section 2 (2) and the fifth schedule of the lease), to include retrospective and all future payments, irrespective of any disagreement?

3. On 19 June 2024, following an abortive attempt at mediation, the Tribunal issued Directions for a determination of the matter.

Barring of the Respondent

4. Paragraph 6 of the Directions required the Respondent to provide a statement of case by 19 July 2024. The Respondent failed to provide any documents to the Tribunal. On 8 November 2024, the Tribunal gave notice that it was minded to bar the Respondent from taking further part in the proceedings, pursuant to Rule 9(3)(a) and Rule 9 (7)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and was warned that if they were barred from taking further part in proceedings, the Tribunal need not consider any response or other submission made by them and may summarily determine all issues against them (Rule 9(8)).
5. Either party was invited to make representations in relation to the proposed barring, within 14 days. Neither party made representations. Accordingly, the Respondent was barred from taking further part in the proceedings, pursuant to Rules 9(3)(a) and (7)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Submissions of the Landlord

6. As directed, the Landlord had provided copies of the service charge accounts for the year in question which ran from 1 April 2023 to 31 March 2024.
7. The income and expenditure account showed a breakdown of costs as follows:

Insurance policies	£5,427.08
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Communal electricity	£254.31
Accountancy fees	£800.00
Fire alarm service and repair	£298.22
Green Wheelie bin x 2	£80.00
Companies House Annual returns fee	£26.00
Roof Repair	£450.00
First Tier Tribunal Fee	<u>£100.00</u>
TOTAL	£7,435.61

8. Within the application form, the Landlord had stated that conflict and disagreement has led to the lessee Mr. Roberts refusing to pay the agreed service charge, which he had previously paid regularly (monthly). There has been no increase in the level of service charge, and no request for any additional payments over and above the amount (£190 per month) that was set out in the demand for payment issued for the appropriate year. The service charge is essential for items such as insurance, energy fees and planned maintenance that is critical to the upkeep of the building; funds are used solely for these purposes and are a necessary and unnegotiable requirement of the lease.

The Lease

9. The Lessee's covenants are set out in clause 2 of the lease. Clause 2 (2) deals with the service charge specifically:

(2) To pay to the Lessor without any deduction by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the Lessor in decoration insurance and heads of expenditure as set out in the Fifth Schedule hereto such further and additional rent (hereinafter called "the Service Charge") being subject to the following terms and provisions

(a) The amount of the service charge shall be ascertained and certified in a certificate (hereinafter called "the Certificate") signed by the Lessor's Manager or Agent acting as expert and not as arbitrator annually and so soon after the end of the Lessor's financial year as may be practicable and shall relate to such year in manner hereinafter mentioned

(b) A copy of the Certificate for each financial year shall be supplied by the Lessor to the Lessee on written request and without charge to the Lessee

(c) The Certificate shall contain a summary of the Lessor's said expenses and outgoings incurred by the Lessor during the Lessor's financial year to which it relates together with a summary of the relevant details and figures forming the basis of the service charge

(d) The annual amount of the service charge payable by the Lessee as aforesaid shall be calculated by dividing the aggregate of the said expenses and outgoings incurred by the Lessor in the year to which the Certificate relates by the aggregate of the rateable value of all the flats in the Building and then multiplying the resultant amount by the rateable value of the Flat

(e) The Expression "the expense and outgoings incurred by the Lessor" as hereinbefore used shall be deemed to include not only those expenses and outgoings and other expenditure hereinbefore described which have been actually disbursed incurred or made by the Lessor during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature whenever disbursed incurred or made including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Lessor or its Manager or Agent may allocate to the year in question as being fair and reasonable in the circumstances

(f) The Lessee shall if required with every half yearly payment of rent reserved hereunder pay to the Lessor such sum in advance and on account of the service charge as the Lessor or its Manager or Agent shall specify to be a fair and reasonable interim payment

(g) As soon as practicable after the signature of the Certificate the Lessor shall furnish to the Lessee an account of the service charge payable by the Lessee for the year in question due credit being given therein for all interim payments made by the Lessee in respect of the said year and upon the furnishing of such account showing such adjustment as may be appropriate there shall be paid by the Lessee to the Lessor the amount of the service charge as aforesaid or any balance found payable or there shall be allowed by the Lessor to the Lessee any amount which may have been overpaid by the Lessee by way of interim payment as the case may be

10. The Lessor's obligations are set out in clauses 4 (4) and 4 (5) and are as follows:

(4) That the Lessor will so far as practicable keep clean and reasonably lighted the passage landings staircases and other parts of the Building used by the Lessee in common with the owners or Lessees of the other Flats

(5) (a) That the Lessor will maintain and keep in good and substantial repair and condition

(i) the roof main walls floors foundations and structure of the building

(ii) all such main gas and water pipes and drains and electric cables and wires serving the Building and not forming part of any particular Flat being

such as used by the Lessee in Common with the owners or lessees of the other flats

(iii) The main entrance passage landings staircases and forecourt of the Building used by the Lessee in Common as aforesaid and will keep the grounds in which the Building stands in good order

(b) That the Lessor will so often as reasonably required decorate the exterior of the Building and the common passages and landings of the building as aforesaid so far as reasonably necessary in the manner in which the same are at the time of this demise decorated or as near thereto as circumstances permit

11. The Fifth Schedule is as follows:

FIFTH SCHEDULE

Lessor's expenses and outgoings and other Heads of Expenditure in respect of which the Lessee is to pay a proportionate part by way of service charge

1. The cost of insuring and keeping insured throughout the term hereby created the Building and all parts thereof against the insurable risks mentioned in Clause 4 (2) hereof and also against third party risks and such other and further risks by way of comprehensive insurance as the Lessor shall determine including two years loss of rent and Architects and Surveyors fees

2. The cost of carrying out the Lessor's obligations under Clause 4 (4) and 4 (5) hereof

3. All charges and assessments and other outgoings (including outgoings relating to the common parts) payable by the Lessor in respect of the Building (other than income or corporation tax)

4. The fees of the Lessor's Agents for the general management of the Flats provided that such fees shall at no time exceed the maximum therefore allowed by the scales authorised for the time being by the Royal Institution of Chartered Surveyors

5. All fees and costs incurred in respect of the annual certificate and of accounts kept and audits made for the purpose thereof

6. The amount which the Lessor may pay as a contribution towards the expenses of making repairing maintaining rebuilding and cleansing all ways

roads pavements sewers drains pipes and watercourses serving the Building and party walls party structure party fences walls or other conveniences used for the Building in common with other premises near or adjoining thereof

7. The upkeeping of the forecourt paths driveways and grounds of the Building

8. The cost of taking all steps deemed desirable or expedient by the Lessor for complying with making representations against or otherwise contesting the incidence of the provisions of any legislation or orders of statutory requirements thereunder concerning town planning public health highways streets drainage or other matters relating or alleged to relate to the Building for which the Lessee is not directly liable hereunder

The Law

12. Sections 18 and 19 provide:

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 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' include 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(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 for the carrying out of works, only if the services are of a reasonable standard;

and the amount 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.

13. Section 27A, so far as relevant, provides:

(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) Sub-section (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 included for services, repairs, maintenance, improvements, insurance or management of any description, a service charge would be payable for the costs, 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 payable.*

The 'appropriate tribunal' is this Tribunal.

The Tribunal's Determination

14. The Respondent has played no meaningful part in these proceedings and his only communications to the Tribunal may be considered at best obtuse and at worst, offensive. The failure to comply with Directions led to the Respondent being barred.

15. As the Respondent has been barred from these proceedings, the Tribunal relies on the written submissions made by the Applicant and its own enquiries as an expert Tribunal.
16. The Tribunal can only provide a determination in respect of the specific costs set out in the application form. It cannot make a determination that covers charges for future or other periods.
17. Online resources indicate Gilshaw Lodge comprises 8 flats formed out of building originally constructed before 1849. It is Grade II listed with a rendered finish to the front elevation and a slate hipped tiled roof.
18. Of the service charge costs set out above, all appear reasonable with the exception of the insurance cost which at first view appeared high. However, in light of the knowledge that the building is listed would, in the opinion of the Tribunal, lead to higher than expected insurance costs than for a contemporary building of similar size.
19. The Tribunal consider that the disputed costs fall within the ambit of the service charge provisions within the lease, set out above.
20. Accordingly, the Tribunal summarily determines that service charges in the sum of £1,330 for the period August 2023 to February 2024 are reasonable and payable subject to the provisions of the following paragraph.
21. During a consideration of the Applicant's written submissions, the Tribunal noted that the service charge demands issued by the Respondent were not in the statutory format required by section 21B of the Landlord and Tenant Act 1985 (as inserted by section 153 of Commonhold and Leasehold Reform Act 2002). This is not fatal to the Applicant but the demands that encompass the disputed charges should be re-issued with the correct summary of the rights and obligations of tenants of dwellings in relation to service charges. The charges will then become payable.

Appeal

22. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V Ward