



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

Case Reference : **MAN/00FC/LSC/2021/0004**

Property : **Flat 8, Hope House, Hope Street,
Grimsby, South Humberside, DN32
7QL**

Applicant : **Hope Street Management Ltd**

Representative : **Mr Gorensweigh**

Respondent : **Mr Mateusz Marek**

Representative : **In Person**

Type of Application : **Section 27A Landlord and Tenant
Act 1985 – Service charges**

Tribunal Members : **Tribunal Judge J. E. Oliver
Tribunal Member P. Mountain**

Date of Determination : **19th January 2022**

Date of Decision : **31st January 2022**

DECISION

Decision

1. The Tribunal determines the service charges for the period 2014 to 2020 are reasonable and payable by the Respondent in the sum of £5966.26, being the amount claimed in the proceedings.
2. There is no order made in respect of the claim relating to administration charges since none have been claimed from the Respondent.
3. The Respondent is to pay costs of the Tribunal in the sum of £200.

Application

4. This is an application transferred to the First-tier Tribunal by District Judge Khan sitting at Great Grimsby County court on 2nd November 2020 for the Tribunal to determine whether the service and administration charges are reasonable and payable in respect of Flat 8 Hope House, Hope Street, Grimsby (“the Property”).
5. The amount claimed against Mr Mateusz Marek (“the Respondent”) is in the sum of ££8114.40 (including interest and costs) plus interest from the date of claim to the date of judgement in the sum of £1.31 per day, The period of claim is for unpaid service charges and administration charges from 1st April 2014 to 31st March 2021.
6. The Respondent filed a defence with the Court admitting the sum of £1620 of the claim and counterclaiming the sum of £4800 for remedial works to the Property.
7. The Respondent subsequently made a payment to the Applicant of £1975.00 in part settlement of the claim.
8. The Tribunal directed a Case Management Conference be held on 2nd March 2021 following which directions were issued on 5th August 2021 providing for the application to be listed for a hearing and for the parties to file statements setting out their respective positions.
9. A hearing was listed for 14th December 2021 but was adjourned due to the failure of both parties to give sufficient notice of their contact details to enable the hearing to take place. A further hearing was listed for 23rd January 2022. The Respondent again failed to provide his contact details as directed by the Tribunal and was thereafter barred from attending the hearing. Mr Gorensweigh attended the hearing on behalf of the Applicant.

The Lease

10. The Property is held under a Lease dated 31st October 2007 and made between Turnstone Property Management Limited (1), David Alan Slater-Bromley (2) and Hope Street Management Limited (3) for a term of 999 years from the 31st July 2007. The Lease describes the Property as:

“The “premises” means all the flat situate on the ground floor of the Building and edged red on Plan number 1 and known as Hope House Hope Street Grimsby Lincolnshire including:

1.2.1 the ceiling and floors within the Premises (but not the structures supporting the same)
 1.2.2 the internal surfaces (including the internal lining of the external walls and internal walls) of the Premises
 1.2.3 non load bearing internal walls of partitions of the Premises
 1.2.4 the doors and windows including frames in the Premises
 1.2.6 all the Landlord's fixture and fittings of every kind that shall from time to time be in or on the Premises (whether originally affixed or fastened to or upon the Premises or otherwise) except any such fixtures installed by the Tenant that can be removed from the Premises without defacing the Premises

1.3 "the Building" means the building edged blue of Plan number 2 and of which the Premises form part".

11. Clause 1.10 defines "the Rent" as:

"means £10 per annum payable in advance without any deduction on the 1st day of April in each yearand the payment of the Service Charge in accordance with the provisions of Clause 4 and the expression Lease Rents include the Rent and Service Charge"

12. Clause 3 of the Lease provides for covenant for the Respondent to pay:

"3.1 ... the Lease Rents on the days and in the manner set out in this lease and not to exercise or seek to exercise any right or claim to withhold the Lease Rents"

13. Clause 3.38 of the Lease provides:

"if the Lease Rents or any other sum due under this lease is unpaid 21 days from the date due whether formally demanded or not to the Landlord interest on the Lease Rents or other sum due from the date on which payment was due to the date of payment both before and after any judgment at the Interest Rate and such interest shall be deemed to be rent due to the Landlord provided that nothing in this clause shall entitle the Tenant to withhold or delay any payment of the Lease Rents or any other sum due under this lease after the date upon which it falls due or in anyway prejudice affect or derogate from the rights of the Landlord in relation to such non-payment including (but without prejudice generally of the above) his rights under the proviso for re-entry in this lease"

14. The Interest Rate in the Lease is defined as:

"the Interest Rate" means 5% per year above the base lending rate of Barclays Bank Plc or such other bank being a member of the Committee of London and Scottish Bankers as the Landlord may from time to time nominate in writing or should such base rate cease to exist such other rate of interest as is most closely comparable with this rate as may be agreed between the parties or in default of agreement be determined by the Surveyor acting as expert and not as an arbitrator"

15. Clause 4 states the Service Charge means:

“03.1 one twenty fourth (1/24th) of the premiums for effecting the insurance policies relating to the Estate

03.2 one twenty fourth (1/24th) of all costs charges and expenses incurred by the Management Company in carrying out its obligations pursuant to the remaining provisions of this Lease and all fees expenses interest charges demands claims and liabilities (including those relating to the computation and collection of the Service Charge) and the costs charges and expenses of any services now provided or in the future to be provided for the Tenant and the occupiers of the other flats in the Building before or after formal demand”

The Law

16. Section 27A(1) of the Landlord & Tenant Act 1985 provides:

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.*

17. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

18. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It 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.*

19. In making any determination under section 27A, the Tribunal must have regard to section 19(1) of the 1985 Act:

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.*

20. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:

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.

21. Paragraph 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 contains the definition of an administration charge for the purposes of the Schedule:

1 (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly-

- (a) for or in connection with the grant of approvals under his lease, or in applications for such approvals,*
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord as a person who is party to his lease otherwise than as landlord and tenant,*
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant,*
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease*

(1) In this part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither-

- (a) specified in his lease, nor*
- (b) calculated in accordance with a formula specified in his lease.*

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

22. Paragraph 5 of Schedule 11 of the 2002 Act provides:

(1) An application may be made to [the appropriate 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*
- (f) the manner in which it is payable.*

Submissions

23. The Respondent filed with the Court a Defence and Counterclaim to the claim for unpaid service charges. He admitted the sum of £1620 and subsequently paid to the Applicant the sum of £1975.00.
24. The Respondent further counterclaimed for the sum of £4800. The Respondent stated it was the Applicant's failure to properly maintain the Building that caused water ingress into the Property. The claim of £4800 related to repairs to the ceiling, re-decoration, soft furnishings, a new boiler and furniture.
25. The Respondent advised that he purchased the Property in 2014 but after 2 years problems developed when there were several water leaks at the Property. He contacted Bevers (managing agents) who advised a tenant in the upstairs flat had left the bath running. He rectified all the damage caused by this leak, but the problems continued. He reported a further leak to Bevers and said :*"I received an e-mail from Bevers on 19th August 2016 stating that if the plumber had reported no leaks then it must be coming from the roof and that flat 14 also has water entering the property."*
26. The Respondent advised that from his own investigations, he found that the roof at the top of the building had an issue as water was running down the side of the Building. He reported this to Bevers who advised they required permission to repair the roof.
27. On 13th September 2016 there was a further leak into the flat and, at that time, discovered a patch repair in the ceiling, indicative of past leaks. The Respondent provided copy e-mails of his exchanges with Bevers.
28. In 2019 the Respondent advised of a leak from a pipe in the wall that irreparably damaged his boiler that he had to replace. He said :*"I did not need a new boiler it was because once again the buildings leaking pipes caused this issue"*. He further said the old boiler had been removed from the Property without his knowledge.
29. The Respondent stated the leaks continue and the Applicant has failed in its duty to keep the Building in good repair.
30. The Respondent provided photographs of damage to both the Property and the Common Parts.
31. Mr Gorensweigh attended the hearing on behalf of the Applicant. He confirmed the claim for the arrears of service charges were for the years 2014 to 2020 inclusive. There had been a further demand for the year 2020/21 that was not included within the claim but was in the sum of £1280.63. He agreed a payment of £1975 had been received from the Applicant but was unable to confirm the date of payment.
32. The Tribunal sought clarification of the role of Bevers in the Property, since reference had been made to the company by the Respondent. Mr Gorensweigh advised Bevers are a property management company responsible for the management of a number of Buy to Let properties within the Building for private owners, but this does not include the Property. He could not explain why the Respondent contacted Bevers, nor why they chose to become involved when they had no responsibility for the Property. The Applicant had not been contacted by Bevers in respect of the issues raised at any time since 2016. Since the commencement of the proceedings, he had contacted Bevers regarding the matter, but they had no records to assist. He would normally

- expect them to contact the Applicant if any repairs were required to the properties they manage.
33. The Applicant had never received any complaints from the Respondent regarding water leaks into the Property and only became aware of the issues in January 2019 when it began taking steps regarding unpaid service charges. He confirmed the Respondent has always defaulted on the payment of his service charges since 2014.
 34. Mr Gorensweigh advised the Property is a ground floor flat. If there had been leaks from the roof, this would have affected other flats above the Property, but no such leaks had been reported to the Applicant. However, the Property does have a flat roof on part of the flat that extends beyond the Building itself but no leaks into this area of the flat have ever been reported prior to 2019. Once the Respondent notified the Applicant of the damage to the Property it was inspected but, at that time, the remedial work had been completed.
 35. Mr Gorensweigh advised he had checked all the costs for the years in dispute and there were none from roofers. A leak causing the damage complained of by the Respondent would have required significant repairs. It would also have affected other properties on the ground floor and no damage reports were received from them.
 36. In relation to the leak in 2016, if this was caused by a leak in the flat above the property, then the owners of that flat would be responsible for any repairs and replacement of damaged contents. In respect of the damage to the boiler in 2019, Mr Gorensweigh did not accept that a water leak could have caused the damage to the boiler as stated. The sludge referred to is formed within the central heating system and cannot enter the boiler as alleged.
 37. Mr Gorensweigh submitted the damage was caused from within the Property which has been empty for some periods of time during the Respondent's ownership. The photographs provided showed evidence of a prolonged pipe leak. This could have been from a leak in the pipework in the flat above or from within the Property itself. No leaks had been reported from the flat above.
 38. The Building was built in the 1950's and had been developed and renovated 14 years ago. The Tribunal enquired whether there was a history of roof repairs. Mr Gorensweigh confirmed there had been periodic problems with the roof. These were repaired as required. He accepted there was evidence of water damage to the common parts in the photographs provided by the Respondent. He was not aware of any leaks at the time of the hearing. There have never been any decorative repairs to the common parts due to insufficient funds and roof repairs take priority over other works. The Building is in an area of high vandalism and consequently 40% of the budget for 20/21 has been spent on upgrading the CCTV system.

Determination

39. In respect of the service charges for the years 2014-2020, the Tribunal determines those are reasonable and payable.
40. The Tribunal notes the Respondent's position is that damage has been caused to the Property by reason of the Applicant's failure to properly maintain the Building. The Respondent has produced photographs and there is no dispute

that there is significant damage to the Property. However, the Respondent has failed to show that this has been caused by roof leaks.

41. The Tribunal found it significant the Respondent has consistently failed to pay the service charges due since his purchase of the Property in 2014. He has failed to provide any adequate explanation for this, although following the issue of the proceedings he has paid the sum of £1975. It is not clear how this amount has been calculated.
42. It is implied, but not said, that the remainder has not been paid due to the defects in the Building by which he has suffered financial loss.
43. The Tribunal preferred the evidence of Mr Gorensweigh when considering the reasons for the damage. It is unclear why the Respondent failed to take matters further when he received an inadequate response from Bevers after the ingress of water in 2016. It is also unclear why Bevers became involved in the matter, but the Respondent repaired the damage, made no attempts at that time to seek any recompense and only raised the matter in 2019 when chased for unpaid service charges.
44. The Tribunal finds the explanation given by Mr Gorensweigh to be credible and accepts that had there been a leak of the magnitude described by the Respondent the Applicant would have been aware of it and repairs would have been necessary. It could find no evidence of any such leaks being reported or repaired.
45. The Tribunal also considered the issue of the damage to the boiler in 2019. In this, it again preferred the explanation proffered by Mr Gorensweigh and noted that the Respondent had not made any report to the Applicant at the time the boiler failed. By the time a complaint was made all remedial work had been carried out.
46. At no time has the Respondent challenged or questioned the reasonableness of the service charges or raised this as an issue before the Tribunal.
47. The Tribunal determines the Respondent is liable to pay the service charges outstanding for the years 2014 to 2020 claimed in the sum of £5966.26.
48. The Tribunal notes the Respondent has made a payment of £1975 since the commencement of the proceedings, but that is a matter for consideration by the County Court.
49. The Applicant confirmed the amount claimed does not include any administration charges and, accordingly, no order is made.
50. The Respondent is to pay costs of £200 being the hearing fee paid by the Applicant in the proceedings before the Tribunal.