



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

Case reference : **LON/00BJ/LS/2021/0148**

Property : **Flats 1,2,3,4,5 and 6, 15-17 West Hill,
London Sw18 1RB.**

Applicant : **Helena Ann Jeanie Piper
Nicola Alison Percy and Lance
Grobbelaar**

Representative : **Julian Briggs Cookson
Lauren Victoria Grimmer
David William Cooper**

Representative : **Helena Ann Jeanie Piper**

Respondents : **Assethold Limited**

Representative : **Mr Ronni Gurvits of Eagerstates
Limited**

Type of application : **Application for a determination of
the reasonableness and payability of
service charge under S.27A Landlord
and Tenant Act 1985. Application
under S.20C Landlord and Tenant
Act 1985.
Application under Paragraph 5A to
Schedule 11 of the Commonhold and
Leasehold Reform Act 2002.**

Tribunal : **Judge Adrian Jack, Tribunal Member
Rachael Kershaw BSc**

Date of Hearing : **1 November 2021**

DECISION

Covid-19 pandemic:

Description of hearing: This has been a remote hearing which has not been objected to by the parties. The form of hearing was **V: CVPREMOTE**. The

Tribunal had a 249 page electronic bundle and an updating email of 31st October 2021.

Background and procedural

1. The property comprises six flats over three floors, all let on long leases. The service charge year ends on 24th March. There are standard provisions for the collection of estimated charges with an adjustment following the end of the service charge year.
2. The only issue outstanding in relation to the actual demands for 2020-21 is insurance. The issues in relation to the budgeted figures for 2021-22 are set out below.
3. The parties had reached a large measure of agreement on many items originally outstanding. The landlord, however, failed to comply with the Tribunal's directions. On 13th October 2021 the Tribunal debarred the landlord from relying on any evidence other than that submitted on 19th July 2021. A subsequent application for relief from sanctions was refused.
4. The Tribunal heard the matter on 1st November 2021 by video. The tenants were represented by Ms Piper, one of the tenants. Mr Gurvits of the managing agents represented the landlord.

Insurance

5. Insurance was the only live issue in 2020-21. (An issue as to AOV was resolved before the hearing.) The landlord sought to recover £1,996.48 for insurance and brokerage. The tenants produced a number of quotations, the most expensive of which was £998.26. They said the landlord had adduced no evidence to show that the broker had properly tested the market. The landlord offered to reduce the insurance figure to £1,460, a 30 per cent deduction. Mr Gurvits criticised the £998.26 quotation on the basis that the excess for subsidence was £2,500, which some mortgage lenders found unacceptably high. Ms Piper pointed out that the quotation from Ageas, which the tenants had obtained had a lower excess and was for less than £998.26. The willingness to pay the higher quotation was a concession to the landlord.
6. We agree with the tenants' approach. The landlord has not adduced evidence of having properly tested the market. If the landlord's only objection to the £998.26 quotation was the excess for subsidence, then the tenants had found a lower quotation with an acceptable excess. The landlord's concession of 30 per cent seems arbitrary. The landlord in our judgment cannot complain of the tenants' concession that £998.26 was reasonable. We allow £998.26 under this item.

Budgeted figures

7. We remind ourselves that the test for budgeted figures is whether the estimate is a reasonable one. The landlord has a discretion.

8. The figure of £450 for AOV was accepted by the tenants.
9. On fire health and safety, the landlord sought £400. The tenants produced quotations for £120 and for £330 (both inclusive of VAT). Mr Gurvits said £120 was far too low. He accepted that £330 might have been reasonable, but said that £400 was reasonable as well. We agree with Mr Gurvits. £400 is well within the landlord's discretion when budgeting.
10. On carpet cleaning, the tenants had a quote for £75. Mr Gurvits agreed that £75 was reasonable. The reason the landlord had budgeted £150 was that he considered two cleans a year was needed. On learning this the tenants abandoned their objection to the figure of £150.
11. On drainage cleaning, Mr Gurvits said that the £300 claimed represented the cost of a CCTV survey and any works necessary. The advantage of carrying out such a survey was that cracking in the pipework could be identified at an early stage, so that the pipe could be lined without the need for digging up the pipe and replacing the fractured section. Mr Gurvits accepted that other Tribunals had expressed scepticism as to whether this approach did actually save money. We are also doubtful as to the overall costs saving. However, in our judgment £300 is a reasonable budgeted figure for drains, regardless of how the landlord in fact proposed to spend the money. We disallow nothing.
12. On gutter cleaning, the tenants had obtained a quote for £150. The landlord sought to recover £200. In our judgment, as a budgeted figure there is no proper basis for challenging the £200 figure. We disallow nothing.
13. The landlord had budgeted £1,000 for a surveyor to value the block for insurance purposes. The parties agreed a figure of £800 for this item and also agreed that a survey need only be carried out every five years. Accordingly, we do not need to determine this item.
14. The management fee is claimed at £1,892, or £312 per flat (£260 plus VAT). The tenants obtained a quote from Managed Partnerships Ltd for £200 plus VAT per flat. In our judgment £312 per flat is a reasonable management fee for this part of London. As a budgeted figure it cannot in our judgment properly be challenged.

Costs

15. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal. These comprise £300. As we indicated to the parties in the hearing, the approach generally taken is to look at the degree of success enjoyed by each side.
16. In our judgment, the honours in this case are roughly equal. The tenants have won on some items; the landlord on others. There are no issues of conduct. Both sides have acted reasonably and there have

been productive negotiations which substantially reduced the areas of disagreement. In these circumstances, we split the fees equally between the parties. Accordingly the landlord should reimburse the tenants with £150.

17. The tenants sought an order under section 20C of the Landlord and Tenant Act 1985. Mr Gurvits indicated that the landlord did not intend to recover any of the costs of the current proceedings through the service charge account or otherwise. In the light of that concession, in our judgment there is no need to make a section 20C order and we decline to do so.

DETERMINATION

- a) The figure for the recoverability in respect of insurance in 2020-21 is £998.48.
- b) As to the budgeted figures for 2021-22, the parties agreed a reduction in the surveyor's fees to £800. The Tribunal otherwise disallows nothing.
- c) The landlord shall reimburse the tenants £150 in respect of the fees payable to the Tribunal.
- d) The Tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985 in the light of the landlord's concession that it will not claim any costs in respect of these proceedings through the service charge account or otherwise.

Name: Judge Adrian Jack

Date: 2nd November 2021

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 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.