First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**LON/00BH/LSC/2021/0042**
Property	**:**	**65 Hainault Road, Leytonstone, London E11 1EA**
Applicants	**:**	**Selina Seesunkur (flat C) Marcella Mackovcakova & Micha Stanek (flat B)**
Respondent	**:**	**Foxglade Properties Ltd.**
Date of application	**:**	**undated**
Type of Application	**:**	**To determine reasonableness of service charges**
The Tribunal	**:**	**Judge Bruce Edgington Susan Coughlin MCIEH**
Date of Hearing	**:**	**14th April 2022**

DECISION

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1. The disputed claims made by or on behalf of the Respondent from the tenants of the 3 flats at the property are determined as follows. As in the remainder of this decision, the pages numbers quoted are from the bundle of documents supplied for the Tribunal:

Year	Service charges	Reasonable and payable (£)
2016	1,590.00 (p 91)	600.00
2017	1,482.00 (p 95)	870.00
2018	1,947.00 (p 101)	1,254.00
2019	3,037.27 (p 105)	1,341.48
	8,056.27	4,065.48

Thus, and assuming that all 3 tenants have paid their actual service charges up to the end of 2019, the amount to be repaid to the tenants is £8,056.27 less £4,065.48 leaving £3,990.79 which should be paid by the 13th May 2022. The Tribunal also notes that at least £841.00 has been paid on account of service charges for 2020. Whatever sum has been paid by the tenants on account for

2020 should also be refunded as no justification has been given for this figure. The Tribunal has not looked at later claims.

2. Orders are made pursuant to section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") and paragraph 5A of Schedule 11 to the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") preventing the Respondent from recovering any costs of representation in these proceedings from the Applicants as service charges or administration charges.

Reasons

Introduction

3. From the pictures on Google Earth, the building in which the flats are situated is a 3 storey mid-terraced property with a shop on the ground floor. One flat is behind the shop and the other flats are above the shop. The flats have their own entrance from the main road to the left of the shop when looked at from the road.

4. It appears that service charge demands have been made over the years in question and these have been paid. They are now being challenged with accusations that no services have ever been provided. It is also said that "*no cleaning has ever been done….Entire property has been mismanaged From damp in the hallway Carpets have not been cleaned or changed in 20 years Communal hallway has been left in a state of disrepair…*"

5. The Tribunal made directions orders on the 8th July 2021 and 16th December 2021 timetabling the case to a determination. These followed oral case management hearings. The Tribunal said that it would be content for the case to be determined on the basis of the papers and written representations without an oral hearing. The Applicants said that they would be happy for this in their main application. However, at the hearing on the 16th December, they changed their minds and wanted an oral hearing which, because of the COVID restrictions, has been arranged by video link.

6. Neither party referred to the Respondent's costs of representation in their written submissions.

The Leases

7. The only lease seen by the Tribunal is for flat A. It is dated 19th February 1988 and is for a term of 99 years from the 25th December 1987 with a rising ground rent. The 1st Applicant is not the named lessee and the Respondent is not the named landlord. The landlord has to keep the structure and common parts of the building maintained and in repair, and insured, and the lessee pays a third of the defined costs.

8. On page 31 of the bundle is the first page of a Deed of Variation dated 26th August 2014. However the remainder of such deed is not in the bundle. The Tribunal has obtained a copy of a Deed of Variation relating to flat 65B dated 8th October 2014 from the Land Registry. A copy of that relating to 65C was

not available. It is clear to the Tribunal that the original leases and the Deeds of Variation must, on the balance of probability, be in the same terms for all 3 flats for all relevant purposes.

9. What is clear is that the terms of the leases have been extended to the 24th March 2139 and, of particular relevance, the service charge has, since 2014, included the ability of the landlord to claim management fees and to claim monies on account of service charges. The original leases had no such provisions.

The Law

10. Section 18 of the 1985 Act says that service charges are amounts which are "*payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management*" which includes overheads.

11. Section 27A of the 1985 Act says that if a tenant has paid service charges demanded, that, of itself, does not mean that they are agreed or admitted.

The Hearing

12. The hearing was attended by Ms. Seesunkur and Cristina Siladi from Ellis & Co. who prepared the statement for the Respondent at pages 41 & 42. Ms. Seesunkur said that the tenants of flat B could not attend because of work commitments. The Tribunal Chair introduced everyone and explained that he would be asking the parties questions arising from the papers submitted. He would then ask the parties to put their cases, invite cross examination and any final summing up before closing the hearing. This was how the hearing proceeded.

13. The first thing to be clarified was that the figures in the papers at pages 22-26 were acknowledged by Ms. Seesunkur to be wrong. She had subsequently seen the figures from the previous managing agents at page 30 and felt that they were correct. However, she still said that all the service charges claimed were wrong as no service had been provided.

14. Having looked at page 30, the Tribunal noted that the figures did not match the annual service charge accounts set out on pages 91-105. However, on closer examination, it would appear that the page 30 figures relate to a single flat. The Tribunal has determined this case on the basis of the figures set out in the service charge accounts save for the 2020 figure which has been taken from page 30 as no service charge accounts have been produced for 2020.

15. Subsequently, Ms. Seesunkur agreed some of the repair and maintenance charges, particularly at pages 56 and 57. Some of the items of maintenance and repair were agreed but not the claims which were said to be excessive, for example the cost of £349.48 for replacing to front door lock and supplying keys (page 58). However, in respect of those charges challenged, she was unable to provide evidence to support what she felt would have been reasonable charges for the works in question.

16. Ms. Siladi did not object to the photographs lodged just prior to the hearing being considered by the Tribunal. It was pointed out to her that one of these was of a sheet completed by cleaners which said clearly that there was no power supply in the common parts enabling them to undertake the cleaning. On the 6th April 2019 it was also said that "*office aware no power*" with 'ditto' marks for subsequent dates. She agreed that there was no power and, after consultation with the tenants, she had stopped appointing cleaners. The photographs do show that the carpet in the hallway is very dirty.

17. Ms. Siladi also made it clear that she took over management in late 2020. All she could do for the period before that was to pass on information given to her by her predecessor, which is what she had done. She apologized if that was not sufficient although this does not absolve the Respondent from its liability to assist the Tribunal.

Discussion

18. The applicants have filed their written criticisms of the various charges which are actually challenged and these are as set out above. At page 27 in the bundle, the 1st Applicant has also set out her further criticisms which include allegations that the communal carpet has not been changed in 20 years; neither the walls in the hallway nor the front door have been painted in 20 years; there are holes in the wall caused by the front door colliding with it; the electricity meters are too high; there is some damp on the wall; electricity "*is frequently out which is a statutory duty of the freeholder*" and there are no post boxes for the individual flats. Further points are made in a series of e-mails sent by the 1st Applicant.

19. The Applicants were ordered to send any response to the Respondent's case by the 14th February 2022. The Respondent's case, written by Ellis & Co., is dated 31st January 2022 and is in the bundle at page 41. The Respondents from flat B sent in an unsigned e-mail to the Tribunal 2 days before the hearing with 11 undated photographs. This sets out a repeat of many of the previous allegations. The photographs show some damp in the main hallway and signs that the carpet had not been cleaned for some time. The e-mail refers to the hallway being "*very dirty, full of cobwebs, old post and leaves*" in 2014, whereas the photographs do not seem to show that although the Applicants do say that the tenant of flat A had undertaken work to the entrance hall when that flat was relatively recently being sold.

20. The Respondent's representatives have filed their responses which basically said (a) that they could not understand the actual amounts being challenged and (b) that the claims were, in any event, reasonable.

21. The Respondent also makes the very relevant point, in view of the allegations, that in 2018, the Respondent's then surveyors started a consultation with a view to completing a scheme of external repairs and decoration. The first letter is at page 62. There is then a second letter at page 63 proposing a scheme of internal repairs and installation of escape lighting. The tenders for

the external work were received and the Respondent's agents. Michael Richards & Co. sent the final consultation letter on the 11th March 2020 (page 64).

22. The cheapest quote for the external repairs, including supervision exceeds £30,000.00 which is a large amount. Hopefully, this work does not include improvements because the leases do now allow for the cost of improvements to be included as a service charge.

23. The Respondent's representatives at, page 42, then point out that the works were supposed to start in 2020 "*but we were informed by Michael Richards that they were delayed due to lack of funds associated with the pandemic at some of the leaseholders' request*". At the hearing Ms. Siladi said that this process was now being started again. Ms. Seesunkur did not dispute this but said that she would prefer that the internal works were undertaken before the external works.

Conclusions

24. The Tribunal infers that the Applicants are asking for orders that the monies paid for service charges since 2016 should be refunded. Their evidence is that no services have been provided. The Respondent has satisfied the Tribunal that some services have been provided and the reasonableness of the cost of these services will therefore be considered even though there is very little evidence about this – one way or the other.

25. The Tribunal was concerned about several aspects of the evidence in this case:

- The lack of any electric plug in the common parts prevented the cleaners doing their job and the arrangement for electricity used in the common parts appeared to be shrouded in mystery. It was agreed by Ms. Siladi that there was no landlord electricity supply in the common parts and that the lighting in the hallway is connected to that of Flat B. On page 101 there is evidence that £48 was collected in the service charge for refunding to that tenant in 2018. The tenants of Flat B said in their statement that they had never received this payment. There seems to be no on-going arrangement.
- The evidence also shows that the cleaners themselves in 2019 could not find power and therefore just told either their office or the managing agent at the time that they could not do the cleaning. Despite that, the cleaning companies still charged and were paid.
- The previous managing agents were charging about £1,200 per annum including VAT and this was increasing. Despite the complaints of the Applicants, some management was taking place but certainly not sufficient to justify £400 per flat. The Tribunal's view is that no more than £200 including VAT was reasonable. Even now, the electricity in the common parts needs to be sorted out. There are no windows and the cost of electricity for the lighting etc. needs to be met equally by the tenants.
- The Tribunal can, to a certain extent, sympathize with the Applicants

for their views on the cost of some of the repair and maintenance work. £349.48 seems a great deal to change locks and supply keys. It was noted, for example, that most of the contractors used seemed to travel a long way to get to the property. However, the Applicants could provide no evidence to suggest what would have been a reasonable cost. This is not a public enquiry. The Tribunal members can use their experience but they cannot create their own evidence. People who want to argue a case must provide evidence to support it.

26. The Tribunal concludes (a) that the costs of management of the residential part of the building for all of the relevant period should be £600 per annum including VAT (b) that the repair and maintenance charges will be allowed in accordance with the invoice evidence supplied and (c) none of the carpet cleaning costs will be allowed. These figures are reflected in the decision above.

Costs

27. As previously indicated, there is some confusion about whether any costs application was being pursued by the Applicants in view of the fact that there is nothing in the written representations of any party dealing with this issue.

28. In order to resolve that confusion, the Tribunal assumes that such an application is being made. It has considered whether costs of representation can be claimed either as a service charge or as an administration charge under either paragraph 5 or 5A of Schedule 11 of the 2002 Act.

29. In any one of these alternatives, such costs have to be payable under the terms of the lease before the Tribunal can order payability or assess quantum. The terms of the leases only allow for litigation costs to be claimed in the event of steps leading to possible forfeiture. This application is made by the tenants and therefore cannot, of itself, lead to forfeiture. The Respondent cannot recover costs of representation from the Applicant in view of the terms of the leases and, for the avoidance of doubt, the orders are made as requested.

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Judge Bruce Edgington
19th April 2022

ANNEX - RIGHTS OF APPEAL

i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to London.RAP@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.