



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : MAN/00CB/LSC/2023/0013

Property : Flats 1-3, 1, Devonshire Road, Prenton, Wirral
CH43 4UP

Applicants : Simon Russell – Flat 1
Kingsley Taylor – Flat 2
Ian Turner – Flat 3

Respondent : Ground Rent Trading (Liverpool)
Limited

Represented by : Paul Simon

Type of Application : Landlord and Tenant Act 1985 – s27A

Tribunal Members : Tribunal Judge C Wood
Tribunal Member H Thomas BSc FRICS
FCABE MEWI

Date of Decision : 24 February 2025

DECISION

DECISION

1. On the Respondent confirming to the Tribunal at the hearing on 4 December 2024, that there is no intention of the Respondent incurring any expenditure in the 2023/24 service charge year and/or of demanding any service charge in that service charge year in respect of the budgeted item "major works' costs", and, with the consent of the parties, the Tribunal makes no determination under s27A of the Landlord and Tenant Act 1985, ("the 1985 Act"), in respect of such costs.
2. In view of the above, there is no liability on any of the Applicants to make payment of any service charge in respect of "major works" costs for the service charge year ended 30 June 2024.

BACKGROUND

3. Pursuant to the Tribunal's decision dated 16 July 2024 and its directions of the same date, a video hearing was held on 4 December 2024 at which Mr Russell, one of the Applicants, and Mr Simon, representative of the Respondent, attended.
4. The purpose of the hearing, as set out in the Decision and the directions, was as follows:
 - 4.1 to determine whether the Applicants, or any of them, has a claim for equitable set-off arising out of a breach by the Respondent of its obligations of maintenance and repair of the Property under the terms of the Applicants' leases. If established, the damages in respect of such breach of contract could be set-off would be against any liability of each of the Applicants in respect of the "major works" costs included in the service charge budget for the year ended 30 June 2024; and,
 - 4.2 in accordance with section 19(2) of the 1985 Act, to determine the reasonableness of service charge payable in respect of the service charge year ended 30 June 2024 for the budgeted costs in respect of the "major works".

HEARING

5. At the hearing, Mr Simon confirmed as follows:
 - 5.1 the Respondent has not incurred any expenditure in respect of the "major works"

- in the service charge year ended 30 June 2024;
- 5.2 the Respondent has determined not to levy any service charge in the service charge year ended 30 June 2024 in respect of the budgeted "major works" costs; and,
- 5.3 the Respondent is intending to undertake a new consultation in respect of the major works required at the Property in 2025.
6. In view of the above, Mr Russell confirmed that he did not wish to pursue the issue of equitable set-off at this hearing.
7. Both parties acknowledged that the inclusion in future service charge budgets of service charge expenditure in respect of major works of maintenance, repair and/or refurbishment of the Property, s20 consultation in respect of such works and/or the levying of service charge in respect of such expenditure might give rise to further applications to the tribunal where, inter alia, the issue of equitable set-off may again be raised.

REASONS

8. In view of the Respondent's submissions as set out in paragraph 5 above, the Tribunal considers that there are no relevant costs for major works in the service charge year ended 30 June 2024 in respect of which any determination as to reasonableness and/or liability to pay can be made.
9. The Tribunal makes no determination accordingly.

ANCILLARY MATTERS

10. The following matters do not form part of this Decision but are included for the avoidance of doubt and/or to assist the parties.

Lease Variation

11. The Tribunal's order regarding the variation of the Applicants' leases is set out in paragraphs 3-5 of the Decision. In particular, but without limitation, the Tribunal is not required to approve the variation but it is to be agreed between the parties.
12. The parties have sent to the Tribunal a copy of the proposed variation.
13. The Tribunal confirms that the deed of variation produced to it appears to

achieve the objective of defining “the maintenance costs” to only those costs incurred under clauses 2(2)(a)(iii) - (vii) of the leases.

Revised Scott Schedule

14. A revised Scott Schedule was prepared for the hearing. The Tribunal assumes that the revisions were intended to reflect the terms of the Decision. The Tribunal notes as follows:

14.1 in respect of each of the service charge years ended 30 June 2019 – 30 June 2023, it appears that the Respondent has continued to charge an administration fee under clause 2(3) of the lease on electricity charges. This is contrary to the Decision and should not be charged;

14.2 at page 197 of the hearing bundle, the Respondent has included a document entitled “Service Charge Account 1/7/23 - 30/6/24 NOT AUDITED”. Several items of expenditure on this document do not appear to be consistent with the Decision and/or submissions made by the Respondent at the hearings on 15 April and 14 May 2024. In particular:

- (1) with regard to the charge for electricity, there is no reference in the account to the credit balance of £2000 on the electricity account as it was suggested by the Respondent would be the case; and,
- (2) there is no explanation of the difference between the amount of Total Expenditure (£3671.16) and the Amount Demanded (£9815.16) or the contractual basis upon which any amount greater than actual expenditure has been demanded. In particular but without limitation, there is no provision in the leases which allows the Lessor to recover as service charges monies to establish a sinking fund.

Future tribunal proceedings

15. Having regard to the complexity of these proceedings, it is acknowledged that, in the event of any future applications being made by any of the parties in respect of the Property, it may be regarded as consistent with the overriding objective, where possible/feasible, to assemble the same Tribunal to determine them.