



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : BIR/OOCN/LSC/2024/0015

Property : Flat 1
149 Medina Road
Birmingham
B11 3SB

Applicant : Sandra Walker

Applicant's Representative : None

Respondent : Scholars Court (149 Medina Road) RTM Company Limited

Respondent's Representative : Bright Willis

Type of Application : Application under Section 27A (and 19) of the Landlord & Tenant Act 1985 for determination to pay and reasonableness of service charges and for an order under Section 20C and under Schedule 11(5)(a) of the Commonhold and Leasehold Reform Act 2002 for the determination of reasonable administration charges

Tribunal Members : Mr G S Freckelton FRICS (Chairman)
Mr P Morris FRICS FAAV MCI. Arb

Date and venue of Hearing : 30th April 2025 by remote video hearing

Date of Decision : 25th June 2025

DECISION

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BACKGROUND

1. This is an Application for a determination of liability to pay and reasonableness of service charges under Section 27A (and 19) of the Landlord & Tenant Act 1985 ("the Act"). The Application also included an Application for an Order under Section 20C of the Act and an Application under Schedule 11(5)(a) of the Commonhold and Leasehold Reform Act 2016 for the determination of reasonable administration charges.
2. The Application states that the dispute is in respect of the service charges for the Service Charge Year 2023 (1st July 2022 – 30th June 2023) and that the total amount presently in dispute is £6,000.00.
3. A Case Management Conference was held on 4th June 2024 following which Directions were issued on 27th August 2024. At the Case Management Conference, it was recommended by the Tribunal that the parties should hold a face-to-face meeting to resolve their differences. Unfortunately, a resolution did not prove possible and further Directions were issued on 24th January 2025 following which submissions were made by both parties.
4. The Directions of 24th January 2025 envisaged that following submissions the matter would be dealt with by a paper determination. However, on receipt of the submissions the Tribunal determined that an oral hearing was required. A remote video hearing was arranged for 30th April 2024 and was attended by the Applicant and the Respondent's Representative, Mr A Davies of Bright Willis.
5. On 21st March 2025 the Applicant submitted a further application to the Tribunal to (1) add additional evidence and; (2) consolidate case BIR/OOCN/LAM/2024/0606 with this case. This was refused by the Tribunal as (1) there had been ample time for the parties to submit their evidence and; (2) that the Tribunal would not allow consolidation of the cases at this late stage.

THE PROPERTY

6. The Tribunal has not carried out an inspection of the property but based on the application it is understood that the property comprises of a self-contained two-bedroom flat in a purpose-built block.
7. The Tribunal asked the Applicant to describe the property and understands that the property comprises a ground floor flat with lounge/kitchen, two bedrooms and bathroom. The property is understood to have central heating and double glazing. The property is approached via a communal hallway.
8. The Tribunal understands that outside there are communal car parking areas with designated car parking for the subject property.

THE LEASE

9. The Tribunal has been provided with a copy of a lease dated 16th June 2006 between Kings Oak Homes Limited and Mr Richard Archer. The property is referred to as 'The ground floor dwelling known as Plot Number 18'. The Tribunal understands that this is the subject property.

10. Schedule 6 (Part A), describes the Maintenance Expense (Estate Costs) and (Part B) the (Building Costs).
11. Schedule 7 of the lease defines the Lessee's proportion of maintenance expenses (2.128% of the Estate Cost and 4.237% of the Building Cost as specified in the Lease). Schedule 8 of the lease provides for the tenants (Lessee's) to pay the service charge.
12. The Tribunal asked the Respondent to confirm the charging arrangements since the formation of the Right to Manage (RTM) Company and it was confirmed that the Building Cost charge had changed to 1/6th of the total cost (there being 6 flats in the block) but that the Estate Cost remained unchanged as the car parking and external areas were used not only by five blocks of six flats but also some freehold houses who also contributed towards the costs.

THE LEGAL FRAMEWORK

13. Under Section 27A of the Landlord & Tenant Act 1985, the Tribunal has jurisdiction to decide whether a service charge is payable and if it is, the Tribunal may also decide:
 - (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

14. Section 19 of the 1985 Act provides that service charges must be reasonable for them to be payable.

"Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:*
And the amount payable shall be limited accordingly."

15. A charge is only payable by the Lessee if the terms of the Lease permit the Lessor to charge for the specific service. The general rule is that service clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (*Gilje v Charlgrove Securities [2002] 1EGLR41*). It was also stated in *Gilje* above "The Lease moreover, was drafted or proffered by the Landlord. It falls to be construed contra proferentum".
16. If the Lease authorises the charges, they are only payable to the extent that they are reasonably incurred; and where they are incurred, only where the services for which they are incurred are of a reasonable standard.
17. The construction of the Lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (*Yorkbrook Investments Ltd v Batten [1985] 2 EGLR 100*).

THE PARTIES' EVIDENCE AND SUBMISSIONS

18. The parties provided submissions, both in writing and at the hearing. In summary the submissions are detailed below:

CAR PARK CLEANING CHARGES

The Applicant's Submissions

19. The Applicant submitted that car parking cleaning had been incurred at a cost of some £4,260.00. This was as detailed in the Service Charge Accounts. It was further submitted that on the Service Charge Account for the year ending 30th June 2022, the cost of cleaning was only £2,592.00. Copies of various invoices from B&L Property Maintenance were submitted for car park cleaning and removal of rubbish.
20. It was further submitted that one of the bin areas had been closed, resulting in additional rubbish in the car parks and that the car park gates were left open which allowed for additional fly tipping from non-residents.
21. In her written submissions the Applicant was concerned that B&L Property Maintenance was actually a company known as 'Borditt & Leggitt Limited and that it was owned by one of the Directors of the Respondent's managing agents, Bright Willis. The Applicant did not accept that all the work was carried out as detailed in the invoices but offered no further explanation.

The Respondent's Submissions

22. The Respondent submitted that there was a regular cleaning contract for the car park areas (of which there were three). However, there had been a considerable amount of fly tipping which resulted in additional charges. Reports of fly tipping were received from either the residents or other contractors working on site and all the invoices related directly to work carried out. Fly tipping took place in all three car park areas.
23. The Respondent further submitted that the gates to the car park were manual, and not electrically operated. In the past they had tried providing padlocks for the gate and asking residents to ensure they were kept locked. Some residents did but some did not and this resulted in the car parking areas being accessible by non-residents. However, the Respondent was of the opinion that the majority of the rubbish left on the site was from tenants on the development and not by non-residents.
24. It was submitted that there were insufficient funds to install remote control electric gates.
25. The Respondent further submitted in its written submissions that at least 2 quotations were obtained in respect of work carried out. The Tribunal infers that this is to ensure B&L Property Maintenance do not have 'carte blanche' to carry out works without any check on the costs.

LEGAL FEES

The Applicant's Submissions

26. At the hearing the Applicant submitted that there were legal fees of £711.00 which she had been charged for setting up the RTM Company. She had been informed verbally that these would be paid by Bright Willis.
27. In her written submissions the Applicant submitted that legal and professional fees in respect of the car park had amounted to £2,021.00. This was not pursued at the hearing and in its written submission the Respondent acknowledged that this had been charged in error and would be credited back to the Car Park Account.
28. The Applicant further submitted that she did not consider the RTM Company had been correctly set up and she had not been notified of the implication of joining it.

The Respondent's Submissions

29. The Respondent submitted that the charge of £711.00 for setting up the RTM Company was paid by the flat owners and that Bright Willis had never agreed to cover the legal charges. It was further submitted that the correct documentation regarding the formation of the RTM Company had been sent to the freeholder and all leaseholders.
30. The Tribunal confirmed that its jurisdiction in respect of legal fees was limited by section 27A (and 19) of the Act and that if the Applicant wished to challenge the validity of the RTM Company, that would need to be done through a separate application to the Tribunal.

ELECTRICITY METER

The Applicant's Submissions

31. The Applicant submitted that there were various addresses for the electricity meters given on the invoices for the communal electricity from the supply company which did not appear to relate to the block she lived in.

The Respondent's Submissions

32. The Respondent submitted a copy of a photograph of the meter located in the electricity cupboard in the Applicant's block. The number on the meter corresponded with the meter number quoted on the invoice although there were other invoices for other meters in other blocks. Unfortunately, as the managing agents were not involved with the property when it was developed or set up, they could not comment on the addresses used by the electricity suppliers.
33. The Applicant acknowledged that she accepted that the invoices provided were for the meter in her block but was also concerned that some payments to the electricity supplier had not been made. The Respondent confirmed that all payments due had been made.

INSURANCE

The Applicant's submissions

34. The Applicant submitted that there had been a payment of some £584.62 which she assumed was for Building Insurance although she had subsequently been informed that it was for Public Liability Insurance. She was not aware if any Building Insurance had been paid.

The Respondent's submissions

35. The Respondent submitted that the premium of £584.62 was for Public Liability Insurance as detailed on the copy invoice provided from PIB Insurance Brokers provided in the Respondent's bundle. Also provided was a copy of the Certificate of Insurance indicating a premium for building insurance of £1,986.11 (including Insurance Premium Tax (IPT)). The amount shown on the Service Charge Accounts for Building Insurance was £1,893.00 and it was submitted that the slight discrepancy was due to the fact that the service charge year ran from 1st July 2022–30th June 2023, whereas the period of insurance was from 1st June 2022–31st May 2023. Therefore, the amount of the premium paid would be adjusted as a standard accounting practice to reflect the service charge year.

General Submissions

The Applicant's submissions

36. In the opinion of the Applicant invoices had been paid to Nominee Freehold Managers which was incorrect. The Applicant paid her ground rent directly to the freeholder and she did not understand why the Respondent should be making payments to the freeholder which were charged to the service charge account.

The Respondent's submissions

37. The Respondent submitted that fees paid to FIT Nominee Ltd and FIT Nominee (2) Ltd were in respect of management fees paid to the managing agent, Bright Willis as only they received management fees paid through the service charge.

DECISION

38. The Tribunal considered the submissions made by the parties both in writing and at the hearing and determined as follows:

Car Park Cleaning Charges

39. The Tribunal determined that the charges in respect of the car park cleaning were covered in Part A of Schedule 6 of the lease and duly payable by the Applicant. The Tribunal accepts that fly tipping has been a problem and as such, it must be dealt with. The Tribunal does not accept the Applicant's submission that invoices have been submitted and paid, for work which has not been completed as no evidence has been provided to substantiate this.

40. However, the Tribunal has some sympathy with the Applicant over access to the site and is aware that many similar developments are fitted with remote control automatic electric gates. The Tribunal appreciates that the cost may be expensive and that it would not deter illegal rubbish tipping from residents/tenants. The Tribunal would however, expect the RTM Company to give serious consideration to this in the future.

41. As stated in paragraph 11 of this decision the percentage contribution for Estate Costs for the subject property is 2.128%. The Service Charge Budget for 'Scholars court Car Park' for the Service Charge Year 1st July 2022-30th June 2023 defines the percentage charge for Flat 1 as being 2.30895%. The Service Charge Accounts confirm total expenditure for the car park areas in the sum of £12,031.00. Based on the percentage stated in the Budget the Applicant will have been charged £277.79, ($£12,031.00 \times 2.30895\% = £277.79$) whereas based on the lease the charge would have been £256.02 ($£12,031.00 \times 2.128\% = £256.02$).

42. However, Clause 7.10 of the lease provides:

'If at any time (including retrospectively) it should become necessary or equitable to do so the Lessor (acting reasonably) shall recalculate on an equitable basis the percentage figure(s) comprised in the Lessees Proportion appropriate to all the Properties comprising the Development or Building (as the case may be) and then shall then notify the lessees accordingly and in such case as from the date specified in the said notice the Lessee's proportion so recalculated and notified to the Lessee in respect of the Demised Premises shall be substituted for that set out in the Particulars and Paragraph 1 of the Seventh Schedule and the Lessee's Proportion so recalculated in respect of the said properties shall be substituted for those set out in their leases.'

43. The Tribunal asked the Respondent during the hearing whether the charges set out in the lease were correct and it was confirmed that although the proportion of the Building Charge had altered since the formation of the RTM Company, the Estate Charge remained the same (paragraph 12). The Tribunal has not been provided with a copy of any certificate or notification sent to the Lessee's of any variation in the amount of the Estate Charge but this was not challenged by the Applicant either in her written submissions or at the hearing. Therefore, the Tribunal did not consider this further.

Legal Fees

44. The Tribunal considered the legal fees of £711.00 charged for the formation of the RTM Company. The Tribunal accepts that it is fair and reasonable for the members of the Company to pay such fees and in the absence of written confirmation to the contrary, finds that they are payable. The actual fee for each member is £118.50, ($£711.00 \div 6 = £118.50$) which the Tribunal considers reasonable.

45. The Tribunal therefore determines that the sum of £711.00 charged to the building in the Service Charge Account for legal fees is correct and 1/6th of this amount is therefore payable by the Applicant.

Electricity Meter

46. At the hearing the Applicant accepted that the electricity meter was located in the electricity cupboard and that invoices had been sent based on the meter readings. There is therefore no further determination for the Tribunal to make on this item.

Insurance

47. During the hearing the Respondent explained the Public Liability Insurance and Building Insurance paid. Copies of invoices were provided and the slight discrepancy between the amount of the invoices and the amount shown on the Service Charge Account was explained.
48. The Tribunal fully accepts the Respondents submissions on this point and determines that the amount charged to the Applicant is correct.

General Matters

49. At the hearing it was obvious to the Tribunal that there was some confusion to the parties (and indeed to the Tribunal) over the payment of charges which appeared (based on the bank account) that might have meant the owners of properties in the block may be paying management charges to both Bright Willis and the Freeholder.
50. The correct source of reference in such matters is the Service Charge Accounts. The names of payees shown on a bank account statement are not necessarily a reliable point of information and in this case have clearly caused confusion.
51. Based on the Service Charge Accounts the Applicant is only paying management fees as follows:
- (1) £199.00 per annum for the Block ($£1194.00 \div 6 = £199.00$) and;
 - (2) £40.73 per annum for the Estate ($£1764.00 \times 2.30895\% = £40.73$) making a total of: £239.73 per annum inclusive of VAT.
52. The Tribunal determines that the management fees charged to the Applicant are reasonable and payable.

SECTION 20C APPLICATION

53. In the Applicant's original Application to the Tribunal a request was made for an order under section 20C of the Act.
54. The purpose of an application under section 20C is to prevent a landlord from recovering his costs in Tribunal proceedings through the service charge. The guidance in previous cases is to the effect that an order under section 20C is to deprive the landlord of a property right and it should be exercised sparingly (see for example, *Veensa-v-Chong*: Lands Tribunal [2003] 1EGLR175).
55. In its written submission and at the hearing the Respondent confirmed that at present it did not anticipate adding any court or legal fees for dealing with the matter.

56. The Tribunal considers this to be a fair and reasonable position. However, for the avoidance of doubt the Tribunal confirms that it will make an order under section 20C of the Act, preventing the Respondent from recovering its costs of these proceedings through the service charge in this case.

ADMINISTRATION CHARGES

57. The Applicant also submitted that the Respondent should not be permitted to impose any Administration Charges as a result of the Tribunal Hearing under schedule 11 of The Commonhold and Leasehold Reform Act 2002.
58. At the hearing the Respondent also confirmed that it did not intend to impose Administration Charges. Again, for the avoidance of doubt, the Tribunal Determines that no Administration Charges will be permitted in connection with this Application.

APPEAL

59. Any Appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision, (or, if applicable, within 28 days of any decision on the review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the results sought by the party making the application.

Graham Freckelton FRICS
Chairman.
First-Tier Tribunal (Property Chamber) (Residential Property)