



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

Case reference	:	CAM/00KA/LSC/2023/0064
Property	:	5 Luton Road, Luton, LU1 3UE
Applicant	:	Ms Constance Lewis
Respondent Landlord	:	JT Consultancy Ltd
Represented by	:	Mr Oliver Dixon of Counsel
Type of application	:	Application for payability and reasonableness of service charges, pursuant to s.27A Landlord and Tenant Act 1985
Tribunal	:	Tribunal Judge Stephen Evans Ms Sarah Redmond
Date of hearing	:	9 December 2024
Date of decision	:	16 December 2024

DECISION

The Tribunal determines that:

- (1) The cost to the Applicant for “Insurance, Public Liability” is limited to a £110 for each of 2022 and 2023;**
- (2) The cost to the Applicant for “Landscape maintenance and gardening- external” is limited to a £109.20 for each of 2022 and 2023;**
- (3) The cost to the Applicant for “Management Fee” is limited to £240 for each of 2022 and 2023;**
- (4) The application by the Applicant under s.20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to CLARA 2002 is granted. No costs of this s.27A application may be recovered from the Applicant through the service charges or as an administration charge;**
- (5) The Respondent shall reimburse the Applicant the application fee and the hearing fee in the total sum of £300 within 28 days.**

REASONS

Background

1. In 2021 the Respondent as lessor granted to the Applicant a long lease of the Property, which is a 1 bedroom ground floor flat in a converted block of 10 flats, the block consisting of numbers 5, 5A and 7 Luton Road plus Caledonian House.
2. Silvercrown Luton Ltd has at all material times been the Respondent’s Managing Agent.
3. On 4 January 2022 the Respondent and the Managing Agent entered into a written Renewal Agreement with regards to its future management.
4. On 10 October 2023 the Applicant brought the instant application, for a determination of payability and reasonableness of service charges.
5. Directions were given by the Tribunal on 14 August 2024, and the Applicant’s case followed on or about 25 September 2024. On 16 October 2024 the Respondent served its documents.

The Lease

6. The Lease defines the Building as 5, 5A and 7 Luton Road, and Caledonian House.

7. By the Lease, the Applicant must pay a fair and reasonable proportion of Service Costs, which are set out in Schedule 7, Part 2, deriving in turn from the Services contained in Schedule 7, Part 1.
8. The Service Charge Year is the calendar year, with payment in advance required from the Applicant on 1 January and 1 July of each year, based on an estimate made before the Service Charge Year begins.
9. The Applicant also has to pay a fair and reasonable proportion of insurance costs (Schedule 4, para 3), on the premise the landlord covenants to insure (Schedule, para 2). The Insured Risks under the Lease expressly include third party liability.
10. Before or at the end of the Service Charge Year, the Respondent must prepare, and send, an estimate of costs to the Applicant.
11. As soon as possible after the end of the Service Charge Year, the Respondent must send a certificate to the Applicant setting out the balancing sum due/ credit to be rolled over to the next year.

The Hearing

12. The Applicant appeared in person. The Respondent was represented by Mr Oliver Dixon of Counsel. No officer of the Respondent attended, nor did the deponent of the witness statement made on behalf of the Respondent (a Mr Feride Darilmaz, legal officer at Ringley Law, solicitors for the Respondent).
13. The Applicant clarified that she challenged the service charge years ending on:
 - (1) 31 December 2022 and
 - (2) 31 December 2023.
14. The Applicant confirmed she did not challenge the apportionment made by the Respondent (1/10 in some cases, and 1/12 in others).
15. The Applicant confirmed that her arguments for 2023 were the same as 2022, so the 2 years could be considered in argument together.
16. The Applicant further confirmed that she wished to challenge the actual figures available, and not just the estimates.

Discussion and Determination

17. Taking each item of challenge on the Scott Schedule:

Health & Safety (£185 + VAT each year)

18. The Applicant's complaint on her Scott Schedule was that this item was not part of the original budget which she had received in 2018, and she was unsure how this item sat outside of insurance.
19. The Respondent contended these were Health and Safety/Fire reports, the cost of which was recoverable under the terms of the sweeper clause in the

Lease at Schedule 7, Part 1 at (l): namely, incurred in its reasonable discretion, following the principles of good estate management, and for the benefit of the Applicant.

20. The Respondent also relied on Mr Darilmaz's statement at paragraph 4. The service was carried out by AMW Health and Safety Services Ltd.
21. The Applicant confirmed, at the hearing, that now she had seen the invoice for 2023 (which was not in the bundle, but which had been sent to her on 16 October 2023) and having heard the Respondent's explanation, she no longer challenged this item.

Insurance and Public Liability (£4286.97 each year)

22. The Applicant's simple case was that the sum had shot up to over £4200 for each of the years 2022 and 2023, when it had been £1100 previously.
23. The Respondent pointed to the fact that under the Lease the Landlord must insure, and that the defined Insured Risks include "public liability to anyone else". The sum was therefore reasonably incurred, Mr Dixon submitted.
24. The Respondent also relied on Mr Darilmaz's statement, which says the sums claimed were "market rates", and a large broker was used.
25. Mr Dixon was unable to assist the Tribunal as to what searches in the market had been undertaken, nor could he identify the name of the broker, nor the insurer. He accepted there was no insurance certificate or policy in the bundle. He could point the Tribunal to a recharge invoice, showing the Managing Agent had demanded the sum of £4286.97 on 24 July 2023 from the Respondent (for the period June 2022 to 2023). There was no corresponding invoice to be shown to the Tribunal for 2022/2023.
26. The Tribunal determines that the sum was recently incurred for the reasons given by Mr Dixon.
27. The Tribunal is not satisfied, however, that the sum claimed is reasonable in amount. Whilst the Tribunal is aware, as an expert Tribunal, that insurance costs have risen in recent years, and whilst the Applicant has no comparable quotations of her own, we consider the increase is so dramatic as to give rise to a prima facie case that the sum claimed is unreasonable. The Tribunal therefore looks to the Respondent for evidence to explain the increase. The Tribunal does not consider a statement from a legal officer, whilst no doubt made on instructions, simply stating that this was the market rate, to be sufficient. Mr Dixon was unable to assist the Tribunal as to what searches in the market had been undertaken, nor could he identify the name of the broker or the insurer. Nor could he explain why the sum was identical for both 2022 and 2023. There was no insurance certificate for either year, nor policy in the bundle. The supporting evidence for the amount charged was simply inadequate.
28. In these circumstances, the Tribunal was, at one stage, tempted to disallow the item in full. However, we consider that a reasonable amount for 2022 and

2023 should instead be limited to the Applicant's fair and reasonable proportion of the earlier undisputed sum charged, namely £1100.

29. We therefore find that a sum was reasonably incurred for 2022 and 2023 for this insurance, but that a reasonable amount is £1100 for each year.

Landscape maintenance and gardening (£1169.20 for 2022 and £1242 for 2023)

30. The Applicant's complaint in her Scott Schedule was of a 67% increase from the original sum (£720). In her oral submissions, she added that she was in her flat often, and she challenged the alleged frequency of visits.
31. The Respondent's Scott Schedule entry explains that visits are scheduled once a month, but depending on needs and weather and time of year, the frequency of visits may vary. The Respondent continues that a company called Bluestar undertakes the landscape maintenance and gardening, which includes weeding, sweeping and tidying of external areas; that they provide photos after each visit, and this service is performed bi-weekly. Additionally, the Respondent writes, it has a maintenance technician who may conduct further external upkeep, which is covered under the management fee.
32. Mr Darilmaz's witness statement at paragraph 6 is in near identical terms to the Scott Schedule entry.
33. Mr Dixon was unable to assist the Tribunal with the amount of hours spent on each visit, but relied on the written evidence that it varied, depending on need.
34. In the bundle there were invoices for 2022, with gardening maintenance starting in March of that year. There were also invoices for 2023, again with gardening starting in March. Each invoice was for £91 plus VAT for the gardening element. Accordingly, the sum total of these invoices was £1092 for each year and not £1200.
35. The Applicant's proportion is calculated at 1/10, i.e. £109.20 including VAT. The Applicant stated in the hearing that she was not saying this was an unreasonable amount if the work had been carried out as alleged.
36. The Tribunal clarified that there was no grass to be cut, only shrubs and borders to be tended, as well as the paths and hard areas.
37. The Tribunal determines that a sum was reasonably incurred each year for landscape maintenance and gardening of external areas. The Applicant did not provide any independent/photographic evidence that the works had not been carried out to a reasonable standard. The Tribunal is not prepared to go behind the 24 invoices supplied in order to find that the frequency of visits was less than alleged therein (at least monthly garden maintenance on site).

38. We were not provided with invoices supporting £1200 each year. The invoiced total of £1092 is not excessive in the Tribunal's experience for monthly services.
39. In the circumstances, we determine that the sum of £1092 for each of 2022 and 2023 is a reasonable amount, of which the Applicant is expected to pay £109.20 p.a.

Management Fee (£3500 for each year)

40. The Applicant's complaint in her Scott Schedule was of a 175% increase from the original sum (£1274).
41. The Respondent's Scott Schedule entry, as supported by paragraph 7 of Mr Darilmaz's statement, explains that the management fee is based on a percentage of the budget; that there has been an increase of 9% in 4 years, which the Respondent does not believe to be unreasonable.
42. Mr Dixon explained that the mathematics show that the sum claimed of £3500 is approximately 30% of the budgeted costs for the years in question.
43. The Tribunal mentioned to the parties that the RICS Code, 3rd edition, observes that a management fee is usually a fixed fee. See section 3.3:
- “Your charges must be reasonable for the task involved and be pre-agreed with the client whenever possible. Where there is a service charge, basic fees are usually quoted as a fixed fee rather than as a percentage of outgoings or income. This method is considered to be preferable so that leaseholders can budget for their annual expenditure. However, where the lease specifies a different form of charging, the method in the lease should be used by managing agents.”
44. The Lease in this case does not specify any form of charging, and the method has instead been agreed between the Respondent and Agent. The Tribunal is concerned that the Agent may be tempted to fix a higher budget than necessary to achieve a certain management fee, as well as making it difficult for the residents to budget.
45. The RICS Code at section 3.4 sets out the work which a managing agent should normally carry out. This is much wider than what the Agent has agreed to do in this case. When one looks to the Management Agreement in the bundle, it provides for the following basic services, and no more: arranging repairs, quarterly visits as part of a “fully managed service” (unparticularised), a power (but no obligation) to serve notices ending tenancies, office services in the working week and hours, and providing an emergency support line for residents out of hours.

46. The Applicant pays 1/10 of the overall budgeted sum, and so £350 is therefore being charged for a small development of 10 flats without unusually challenging management issues, and without the full range of RICS-recommended services.
47. A sum of £350 is therefore unreasonable in amount, the Tribunal determines. For the contracted services provided, the Tribunal determines that the sum of £200 + VAT (£240) would be reasonable to charge for each year in issue.

Window cleaning (£720 each year)

48. The Tribunal noted at the hearing that the sum was lower than the original cost of £850, and that the Applicant's Scott Schedule was blank where the tenant's comments should have been.
49. It also noted that the sum claimed was for 6 visits per year at £100 plus VAT, which did not seem prima facie unreasonable.
50. The Applicant, duly reflecting on this, stated at the hearing she was no longer challenged this item.

CCTV Monitoring (£600 for 2022 only)

51. The Applicant's complaint was that she received no service for the sum which she had paid on account.
52. The Respondent explains in its Scott Schedule entry, supported by paragraph 9 of the statement of Mr Darilmaz, that the 2022 figure was budgeted expenditure only, that nothing was included for 2023, and there was no actual expenditure in either year.
53. Mr Dixon explained that, notwithstanding £600 was demanded of the residents for 2022, the actual expenditure was higher than the budgeted expenditure in other areas, and accordingly there was nothing to refund to the Applicant, save for the 2022 balancing credit of £13.69 which had already been applied on 11 August 2023 (as evidenced by the invoice of that date).
54. The Applicant appeared to accept this explanation, but said that she still had an issue with the description on the Agent's "statement" of expenditure, which described "CCTV Monitoring" rather than "Dummy CCTV". This had led her to believe CCTV had been installed, and that she had been misled.
55. The Tribunal understands the Applicant's position, but cannot regulate how the Respondent's Agent sets out its descriptions on the "statement". The Tribunal would hope and expect the Respondent to ensure that accurate descriptions are given in the service charge "statements" in future.

Application under Section 20C/Paragraph 5A to CLARA

56. A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings a First-tier Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant.
57. There are similar provisions under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as regards administration charges in respect of litigation costs.
58. In *Tenants of Langford Court v Doren Ltd* (LRX/37/2000), HHJ Rich held:
- "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.....In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that makes its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a Tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them."
59. In the instant case, the Tribunal determines that it would be just and equitable to order that the Respondent's costs of these proceedings should not be recovered from the Applicant through the services charges, or by way of any administration charge. We are satisfied that the Applicant has had to instigate these proceedings in order to obtain clarity as to the charges being sought; and that overall she has been the successful party. The concessions made by her were in part made in the light of explanations provided during the course of these proceedings. Further, whilst Counsel represented the Respondent without fault, his instructions were limited, and there were times when greater explanation could have been given, had someone with knowledge of matters 'at the coalface' attended to assist the Tribunal.
60. For similar reasons, we order that the Respondent shall reimburse the Applicant the application fee and the hearing fee in the total sum of £300 within 28 days.

Judge:

S J Evans

Date:

16/12/24

ANNEX – 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 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 to 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.

Appendix 1

Landlord and Tenant Act 1985

Section 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 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.

Section 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 provisions 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.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, a First-tier Tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2)
- (3)

- (4) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A

- (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) Subsection (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 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.