



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

Case Reference : **MAN/00EY/LSC/2022/0109**

Property : **Flat P, The Chimes, 1a, Forest Gate,
Blackpool FY3 9AR**

Applicant : **The Chimes (Blackpool) Limited**

Represented by : **Mr Michael White**

Respondent : **Mr James Murray**

**Type of
Application** : **Landlord and Tenant Act 1985, section 27A
Commonhold and Leasehold Reform Act
2002, Schedule 11, Part 1, paragraph 5**

**Tribunal
Members** : **Tribunal Judge C Wood
Tribunal Judge I James**

Date of Decision : **20 February 2024**

DECISION

Order

1. The Tribunal orders as follows:
 - 1.1 the costs charged as service charge for the service charge years ended 30 June 2019, 30 June 2020 and 30 June 2021 are reasonable and the Respondent is liable to pay them;
 - 1.2 no greater amounts than the charges as set out in the budget for the service charge year ending 31 December 2023 are reasonable and the Respondent is liable to pay them; and,
 - 1.3 the Applicant is not entitled to recover its legal costs under clause 3(7) of the lease of the Property.
2. The Tribunal makes no order:
 - 2.1 in respect of the service charge costs for the 18-month period 1 July 2021 to 31 December 2022;
 - 2.2 in respect of legal costs incurred in bringing proceedings before the Tribunal under Rule 13(1)(a) or for reimbursement of the application fee under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Background

2. By an application dated 23 November 2022, as amended on 18 March 2023, (“the Application”), the Applicant sought a determination under s27A of the Landlord and Tenant Act 1985 as to the reasonableness and payability of service charges for the years ended 30 June 2019, 30 June 2020, 30 June 2021, the 18-month period ended 31 December 2022 and the year ended 31 December 2023.
3. Directions dated 6 March 2023 were issued pursuant to which the Applicant submitted a Statement of Case together with supporting documentation.
4. No submissions were received from the Respondent.
5. The Directions state that the Tribunal considers that the Application is appropriate for determination “on the papers”, subject to a request for a hearing from either of the parties.

6. No request was received and the Application was scheduled for determination on Friday 9 February 2024 following an inspection of the Property at 10:30 on the same date.

The Law

7. Section 18 of the 1985 Act provides:
 - (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.
8. Section 19 provides that –
 - (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.
9. Section 27A provides that:
 - (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 date at or by which it is payable, and
 - (d) the manner in which it is payable.
 - (2) Subsection (1) applies whether or not any payment has been made.

- (3)
- (4) No application under subsection (1)...may be made in respect of a matter which
 -
 - (a) has been agreed by the tenant.....
 - (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- 10. In *Veena SA v Cheong* [2003] 1 EGLR 175, Mr. Peter Clarke comprehensively reviewed the authorities at page 182 letters E to L inclusive. He concluded that the word “reasonableness” should be read in its general sense and given a broad common sense meaning [letter K].
- 11. Paragraph 1 of Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, (“CLARA”), contains the definition of an “administration charge”.
- 12. Paragraph 5 of Part 1 of Schedule 11 to CLARA provides as follows:
 - (1) An application may be made to the [Tribunal] for a determination whether an administration 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.

Inspection

- 13. Neither of the parties attended or were represented at the inspection.
- 14. The building in which the Property is located is a 3-storey purpose-built block of flats built in or around 2000, (“the Building”). It is of brick construction with tiled roof.
- 15. The external areas comprise parking and grounds laid out in beds with shrubs.
- 16. The external areas appear tidy and generally well-maintained. There was some pooling apparent in a part of the car parking area.
- 17. Some of the external paintwork/woodwork at the Building is showing wear and tear/in need of re-decoration within a reasonable period.
- 15. There are 15 flats in total within the Building with 5 on each floor.
- 16. Access to the Building is via an entry phone system.

17. The internal layout is the same across the three floors. The internal walls are painted and the floors and staircase are carpeted. There is no lift. The banisters are wood and painted.
18. On the day of the inspection, there was some packaging detritus on the ground floor passageway but otherwise the areas appeared tidy and well-maintained. There was no obvious wear and tear to the carpets.
19. There was some evidence of leaks from the roof of the Building but these appeared to be historical. There was no evidence of any recent water ingress.

The Applicant's Submissions

20. The Applicant's submissions, as set out in the Statement of Case of Michael White dated 19 March 2022, the Applicant's managing agent of the Property, are summarised as follows:
 - 20.1 Mr White was appointed as managing agent of the Building with effect from 1 July 2021;
 - 20.2 as at the date of his appointment, there were arrears of service charge in respect of the Property for the years ended 30 June 2019, 2020 and 2021;
 - 20.3 prior to his appointment, service charges were administered by one of the leaseholders at the Building by charging a fixed amount of £50 per month per flat;
 - 20.4 Mr White considers that the amount charged in previous years has been inadequate to provide the services under the terms of the leases of the apartments in the Building. A copy of a lease is attached to the Statement, ("the Lease").
 - 20.5 service charge accounts for the periods ended 30 June 2019, 2020 and 2021 are attached to the Statement;
 - 20.6 following his appointment, the service charge year was changed to conform with the terms of the Lease which provides for the service charge year to be from 1 January – 31 December in each year. As a result, the service charge period for 2022 is an 18-month period from 1 July 2021 to 31 December 2022;
 - 20.7 a budget for the 2023 service charge year is attached to the Statement; and,

20.8 the Applicant also claims administration charges totalling £6866.60, as detailed on page 110 of the Statement, in accordance with clause 3(7) of the Lease;

20.9 attached to the Statement is a series of emails with the Respondent regarding payment of arrears and correspondence with the Respondent's mortgagee, NatWest, in which they require a court or tribunal adjudication in respect of the arrears before agreeing to settle the amount claimed. Mr White states that the emails constitute an acknowledgement of the amount owed by the Respondent; this is disputed by NatWest.

The Respondent's Submissions

21. No submissions were received from the Respondent.

Tribunal's Determination

Service Charges

22. The Tribunal's reasons for its determinations are as follows:

Section 27A(4) of the 1985 Act

22.1 the Tribunal is not satisfied that the email correspondence attached to the Statement constitutes an agreement or admission within section 27A(4);

Section 27A of the 1985 Act: reasonableness of the service charges

22.2 **Service charge period 1 July 2021 – 31 December 2022**

The Tribunal notes as follows:

- (1) there is no breakdown of the amount of £1070 charged as service charges for the 18-month period ended 31 December 2022; and,
- (2) Mr White's statement that the accounts for this period are in the course of preparation.

22.3 In the absence of any information regarding the service charge items and/or the amounts charged in respect thereof for the period in question, the Tribunal is unable to make any determination under section 27A of the 1985 Act. In particular, the Tribunal is surprised by the Applicant's failure to provide any budget or draft accounts for the relevant period or that, having regard to the date of this determination, that the service charge accounts have not been finalised.

22.2 **Service charge years ended 30 June 2019, 30 June 2020 and 30 June 2021**

Having regard to the evidence contained in the service charge accounts for the years ended 30 June 2019, 30 June 2020 and 30 June 2021, the Tribunal is satisfied that the amounts charged, (variously in respect of each of the years for light and heat, repairs and maintenance, cleaning, premises insurance, accountancy fees, bank charges and sundry expenses), are reasonable, as that term is defined in section 19(1) of the 1985 Act, and are payable by the Respondent.

22.3 Budget for the service charge year ending 31 December 2023

- (1) Having regard to the evidence contained in the budget, the Tribunal is satisfied, save as set out below, that no greater amounts than as set out in the budget are to be regarded as reasonable in accordance with, and subject to, section 19(2) of the 1985 Act.
- (2) In the absence of evidence, the Tribunal is not satisfied that interest on a “bounce back” loan is to be regarded as a service charge cost chargeable in accordance with the terms of the Lease and it is not payable by the Respondent accordingly.

Legal Costs

23. The Tribunal notes that there is no breakdown of the legal costs claimed save that, at page 110 of the Applicant’s bundle, there is reference to costs incurred in relation to correspondence with the Respondent’s mortgagee, and, at page 107, costs of £250 in respect of the application to the Tribunal and the application fee of £100.

The Tribunal notes as follows in respect of the terms of clause 3(7) of the Lease:

- 23.1 there is no evidence before the Tribunal that the Applicant had formed any intention to issue any notices or proceedings for forfeiture of the Lease;
- 23.2 the legal costs are therefore not to be regarded as incurred “...for the purposes of or incidental to the preparation and service of any notices or proceedings under sections 146 and 147 of the Law of Property Act 1925” within clause 3(7) of the Lease;
- 23.3 in this respect, the Tribunal refers to the decision in *Khan v Tower Hamlets LBC* [2022] EWCA Civ 831 where the relevant part of the clause was in substantially similar terms to clause 3(7) of the Lease.
24. The Tribunal therefore determines that the Applicant is not entitled to recover its legal costs under clause 3(7) of the Lease.

25. With regard to any legal costs incurred in connection with the bringing of the Application, the Tribunal notes as follows:
- 25.1 no application has been made at the date of this determination by the Applicant under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Procedure) Rules 2013, (“the Rules”);
- 25.2 the Tribunal does not consider it is appropriate in the circumstances to make an order under Rule 13(1)(a) in respect of the Applicant’s legal costs in bringing the Application, or under Rule 13(2) requiring the Respondent to reimburse the Applicant with the application fee.