



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

Case Reference : **LON/00AW/LSC/2020/0185 CVP**

Property : **Flat 116C Kings Road, London SW3
4TX**

Applicant : **Thomas Charles Louis Goolnik
(Leaseholder)**

Representative : **Applicant in Person**

Respondent : **Cadogan Estates Limited
(Freeholder)**

Representative : **Mr Ian Scott**

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

Tribunal Members : **Judge Abebrese, Mr T Sennett**

**Date and venue of
Hearing** : **19 November 2020 via CVP Remote**

Date of Decision : **16 December 2020**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that save for minor exceptions (see Summary below) the **budget** proposed by the respondent for the financial year in question is considered reasonable.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessee through any service charge.
- (4) The Tribunal orders that the respondent makes a contribution towards the cost of the hearing and issuing which has been paid by the applicant. The sum of the contribution is £150.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985. The service charges in dispute concern the year 2019-2020 and according to the application of the applicant amounts to the sum of £2682.91.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background and issues

3. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable. The lessee also seeks an order for the limitation of the landlord's cost in the proceedings under Section 20c of the Landlord and Tenant Act 1985.
4. The building 116 King's Road, Chelsea comprises a basement, ground floor set to commercial retail use and three floors originally arranged as residential accommodation. The building has some linked arrangements with 114 King's Road attached to the east side of the building. The subject flat is on the third floor and is accessed by a main entrance door on the left flank wall on Tryon Street.
5. The applicant in his application states that the service charges have increased substantially and unreasonably since the new management company have become involved in the property. There has been no added value and the charges are not in line with previous service

6. Charges. The parties confirmed prior to the hearing of the evidence that the amounts stated in the application of the applicant relate to budget estimates and only two of the items were actuals. The year ends in March 2021.

7. The parties provided a Scott Schedule and this sets out the position taken by both parties on the items set out in the application. The Tribunal noted the following paragraphs of the lease which we deemed to be relevant in discussion of the issues in this application. Clause 3(1) deals with the issue of rent and it states:

“one fifth of the cost of the Lessor of maintaining the insurance of the Building against the loss or damage by the insured risk including a sum sufficient to cover architects, surveyors and other professional fees”

3(ii) one third of the cost of the Lessor of

(a) cleaning maintaining repairing and decorating the doorway exterior and the roofs foundations main and structure of the building

(b) cleaning lighting maintaining repairing and decorating the doorway entrance hall passages staircases landings and other common parts serving the demised premises and the other flats and units of the building

(c) the cost to the Lessor of replacing the carpet and any other fittings of the common parts in accordance with the Lessor covenant set out in Clause 4.3 hereof

(d) the cost to the Lessor of providing maintaining repairing and where necessary replacing an entry phone system and where installed a fire alarm

(e) the cost to the Lessor of any refuse collection service for the benefit of the Lessee and the Lessor or occupiers of the other flats and units of the building

(iii) one third of the Lessor management and administrative cost charges fees and expenses (including management agents cost charges fees and expenses) in connection with or arising from the observance or performance by the lessor of the Lessor covenants hereafter contained

8. The Tribunal have also considered Clause 5.4 of the lease which stipulates:

“Forthwith adequately to insure and maintain insurance of the building against the insured risks and to produce to the Lessee upon demand (but

more frequently than every twelve months) confirmation of such insurance and in the event of the building or any part thereof being damaged or destroyed by fire or other insured risk as soon as reasonably practicable to lay out the insurance monies received in the repair rebuilding or reinstatement of the building”.

RENT INSURANCE & TERRORISM INSURANCE

9. The applicant claims that there is no legal requirement imposed on him to pay rent under the terms of the lease and furthermore no obligation is imposed under Clause 3 (i) of the lease. The respondent states that there is an obligation imposed within the lease in Clause 3 (i) and that the original insurance premium included rent insurance. The budget cost according to the respondent is £415.60 and this includes building insurance and terrorism insurance. The share of the cost of the applicant shall be one fifth of the total amount. The previous years premium was £2,157.12 and the applicants share was £431.42. The applicant has a legal obligation under Clause 5.4 of the lease and it is recoverable under Clause 3(i) of the lease

10. During the hearing it **was conceded** by the respondent that the rent insurance covered areas of the building concerning retail space and this part of the insurance is not recoverable by the respondent. In respect of **terrorism insurance**. The Tribunal noted that the parties during the course of the hearing agreed that a claim for terrorism is valid under the lease. The budget cost is **£766.98** and the share of the applicant is assessed at **£153.40**. The Tribunal notes that any surplus or deficit between the estimate and actual cost will be accounted for in the year end accounts.

ELECTRICITY

11. The budget figure proposed by the respondent is £200. The applicant states that he has not been provided with invoices and a breakdown of the cost. The respondent stated that this is an estimated cost and that it has been derived by making a comparison with previous bills and that in any event the final sum payable by the applicant will be balanced at the end of the year. The Tribunal find on balance that the total budget cost of **£200, with the** portion to be paid by the applicant at £66, are reasonable in this instance. The Tribunal noted the points raised by the applicant and encourage the respondent where practicable to provide as much information as possible to the applicant. The Tribunal finds that this item is claimable by the respondent under Clause 3 (ii) (b) and that the applicant is liable for a third of the total amount.

INTERNAL CLEANING

12. The applicant has requested that the respondent provides to him invoices and confirmation of the items that fall within the common parts that have been cleaned. The applicant also disputed whether the property had in actual fact been cleaned by the respondents. The position of the respondent is that the item is claimable under Clause 3 (ii) (b) of the lease. The property according to the respondents has been cleaned except for the period between May-June 2020 when they were not able to gain access into the building because they claim the locks had been changed and this will be offset in the charges in the end of year accounts. The estimate total charge of £1400 according to Mr Scott is based on comparable charges in respect of other properties. The proportion to be paid by the applicant is £466.66.
13. The Tribunal gave very careful consideration to the estimate provided by the applicant from Chelsea Cleaners at page 132 of the hearing bundle. The estimate is provided by Natally Matos and she states: "I charge £12 per hour and would agree my total charge would be £12 per week for this job". The estimate is dated 13 October 2020. The Tribunal accepted the submissions of the respondent in that the estimate did not take into consideration London living wage or VAT and therefore the estimate did not appear to be viable as an estimate of cost. It was submitted by Mr Scott that **presently** the amount estimated is £90 plus VAT per month which amounts to £108. The Tribunal finds on the basis of the evidence that the budget estimate is reasonable and that it is claimable under Clause 3 (ii) (b) of the lease.
14. The Tribunal noted that the applicant had provided a report from Mr Kwasi Agyapong a surveyor which shows that the property is in need of repair both internally and externally. The report is dated 19 June 2020. The respondents accept that the property is in a state of disrepair and they have served notice under Section 20 of the Landlord and Tenant Act 1985 on 15 November 2019. The works were scheduled to be carried out in 2020 but have had to be put on hold due to the impact of Covid 19.

INTERNAL GENERAL REPAIRS

15. The applicant required invoices and details to substantiate the £500 budget figure. He stated that upon supply of the information and amount expended, if any, he would pay.
16. The respondent told the Tribunal that this budget sum was considered reasonable to cover for contingencies such as lighting repairs, door entry or other damage that more arise in the common parts of the building. The actual expenditure incurred will be based upon bills received during the period and adjusted in the year end accounts. The applicant is obliged the lease to pay one-third of the estimated cost of £500.
17. The Tribunal consider that a prudent landlord would make budgetary provision for day to day repairs to ensure maintenance of the building

and determines that the estimate is reasonable and rechargeable under the lease.

FIRE ALARM & EMERGENCY LIGHTING

18. The applicant required information as to what the charge relates to and sought a report as support to the charge of £400. He stated that previous charges had been £100 a year and the sum was unreasonable.
19. The respondent referred to a test report in the bundle and advised that it referred to 114-116 Kings Road as the first floor of the buildings are interlinked in office use and that the fire alarm panel serving the common parts of 116 Kings road is sited in the commonways of 114. Rectification of this is one of the elements of internal works proposed to be undertaken as part of the major works programme. Tests of alarms and emergency lighting are required for the safety of the building and the budget sum of £400 is reasonable.
20. The Tribunal notes that this is a budget figure and that the actual expenditure incurred will be based on invoices to be received during the service charge year. The sum of £400 is considered a reasonable estimate and is rechargeable under the lease.

EXTERNAL GENERAL REPAIRS

21. The applicant required invoices and details to substantiate the £300 budget figure, particularly since the property has been neglected and is in disrepair as outlined in his surveyor's report (see para 14 above). He stated that upon supply of the information and amount expended, if any, he would pay.
22. The respondent told the Tribunal that this budget sum was considered reasonable to cover for minor repairs to the external fabric of the building. The actual expenditure incurred will be based upon bills received during the period and adjusted in the year end accounts. The applicant is obliged the lease to pay one-third of the estimated cost of £300. The respondent stated that it is fully aware of the condition of the building and a package of internal and external repairs has been subject of section 20 consultation and although scheduled for 2020 has been unavoidably delayed due to the current Covid-19 situation.
23. The Tribunal consider that a prudent landlord would make budgetary provision for minor external repairs to ensure maintenance of the building and determines that the estimate is reasonable and rechargeable under the lease.

GUTTER CLEANING

24. The applicant claims that there have been no reported issues with the gutter and the total price of £576 is unreasonable. The applicant proposed however that he was willing to pay the sum of £250 in accordance with the estimate which he provided from **ALL GUTTERING Property Maintenance** dated 11 September 2020 and **PP Gutters** Ltd of the same date for one off gutter clearance. Furthermore, he stated that he had not been provided with invoices and those that had been provided had been submitted late and should not be considered by the Tribunal. The respondent stated that invoices had been sent to the applicant for routine visits in July and October 2020 and that estimate was for 4 visits a year. This was considered necessary preventative maintenance to obviate leaks occasioned by roof gutter blocked with leaves and other wind blown debris. The Tribunal on balance accept the evidence of the respondent because the charges are reasonable and it is considered sound practice to undertake preventative maintenance. The applicant did accept during the hearing that he had been provided with invoices even though they were not before the Tribunal during the course of the hearing. The Tribunal in light of the applicant's acceptance that he had been provided with the invoices were not minded to discount the information provided by the respondents.

PEST CONTROL

25. There is a contract in place and the main problem appears to be rodents. The cost being claimed here is £300 but the evidence of the applicant is that he has not seen any pest control on the property and he has requested that the respondent provides him with invoices. The applicant also contends that the respondent has not complied with the directions set by the Tribunal. The Tribunal noted that the applicant does not reside on the premises but he claims that he visits at least once a week and he has not seen any compliance with the contract.
26. The Tribunal find on the evidence that the sum of £300 is a reasonable estimate and it is recoverable by the respondent under Clause 3 (iii) (b) of the lease. The Tribunal also noted that the contract also covers Rats, Cockroaches, Mice and call outs.

RISK ASSESSMENTS

27. The applicants contend that the estimated cost has increased from £200 to £240 but he has not been provided with any evidence of a risk assessment having taken place on the premises. The applicant also objected to documents which had been provided by the respondent outside of the periods laid down in the directions of the Tribunal even though he was now in possession of these documents.

28. The Tribunal accept that on the basis of Clause 3 (iii) of the lease that the applicant is liable for a third of the estimated cost of £80. The Tribunal find that the estimated cost is reasonable and that the actual expenditure incurred will be based on the bills received during the period and adjusted in the year end accounts.

MANAGEMENT FEES

29. The respondent claims that this is recoverable under Clause 3 (iii) of the lease and that the applicant is liable for a third of the total amount. The amount chargeable to the applicant is £432 per annum for carrying out duties which includes regular building inspections, out of hours emergency maintenance response, managing maintenance contracts, assisting with insurance claims, appointing contractors, managing repairs and issuing service charge demands.
30. The applicant claims that the respondents should have obtained 3 quotes and not two and also that the budget sum being claimed of £1296.00 represents 100% increase on the previous sum of £648. The Tribunal gave careful consideration to the two quotes provided by the applicant and also that both companies are willing to manage the property for £648 as has been the case in previous years. The applicant was also critical of the wording of the agreement between Cadogan and Susan Metcalfe Management. The respondents state that, as a matter of course, they seek to obtain three quotes for management, even though there is no legal requirement to do so as it is not a long-term agreement. In this instance only two firms provided quotations.
31. The Tribunal noted the deficiencies of the management agreement but we find that we are not in a position to re-write the agreement between the parties. The Tribunal found on the evidence that the management fees being claimed were reasonable for a property of this nature in prime central London. It was also noted that under previous management, there had not been an increase since 2011. The Tribunal in coming to this conclusion took into consideration its knowledge and experience of properties in the same location as the subject property.

ACCOUNTANCY FEES

32. The budget sum being claimed is £540 and the applicant requested that the respondent provide him with invoices and a breakdown of the cost. The applicant claims that the accountancy fees have increased by almost 50%. Both parties agreed a total charge of £360 and that the applicants share is £120.

BANK CHARGES

33. The respondent estimated charges amounting to £60. The applicant however, request a full breakdown of the charges and what they relate to. The Tribunal find that the estimated charges are reasonable because the actual cost will be based on bills received during the period and adjusted in the year end accounts. The bank charges as with the majority of items in this application are budget estimates.

SUMMARY OF BUDGET CHARGES

34. For the avoidance of doubt, The Tribunal finds that all items within the proposed service charge budget are reasonable and chargeable under the lease with the exception of the following:
- Rent insurance of £415.60 conceded by the respondent
 - Terrorism insurance quantum £766.98 (to be settled at year end if different)
 - Accountancy fees agreed by parties at £360

Application under s.20C and refund of fees

35. The Respondant informed the Tribunal that it would not be seeking to recover any costs in respect of responding to the application by Mr Goolnik but requested that the applicant should bear his own costs of the application and hearing.
36. The applicant sought the fee of £300 for the application and hearing and in a subsequent request to the Tribunal asked for his costs in seeking telephone advice in the sum of £600 to be refunded by the respondent. He was critical of the landlord company and considered that they had acted unreasonably and should be precluded from charging their costs in the hearing.
37. The Tribunal records that the respondent will not be charging their costs in the hearing against the service charge, however, for completeness makes an order under Section 20C to prevent the respondent from claiming their costs associated with the application and hearing through the service charges.
38. Whilst noting that the applicant took advice regarding his application to the First Tier Tribunal (Property Chamber), such costs are not considered relevant to the hearing or decisions of this Tribunal. The applicant should be aware that costs of parties in the Tribunal are only awarded in exceptional circumstances and following an application pursuant to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

39. The Tribunal after hearing submissions from the parties regarding reimbursement of fees orders that the respondent pays the sum of £150 towards the applicant's payment of the hearing and issuing fees. The sum of £150 is to be paid to the applicant within a period of 28 days of receipt of this decision.

Name: Judge Abebrese

Date: 17 December 2020

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.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (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 a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (a) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) 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.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) 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—
 - (a) in a particular manner, or

(b) on particular evidence,
of any question which may be the subject matter of an application
under sub-paragraph (1).