



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

Case Reference : **BIR/00GF/LIS/2018/0019**

Property : **140 Bembridge, Brookside
Telford, Shropshire, TF3 1NE**

Applicants : **Mr Gatis Ginguls and Mrs Baiba Eglite**

Respondent : **Down CT. Limited**

Respondent's Agent : **Levine Property Management Limited**

Type of Application : **Applications under sections 27A and
20C of the Landlord and Tenant Act
1985 for a determination of liability to
pay and reasonableness of service
charges**

Tribunal Members : **Judge M K Gandham
Mrs S Hopkins MRICS**

**Date and venue of
Hearing** : **Paper determination**

Date of Decision : **12 June 2019**

DECISION

Introduction

1. On 27th March 2018, the Tribunal received an application from Mr Gatis Ginguls and Mrs Baiba Eglite ('the Applicants') under section 27A of the Landlord and Tenant Act 1985 ('the Act') to determine whether the service charges demanded for the service charge periods ending 31st March 2017 and 31st March 2018 were payable (and the amounts which were reasonably payable) in respect of the property known as 140 Bembridge, Brookside, Telford, Shropshire, TF3 1NE ('the Property'). In addition, the Applicants made an application under 20C of the Act in respect of the landlord's costs.
2. The Applicants are the current lessees of the Property under a lease dated 27th October 1989 and made between (1) Telford Development Corporation and (2) Mr and Mrs C D Marshall for a term of 125 years from 1st April 1989 ('the Lease'). The current landlord, and freeholder of the Property, is Down CT. Limited ('the Respondent') and the property is managed for the Respondent by Levine Property Management Limited ('the Respondent's Agent').
3. A Procedural Judge issued directions on 15th June 2018 and the Tribunal received a bundle of documents from each of the parties, forming their respective Statements of Case. The matter was listed for a paper determination as neither party requested an oral hearing, and an inspection was arranged to take place on 5th November 2018.
4. Following the inspection, the Tribunal requested further information regarding the service charge accounts and reconvened on 5th February 2019 to discuss the same. A further request for information was made on 7th February 2019.

Inspection

5. The Tribunal inspected the Property on the 5th November 2019 in the presence of the Applicants. The Respondent did not attend and was not represented.
6. The Property is situated in a development known as Brookside Estate, in a block comprising four properties - 139, 140, 141 and 142 Bembridge ('the Block'). There is a small grassed area fronting the Block, with a pathway leading to the front entrance, and a communal car park, shared with the remainder of the estate, to the rear of the Block.
7. The Property is a maisonette, situated on the ground and first floor, and has its own rear garden and store. The Block contains a communal lobby giving access to each of the properties, with entrance doors to the front and rear on the ground floor. There are three stairwells with windows on a middle landing. The stairwells and landings are all tiled.

8. The Tribunal noted that the windows locks were faulty, as were the locks on both the front and rear entrance doors - the front door only being capable of being secured internally. The glass pane from one of the doors was missing and had been covered, by the Applicants, with a PVC panel.
9. Emergency lighting was present, but the Applicants had stated that this was not in working order. There was no fire alarm nor any firefighting equipment. In addition, although there were 'Fire' notices, they were not the correct type of notices.

The Law

10. The Act (as amended) provides:

Section 19 Limitation of service charges: reasonableness

- (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 of subsequent charges or otherwise.*

Section 27A Liability to pay service charges: jurisdiction

- (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 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.

(4) No Applications 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 as having agreed or admitted any matter by reason only of having made a payment.

...

Section 20c Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ... the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or person specified in the application.

...

The Lease

11. Under clause 1 (2) of the Lease, the lessee covenants, in addition to paying the yearly rent, to pay:

“by way of further rent such sums of service charge as are payable in accordance with the provisions of the Fifth Schedule hereto”

And the lessor covenants in clause 3 (2):

“That so long as the Lessee shall not be in arrear in payment of the rent secondly hereinbefore reserved as set out in the Fifth Schedule hereto the Lessor hereby further covenants to observe and perform the covenants set out in Part II of the said Seventh Schedule hereto”

12. The Fifth Schedule details the calculation of the service charge and defines the service charge as:

“that part of the outgoings incurred by the Lessor ... calculated in accordance with the provisions of paragraph 6 hereof in complying with its obligations set out in Part II of the said Seventh Schedule ...”

13. Paragraph 2 of the Fifth Schedule states:

“The service charge shall be ascertained and certified by certificate ... and so soon as the end of the Lessors financial year (as hereinafter defined) as may be practicable ... PROVIDED THAT the service charge for each such financial year shall be estimated by the Lessor as soon as practical after the First day of April in each year of the term and the Lessee shall pay the estimated contribution (hereinafter called “the interim service charge instalment”) ...”

14. The provisions in the Fifth Schedule confirm that the lessor’s financial year runs from 1st April in each year to 31st March and it is clear that, until a certificate is issued for that years’ accounts, the service charge is only a payment on account for estimated expenditure.

15. Paragraph 5 of the Fifth Schedule details the calculation of the service charge and paragraph 6 confirms that the expenses and outgoings incurred by the lessor include, not only those items which have been actually been incurred during the year in question, but also a reasonable part of any such expenses outgoings and other expenditure which may have been incurred prior to the commencement of the term or a reasonable sum for anticipated expenditure.

16. After the issuing of the certificate for a financial year, paragraph 7 details the liability of the lessee to pay to the lessor the amount of any balance found to be payable, or for repayment to the lessee for any amount which may have been overpaid.

17. Part II of the Seventh Schedule details the lessor’s covenants as follows:

“1. (a) To insure and keep insured ... the buildings and structures for the time being comprising the Block of Dwellings ...”

2. To repair the Block of Dwellings (except such parts thereof as the Lessee covenants in this lease to repair)

3. As and when necessary to paint the exterior wood and iron (other than the respective exterior doors thereof) of the Block of Dwellings ...

4. To keep the common passageways stairways and hallways within the Block of Dwellings adequately lighted

5. As and when necessary to redecorate in a proper and workmanlike manner the common passageways staircases and hallways within the Block of Dwellings

6. To repair and keep cleansed and adequately lit as necessary all private roads footpaths and vehicle parking areas within the Estate

7. To keep all landscaped areas including the lawns and gardens within the Estate in a neat and tidy condition ...

8. *To provide and thereafter repair and maintain as long as is necessary a communal television aerial ...”*

18. In the Lease, *‘the Block of Dwellings’* refers to the four properties comprising the block, being 139, 140, 141 and 142 Bembridge, and *‘the Estate’* refers to the Brookside Estate.

Submissions

Applicants’ submissions

19. In relation to the service charge for the period ending 31st March 2017, the Applicants stated that they had not received a copy of the statement of service charge and were, therefore, not aware as to exactly what their money was being spent on. They also queried the figures in the accounts that had been provided by the Respondent to the Tribunal and stated that the calculations were not correct.
20. They queried the charge in relation to repairing the Block, as they stated that the entrance doors were still broken (despite the Applicants having informed the Respondent of the disrepair and having made a temporary repair themselves) and they queried the adequacy of the cleaning of the common areas in the Block.
21. In addition, the Applicants queried why they had not been forwarded a copy of the buildings insurance policy and why they were not informed as to the change in the managing agent. They also questioned whether the Respondent’s Agents were members of any government approved redress scheme.
22. In relation to the service charge for the period ending 31st March 2018, the Applicants again queried why they had not received a service charge account (detailing a breakdown of the figures), a copy of the ground rent invoice or a copy of any buildings insurance policy.
23. In addition, they again referred to the fact that the entrance doors had not been repaired and that the cleaning of the common areas in the Block was not satisfactory and stated that the Respondent *‘doesn’t care’* about the Block. They provided a letter purportedly signed by some of the other residents, stating that the staircase was not cleaned every two weeks. They stated that, as they had not been provided with a detailed breakdown for the service charge, they could not confirm how much they considered to be a reasonable for the cost of such works.
24. They also referred to not having received a copy of the new leasehold agreement with the Respondent.

Respondent's submissions

25. The Respondent's Agents provided a bundle of documents, which included, amongst other documents: a statement in response to the Applicants' queries, a copy of the Lease, a copy of the service charge demands and a copy of the buildings insurance policy schedule.
26. In relation to the fact that there was no new leasehold agreement with the Respondent, they stated that the Applicants quite clearly had a copy of the Lease. They also stated that they had previously provided to the Applicants a copy of the buildings insurance policy and replied to their query regarding membership of a property redress scheme.
27. In relation to the breakdown for the service charge for the year ending 31st March 2017, the Respondent's Agent stated that this had already been sent out several times to the Applicants.
28. In relation to the Applicants' assertion - that they did not clean or repair the Block - they stated that this was incorrect and that they employed a third party contractor who acted as a caretaker and cleaner. They stated that the other residents of the Block were happy with the services and with the information that had been provided by the Respondent.
29. The Respondent's bundle contained a copy of a health and safety report commissioned on the Block in June 2016 and the Respondent's Agent stated the fact that they had carried out the recommended works clearly demonstrated that *they did care* about the Block
30. In summary, they stated that they had carried out a '*good job at managing the block*'.
31. In reply to queries raised by the Tribunal, the Respondent provided an audited copy of the accounts for the year ending 31st March 2017, which rectified the mathematical error in the previous accounts. The Respondent also provided a certificate, with a summary of the expenses relating to the year ending 31st March 2017 and which detailed the shortfall to be carried forward to the following service year.
32. The Respondent confirmed that the accounts for the year ending 31st March 2018 were not yet available and, as such, a certificate had not yet been produced in relation to the same.
33. In addition, the Respondent provided the Fire Risk Assessment carried out on the Block, together with copies of invoices relating to the cleaning and repair of the Block (which included repairs to the entrance doors). They also provide a copy of the budget for the estimated service charge for the year ending 31st March 2018.
34. The Respondent provided, in reply to the Tribunal's further queries, copy invoices relating to other repairs carried out at the Block. In relation to the item on the service charge, which was detailed as "Electrical", the

Respondent confirmed that this related to the communal electrics provided by EON. They stated that no actual invoices were sent by EON for each individual block, but that they instead received a single demand for payment across all the blocks that they owned, which they then allocated across the individual blocks evenly.

35. The Respondent also confirmed that the invoice numbered 23 for electrical repairs, although dated 20th November 2017, related to works carried out in June 2016, therefore, appeared within the 2017 accounts.

The Tribunal's Deliberations and Determinations

36. The Tribunal considered all the written and oral evidence submitted and summarised above.
37. An application under section 27A of the Act relates to whether service charges are payable and, if so, the reasonableness of such charges. As such, any matters relating to ground rent, the provision of buildings insurance policy documents and the participation of the Respondent in any property redress scheme, are questions beyond the remit of the Tribunal.
38. In relation to the legal agreement between the Applicants and the Respondent, the Respondent is correct in that these are the matters contained within the Lease. It is therefore the duty of the Tribunal to consider which items are payable as service charge under the Lease and whether such charges are reasonable.
39. The Fifth Schedule confirms that the service charge payable under the Lease relate to those expenses and outgoings of the landlord in complying with its obligations as detailed in Part II of the Seventh Schedule to the Lease (which provisions are detailed in paragraph 17 above). These obligations relate to the following:
- insuring the Block;
 - repairing the Block;
 - painting the exterior wood and iron of the Block;
 - lighting the common passageways, stairways and hallways within the Block;
 - redecorating the common passageways, staircases and hallways within the Block;
 - repairing, cleansing and lighting the private roads, footpaths and vehicle parking areas within the estate;
 - keeping the landscaped areas in a neat and tidy condition; and
 - repairing and maintaining the communal television.

Service Charge to 31st March 2017

40. In relation to the service charge for the year ending 31st March 2017, the end of year accounts have been produced together with the management company's certificate.

41. The Tribunal considered that invoice number 23 could be included in the accounts, as paragraph 6 of the Fifth Schedule to the Lease confirmed that the service charge could include reasonable provision for anticipated expenditure.
42. The Tribunal noted that, although the entrance doors were clearly still in need of repair, there was an invoice relating to their repair within the items forwarded by the Respondent to the Tribunal. In addition, an email dated 28th September 2017, from the Respondent to the Applicants (provided within the Applicant's submissions) also referred to the fact that the Respondent had attempted some repairs.
43. Regarding the other items detailed in the service charge accounts, the Tribunal noted that many of them did not fall within the obligations referred to in Part II of the Seventh Schedule to the Lease. This included the entry relating to cleaning, as the Lease, quite unusually, only allowed for the cleaning of the roads, footpaths and parking areas and did not make any provision for the cleaning of the communal passageways, staircases and hallways. In addition, there were no provisions to allow for payment of management fees, auditing and accountancy, or for the maintenance of the Block - which may have included items such as Fire Safety Reports or Health and Safety Reports - as part of the service charge.
44. In relation to the reasonableness of the figures, the Respondent had provided a copy of the invoices. Having considered the invoices provided by the Respondent, the Tribunal considered the figures quoted appeared to be reasonable.
45. Accordingly, the Tribunal determines that the following items are reasonable and payable in relation to the service charge for the Block for the service charge year ending 31st March 2017:

Insurance	£	960
External Grounds	£	480
Electrical	£	420
General Repairs	£	180
Lighting Repairs	£	145
Electrical Repairs	£	<u>280</u>
		<u>£ 2,465</u>

Service Charge to 31st March 2018

46. The Tribunal noted that no end of year accounts had been produced for the year ending 31st March 2018, consequently, no final certificate had been issued. In these circumstances, the Tribunal needed to determine, under section 19(2) of the Act, whether the estimated contribution requested by the Respondent exceeded a figure which would reasonably be payable under the provisions of the Lease.

47. The Respondent had provided a copy their budget for the year ended 31st March 2018. This appeared to be based (with a small increase for certain items) on the accounts for the year ending 31st March 2017.
48. Having considered the budget provided, the Tribunal noted that, again, certain items detailed in the budget were not items which fell within the Respondent's obligations under Part II of the Seventh Schedule and, consequently, were not items that could be included within the service charge. As such, the Tribunal considered that requesting payment on account for these items was not reasonable. In relation to the remaining items, the Tribunal considered the Respondent's estimates to be reasonable.
49. According, the Tribunal determines the following items detailed on the Respondent's budget to be reasonably payable on account of the service charge for the year ending 31st March 2018:

Insurance	£ 960
External Grounds	£ 480
Electrical	£ 450
General Repairs	£ 200
Lighting Repairs	£ 150
Electrical Repairs	<u>£ 300</u>
	<u>£ 2,540</u>

Section 20C Application

50. The Tribunal does not consider that the Lease allows for repayment of the costs of these proceedings as part of the service charge but, in any event, orders, under Section 20C of the Act, that if any such costs are payable, they are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

Appeal Provisions

51. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

 Judge M. K. Gandham