



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

Case Reference : CAM/00MG/LSC/2020/0021

Property : 13 Eider House, 55 Millward Drive, Fenny Stratford,
Milton Keynes, Bucks MK2 2DB

Applicant : Vicky Lewin & Richard Lewin

Respondent : Crabtree Property Management Ltd

Type of Application : determination of the reasonableness and payability
of service charges for the years 2019 and 2020

Tribunal : Judge G K Sinclair

Date of determination : Monday 7th September 2020

DECISION following a paper determination

1. Despite the respondent having declined to participate in the proceedings or to comply with the tribunal's directions dated 30th June 202, on the basis of the information before it and for the reasons which follow the tribunal dismisses this application.

Background

2. This application concerns a modern residential development of apartments of varying sizes. Although both Mr & Mrs Lewin are named as applicants it is only Mr Lewin who is the tenant under the lease. Further, the respondent (the correct name of which is Crabtree PM Ltd) acts as managing agent for the management company named in the lease, which appears to be a tenant-owned and controlled management company. Recovery is sought of the sum of £402.53 paid for the year 2019 and £133.46 for the current year, 2020.

Material lease provisions

3. The material lease is a tripartite one between Bellway Homes Ltd as landlord, Richard Levin (sic) as tenant and Aqua (Fenny Stratford) Management Company Ltd as management company. Neither the copy lease [B10] nor the contract of sale between Bellway Homes Ltd as seller (and developer) and Mr Levin as buyer [B1] are dated, but from the reference on the final page of the lease [B37] to it being signed on behalf of the landlord under a Power of Attorney dated 1st October 2012 it must at least be on or after that date.
4. The term is 125 years from 1st January 2007. The premises comprise plot 246, as supposedly identified on plan 2 (which is missing), so whether they comprise a 1, 2 or 3 bedroom flat, and whether block contains a lift – which attracts its own proportionate liability, are also unknown.
5. Clause 1 sets out various definitions, and 1.20 [B18] provides that “the Tenant’s Proportion” shall be :

For all properties on the estate 1/271 (0.369%) of the costs associated with those matters set out in the Seventh Schedule as apply to the block and 1/286 (0.3496%) of the costs associated with those matters set out in the Seventh Schedule as apply to the estate and the administration of the management company as a whole additionally for those flats within a block served by a lift 1/104 (0.962%) of the costs associated with the lift SUBJECT TO in any of these cases to such other proportion(s) as may from time to time be substituted for under the provision of clause 7.2.1 of this lease.

That could have been expressed far more clearly and grammatically.
6. By clause 3 the tenant covenants to observe and perform the obligations on the part of the tenant set out in the Fourth and Seventh Schedules, and to apply to become a member of the management company in accordance with its articles of association and to continue to be so whilst he remains as a tenant, execution of the lease being treated as application for membership.
7. By paragraph 16.1 of the Fourth Schedule the tenant covenants :

To pay to the management company an interim service charge a service charge and where applicable a supplemental interim service charge in accordance with the provisions of the Seventh Schedule to this lease
8. The landlord’s covenants appear in clause 4, and by clause 5 the management company covenants with the landlord and separately with the tenant to observe and perform the obligations on its part and to undertake the works and services set out in the Seventh Schedule. By clause 6 the landlord grants the management company such rights of entry onto the demised premises and access and egress over and through the other parts of the development as are necessary for it to carry out such obligations.
9. The Seventh Schedule comprises two parts. Part One deals with the mechanism for estimating future service charge costs, payment of interim service charge, certification by the management company (and by an independent accountant) of the actual costs after the 1st January accounting date, and payment of the final service charge (if a balance remains due) against a statement served upon the tenant. The schedule is silent as to the treatment of any credit due to the tenant if the actual costs neither equal nor exceed the amount estimated at the outset of

the annual accounting period. The charge may include provision for a reserve fund to meet the cost of anticipated future works.

10. Part Two sets out the works and services referred to in the Sixth Schedule (service costs) and Part One of the Seventh Schedule. Paragraph 3 of the Sixth Schedule includes the cost of employing managing agents for the general management and administration of the development, and paragraphs 8 and 9 its legal costs and the costs of bringing or defending any action or proceedings.

Relevant 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 charges 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. Please also note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A.

Discussion and findings

15. The applicants claim that the development has been poorly managed for many years, but the only accounting periods under challenge are 2019 – for which certified accounts ought by now to be available – and the current year, 2020. As stated in paragraph 2 above, the amounts in dispute are trivial : £402.53 for 2019 and £133.46 for 2020. In the County Court this would be a very small claim.
16. Directions issued by the tribunal on 30th June 2020 required the applicants to file and serve a bundle which included a detailed statement of their case, listing the reason for their challenge to each service charge and setting out as fully as possible the basis for their claim that the respondent is in breach of the lease.
17. At section C of the applicants’ bundle is a 6-page narrative referring to what is

requested, including that Crabtree “improve upon communication, customer service and managing the site”, none of which is in the tribunal’s gift. It also refers to numerous emails contained, with other documents, in section D, and to photographs and videos listed in section E but supplied on an insecure USB stick. It is not for the tribunal to risk cyber security by viewing such material.

18. While section D includes at [D109] service charge accounts for the year ending 2018, certified by Clear House Accountants of Stanmore and dated 18th February 2020, there are no accounts for the relevant year, 2019. Nor are the accounts signed off by or on behalf of the management company, merely by Crabtree PM Ltd.
19. Further, despite section D including at [D36] an email dated 16th December 2019 from Vicky Lewin to Daniel Houghton stating that her husband has received the statement of anticipated expenditure for 2020, no such useful document appears in the bundle.
20. If a tenant wishes to challenge the reasonableness and amount of a service charge then the burden is upon him or her to justify and explain any alternative figure proposed. Although many small deductions are set out in the application form nowhere do the applicants attempt to show how they are calculated. Without the overall figures – if necessary from management accounts rather than certified ones, and an idea of exactly what percentages the applicants should be paying, the tribunal cannot possibly determine what deductions (if any) are justified.
21. It is not for the tribunal to go hunting through voluminous emails to understand what exactly a party’s case is, but even a glance shows that the managing agents’ response appears to have been poor. However, Crabtree PM Ltd was appointed by a management company controlled by the long leaseholders, and of which Mr Lewin is a member. It is the party responsible for the provision of services under the lease, and it can if desired achieve change by applying pressure to its agent – or by putting the management contract out to tender.
22. As a final point, while poor service provision may entitle the paying party to some reduction on the final service charge account, 2020 is the current accounting period and contributions were paid against an estimate. It is extremely difficult to justify the deduction of anything against an estimate except on the grounds that such estimate was unreasonable; but that does not prevent the payer from challenging the certified service charge account for 2020 when that eventually appears. The payer must just choose the right target, and justify any proposed adjustments. Support by other service charge payers also assists in showing the tribunal that concern about the quality of management is rather more general amongst tenants.

Dated 7th September 2020

Graham K Sinclair
First-tier Tribunal Judge