FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/42UG/LSC/2019/0037**
Property	:	11 Blakes Close, Melton, Woodbridge, Suffolk 1P12 1RQ
Applicant	:	Pietro Giannone (in person)
Respondents	**1**	Holding & Management (Solitaire) Ltd
	2	Firstport Property Services Ltd
Representation	:	P Sweeney (counsel), instructed by J B Leitch LLP
Type of Application	**A**	to determine reasonableness and payability of service charges for the years 2018–2019 [LTA 1985, s.27A]
	B	for an order limiting payment of landlord's costs by way of an administration charge [CLRA 2002, Sch 11, para 5A]
	C	for an order that the landlord's costs are not to be included in the amount of any service charge payable by the tenants [LTA 1985, s.20C]
Tribunal Members	:	G K Sinclair & R Thomas MRICS
Date and venue of Hearing	:	Thursday 31st October 2019 at Ipswich Magistrates Court
Date of decision	:	11th November 2019

DECISION

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1. In this application the applicant lessee of one of the four bedsit flats in the block asks the tribunal to determine :
   a. The reasonableness and payability of service charges in the period in question
   b. An order limiting payment of landlord's costs by way of an administration charge, and
   c. An order that the landlord's costs are not to be included in the amount of any service charge payable by them.

2. For the reasons which follow the tribunal determines that :
   a. The service charge budget for 2018–19 be reduced by reducing the estimated management fees from £1 590 to £1 000, by deleting entirely the accounts preparation fee of £482, and deleting the £550 under section S2 (internal common parts). The applicant's share of each is one quarter
   b. There is no lawful basis under the lease for levying an administration charge and legal review fee, each of £60, and these are rescinded
   c. Save in the case of forfeiture proceedings under section 146 the lease makes no relevant provision for recovery of the lessor's legal costs.
   d. For the avoidance of doubt the tribunal makes an order under paragraph 5A that the lessor's costs of an incidental to this application may not be recovered from the applicant personally
   e. For the avoidance of doubt an order is made under section 20C that the lessor's costs of and incidental to this application my not be taken into account in the calculation of any service charge payable by any of the lessees named in the application, or when assessing the amount of any retained but unspent service charge funds (if any) that are remittable to the RTM company.

Background

3. The applicant is one of four lessees of bedsit flats. He challenges the service and administration charges which, on behalf of his lessor, its managing agent seeks to recover. A second lessee, Mr Shoard, also brought a similar claim. However, faced by tribunal directions requiring him to assemble documents and prepare the hearing bundle, he felt overwhelmed by the task because of his dyslexia and withdrew his application. (At least, that his how he explained it when attending the hearing in support of Mr Giannone).

The lease

4. Mr Giannone's lease dated 2nd May 1984 was granted by Broseley Estates Ltd to Whiting and Gladwell for a term of 105 years from 1st October 1982, but with the stated intention of transferring the freehold interest in the block to Holding & Management (Solitaire) Ltd within 28 days of the grant of the last lease of flats and parking spaces on the development. Although the latter company is named in and is a party to the lease this is not the typical tripartite arrangement where the lessor names a management company to take principal responsibility for the

provision of services and collection of service charges. The ongoing relationship is simply one between lessor and lessee.

5. Clauses 1.3 and 1.4 define what is meant by "the flat" and "the parking space" respectively. The maintenance year is defined in 1.8 as the twelve month period ending 30th September, and 1.9 explains that the service charge shall be :

> ...a sum equal to one quarter... of the aggregate annual maintenance provision for the whole of the block (other than the entrance hall stairs and landing of the block giving access to the first floor) for each maintenance year (computed in accordance with Part II of the Fourth Schedule) and in the case of a lessee of a flat on the first floor in addition a sum equal to the half... of so much of the aggregate annual maintenance provision as relates to the entrance hall stairs and landing giving access to the first floor and the lighting and cleaning thereof for each maintenance year (computed in accordance with Part II of the Fourth Schedule).

6. The lessee's covenants appear in clause 3 and the Third Schedule and include, at 3.2, a covenant to pay the service charge to the company by two equal instalments in advance on the half-yearly day (31st March and 30th September). The lessor's covenants can be found in clause 5 and the Fifth Schedule, and at clause 6.1 is the usual proviso for re-entry if the rents reserved or service charge payments shall be unpaid for 21 days after becoming payable (whether formally demanded or not) or if any of the covenants on the lessee's part are not performed or observed.

7. At paragraph 13 of the Third Schedule (registration of dispositions) the lessee covenants, upon every underletting, assignment, etc of the flat to notify the lessor, produce a copy of the relevant document and pay 0.1% of the value of the transaction (but not less than ten pounds) for registration of every such notice.

8. By paragraph 16 the lessee covenants to pay to the lessor on demand :

> ...all costs, charges and expenses (including legal costs and surveyor's fees) which may be incurred by the company or which may become payable by the company in respect of the preparation and service of a schedule of dilapidations or under or in contemplation of the Law of Property Act 1925 or in the preparation or service of any notice thereunder respectively notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court.

9. By paragraph 17 the lessee covenants to pay all reasonable costs and expenses of the company (including all solicitors and surveyor's costs and fees) incurred in granting any consent under the lease.

10. Part II of the Fourth Schedule deals with the computation of the service charge and includes at paragraph 2(i) an estimate of the amount likely to be incurred in that year, and at 2(ii) provision for a reserve or sinking fund. The Fifth Schedule lists the purposes for which the service charge is to be applied, including at paragraph 2 the decoration and repair of the common parts – both internal and external. Paragraph 4 refers to the employment of staff to perform such services as the company shall think necessary in or about the block, and paragraph 5 to payment of costs incurred in management. While these include costs incurred in the running and management of the block and the collection of the rents and

service charges in respect of the flats there is no express mention of legal costs.

Material statutory provisions

11. Section 18 of the Landlord and Tenant Act 1985 defines the expression "service charge", for the tribunal's purposes, as :

> 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...

12. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :

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.

13. The tribunal's powers to determine whether an amount by way of service charge is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A of the Landlord and Tenant Act 1985. The first step in finding answers to these questions is for the tribunal to consider the exact wording of the relevant provisions in the lease. If the lease does not say that the cost of an item may be recovered then usually the tribunal need go no further. The statutory provisions in the 1985 Act, there to ameliorate the full rigour of the lease, need not then come into play.

14. The tribunal's jurisdiction to determine the reasonableness and payability of administration charges and to vary leases accordingly is governed by section 158 of and Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Not every payment required under a lease falls within the tribunal's jurisdiction, with paragraph 1(1) stating that :

> 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 applications for such approvals,
> (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or 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, or
> (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

15. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides that a landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless it has been finally determined on such an application to the tribunal by a landlord that the breach has occurred, or the tenant has admitted the breach, or a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute

arbitration agreement, has finally determined that the breach has occurred.

16. By the more recently introduced paragraph 5A a tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs incurred in proceedings before it, whereupon the court or tribunal may tribunal may make whatever order on the application it considers to be just and equitable.

17. Finally, by section 20C of the Landlord and Tenant Act 1985 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 a court or 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 persons specified in the application.

Inspection and hearing

18. The tribunal inspected the exterior of the building and the internal common staircase at 10:00 on the morning of the hearing. Also present were Mr Sweeney, counsel for the respondents, and the Firstport agent managing this and another block in the immediate area, Mrs S Stewart. The applicant had already set off for the hearing.

19. The block comprises the bar across the top of the letter T, with the stem being several freehold terraced houses and each end of the bar comprising projecting part-rendered panels with two windows to each of four flats, two on the ground floor and two above. The top of the T is a brick gable wall, in the centre of which are a row of three doors. Those on the left and right are the entrances to the ground floor flats; that in the middle leads to the entrance hall and stairs up to the two upper flats.

20. Near the ridge line are a small group of television aerials, notionally communal, although the individual satellite dishes for each flat were, the tribunal was told, of recent origin.

21. The block is situate near the end of a small residential estate road, from which a private car park shared by and situate between the rear garden to the block and the houses opposite is accessed. At the rear is a large communal garden laid to grass, with one high wooden fence of uncertain ownership between the freehold houses on the left hand boundary (when viewed from the road) and two in the ownership of the block : along the rear, bounding a footpath, and to the right (incorporating a pedestrian gate), between garden and car park. Large parts of the fence along the rear were covered in ivy.

22. Part of the right hand boundary, extending from the gable wall of the block and by the curved entrance to the car park, comprises a high brick wall in which is inset another pedestrian gate enabling access to the garden from near the doors to the flats. In front of both the gable wall and entrance doors and under the windows facing the road is another small area laid to grass.

23. By an amended set of directions responsibility for preparation of the hearing

bundle was imposed on the respondent. The bulk of it was the respondent's own statement of case to which, unnecessarily, were exhibited copies of the various applications and the tribunal's initial directions order.

24. In his application relating to service charges Mr Giannone challenged the demands for October 2018 and May 2019. The first he had paid; the second he had withheld because of the ongoing dispute. He alleged that the charges were unreasonable, that none of the anticipated works charged for have been done, that the lawn that is mown is full of weeds, the fencing disappeared under ivy, and that four tiny studio flats should not be charged so much. He also drew the tribunal's attention to the fact that the four lessees had formed an RTM company which, by the date of the hearing, had taken over responsibility for management.

25. By a directions order dated 20th June 2019 the respondent was required to produce copies of all relevant service charge accounts and estimates for the year in question, in answer to which the applicant was to provide a detailed schedule-based challenge. What he produced took up a single line on the model schedule which, with column headings, read :

Item	Cost	Applicant's comments
Statement 1 July 19	863.63	Unreasonable & untruthful

26. In his section 20C application he referred to his age (70), his low income, and to various health problems; all of which are not really relevant to that issue. In his application under paragraph 5A of Schedule 11 to the 2002 Act he mentioned the same, save for his age.

27. Apart, therefore, from broad allegations about the quality of the gardening, that no maintenance was being undertaken, and a general point that too much was being charged for four small bedsits, the respondent had little to go on.

28. The bundle included a short witness statement from Mrs Stewart, adopting as her evidence what was included in the respondent's statement of case. She referred to photographs she had taken on the block and garden on her inspections and an email and list of dates of attendance by her gardening contractor, E G Lawrence Ltd (from the Braintree area), sought to show that Mr Giannone's complaints on that score were wrong and the amount charged by the company for fortnightly visits was reasonable.

29. The demands for the 2018–19 accounting period appeared to be based on an income and expenditure account for the previous year, at page 169 in the bundle. Nothing was said about a £14.68 monitoring charge, and on the subject of both terrorism and buildings insurance the tribunal explained to Mr Giannone (and to Mr Shoard sitting beside him) that while Mr Shoard may have been able to obtain insurance for his flat, landlord's insurance was different and had to cover the lessor's freehold interest as well as all the flats (but not their contents), and that unless he could show (which he had not) that the insurance cover sought and premium paid by the lessor were excessive, and beyond the range of normal market rates, these were costs that he could not successfully dispute.

30. He had nothing more to say on the subject of gardening, and reluctantly accepted that work had been done – but in 2017 – to paint the rendered panels. This, said Mrs Stewart, was done off a ladder rather than scaffolding. There was a modest £350 in the budget, at page 164, for the year 2018–19. Also in the budget, but for the first time, was a section 2 covering internal communal cleaning, general maintenance and a contribution to reserves. These totalled £550 and produced astonishment from the applicant. Neither the lessor nor its managing agent had a key to the entrance door (the tribunal and Mrs Stewart had to be let in by a neighbour) and so any cleaning inside was done by the tenants themselves.

31. However, the tribunal noted that management fees of £1 514.04 for 2017–18 had risen for the year in question to a budgeted £1 590, on top of which was a fee of £482, described as an "accounts preparation fee." What, the tribunal asked, was included in the standard management fee? Mr Sweeney replied that it covered preparing and issuing service charge estimates, accounts, providing account information to external auditors, credit collection, reconciling accounts, correspondence with residents, planning the insurance and handling claims, general maintenance, site inspections, attending regular meetings when required, arranging ad hoc repairs, managing contractor performance, authorising the payment of invoices for planned maintenance and utility suppliers, plus safety audits.

32. Why then charge separately for an accounts preparation fee, asked the tribunal, referring to paragraph 3.4 of the current (3rd) edition of the RICS Blue Book?

33. Mrs Stewart stated that health and safety reports were arranged every five years, as in 2017–18, but none was included for the year in question. This would not generally include an asbestos survey.

34. By reference to Mr Giannone's Firstport statement of account dated 1st July 2019 (page 138) the tribunal enquired about the administration charge dated 23rd April 2019 and a legal review fee dated 9th May 2019, each in the sum of £60. What were these for? Mrs Stewart explained that the administration charge is for attempts to collect the service charge, which involves writing three letters. The legal review fee is for someone in credit control who collates the documents and passes to the legal team for enforcement. When it was suggested that this would not take long she agreed that she would like to earn £60 for an hour's work. The tribunal then pointed out that the administration fee was levied on 23rd April, just after the 21 days for payment of the 31st March payment had elapsed. No letter – let alone three – seemed to have been written. This appeared to have been an automatic charge.

35. Asked the legal basis for imposing such charges, Mr Sweeney said that the lessor relied upon paragraph 16 of the Third Schedule. Where, asked the tribunal, was there evidence of a determination to pursue him to forfeiture?

36. Bearing in mind that the lessees had, through their newly formed RTM company, now assumed responsibility for management the tribunal enquired when this had first come to the lessor's attention. Mr Giannone thought that the company was formed in about March or April, and notice sent to Firstport. Mrs Stewart said that the claim notice was dated 23rd May 2019.

37. In his closing submissions Mr Sweeney argued that the applicant had made no effort to make a sustainable application. The respondent has had almost to guess in what way, other than the gardening situation, the budget was opposed other than by saying it is lies and not correct. Nonetheless, the respondent had been dragged to a hearing to present a case without knowing to what level items were disputed. In particular, as to the gardening, there had never been an objection to the gardening and the quality provided. He therefore submitted that the application should fail in every respect.

Discussion and findings

38. It is unfortunate that the applicant did not take advantage of the advice which is available to lessees with respect to long leasehold or property management issues. His case might otherwise have been better prepared. Nevertheless, he did raise an overall complaint about the costs imposed for a small modern block of modest bedsits with a garden laid only to grass and where little else was done, or expected to be done, beyond gardening.

39. His complaint concerning the gardening fails, however. At a cost of two men for one hour once a fortnight, at the equivalent of an hourly rate of £9.50, the sum charged is reasonable. There is no doubt that the work was undertaken, and the applicant was unable to produce any photographs of long, unkempt grass and weeds proving to the contrary.

40. Equally, he had nothing with which to put up any effective argument about the cost of the buildings insurance; a task which is rarely straightforward.

41. Where he is on stronger ground, especially viewed with hindsight, is in saying that the lessor or its agent have never had (and still don't have) a key to the communal entrance door and therefore including estimates for work to the hall or stairs that could never have been undertaken was wrong.

42. The tribunal considers that, adding together the standard management fee and that for preparation of the accounts for audit, a total of just under £2 000 or £500 per flat is excessive for the work likely to be required. The tribunal reduces the sum allowed to £1 000, or £250 per flat.

43. The tribunal does not accept that any letters – let alone three – were written to the lessee with a view to recovery of service charge arrears. The first charge was imposed almost immediately after the 21 day deadline had passed. Equally, the legal review fee is excessive for the work needed by a credit control accounts clerk, at his or her usual hourly rate. More importantly, even if the amounts charged were reasonable, there is no lawful basis under the lease for imposing such charges.

44. As for the suggestion that these costs were incurred in or in contemplation of section 146 proceedings, there is no evidence that anyone on behalf of the lessor ever formed that intention, that there was correspondence with the lessee to that effect, or that consideration had been given to applying to the tribunal under section 168 of the 2002 Act for a determination that the applicant was in breach of covenant. Only then could a section 146 notice be served upon the applicant as the essential precursor to forfeiture proceedings.

45. Finally, while the lease makes provision for recovery of the costs of management there is no such provision for the recovery of solicitors' legal costs and fees except in specific circumstances (registration of notices and requests for consents) that do not apply here. The applicant's other applications under section 20C and paragraph 5A of Schedule 11 might therefore be regarded as otiose, but for the avoidance of doubt the tribunal makes the orders requested.

Dated 11th November 2019

Graham Sinclair
First-tier Tribunal Judge