



PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : MAN/00BY/LSC/2023/0074

Property : 15 Mark Street, Liverpool L5 ORF

Applicant : William Higham

Respondent : Torus 62 Limited

Representative : Brabners solicitors

Type of application : For the determination of the reasonableness of and the liability to pay a service charge

Tribunal members : Judge J White
Kenneth Kasambara (valuer)

Venue : Video
Northern Residential Property
First-tier Tribunal, 1 floor,
Piccadilly Exchange, 2 Piccadilly
Plaza, Manchester, M1 4AH

Date of decision : 7 May 2025

Date of determination : 7 May 2025

DECISION

Decisions of the tribunal

The Respondent has conceded that the previous Leaseholder's Sinking Fund debt liability of £6031.57 is not payable by the Applicant.

- (1) The sinking fund contributions for the years 2016/17 to 23/24 of £3686.95 are payable.
- (2) The Respondent to re pay the Applicant the £325 tribunal fees.
- (3) Any litigation costs are extinguished.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years April 2016-March 2024 (from date of purchase on 15 December 2016). In his application dated 13 September 2024 he stated that the value of the dispute was £6031.57.
2. The Applicant seeks an order under section 20C of the 1985 Act that none of the landlord's costs of the tribunal proceedings may be passed to any of the lessees through any service charge.
3. The Applicant seeks an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). that none of the landlord's costs of the tribunal proceedings may be passed to the Applicant as an administration charge.
4. The property which is the subject of this application is 15 Mark Street, Liverpool L5 0RF ("the Property"). It is a ground floor two bedroomed property in a purpose built block of flats with nine units (the Building). The Applicant, William Higham is a leaseholder in respect of the Property. The leasehold interest in the Property was purchased by the Applicant on 15 December 2016. The Respondent, Torus65, is a registered provider of social housing (housing association). There is one other leaseholder
5. The Tribunal issued Directions on 25 March 2023. In accordance with those Directions the Respondent's solicitors sent a financial statement with individual account and budget demands for the years in dispute. On 17 June 2024, the Applicant sent a submission clarifying the ongoing dispute that on purchase of the Property he inherited a sinking fund debt of £6031.57 from the previous leaseholder. He should not have done so.
6. On 15 July 2024 Brabners solicitors set out their response on behalf of the Respondent stating that whilst they maintain that the sums remain due and payable by the Applicant, they are willing to credit the sinking fund £6,031.57, that being the brought forward balance at the time the Applicant purchased the Property. They stated that the appropriate credits will be applied on the next years accounts. As there was nothing further at issue, there was no longer a requirement for a hearing.
7. On 3 August 2024, the Applicant set out a brief reply disputing that any sinking fund payment is not repayable if there is no major works, in the

near future, especially if the lease was sold to another leaseholder. The incoming leaseholder does not inherit the default of the outgoing owner by virtue of Section 23(1) Landlord and Tenant (Covenants) Act 1995 and by the Apportionment Act 1870 and common law.

8. The day before the hearing Brabners solicitors sent a skeleton argument agreeing that there was no legal basis to recover a previous leaseholder's debt. They set out the sinking fund amounts demanded and payable each year.

Year	Amount (£)	Page
16/17	286.95	p63
17/18	300.00	p67
18/19	400.00	p72
19/20	550.00	p77
20/21	550.00	p81
21/22	550.00	p84
22/23	550.00	p88
23/24	500.00	p120
Total	3,686.95	

9. The Applicant sent a brief reply the same day as he was unclear how the credit would affect his account, as he had not received a balance statement. He sent a copy of a letter dated 12 July 2023 where he had originally set out the legal basis for his case.

The Hearing

10. The Applicant attended the hearing in person. Dawn Growcott a manager employed by Torus65 attended on behalf of the Respondent who was represented by Ian Alderson of Brabners.
11. The Applicant was unclear how the £6,031.57 had been credited to his sinking fund account as he had still not received a new statement showing the credits. He contended that this should be fully refunded, and he wanted a small amount of compensation for his time and effort. He states that he was not challenging the reasonableness of the annual payments, though was not sure of the amounts.
12. Ian Alderson set out the sinking fund clause in the Lease and confirmed that s42 of the Landlord and Tenant Act 1987 did not apply to public sector landlords.
13. Dawn Growcott gave evidence that the Property was only one of two of the nine flats in the block that had been sold. The rest remained in the Respondents ownership, after a block transfer from Liverpool City Council in the 2000's. As such each leaseholder had their own sinking Fund account and payments were hold in a separate fund for the Applicant and future leaseholders. The amount was reviewed every two years and

adjusted according to projected future spend. There was likely to be significant spend in the near future due to government requirements for decarbonisation works.

14. Ian Alderson made no submission on costs, save that the Respondents should not be liable for the hearing fee, having conceded the only point at issue prior to the hearing.

The Sinking Fund debt of £6,031.57

15. The Respondent had conceded that £6,031.57 is not payable by the Applicant, as this is a debt from the previous leaseholder. They now accept the legal position with regard to Applicant's liability for pre-assignment service charges arrears is as set out in his submissions in reply (p59). Namely that by virtue of s2 Apportionment Act 1870 and s23(1) Landlord and Tenant (Covenants) Act 1995, the Applicant is not liable for service charge arrears that accrued before the lease was assigned to him (18 September 2017).
16. As this was a debt on his Sinking Fund Account, that account will be credited with £6,031.57. This leaves £3,686.95 payable, some or all of which has already been paid by the Applicant. This amount is made up of Sinking Fund charges from 18 September 2017 to 2023/4 as set out in the bundle and summarised in the table at paragraph 8 above.

The Lease

18. The relevant provisions in the lease of the property are in the Fourth Schedule that is headed "*Service Charge*" at p40. Paragraph 1(v) provides that "*the Sinking Fund*" shall mean a fund to be maintained by the Landlord of contributions of each tenant within the main building who has purchased his flat towards the costs of major items of expenditure. Paragraph 2 provides that "*The Tenant shall pay ... (b) a contribution towards the Sinking Fund as the Landlord or its duly authorised agent shall in its absolute direction specify...*"
19. The Landlord's repairing obligations are set out in clause 4 of the lease (p35) and in para 14(2) of Schedule 6 Housing Act 1985 (referred to in clause 2(ii)(b)(1) of the lease (p32), which provides *implied covenants by the landlord—*
 - (a) to keep in repair the structure and exterior of the dwelling-house and of the building in which it is situated (including drains, gutters and external pipes) and to make good any defect affecting that structure;
 - (b) to keep in repair any other property over or in respect of which the tenant has rights by virtue of this Schedule;
 - (c) to ensure, so far as practicable, that services which are to be provided

by the landlord and to which the tenant is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services

Sinking Fund Contributions

20. The sinking fund contributions of £3,686.95 for the years 2016/17 to 2023/24 are reasonable and payable.

Reasons

21. The Respondent must, comply with the lease terms in respect of the sinking fund (Criterion Buildings LTD v McKinsey [2021] EWHC 216). The lease is clear that the sinking Fund is for future major works and gives an "*absolute discretion to specify*" the amount of the contribution. However as the Lease does not limit the amount held or how long it should be held for, it is subject to the test of reasonableness (see Leicester City Council v Master [2008] 12 WLUK 396 and Garrick Estate Ltd V Balchin [2014] UKUT 407 (LC)). There is no requirement for the Respondent to give full details of how the contributions required for a sinking fund has been calculated. This is particularly, so as the Applicant has not directly challenged the reasonableness of the contributions and during the hearing expressly stated that he was not doing so.
22. The Sinking Fund balance for the Applicant is now in credit of £3,686.95. This is made up of 2016/17 £286.95, 2017/18 £300, 2018/19 £400, 2019/20 £550, 2020/21 £550, 2021/22 £550, 2022/23 £550, Budget for 2024/25 £550.
23. Given the lack of challenge of the Applicant, Dawn Growcott's explanation as to upcoming major expenditure, and the amount of the annual charge and individual fund, the Tribunal can only find that the contributions for the years in dispute are reasonable and payable in accordance with the Lease and Landlord and Tenant Act 1985 as set out in the Appendix.
24. Though s42 of the Landlord and Tenant Act 1987 does not apply, the lease is expressed as a contribution payable towards costs of major items, that are inevitably future items of expenditure. Though there is a credit balance on the fund this is held for payment of those future items to minimise sudden fluctuates in annual service charge costs.

Costs and refund of fees

25. Having considered the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the £325 fees paid by the Applicant. It also extinguishes any litigation costs that may be claimed. Though, the Respondent had said they would credit the £6031.57, by the time of the hearing they had not done so and it was only the afternoon before the hearing that they concede that there was no legal basis for this debt to be transferred to the Applicant.

26. The Tribunal are unable to make any order for compensation requested, as being outside our jurisdiction and the question of payability.

Name: J White

Date: 27 May 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e., give the date, the property, and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix The Landlord and Tenant Act 1985

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.

Section 19 provides: (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. (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction, or subsequent charges or otherwise.

Section 21B (1) provides a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

Section 27A provides: (1) an application may be made to an 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 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.