



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

Case Reference : **MAN/ooCZ/LSC/2023/0073**

Property : **Apartment 5, The Old Chapel,
12 Bennett Street, Liversedge WF15 7ES**

Applicant : **Stephen Mark Watson**

Respondent : **The Old Chapel RTM Company Limited**

Type of Application : **Determination as to Service Charges, s27A
Landlord and Tenant Act 1985
Commonhold and Leasehold Reform Act 2002,
Schedule 11 Paragraph 5A
Section 20C, Landlord and Tenant Act 1985
Rule 13, Tribunal Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**

Tribunal Members : **A M Davies, LLB
A Hossain, MRICS**

Date of Decision : **25 February 2025**

DECISION

DECISION

1. Service charges demanded for the years ending 31 December 2017 to 31 December 2023 inclusive for Apartment 5, 12 Bennett Street, Liversedge other than those, if any, already paid are not payable by the Applicant.
2. The Respondent's costs of the application may not be added to the service charge account payable by the Applicant.
3. No order is made under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
4. The application for costs is subject to the following directions:

DIRECTIONS

1. The Applicant has applied for a costs order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Applicant has itemised his costs as follows:

Fees paid to the Tribunal	£330.00
Mileage to the hearing	£200.00
Overnight stay	£ 64.50
Preparation time	<u>£250.00</u>
<u>Total</u>	£844.50

2. The Respondent may within 14 days following receipt of this decision file written representations regarding the costs application. Any such representations must be copied to the Applicant.
3. The Tribunal will determine the costs application on the first available date following 14 days after promulgation of this decision.

REASONS

BACKGROUND

1. The Applicant is the freehold owner of The Old Chapel, 12 Bennett Street, Liversedge, and also holds the lease of a one bedroomed apartment in the building, Apartment 5. There are 7 other apartments, 2 of them having a separate shared entrance, and one, Apartment 4, having a separate entrance at the rear of the building. The building is managed as a single unit. The leaseholders have unallocated parking spaces on adjacent land. There is a drying yard to the rear of the building.
2. Since 2013 the building has been managed by the Respondent, whose sole director is Mr Shepherd, a leaseholder of 4 of the apartments. The leaseholders including Mr Shepherd but with the exception of the Applicant are members of the RTM company. So far as the Tribunal has been able to ascertain, the RTM company has enlisted help from professionals as follows:

Lentin Smith were property managers from June 2015 to May 2018
Home of Property Ltd (“HOP”) served a service charge demand in 2022 but apparently did not enter into a management contract with the Respondent
H&M Ltd Accountants provided accountancy services from 2020 or 2021 to 2023
JH Accountants are currently providing accountancy advice or services. The date of their appointment is unknown.

3. The Applicant has withheld payment of service charges on the grounds firstly, that the Respondent has not prepared accounts as required by the lease; secondly, that service charges have not been demanded as required by statute; and thirdly, that they are unreasonable, unreasonably incurred or not incurred at all. He seeks a determination as to payability of service charges for Apartment 5 for the years 2017 to 2023 inclusive, and an order under section 20C of the Landlord and Tenant Act 1985 that any costs incurred by the Respondent in these proceedings may not be added to his service charge account.
4. In his application, the Applicant indicated an intention to apply for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

No administration charge relating to the Respondent's litigation costs was identified by the Applicant. No order is made in respect of this application.

THE LAW

5. Relations between the Landlord, any management company, and a leaseholder are governed by the terms of the lease. These terms set out the contract entered into by the parties. They may not be varied unilaterally. In the case of a building occupied by a number of leaseholders, unless expressly agreed otherwise each leaseholder should have the security of knowing that the obligations of the parties set out in his lease apply equally to all the others.
6. Section 27A of the 1985 Act enables either party to a lease to apply to the Tribunal for an order as to whether a service charge is payable and, if it is, as to the amount which is payable.
7. Section 19(1) of the 1985 Act provides as follows:

"Relevant costs [ie costs incurred by or on behalf of the landlord] 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."
8. Section 20 of the 1985 Act provides that expenditure on building work or repairs which will cost any leaseholder more than £250 may not be incurred until a consultation with the leaseholders has been carried out. Any leaseholder's contribution to expenditure incurred in breach of this requirement is limited to £250.
9. All demands for service charges must be accompanied by a Summary of Tenants' Rights and Obligations as set out in The Service Charges (Summary of Rights and Obligations, and Transitional Provision)(England) Regulations 2007 ("the 2007 Regulations"). Until or unless the summary is provided, the service charges are not payable.

THE LEASE

10. The Applicant's lease is dated 31 July 2007 and is made between the Landlord, the Management Company and the leaseholder. Three forms of service charge are payable by the leaseholder. Firstly, he must contribute to the cost of providing the Landlord's Services including provision for anticipated costs. This is termed "The Expenditure" and the tenant's share of it is the "Service Charge". The Landlord's Services are set out at Part 2 of Schedule 6 to the lease and include (a) maintenance of the structure of the building including external and boundary structures, internal party walls, and the conduits, (b) the costs of employing professionals including accountants, solicitors and managing agents and (c) other outgoings such as rates, bank charges and the cost of "*such other services and works as the Landlord may reasonably deem desirable*". Secondly, the leaseholder must pay a Management Charge, being his share of the cost of Management Services as listed in Part 1 of Schedule 6. These include maintenance, cleaning, lighting, heating and decoration of the Common Parts, exterior window cleaning, providing fire protection, providing water and sewerage, and providing methods for the collection and disposal of waste together with any other amenities that the Management Company deems reasonable. Clause 6.4 of the lease includes in the Management Charge provision for recurring expenditure, replacements and renewals. The definition of Common Parts includes all shared internal and external areas and facilities in the property other than the structures included in the Landlord's responsibilities.
11. Thirdly, the leaseholder must pay the "Insurance Rent" attributable to his apartment, being an amount "*conclusively determined*" by the Landlord. Under section 18 of the 1985 Act a contribution that a tenant is required to make to the cost of insurance is a service charge. There are no other requirements in the lease regarding calculation of or demand for the Insurance Rent.
12. In regard to the Landlord's Service costs ("The Expenditure"), clause 5.3 provides that after the end of each financial year the Landlord must prepare accounts certified by "the Accountant" and "*containing a fair summary of the various items comprising the Expenditure and a copy of such accounts will be supplied to the Tenant*". Clause 5.4 provides that the Tenant is to pay the Landlord on 1 January each year such sum on account as the Landlord specifies as being a fair and reasonable assessment of the Service Charge for the coming year. The clause also

provides for a balancing account at the end of each service charge year, any overpayment to be credited to the tenant against his next payment.

13. Clause 6.3 and paragraph 3 of Schedule 4 to the lease provide for payment of the Management Charge as follows: at least once a year the Management Company is to have an account prepared by “*its auditors or accountants*” who are to certify the amount of Management Charge “*in respect of the Demised Premises*” for the year. On 1 January each year the tenant is to pay his Management Charge contribution for the year, the amount being estimated “*by the Management Company and the Landlord or their respective duly authorised agents*” as soon as practicable after the beginning of each year. A balancing account is to be taken and any credit is to be carried forward to the tenant’s contribution due in the following year.
14. “The Accountant” is defined in the lease as “*any person appointed by the Landlord to perform the function of an accountant in relation to the Expenditure*” and is responsible for certifying the Service Charge. The Management Company’s accountant is responsible for certifying the Management Charge.
15. Following its appointment the Respondent RTM company is responsible for the leasehold obligations of both Landlord and Management Company. Thus since 2013 the Applicant has had no involvement in managing or insuring the property.

INSPECTION AND HEARING

16. The Respondent failed to comply with directions. After due warning, it was debarred from the proceedings. Mr Shepherd on behalf of the Respondent attended the Tribunal’s inspection of the common parts of the property and was present at the hearing as an observer.
17. On inspection the Tribunal found the main part of the property to consist of three floors, with a separate entrance to two flats to the side and the entrance to flat 4 at the rear. In the main area the common parts of the property consisted of a cheaply carpeted stair and landings. The stairwell was painted but the skirtings and stairs were not clean. The drying yard at the rear was dirty and unkempt. There was no evidence of grounds maintenance. Externally, all window frames and doors had been repainted, except the window frames of the Applicant’s flat 5.

18. The Applicant was unrepresented. He had provided the Tribunal with a written statement and a bundle of supporting documents, including copies of service charge demands received. The hearing took the form of the Applicant answering questions put to him by the Tribunal. There were no written representations or documents from the Respondent. Mr Shepherd was occasionally permitted to intervene during the hearing with information useful to the Tribunal.

SERVICE CHARGE DEMANDS

19. Following amalgamation of the functions of Landlord and Management Company, the Respondent's obligations under the lease are to appoint accountants to prepare and certify annual accounts for the Service Charge and the Management Charge (together, "service charge"). There is no reason why these should not be included in the same document. The Insurance Rent service charge could be included or demanded separately when incurred by the Respondent. The account should be taken as soon as possible after the end of the service charge year, and should show (1) costs incurred under individual heads of expenditure (2) the proportion payable by the leaseholder to whom the account is sent (3) any overpayment of service charges brought forward for the credit of the leaseholder, and (4) the amount of any service charge which has been transferred to a reserve fund for future or recurring expenditure.

20. No account compliant with the lease terms has been served on the Applicant between 2017 and 2023 inclusive. In 2014 the Respondent's then agents Luna Property Management Ltd served a service charge budget dated 1st January 2015, and a demand for £1,924.28. This included the Applicant's share of an annual management fee of £1,800, buildings insurance of £2,580, transfer of £800 to a sinking fund, and provision for redecoration of windows and doors at £4,300. Although the account did not comply with the terms of the lease the Applicant paid it. He told the Tribunal that he did so trusting that Luna Property Management Ltd would manage the property well. However their appointment was terminated in 2018 or 2019 following discovery that their director Mr Dilenardo had been misappropriating funds. The Applicant has not seen any evidence of how his service charge contribution was expended, no year-end balancing account having been produced for 2015 or any subsequent year. He received a demand for estimated service charges of £1267.14 for each of the years ending 31 December 2017 and

2018. He did not pay these as the demands were not prepared in accordance with the lease.

21. The Tribunal's bundle did not include documentation relating to service charge issues in 2019 and 2020. The Tribunal has seen 2 demands dated 1 February 2022 for advance payment of estimated service charges for the years ending 31 December 2021 and 2022. The demands are not on headed paper. They are not certified by anyone appointed as an accountant by the Respondent. They give round figures adding up to £600 per leaseholder (total £4,800) and do not refer to any previous actual expenditure. They include an annual management charge of £750 although it seems that there were no managing agents operating in these years. Buildings insurance is said to be £750 for the year. Cleaning is claimed at £480pa although Mr Shepherd has confirmed that little if any professional cleaning is undertaken at the property. "*Grounds keeping*" is said to cost £300 a year, but the Tribunal has no evidence that any such expenditure was incurred and following their inspection of the property thinks it unlikely. "*General maintenance and repair*" is said to cost £975 in each of the two years with no explanation, and there is no explanation for "*administrative expenditure*" of £620pa. The Respondent has not replied to the Applicant's requests for details of these costs and no invoices have been supplied.
22. Among the papers supplied there is only one service charge invoice (also dated 1 February 2022 but sent to the Applicant on 20 September 2022) which is accompanied by the required summary of tenants' rights. This was issued by HOP on behalf of the Respondent. As with the other demands of that date, the amount said to be payable is £600 on account of the service charges for 2022.
23. On 8 January 2024 the Respondent issued a statement of account claiming that £600 is due from the Applicant for each of the years 2021 to 2024 inclusive plus £100 due for the year 2020, making a total of £2,500. However service charges to the end of 2021 have already been settled, as explained at paragraph 28 below.
24. The Tribunal has seen "Service Charge Accounts" for the year ended 31 January 2023. This document, which is not a demand for payment, is headed with the name of the Respondent and states that income received was £4,800 (ie £600 from each of 8 leaseholders although the Applicant had not paid any service charge),

expenditure was £3,133, and £1,667 surplus had been transferred to reserves. There is no indication as to what reserves, if any, have been held from time to time by the Respondent. Mr Shepherd says that he has contributed his own funds to the company by way of loans.

25. Between 2020 and March 2023 the Respondent appointed its accountants H&M Ltd to prepare service charge accounts. They produced a “Service charges costs summary” for the year ending 31 January 2021 indicating expenditure of £6,000 on “legal and professional”, £600 for accountancy fees, and £6,650 for roof repairs. However no section 20 consultation procedure has been undertaken, either for the roof repairs or for the cost of external decorations in 2015. On 14 March 2023 the accountants wrote to the Applicant saying *“I advised [Mr Shepherd] on the 8 March that we were resigning, with immediate effect, as accountants for the company.....I advised [the Respondent] in November 2022 that we did not have the experience or software to prepare the service charge accounts that you require. We do not act for any other RTM companies. Please address future queries to [Mr Shepherd] directly. He has not advised me who will be taking over the preparation of these accounts.”*
26. The Respondent has failed to prepare and serve certified annual service charge accounts in accordance with the lease terms. It has claimed contributions on account of costs which do not appear to have been incurred, without providing any balancing account or credit. It has failed in every year except 2023 to accompany service charge demands with the Summary required by regulation 2 of the 2007 Regulations. The Respondent has claimed full payment of contributions towards qualifying works as defined at section 20 of the 1985 Act without undertaking the statutory consultation procedure. It has not made any effort to deny or justify these failings in response to the present application.
27. For all these reasons, the Applicant has no present obligation to pay Service Charges, Management Charges or Insurance Rent for the years 2017 to 2023 inclusive.

THE SETTLEMENT DEED

28. In 2021 the Applicant, Mr Shepherd and the Respondent entered into a Settlement Deed intended to draw a line under disputes over service charges and other issues arising in previous years including 2021. Once the payments required by the Settlement Deed had been made, any service charges due from the Applicant for the years prior to 1 January 2022 were agreed to have been settled.
29. Under settlement terms the Applicant (having received substantial settlement monies from the other parties) paid the Respondent £11,317.88. The Tribunal heard that this represented arrears of service charges and other monies owed by leaseholders in 2013 and paid to the Applicant after appointment of the RTM company. The Applicant asked the Tribunal to determine whether this money had been used solely for service charges as agreed by the Respondent and Mr Shepherd.
30. The Tribunal has seen no documentation relating either to calculation of the figure £11,317.88 or to the use of that money by the Respondent. The Tribunal is unable to ascertain whether it has been properly expended and makes no order regarding it.

COSTS

31. To the extent (if any) that the terms of the lease permit the Respondent to add its costs of this application to the Applicant's service charge account, the Tribunal has ordered that it may not do so because the Applicant has successfully challenged the Respondent's service charge demands.
32. The Applicant claims that the Respondent should pay his costs pursuant to Rule 13 (1)(b) which states that the Tribunal may make a costs order if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case. Directions have been given to enable the Respondent to make representations before the Tribunal considers this application.