



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

Case Reference : **LON/00BG/LSC/2022/0122**

Property : **Various flats at 9 Rearden Path,
London E1W 2AN**

Applicants : **Natalia Skvortsova and other
leaseholders as named in the application**

Respondent : **Plantview Ltd**

Representative : **The Resident Management Group Ltd**

**Type of
Application** : **Reasonableness of and liability to pay
service and administration charges**

Tribunal Members : **Judge Nicol
Mrs A Flynn MA MRICS
Mr A Ring**

**Date and venue of
Hearing** : **17th October 2022
10 Alfred Place, London WC1E 7LR**

Date of Decision : **30th January 2023**

DECISION

- (1) The Tribunal determines that all the actual charges claimed by the Respondent for 2020-21 and the estimated charges for 2021-22 and 2022-23 are payable by the Applicants, save for:
- (a) The charges for cleaning are limited to £5,500 (£250 per lessee) for each year.
 - (b) The Complete Security Installations invoice dated 12th November 2020 for a charge of £582 is disallowed in full.
 - (c) The Respondent conceded that they would not pass on the cost of £84 arising from an invoice dated 20th October 2020 from Reactive Contracting Group.

- (d) The Respondent also conceded that they would carry the cost of the asbestos survey.
 - (e) The amount charged by DMG Delta for the maintenance contract for the communal boilers at a cost is limited to £5,500 so that there has been an overcharge of £1,101.92.
 - (f) The Respondent conceded that the insurance premium of £16,188.86 had mistakenly been charged twice so that a credit of that sum is due.
 - (g) The Respondent also conceded that there are credits due for electricity and water.
 - (h) The management fees are reduced by £20 per unit per year.
- (2) There is no order for costs on the Respondent's indication that they do not intend to seek any from the Applicants.

The relevant legal provisions are set out in the Appendix to this decision.

The Tribunal's reasons

1. The Applicants are the lessees of 18 of the 22 flats at 9 Rearden Path, London E1W 2AN, a building converted to residential use in 2019. There are also 4 parking spaces in the garage which are separately leased, two of them to Applicants.
2. The Respondent is the freeholder of the subject property. The Residential Management Group (RMG) manage the property on their behalf.
3. The leases are in identical form and require the Respondent to provide services for which the Applicants pay service charges. RMG provided an audited account for 2020/21 and the one for 2021/22 is pending. The Applicants seek to challenge some of the charges for 2020/21 and some of the budget items for 2021/22 and 2022/23 pursuant to s.27A of the Landlord and Tenant Act 1985.
4. The Tribunal heard the application at a face-to-face hearing on 17th October 2022. The hearing was listed for a second day but the parties were able to present their respective cases succinctly and it was possible to finish with submissions by 5:15pm. The attendees at the hearing, all of whom gave evidence and made submissions, were:
 - Ms Natalia Skvortsova, the lessee of Flat 21, and Ms Chisara Sagay, the lessee of Flat 10, who between them represented all the Applicants;
 - Mr Marcelo Amodeo and Mrs Archi Minhas, both from RMG, representing the Respondent.
5. The Tribunal issued directions for this case on 17th May 2022, in accordance with which both parties served their statements of case, supported by documents they wished to rely on. The directions also provided for the Applicants to serve a Reply. They purported to serve one consisting of 139 pages of submissions and additional documents.

The Respondent objected. By email dated 22nd September 2022 Judge Korn explained the purpose of the Reply which should explain what issues remain in dispute, be brief and contain no new evidence.

6. Accordingly, the Applicants reduced their Reply to 10 pages. Very helpfully, it set out the issues which remained in dispute, and why, and they are addressed in turn below. Unfortunately, neither party had appreciated the full extent of their obligation to disclose documents with their statement of case and the hearing bundle prepared by the Applicants did not contain documents which each wished to rely on. The Tribunal's decision is based on the evidence available to it.

General points

7. In accordance with standard practice for residential service charges, the Respondent's agents produced budgets ahead of each year showing how they calculated the amount of advance service charges. The Applicants mistakenly assumed that the budget demonstrated some kind of commitment to spend the service charge income in precisely the way indicated in the budget. Therefore, if money was not spent as indicated in the budget, the Applicants argued that this was surplus money to be refunded to them.
8. However, that is not how service charges work. Proper budgets will be genuine estimates of expenditure for the coming year but the money then collected may be used to pay for any services legitimately provided in accordance with the lease. For example, if an unexpected maintenance issue arises so that the maintenance budget is exceeded, this is appropriate expenditure even if there is no money left for something else which was budgeted for. Also, if one or more lessees fail to pay their service charges, income may be less than expected and some budgeted expenditure may not be possible.
9. In particular, the Respondent's agents budgeted for work to bike storage which is no longer going ahead. However, the money budgeted for that work is not surplus to requirements. The Respondent may retain the money to the extent that it is required to cover other expenditure during the same year. The fact that the money has not been used as originally intended does not mean that the original estimate or any subsequent expenditure is unreasonable.
10. A further point related to consultation under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. The requirement to consult is triggered by anticipated expenditure of more than £250 per lessee. This equates to expenditure of £1,000 in relation to the car park, where there are only 4 lessees for the 4 parking spaces, and £5,500 in relation to the whole block.
11. Some of the categories of expenditure in the service charge accounts and budgets exceeded these limits. The Applicants thereby asserted that the consultation requirements were triggered. However, the

requirements only relate to single projects or contracts, not to a series of expenditures which happen to be categorised together.

12. For example, the Applicants complained that the expenditure of £1,043 in 2020-21 in relation to the car park should have been subject to consultation. However, the Respondent's evidence showed that this was an accumulation of separate items of expenditure which happened to be put in the same category, not a single project within the statutory requirements.
13. The Applicants also complained that some invoices did not comply with regulations as to the layout of invoices. It seems they confused the UK Government's requirements for its contractors with something which applies to everyone. There are no generally applicable invoicing regulations or requirements.

Gate maintenance and car park shutters

14. As well as the consultation point, the Applicants pointed out that the Respondent had not provided the invoices for the expenditure of £1,043. However, this is an example of missing evidence referred to in paragraph 6 above. The Respondent had limited its disclosure to those categories it understood the Applicants to be disputing and had thought that this was a category which was not in dispute.
15. Obviously, it cannot help the Respondent's case if documents which the Tribunal would expect to see are missing. However, an absence of relevant documentation is not conclusive. In this case, Mr Amodeo gave credible evidence that the work had been carried out and the absence of invoices was merely unfortunate rather than indicative that the expenditure did not occur. In the circumstances, the Tribunal accepts that the expenditure was incurred and the resulting service charges are reasonable and payable.

Cleaning

16. The Applicants had a number of complaints about the cleaning service. Firstly, they said that the car park had not been cleaned or swept. In fact, the Respondent had not spent any money on such a service. They have budgeted to spend £100 in 2022-23 and the Tribunal is satisfied that this is a reasonable amount.
17. The Applicants alleged that the cleaning service was poor from May to September 2022 and intermittent in earlier periods. They had a couple of photos of the bin store which showed it was reasonably clean apart from a few leaves. In contrast, the Respondent's agents had inspected twice in 2022 and their photos showed a good standard of cleanliness.
18. Moreover, so far the Applicants have only been asked to pay estimated advance charges for cleaning for 2022. The reasonableness of the budgeted figure is judged as at the time it was created, not in hindsight. In relation to the earlier period, the Respondent accepted the service

was intermittent but blamed a lack of funds, resulting in the cleaning contract being ended and replaced when funds were available.

19. The current cleaning contractor attends once per week. Amongst their other duties, they put out the paladins for the usual rubbish collection by the local authority. The Respondent pays for another contractor to come in a couple of days later to put the paladins back at a cost of £95. The Applicants pointed out that the previous contractor did this within their duties. The Respondent replied that that contractor attended 3 days per week, which they judged to be excessive for the size of the building, and the paladin arrangements are cheaper than any alternative.
20. The Applicants obtained a quote from an alternative contractor, Fantastic. Unfortunately, it was insufficiently itemised to ensure that it was a like-for-like quote.
21. The Respondent had not provided the cleaning contract but the accounts for 2020-21 refer to a "Cleaning Contract" at a budgeted cost of £9,750 and an actual cost of £8,914. The budget for 2021-22 puts the "Cleaning Contract" at £11,500. These sums are considerably in excess of the limit for the aforementioned statutory consultation requirements. On the basis that it is a single contract, as described, it is covered by those requirements and should have been consulted on. The Respondent did not consult and has not sought dispensation from the requirements. Therefore, the actual charges for each relevant year must be limited to £5,500.
22. In the circumstances, the Tribunal is satisfied that the service charges for cleaning are otherwise reasonable and payable.

General Repair and Maintenance

23. The Applicants challenged an invoice dated 8th March 2021 from a contractor called Heatlink who attended at a cost of £563.22 to four meters which weren't reading remotely. They asserted that the problem must be the responsibility of the Respondent because they had arranged for the meters to be installed in the first place. However, they had no evidence that the meter installation had been defective or that the current problem arose from that. The Applicants fell foul of the well-known logical fallacy of *post hoc ergo propter hoc* which states that, since event Y followed event X, event Y must have been caused by event X.
24. There are 3 entrances into the building, controlled with entryphones and fobs. However, only the residents with parking spaces are supposed to have access to the garage. Complete Security Installations invoiced on 12th November 2020 for a charge of £582 for re-programming the fobs and disabling the door entry panels for the garage roller shutter and bin store doors. However, the Respondent conceded that some fobs had been wrongly programmed, allowing all residents through the door into the garage.

25. Further, the Applicants took videos showing that the door entry panels still worked. The Respondent was at a loss to explain this. In the circumstances, the only reasonable conclusion is that, for whatever reason, the Applicants did not receive any value from this work and the costs set out in the invoice cannot be regarded as having been reasonably incurred.
26. The Applicants pointed out that the amount in the accounts for General repair and maintenance did not tally with the invoices provided by the Respondent. The Respondent explained that not all invoices arrived in the same period as that in which the work was done and accounted for but that, across the years, the Applicants would only pay for work actually done.
27. The Respondent conceded that service charges arising from an invoice dated 20th October 2020 from Reactive Contracting Group for £84 would not be payable because the work was aborted.

Asbestos survey

28. The Respondent conceded that its predecessor-in-title should have carried out an asbestos survey at its own cost when completing the development and, therefore, that they would not charge for the one they had arranged for themselves.

PV Panel & System

29. The Applicants complained about charges for solar panel maintenance and queried who benefited from any electricity generated. The Respondent is currently unable to say where any such electricity goes and is investigating. They have undertaken to discuss their findings with the Applicants in due course. In the meantime, the solar panels have to be maintained and the charges appear reasonable for that purpose.

Boiler Maintenance

30. The Respondent has a service contract with DMG Delta for maintenance of the communal boilers at a cost of £5,501.60 plus VAT (£6,601.92). This exceeds the limit for the consultation requirements referred to above. The Respondent did not consult and has not sought dispensation from the consultation requirements. Therefore, the amount in excess of £250 per lessee, namely £1,101.92, is not payable.
31. The Applicants challenged the cost as high but the Tribunal is satisfied that £5,500 is well within the range of what is reasonable for what appears to be a comprehensive contract.
32. The Applicants further pointed out that they were separately charged for engineering insurance and queried whether any boiler maintenance costs should be covered by it. The Respondent had not anticipated this line of argument and had not provided details of the policy. In any

event, they had no reason to think that any insured expenditure had arisen.

Buildings Insurance

33. The Respondent conceded that there the insurance premium of £16,188.86 had been charged twice and said they were already prepared to re-credit the amount to the service charge account.

Health and Safety

34. The Applicants queried whether a legionella risk assessment for which they had been charged had actually been carried out. The Respondent produced it and the Applicants conceded this point.

Electricity

35. The Respondent conceded that some electricity charges properly attributable to a different building had been wrongly debited to the service charge account but also stated that a suitable credit would be provided in the next accounts.

Legal and Professional Fees

36. The Respondent's agents carried out work preparatory to the compilation of the annual accounts. On hearing the explanation for this, the Applicants conceded that the resulting charges were payable.

Management fees

37. The Respondent's agents charged £9,900 for their services in 2020-21 and increased the budgeted amount to £10,200 for 2021-22. The Applicants obtained two lower quotes but they seemed not to be like for like, including an initial set-up fee or charges for attending lessee meetings but not including a residents portal or an out of hours service such as RMG provided. The Tribunal's experience suggests that a charge of around £375 per unit is on the high side but within the range of what might be found in the market.
38. However, the Applicants sought to compare the Respondent's agents response times to lessee queries to the standards set by the agents which provided alternative quotes. RMG admitted that the Appellant's allegations that they had failed to communicate within a reasonable period of 10 days on a number of occasions was correct.
39. The subject property is not a straightforward building but there can be no doubt that RMG have not communicated well, either in their response times, the provision of information, or explanations for the service charges. More active management and better communication would have resulted in a better level of understanding and possibly even have avoided these proceedings. The Applicants have set up a

residents' association and it is hoped that communication can improve in future.

40. In the circumstances, the Tribunal determined that a reasonable management fee for the service delivered would be one reduced by £20 per unit plus VAT, down from £450 to £426 for an annual total of £9,372.

Gas Tariff

41. There is a communal heating system. Recently, lessees have received letters indicating how much they are likely to be charged for the heat delivered inside their flat. The Applicants challenged these charges. However, the heating charges are not service charges. The bills will be sent by a company separate from RMG. Moreover, there has been no charge to date. Therefore, there is nothing for the Tribunal to rule on, at least at this stage.

Water charges

42. The Applicants challenged a charge of £1,400 for water but this is due to be credited back in the next accounts.

Costs

43. The Applicants have applied for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that the Respondent's costs of the proceedings may not be added to the service charge or charged to them individually. However, Mr Amodeo stated at the hearing that no costs will be sought. In the Tribunal's opinion, this is a sensible outcome.

Name: Judge Nicol

Date: 30th January 2023

Appendix of relevant legislation

Landlord and Tenant Act 1985

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 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;

- (aa) 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.

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.

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).