



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

Case Reference : **LON/00AH/LSC/2022/0171**

Property : **24 Crown Point Flats, Beulah Hill,
London SE19 3NF**

Applicant : **Grandglobe Ventures Limited**

Representative : **Dutton Gregory LLP**

Respondent : **Evelyn Margaret Proudfoot**

Representative : **Litigant in person**

Type of Application : **Determination as to reasonableness and
payability of service charge**

Tribunal Members : **Judge H Lumby
Mr S Mason BSc FRICS**

Date and venue of hearing : **24 October 2022 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **26 October 2022**

DECISION

Description of hearing

This has been a face-to-face hearing, on referral of an issue from the County Court (case number G42YX095).

The decisions made are set out below under the heading “Decisions of the tribunal”.

Decisions of the tribunal

- (1) The service charges levied on the Respondent for the service charge years ended 24 December 2018, 2019 and 2020 are properly payable and are reasonable in amount.
- (2) The issue referred from the County Court is now transferred back to it for final disposal.

Introduction

1. The issue in this case has transferred from the County Court to seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) as to the reasonableness and payability of the service charges levied by the Applicant on the Respondent for the years ended 24 December 2018, 2019 and 2020.
2. The Applicant owns the freehold of Crown Point, Beulah Hill, London SE19 3NF which appears to be a purpose-built development comprising a parade of shops and blocks of flats (“**the Building**”). The Respondent is the leaseholder of Flat 24 (“**the Flat**”) pursuant to a lease dated 15 July 1977 for a term of 99 years from 24 June 1976 (“**the Lease**”).
3. The Lease requires the Respondent to pay service charges to the Applicant. In particular, the Applicant is required to pay a specific percentage identified in the Lease of the Total Expenditure, as defined in the Fifth Schedule to the Lease. The relevant percentage is not apparent on the face of the Lease but an amount of 2.06% has been charged for at least five years without evidence of challenge by the Respondent.
4. The service charge year runs for 12 months until 24 December each year. The Respondent is required to make two payments of service charge at six monthly intervals, based on the budgeted service charge for the year ahead. Any excess is carried forward as a credit against the following year whilst any shortfall is payable by the leaseholder.
5. The Respondent appears to have paid the service charge up to the end of the service charge year ended 24th December 2018 and then stopped

paying. The Applicant brought proceedings in the County Court to recover various arrears in March 2020, claiming unpaid service charge, ground rent and other sums amounting to £4559.78 plus costs and interest.

6. The service charge element has been transferred to the Tribunal to determine whether the service charges for the period 2018 to 2020 are payable and reasonable. In assessing the position, we have considered the service charge levied for the years ended 24 December 2018, 2019 and 2020.
7. The Tribunal has not considered issues in relation to any claims for unpaid ground rent and interest and has only considered service charge recoverability. These are retained by the County Court for determination.

Non-attendance of parties

8. Neither party attended the hearing nor was any statement of case or skeleton provided by either party.
9. In addition, the Applicant did not submit a bundle, notwithstanding the directions of Judge Professor Robert Abbey given on 31st May 2022 requiring it to do so. The Tribunal had chased for that bundle in advance and contacted both the Applicant's representative and managing agent on the day. Both explained that they were not instructed to attend and that the Applicant was dealing with this itself.
10. The Respondent similarly did not submit any documentation, including a Scott Schedule setting out the amounts in dispute, again notwithstanding Judge Abbey's directions requiring her to do so. The Tribunal attempted to contact the Respondent on the day by telephone but received no answer.
11. The Tribunal instead considered the information provided to it to date. This comprised incomplete copies of the original claim to the County Court and the response to it, some Land Registry office copy entries and service charge budgets, statements and invoices provided by the Applicant's managing agent. The Tribunal also obtained a copy of the Respondent's lease from the Land Registry.

Applicant's case

12. As referred to above, the Applicant did not attend the hearing.
13. However, the Tribunal was provided with an incomplete copy of the Applicant's application to the County Court in relation to the recovery of the arrears referred to in paragraph 5 above. That application stated that

the sums claimed were detailed in a schedule to the claim but that schedule has not been provided to the Tribunal. It also stated that the sums were payable pursuant to the Lease.

14. We have also been provided with electronic copies of service charge budgets, statements and invoices for between 2017 and 2021. These include budgets and invoices prepared by the managing agents, sba property management, and accounts audited by Trevor Jones & Partners.

Respondent's case

15. Again as referred to above, the Respondent similarly did not attend the hearing.
16. The only evidence we have received from the Respondent is an incomplete copy of a response to the Applicant's claim in the County Court. This makes various complaints about the increase in the service charge between 2018 and 2020 and appears to be disputing the following amounts:

- (i) Balance of service charge January to June 2019 - £242.31
- (ii) Balance of service charge June to December 2019 - £242.31
- (iii) Amount requested for 2017 - £302.66
- (iv) Total legal costs - £1354.60
- (v) Excess charge 2020 January to June - £103

This amounts to £2,244.88, it would therefore appear that the balance claimed by the Applicant is accepted, even though this has not been paid.

17. The Respondent does not set out whether she is objecting to these sums on grounds of payability or reasonableness. No evidence of either has been provided. There is a suggestion of failures by the Applicant to keep the Building in repair which may give rise to a claim for set off but again this has not been particularised or evidenced and so cannot be assessed.

Lease provisions

18. The tenant covenants at clause 4(4) of the Lease to "*pay the Interim Charge and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto*"

19. The service charge provisions are set out in the Fifth Schedule to the Lease. The Service Charge is defined as “*such percentage of Total Expenditure as is specified in Paragraph 7 of the Particulars*”. As referred to above, that percentage is not apparent from the copy of the Lease obtained by the Tribunal from the Land Registry but the parties both appear to be working on the basis that it is 2.06%.
20. “Total Expenditure” includes “*the total expenditure incurred by the Lessors in any Accounting Period in carrying out their obligations under clause 5(5) of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing (a) at[sic] the cost of employing Managing Agents (b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder ...*”.
21. The definition of Total Expenditure refers to the landlord’s obligations in clause 5(5) of the Lease. This lists an extensive list of covenants including maintaining and keeping in good and substantial repair and condition:
 - (i) *the main structure of the Building including the principal internal timbers and the exterior walls and the foundations and the roof thereof with its main water tanks main drains gutters and rainwater pipes (other than those included in this demise or in the demise of any other flat in the Building)*
 - (ii) *all such gas and water mains and pipes drains waste water and sewage ducts and electric cables and wires as may by virtue of the terms of this Lease be enjoyed or used by the Tenant in common with the owners or tenants of the other flats in the Building*
 - (iii) *the Common Parts and boundary walls railings and fences of the Estate*
 - (iv) *the boundary walls and fences of the Building*
 - (v) ...
 - (vi) ...
 - (vii) *all other parts of the Building not included in the forgoing sub-paragraphs (i) to (v) and not included in this demise or the demise of any other flat maisonette or part of the Building*

22. Other obligations covered by clause 5(5) include external and internal redecoration (other than demised parts), insurance of the Building, lighting and cleaning common parts, employment of managing agents, provision of fire extinguishers and *“to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Lessors may be considered necessary or advisable for the proper maintenance safety amenity and administration of the Building and the Estate”*. Finally, there is an obligation to set aside moneys for a sinking fund.

Tribunal’s analysis

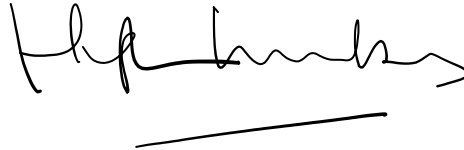
23. In the absence of certainty as to which elements of the service charge are in dispute, the Tribunal has instead considered the whole of the service charges for the years ending 24 December 2018, 2019 and 2020. We have done this by analysing the service charge budgets (where available) and accounts for each of these years to see whether the sums listed fall within the definition of Total Expenditure within the Fifth Schedule to the Lease. If they fall within there, then 2.06% of the reasonable costs of these items will be payable by the Respondent.
24. Having carried out this analysis, the Tribunal finds that all items fall within the definition of Total Expenditure. This is because in the main they relate to items covered by the landlord’s obligations in clause 5(5) of the Lease, including maintenance and repair works carried out to the Building. In addition, the managing agents and accountants’ costs are expressly recoverable within the definition of Total Expenditure. Any additional items are of a de minimis nature, especially when a percentage of 2.06% is applied to them and are captured as ancillary expenditure reasonably and properly incurred by the landlord or its managing agents.
25. Accordingly, all these sums incurred in the service charge years ending 24 December 2018, 2019 and 2020 will be payable to the extent reasonably incurred.
26. Section 19(1) of the 1985 Act provides that *“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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard”*
27. The Tribunal has therefore considered, based on the evidence available to it, whether the sums claimed have been reasonably incurred and whether any works are of a reasonable standard. Nothing in the evidence provided suggests otherwise and so, based on that information, we must therefore conclude that the sums claimed are reasonable.

28. In conclusion, all sums claimed in relation to the service charge years ending 24 December 2018, 2019 and 2020 were reasonably incurred and are payable in full. This means that any dispute the Respondent has with them on that basis must fail.

Name: Judge H Lumby

Date: 26 October 2022

Signed:

A handwritten signature in black ink, appearing to read 'H Lumby', written over a horizontal line.

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

APPENDIX

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (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

- (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 provisions 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 27A

- (1) 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.