FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BY/LSC/2023/0044**
Premises	**:**	**Flat 3, 4 Princes Avenue, Liverpool L8 2TA**
Applicant	**:**	**Tina Lesley Seymour**
Representative	**:**	**Jack Cutterham**
Respondent	**:**	**4 Princes Avenue Management Company Ltd.**
Type of Application	**:**	**under s.27A of the Landlord and Tenant Act 1985** **Sch 11 para 5A of the Commonhold and Leasehold Reform Act 2002** **s. 20C of the Landlord and Tenant Act 1985**
Tribunal Member	**:**	**Judge P Forster** **Ms. D Latham MRICS**

DECISION

Decision

(a) The service charge payable by the Applicant to the Respondent in respect of Flat 3, 4 Princes Avenue, Liverpool L8 2TA for the following years is:

(1) 2020 £0.00
(2) 2021 £0.00
(3) 2022 £856.02
(4) 2023 £1,410.00

(b) The Respondent's claim for legal fees and interest is not payable by the Applicant.

Introduction

1. Under s.27A of the Landlord and Tenant Act 1985 ("the Act") the Tribunal is asked to determine the reasonableness of the service charges that have been made in respect of Flat 3, 4 Princes Avenue, Liverpool L8 2TA ("the Premises"). The application concerns the 2020, 2021, 2022 and 2023 service charge years.

2. Tina Lesley Seymour ("the Applicant") is the registered proprietor of the leasehold interest in the Premises registered at HM Land Registry under title number LA312082. She holds the Premises under the terms of a lease dated 17 March 2003 ("the Lease") made between (1) Anthony Roberts and Peter O'Para as the Landlord and (2) Jacqueline Riley as the Tenant. The Applicant is a former director of the Respondent company.

3. 4 Princes Avenue Management Company Limited ("the Respondent") was incorporated on 25 September 2002. It holds the freehold of 4 Princes Avenue, a block of six flats. The Respondent has six directors: Christine Marilyn Miller, Faye Christiansen, Francesca Louise Collis, Sally Gilian Collis, Ajay Sudra and Callum Scott.

4. The Applicant is represented by her son Jack Cutterham. The Respondent is represented by one of its directors, Sally Collis.

5. The Tribunal issued directions on 27 February 2024. The parties were required to exchange statements of case, copies of all documents on which they intend to rely for the years in dispute and any witness statements. The Parties have agreed a bundle of documents which is before the Tribunal. The Tribunal has not inspected the Property. The hearing was held by video on 29 August 2024. After the hearing the Tribunal invited the parties to submit any additional documents they seek to rely on. Both parties have provided a supplemental bundle of documents.

<u>The Applicant's case</u>

6. The Applicant asks the Tribunal to determine the amount of the service charges payable by her in accordance with the terms of her lease.

7. The Applicant set out her case in the form of a schedule and in respect of each of the service charge years in dispute she has identified the items in dispute, given reasons

for the dispute and stated how much she is willing to pay, if anything. The Respondent has added its comments to the schedule.

8. In respect of 2020 and 2021 the Applicant says that nothing is payable because the Respondent failed to issue a service charge demand. Subject to this, objection is taken in 2020 to the Respondent's failure to provide a balancing statement and if this had been done, she says that she would have been entitled to a credit to be paid to her or carried over to the following year. Objection is taken to the charge for repairs and maintenance, and an insurance excess.

9. In 2021, the issue of the balancing statement is raised again together with the increase in insurance premiums, the failure to consult under s20 of the Landlord and Tenant Act 1985, a claim in respect of Carol Odonhue, accountancy fees and CCTV replacement costs.

10. In respect of 2022, the Applicant raises the recurring issue about a balancing statement, and disputes about the cost of a fire extinguisher replacement, repairs, insurance premium, the costs of a building surveyor, repairs to gutter, facia and roof tiles.

11. In respect of 2023, it is said that accounts were not provided, the Applicant disputes the insurance premium and a claim for legal costs and interest.

The Respondent's case

12. The Respondent owns the freehold of 6 Princes Avenue. It is said to be 'run by volunteers'. There has been no professional managing agent involved for several years in an effort to keep costs down.

13. The service charge is composed only of repairs, insurance, cleaning, gardening, pest control, accountancy fees, electricity costs and some small sundry items.

14. The directors have a vested interest in keeping the service charge as low as possible. They work together, striving always to obtain the cheapest quotes for work. All 'one off expenditure' over £50 is put to a vote.

15. In 2014, the Applicant, who was then the company treasurer, appointed her son Jack Cutterham as managing agent. He was paid a fee for his work. The only other director at the time, Ajay Sudra, was working abroad so was not fully appraised of the situation. Mr Cutterham's 'management contract' was never authorised by the board.

16. Mr Cutterham set the service charge at £75 per month. The service charge continued at £75 per month until 2022. It was then raised to £120 a month, for the year 2023, mainly because of increased insurance premiums.

17. The Applicant stopped paying her service charge in full in August 2022, and she resigned from the Board, citing management failings as her reasons. The Applicant paid her arrears in February 2024.

18. The Respondent does not understand why the Applicant claims that the service charge is unreasonable. Her statement of case does not explain why she thinks it is unreasonable; she simply picks at individual amounts and attempts to strike them out, but the Respondent has no reason to believe that these amounts are not justified.

19. The Applicant has a history of negative and confrontational treatment of the company and directors. This started in 2020 when the management contract was taken away from her son; the bank card that she had given him to use without authority was cancelled, a leak emanated from her flat which did considerable damage to the flat below (Flat 1 owned by Ms Collis) but for which despite being a danger she continued to insist it was the responsibility of the leaseholder of the flat below and then refused to allow access to assess the situation.

20. The Applicant has disallowed the increased insurance premiums as a result of the claims made. At the time her son accused the insurance company of paying out on fraudulent claims.

21. The Applicant was director until August 2022. As such she was provided, along with all directors, with information concerning expenditure, including quotes, discussions, invoices and monthly bank statements. Mrs Seymour was therefore privy to everything that makes up the service charge and given a vote on each item of expense in line with company policy adopted in 2020 and also given the opportunity to furnish other quotes where she was not satisfied, but which she never did.

22. Mrs Seymour was also therefore in a position to assist with completing any regulatory requirements that she considered necessary. Again, the Respondent re-iterates that as director and treasurer working alongside her son as manager from 2015 to 2020, no service charge demands or balancing statements had ever been done. If there was anything about the management that she later decided she was not happy with such as lack of service charge demands or balancing statements she could have at least voiced her specific concerns and at best offered to have completed them herself, but she did neither.

The Law

23. The law relevant to the case is set out in the Annex 1.

Reasons for the decision

24. The Applicant accepts that she is liable to pay the service charge to the Respondent as set out in the Third Schedule to the Lease. It is not in dispute that the Applicant is liable to pay 16.66% of the total amount.

25. The question for the Tribunal is how much is payable by the Applicant to the Respondent.

26. There is clearly a troubled relationship between the Applicant and the directors of the Respondent Company. Over the last four years there has been voluminous correspondence between the parties including allegations and counter-allegations about the management of 6 Princes Avenue.

2020 and 2021

27. In respect of both 2020 and 2021 the Applicant submits that no service charge is payable because no demands were served.

28. The Respondent accepts that no demands were served but argues that the Applicant was a director until August 2022 and as such she was provided, along with all the other directors, with all information concerning expenditure, including quotes, discussions, invoices and monthly bank statements. It is said that the Applicant was therefore privy to everything that makes up the service charge and she had a vote on each item of expense in line with company policy adopted in 2020.

29. The Respondent submits that the Applicant was in a position to assist with completing any regulatory requirements that she considered necessary. The Respondent makes the point that as director and treasurer working alongside her son as manager from 2015 to 2020, no service charge demands were ever issued.

30. S.20B of the Landlord and Tenant Act 1985 provides that a landlord cannot recover service charge costs that were incurred more than 18 months before a formal demand was served. The exception to this rule is if the landlord writes to the leaseholder within 18 months of incurring the costs informing them that the costs have been incurred, the amount of them, and that they will be demanded in due course. Case law indicates that costs are "incurred" when the landlord pays them or becomes liable to pay them; for instance, through receiving an invoice from a contractor or supplier.

31. It is important to distinguish between the Applicant as a director of the Respondent Company and as a leaseholder. Whatever knowledge the Applicant may have gained as a director does not absolve the Respondent from compliance with all relevant legislation. It was not possible for the directors of the Respondent Company to ignore the legal responsibilities imposed on it.

32. No service charge demand was served in respect of 2020 or 2021. The evidence does not suggest that the Respondent wrote to the Applicant as required within 18 months of the costs being incurred. The failure to serve a demand cannot be remedied now more than two and a half years after the end of the 2021 service charge year. Therefore, the service charge for 2020 and 2021 is not payable by the Applicant.

33. This leaves the Tribunal to consider the remaining service charge years, 2022 and 2023.

Disputed items

34. The Applicant disputes the following items:

2022 (1) No balancing statement

(2) Fire extinguisher replacement

(3) Repairs

(4) Insurance premium

(5) Building surveyor

(6) Repair of gutter, facia and roof tile

2023 (1) Accounts not provided

(2) Insurance premium

(3) Legal charges

(4) Interest

2022

35. No balancing statement: There is a recurring complaint that the Respondent failed to provide a balancing statement. It was raised in respect of 2020, 2021 and 2022.

36. The issue raises the question of any deficit or credit arising in a particular year being demanded of or credited to individual lease holders. There are relevant provisions in the Third Schedule to the Lease which includes the service charge provisions. The Applicant cites paragraph 5 which provides that if 'the service charge for any Financial Year exceeds the provisional sum for that Financial Year the excess shall be due to the landlord on demand and if the service charge for any Financial Year is less than such provisional sum the overpayment shall be credited to the tenant against the next quarterly payment of the rent and service charge".

37. The Respondent does not dispute the principal argument. In 2022 there was a deficit of £1,044.00 or £174.00 per flat. The Respondent says in response that the deficit was carried over and it was decided not to issue further demands but rather to manage cash reserves the following year. The accounts are prepared by a firm of accountants who have verified and accounted for the deficit. The Applicant was not asked to make good her share of the deficit and this was rolled over into the following year. The procedure adopted by the Respondent does not attract criticism.

38. In effect the deficit was absorbed by cash reserves held by the Respondent and the Applicant was not asked directly to make good the loss. No adjustment is necessary in respect of the amount that the Applicant is liable to pay in 2022.

39. Fire extinguisher replacement: the Applicant argues that relevant guidance provides 'any proposal for the provision of fire extinguishing appliances, or continued presence of existing equipment, should be based on full justification of the proposal by a fire risk assessment'. The Applicant says that despite asking for one, she has not seen a fire risk assessment.

40. The Respondent falls back on the argument that because the Applicant was privy to all work done on the fire safety system before she resigned as a director, she cannot now question the cost of replacing the fire extinguisher. The cost was £264.00. This argument has no merit because what is being considered is the replacement in 2022. The Respondent states that the Applicant is not entitled to see the fire safety assessment because she is no longer a director. This also has no merit. The Applicant is entitled to challenge the need to replace the extinguisher and the cost of the replacement, and the Respondent needs to justify the expense.

41. The Applicant is arguing that the extinguisher should not have been replaced. She relies on a 2018 fire risk assessment which provides that '…in the opinion of the risk

assessor portable fire extinguishers are not required in the communal area. Their installation would only lead to problems with maintenance, vandalism, and improper use; it is therefore recommended that the two extinguishers currently in the communal area are removed immediately and not replaced'.

42. It is for the Respondent to justify the replacement of the fire extinguishers, and the cost incurred. The Respondent maintains that the extinguishers were replaced on the advice of a fire risk assessor, but the Tribunal has not seen any evidence to support this assertion. There is very little evidence about the fire extinguishers, but the Tribunal accepts the Applicant's argument based on the 2018 assessment. This recommends the removal of the extinguishers. It would therefore be unreasonable to incur costs by replacing them. The cost of £264.00 stands to be deducted from the service charge demand for 2022.

43. Repairs: an item is included in the service charge for 'repairs' at a cost of £457.00. The Applicant complains that she has not received a breakdown 'showing details, specifications, invoices, or receipts or supporting documents'. The response to this is that the Applicant was a director until 2022 and was privy to all these costs. This offers the respondent no respite. It is necessary to distinguish between the Applicant as an officer of the Company and as one of the individual leaseholders.

44. Belatedly, the Respondent has identified the repairs as being 'the installation of letter boxes and post cages, £139.00, flat inspection', £240.00 and CCTV repairs, £78.00. It is stated that a summary of income and expenditure was provided to all leaseholders in June 2023, and this included a note to explain what the repairs were.

45. The Applicant has not challenged the need for the repairs, nor has she put forward alternative costs. On the available evidence the Tribunal concludes that the work was necessary, and the costs were reasonable.

46. Insurance premium: the Applicant states that the increase from £1,126.52 in the previous year to £3,342.00 was due to 'historic subsidence not being mentioned when switching policies'. It is alleged that in some way the Respondent is responsible for the increased premium. The Applicant disputes her 16.66% share of £1,600.00 or £266.56.

47. The Respondent's position is that the insurance policy was due for renewal when it came to be known that there had been historic subsidence which should be disclosed to the insurer. Once informed the existing insurer declined to insure and an alternative quote was obtained at short notice. The premium was 'considerably higher than before'. Correspondence has been provided which substantiates matters. The building was previously underinsured, which also affected the premium.

48. In the prevailing circumstances, it was necessary to obtain insurance cover at short notice. The Applicant argues for a premium of £1,600.00. Whether the subsidence should have been disclosed previously is not relevant to the amount of the premium. On the available evidence, the Tribunal finds that the premium charged is reasonable and recoverable.

49. Building surveyor: the Applicant says that incurring the cost of a survey was only necessary 'due to the omission of historic subsidence when arranging the new policy in 2020'. The Applicant disputes her share of the £900.00 cost - £50.00. The

Respondent's case is that one of the conditions of the new policy was that a surveyor prepare a report. This was done and the report confirmed that any subsidence was historic and too old to be of concern.

50. The Tribunal finds that it was necessary to instruct a surveyor and the cost of obtaining a report, £900.00, was reasonable.

51. Repair of gutter, facia and roof tile: the repairs were identified in a structural report in June 2022 and a quote was obtained of £780.00 but the Applicant complains that the Respondent did not undertake the works, so she authorized the repairs to be carried out at a cost of £120.00. In fact, the works were undertaken by her son. The Applicant did not have the authority to authorize the works and she is not entitled to claim the costs from the Respondent.

2023

52. Accounts not provided: the Applicant simply states 'accounts not provided' with no further commentary. This does not engage the Tribunal's jurisdiction.

53. Insurance premium: the Applicant states that insurance could have been obtained 'for around £1,800.00 (as shown in the 2024 budget)'. She complains that she has not been provided with a copy of the policy. She understands that escape of water was not covered in this policy despite the requirement to insure risks detailed in the Lease at paragraph 5.1. The Applicant is willing to pay 16.66% of £1,800.00.

54. The Respondent's response is that 'the company budgeted for a high premium because the indications were from the broker that this would be the level as a result of the claims. It is said that the Applicant was included in the vote but abstained so she cannot now object'.

55. The argument that the Applicant cannot now object is spurious. The liability to pay and the reasonableness of the service charge is not curtailed by the process said to have been adopted by the leaseholders.

56. The reduction from the previous year reflects the surveyors report that subsidence was historic.

57. The insurance costs included in the service charge for 2023 is £2,606.00. It is not apparent on what the Applicant's figure of £1,800.00 is based. She has used the 2023 costs of £2,606.00 as the basis for 2022 expressing an expectation that 2022 would be less expensive than 2023. This does not assist the Tribunal.

58. Doing the best it can on the available evidence, the Tribunal finds the insurance costs of £2,606.00 to be reasonable.

59. Legal charges: the Applicant disputes the costs for legal services of £2,949.60. She states that these charges were incurred after the current proceedings were issued in respect of the reasonableness of the service charges. She describes the costs as out of proportion to the amount of service charges in dispute. She says that the Respondent has not previously charged 'interest, applied late fees or applied solicitors' fees'. The Applicant believes that a significant proportion of the legal costs were incurred

advising about the s.s27A proceedings. The Applicant is willing to pay 16.66% of £2,949.60.

60. The response from the Respondent is that the fees are due under the terms of the Lease, citing clauses 3.23 and 3.24. It is asserted that the costs were incurred after the Applicant stopped paying her service charge in August 2022 and that the costs were not incurred in relation to the proceedings 'but before this when the lawyers were engaged after the Applicant failed to respond to the Company's numerous requests for the Applicant to pay her service charges'. The evidence is that the solicitors were instructed in March 2023. The final invoice from the solicitors dated 8 September 2023 includes work said to include consultation with Harriet Greener to discuss the First-tier Tribunal. This does not fall within the scope of debt collection work.

61. The claim for legal costs is against the Applicant personally and not as part of the service charge payable by all the individual leaseholders. Under clauses 3.23 of the Lease the tenant covenants to indemnify the landlord against 'costs fees charges disbursements and expenses …properly and reasonably incurred by the landlord in relation to or contemplation of or incidental to…'. the preparation and service of a notice under s.146 of the Law of Property Act 1925. Clause 3.24 provides for a covenant to indemnify the landlord against 'all damages losses costs expenses actions demands proceedings claims and liabilities…' arising out of any act or omission of the tenant or any breach or non-observance by the tenant of the provisions in the lease.

62. The claim for legal costs is not part of the service charge. This is clearly understood by the Applicant who seeks to assign the costs to be shared by all the leaseholders. She has offered to pay her 16.66% share of the costs.

63. The claim for legal costs is an administration charge and falls within provisions of the Commonhold and Leasehold Reform Act 2002. Administration charges are payable by a tenant as part of or in addition to rent. Such charges must be reasonable.

64. The demand for payment of legal fees and interest is set out in an email dated 31 January 2024 from Faye Christiansen to the Applicant. However, the demand fails to set out the Applicant's statutory rights to challenge the claim. The claim is not in the proper form and therefore the demand is not valid and the legal fees and interest are not payable by the Applicant.

65. If the demand was valid and the legal fees payable the Tribunal would not have allowed the invoice dated 25 August 2023 and would have reduced the amount from £2,949.60 to £2,0949.60.

66. Interest: any claim for interest is to be considered as a claim for an administration charge under the 2002 Act. The demand in the form of the email dated 31 January 2024 is not valid and therefore interest is not payable by the Applicant. If interest was payable it would be simple and not compound interest and limited to the 2022 and 2022 service charges because nothing is payable in respect of 2020 and 2021.

Conclusion

67. The Applicant is not liable to pay services charges for 2020 and 2021 because the Respondent has not served a demand.

68. In respect of 2022, the service charge demand is for £900.00. The Tribunal has found that the Applicant is not liable for £43.98. The Applicant is liable to pay £856.02

69. In respect of 2023, the service charge demand is for £1,410.00. The Tribunal has found that the Applicant is liable for the full amount.

70. The Applicant is not liable to pay administration charges in respect of legal costs and interest because the Respondent has not served a demand in proper form.

Dated 10 December 2024

Judge P Forster

ANNEX

S.18 of the Landlord and Tenant Act 1985 defines "service charges" and "relevant costs":

(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.

S.19 of the 1985 Act deals with limitation of service charges:

(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.

S.27A of the 1985 Act deals with the liability to pay service charges:

(1) An application may be made to a leasehold valuation 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.

RIGHT OF APPEAL

A person wishing to appeal against this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.