



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

Case Reference : **CHI/00HB/LIS/2014/0021.**

Property : **Flat 336, Airpoint, Skypark Road,
Bristol, BS3 3NG.**

Applicant : **Airpoint RTM Company Limited.**

Representative : **William Heath & Co, Solicitors.**

Respondent : **1. Mr. Andrew Kenneth Price
2. Mr. Alexander George Sandland.**

Representative : **In person.**

Type of Application : **Determination of reasonableness of
service charges, s27A Landlord and
Tenant Act 1985 (as amended).**

Tribunal Members : **Judge J G Orme (Chairman)
Mr. M J Ayres FRICS (Member)**

**Date and Venue of
Hearing** : **29 August 2014.
Determination on papers.**

Date of Decision : **1 September 2014.**

Decision

For the reasons set out below, the Tribunal:

- 1. Determines that the sum of £1,487.86 is payable by the Respondents, Mr. Andrew Kenneth Price and Mr. Alexander George Sandland, to the Applicant, Airpoint RTM Company Limited, on account of service charges payable in advance for the period from 1 July 2012 to 2 August 2013 in respect of the property at Flat 336, Airpoint, Skypark Road, Bristol, BS3 3NG.**
- 2. Makes no order for costs in relation to the proceedings before the Tribunal.**

Reasons

Background

1. Airpoint is a building which was converted in about 2006 from industrial use to form 255 apartments. Flat 336 is a flat on the 3rd level of the building. The Respondents, Mr. Andrew Kenneth Price and Mr. Alexander George Sandland, are the leaseholders of Flat 336 by virtue of a lease dated 8 May 2008.
2. The Landlord at the time of the lease was West Street Developments Limited. Andrews West Street Management Limited was a party to the lease as a manager. At the time of the lease, the estate consisted of other buildings, including Airpoint, and some common areas including access roads and a square. The Applicant, Airpoint RTM Company Limited, is a right to manage company which acquired the right to manage the building known as Airpoint (but not including the rest of the estate) on 1 July 2012.
3. The Lease of Flat 336 contains covenants by the manager to manage Airpoint and the estate. It also contains covenants by the Respondents to pay a service charge by way of contribution to the costs of management. The lease provides for quarterly payments to be made in advance on account of the service charge with any balance being payable at the end of each year. There is also a provision for the manager to maintain a reserve fund.
4. On 2 August 2013 the Applicant issued against the Respondents a claim in the Northampton CCMCC under claim number 3YQ09962 claiming the sum of £2,689.17 by way of service charge together with interest. On 17 February 2014 the Respondents filed a defence denying liability for the service charges and raising a number of issues. The Applicant filed a reply dated 24 February 2014.
5. By an order dated 9 April 2014 made in the Chester County Court the claim was transferred to the Tribunal to *“resolve the issue of reasonableness of the service charges for the period 1-07-12 to 2-08-13*

in respect of the property Flat 336 Airpoint, Skypark Road, Bristol, BS3 3NG.”

6. On 24 April 2014 the Tribunal made directions. It gave notice that it intended to determine the reference on the basis of written submissions without an oral hearing. It directed the Applicant to give disclosure of various documents including the lease and service charge accounts. It directed the Respondents to file a written statement of case by 28 May setting out which items in the service charge they disputed and their reasons for doing so. The Applicant was to reply and the reference was then to be determined.
7. The Respondents have failed to file a written statement of case by 28 May or at all. The Tribunal made further directions on 5 June providing for the Applicant to file a written statement of case and for the reference then to be determined.
8. No party has requested an oral hearing.
9. By the reply and by letter dated 26 June addressed to the Respondents and copied to the Tribunal, the Applicant asked the Tribunal to make an order that the Respondents do pay the Applicant’s costs of the proceedings before the Tribunal.

The Law

10. The law relating to determination of the amount of service charges payable by a leaseholder is primarily set out in sections 18, 19, 21B and 27A of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”). In brief, if the parties to a lease cannot agree the amount of service charges payable, either the landlord or the tenant may apply to the Tribunal to make a determination or the court may refer a dispute to the Tribunal for a determination. In making that determination, the Tribunal will consider whether the charge is recoverable under the terms of the lease and, if it is, whether the amount claimed has been reasonably incurred and whether the services or works were carried out to a reasonable standard. Where a service charge is payable before the costs are incurred, no greater amount than is reasonable is payable.
11. Section 29 of the *Tribunals, Courts and Enforcement Act 2007* provides that the costs of all proceedings in the First-tier Tribunal shall be at the discretion of the tribunal in which the proceedings take place. Rule 13 of the *Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169)* makes further provision for the award of costs in tribunal proceedings. The tribunal may make an order for costs if a person has acted unreasonably in bringing, defending or conducting proceedings.
12. The full text of the statutory provisions referred to in this section is set out in the appendix to this decision.

The Lease

13. The Tribunal had before it a copy of a lease dated 8 May 2008 made between West Street Developments Limited as landlord, Andrews West Street Management Limited as manager and the Respondents as tenant (“the Lease”).
14. By the Lease, the landlord demised Flat 336 to the Respondents for a term of 999 years from 1 January 2006 at a yearly rent of £250.
15. Clause 1 of the Lease sets out a number of definitions which are relevant to this reference, namely:

Estate	the land and premises registered under Title number AV180790 known as Land and Buildings lying to the south east of West Street, Bedminster, which includes the Building
Building	the building comprising the 255 apartments, the Car Park and Common Parts to be known as Airpoint, West Street, Bedminster, Bristol
Estate Services	the services listed in Part 3 and Part 4 of the Fourth Schedule
Estate Service Charge	the Service Costs incurred in providing the Estates Services
Building Services	the services listed in Part 2 and Part 4 of the Fourth Schedule
Building Service Charge	the Service Costs in providing the Building Services
Services	the Estate Services and the Building Services
Service Charge	0.285 percentage of the Building Service Charge and 0.22 percentage of the Estate Service Charge or such other percentages attributable to the Premises as may be determined from time to time by the Manager acting reasonably
Service Costs	(a) all costs, charges and expenses incurred by the Manager in carrying out its obligations and providing the Services; (b) the costs, charges and expenses of any Mains Services now provided or in the future to be provided for the Tenant and/or the occupier of other Units in the Building; (c) all fees, expenses, interests, charges, demands, claims and liabilities incurred by the Manager in respect of the matters referred to in (a) and (b) above including those relating to collection of Rents and computation and collection of the Service Charge; and (d) such reasonable sum as the Manager may in its absolute discretion consider appropriate to provide a reserve to meet all or any of the costs charges expenses and liabilities referred

to in the preceding sub clauses
(e) all other reasonable and proper costs and expenses (if any) incurred by the Manager in connection with the Services

16. By Clause 22 of the Lease, the manager covenants to insure the Building. By clause 24, the manager covenants to provide the services and to hold the reserve fund in trust for the tenant.
17. By clauses 6.3 and 21, the tenant covenants to pay the service charge.
18. Part 1 of the Fourth Schedule sets out the mechanism for calculating the service charge, namely:
 - 1) The amount of the service costs for each financial year is to be estimated by the manager as soon as practicable before the end of the preceding financial year;
 - 2) Before the end of the preceding financial year the manager is to serve notice of the estimated service charge on the tenant. The tenant is to pay one quarter of the estimated service charge on 1 January, 1 April, 1 July and 1 October in the financial year in question;
 - 3) As soon as practicable after the end of the financial year the manager is to calculate the actual service costs for that financial year and serve on the tenant a notice setting out the estimated service charge and the actual service charge for that year;
 - 4) The tenant is to pay any balance of the service charge to the manager within 21 days of service of the notice.

The Inspection.

19. The Tribunal inspected Airpoint on 29 August 2014 in the presence of Sally Robinson MIRPM, an employee of Blenheim's Estate and Asset Management Limited, the managing agents employed by the Applicant. Miss Robinson showed the Tribunal an email from Mr. Sandland saying that he was aware of the inspection and that he could not attend as he was abroad.
20. Miss Robinson explained to the Tribunal that the Applicant manages just the building known as Airpoint. It took over management of the building as a right to manage company on 1 July 2012. Andrews West Street Management Limited continues to manage the remainder of the estate and invoices the Applicant for the relevant share of any estate service charge.
21. Airpoint was formerly an industrial building which has been converted to residential use. 2 floors were added on to the original building and 2 new blocks have been added, one on either side of the original building. Levels 0 and 1 are used for car parking, bicycle storage, storage of waste and accommodation for plant and water storage systems. Level 2 contains the communal entrance hall with manager's office, staff room, mail room and some apartments. Levels 3 to 7 consist of apartments. There is a separate bin store on each floor. Level 8 is the roof which

includes a function room, pool room, running track, fitness equipment, sun deck and barbecue area.

22. Access to the building is through security controlled doors. There is a CCTV system with 16 cameras monitored by the building manager. There are 2 passenger lifts, 1 goods lift and a staircase in the original building giving access to all floors including the adjoining blocks. There are smoke detectors, fire alarms and a sprinkler system in the car park areas. The Applicant employs a full time building manager, a full time cleaner and 2 part time cleaners. There is no heating in the communal areas. Each apartment has its own electrical heating system.

The Evidence

23. The Applicant had filed a bundle of documentation under cover of a letter dated 9 May. The documents included a copy of the Lease, copies of the estimated service charge account for the years ending 31 December 2012 and 2013, an estimated reserve fund account for the year ending 31 December 2012, applications for payment of quarterly sums from 5 July 2012 to 10 June 2013, draft service charge accounts for the year ended 31 December 2012, a letter dated 10 April 2014 notifying all leaseholders of the AGM and an email dated 6 May 2014 from Blenheims. The email explained that the service charge accounts for the years ended 31 December 2012 and 2013 could not be finalised until such time as further information had been obtained from the previous manager. The Tribunal also took into account the information set out in the Applicant's reply to the defence filed at court.
24. The Respondents had filed no information with the Tribunal. The Tribunal had a copy of the defence filed by the Respondents and took note of its contents.

Conclusions

36. The defence filed by the Respondents looks as though it has been prepared from a proforma form of defence which covers the majority of potential defences to a service charge claim. However, the Respondents have not given any particulars in relation to the majority of the allegations and they have not indicated that they challenge any specific item of service charge. For instance, the defence raises failure to consult on major works and long term agreements (para 10(e)(v) and (vii)), failure to hold funds in an appropriate trust account (para 10(e)(viii)), section 21 of the Landlord and Tenant Act 1985 (para 10(j)), section 42B of the Landlord and Tenant Act 1987 (para 10(k)) and administration charges (para 12) without giving any particulars of the allegations and without explaining why those matters are relevant. The Tribunal does not intend to deal with each and every paragraph of the defence as it is seriously lacking in any particulars of the allegations.
37. What is clear from the papers provided by the Applicant is that the service charges which are claimed fall into 3 categories:

- 1) Estimated service charges for the period from 1 July 2012 to 30 September 2013;
 - 2) Sums in respect of the reserve fund for the period from 1 July 2012 to 30 September 2013;
 - 3) A sum of £1,201.31 due to Andrews West Street Management.
38. In relation to the estimated service charges for the period from 1 July 2012 to 30 September 2013, the Applicant has provided the Tribunal with copies of the estimated service charge accounts which it has prepared for the years ending 31 December 2012 and 2013. The Respondents have not provided any details of the items in those accounts which they dispute. The Tribunal has looked at the estimated accounts and considers that the items listed in the accounts would be recoverable under the terms of the Lease as service charge and that the sums appear to be reasonable. The only questionable amount is the item for "*Estate charge – the Square*" which is included in the account with the Respondents being shown as responsible for 0.2854% of the total of the account. The Lease provides that the Respondents are only responsible for 0.22% of the estate service charge. However, the difference in amounts payable is so little that looking at the accounts overall, the Tribunal considers that the amounts claimed by the Applicant on account of service charge are reasonable within the meaning of section 19(2) of the Act. Any differences in the amount payable on account and the amount actually due can be reconciled once the final service charge accounts are produced.
39. Looking at the procedure for producing the estimated accounts, the Tribunal notes that the estimated account for the year ending 31 December 2012 was not produced until 3 July 2012 whereas the Lease required it to be produced before the end of 2011. Clearly, the Applicant was unable to produce any estimated accounts prior to that date as it did not take over management until 1 July 2012. The Tribunal does not know whether the Applicant's predecessor produced any estimated service charge accounts for 2012 or earlier years. The Tribunal is satisfied that in the circumstances the Applicant should not be held to the strict terms of the Lease.
40. Once the Applicant has served notice on the Respondents of the estimated service charge payable for the year, it is for the Respondents to make payments without further demand. However, the Respondents may withhold payment until such time as the Applicant gives the Respondents a summary of the rights and obligations of tenants complying with section 21B of the Act. At paragraph 10(e)(iv) of the defence, the Respondents allege that no such notice was given. In its reply, the Applicant says that the appropriate notice is printed on the reverse of all service charge demands sent out by Blenheims on behalf of the Applicant. Although the copy demands before the Tribunal do not have the summary printed on the reverse, the Tribunal accepts the evidence of the Applicant and finds as a fact that the appropriate notice was printed on the reverse of the applications for payment of the service charge.

41. In the circumstances, the Tribunal determines that the amounts claimed by the Applicant on account of service charge from 1 July 2012 are payable by the Respondents. The quarterly service charge was £246.05 in 2012 and £230.82 in 2013. The Tribunal allows the amounts claimed being 2 quarters for 2012 and 3 quarters for 2013 making a total of £1,184.56.
42. The Lease provides for the Applicant to maintain a reserve fund. The Tribunal does not know whether a reserve fund was maintained by the previous manager but it is clear from the papers that the Applicant intended to build up a reserve fund of £85,000 each year resulting in an annual payment of £242.62 (£60.66 per quarter) by the Respondents. The Respondents do not challenge the legality of a reserve fund in their defence and merely say at paragraph 10(f)(iii) that the Applicant has not provided a breakdown. The Tribunal considers that the amount claimed by way of reserve fund is reasonable and will allow the amount claimed being 5 quarters at £60.66 making £303.30.
43. At paragraph 10(f)(ii) of the defence, the Respondents specifically deny any liability for the sum of £1,201.31 claimed as being due to Andrews West Street Management. They say that they believe that the sum is carried over from the previous managing agents who had failed to justify the liability or to provide information as requested. The only evidence that the Tribunal has in relation to that sum is in the Applicant's reply which provides a breakdown of the amount. It shows amounts being due on the quarter days from 1 April 2011 to 1 April 2012. No evidence is given as to whether the amount claimed is the balance of actual service charge due or on account of estimated service charges. The Tribunal has not seen the estimated service charge accounts or actual service charge accounts on which the demands are based nor has it seen copies of the demands served on the Respondents. The Tribunal has no evidence as to whether the demands were accompanied by notices complying with section 21B. In the circumstances, the Tribunal cannot be satisfied that this sum is properly due and payable.
44. In summary, the Tribunal will allow the sums claimed on account of service charge from the time when the Applicant took over the management together with the amounts claimed for the reserve fund. Together these total £1,487.86. In due course, the Applicant will have to produce final service charge accounts for the relevant periods and any over or under payment will be reconciled at that stage.
45. In relation to costs, the Tribunal may only make an order for costs against the Respondents if satisfied that the Respondents have acted unreasonably in defending the proceedings before the Tribunal.
46. The Respondents filed a defence to the claim. As already indicated, the defence looks like a proforma defence which raises many issues without giving any detailed particulars. As a result, the claim was transferred to

the Tribunal. The Respondents have taken no part in the Tribunal proceedings and have not complied with the Tribunal's directions. On that basis, it is open to the Tribunal to say that the Respondents have acted unreasonably. However, it is for the Applicant to prove its claim. It has failed to do so in respect of a substantial part of the claim. The consequence is that the Respondents have been partially successful in their defence. In the circumstances, the Tribunal is not prepared to exercise its discretion to make an order for costs against the Respondents.

47. The Tribunal has no jurisdiction to make any order for payment of the service charges and it has no jurisdiction to determine the claim for interest or for any costs of the court proceedings. If the Applicant wishes to pursue any of those matters, it must make application to the court.

Right of Appeal

48. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.
49. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the application is seeking.
50. The parties are directed to Regulation 52 of the *Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169*. Any application to the Upper Tribunal must be made in accordance with the *Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600*.

J G Orme
Judge of the First-tier Tribunal
Dated 1 September 2014

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 provision 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 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 the 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.

Tribunals, Courts and Enforcement Act 2007

Section 29

- (1) The costs of and incidental to
 - a. all proceedings in the First-tier Tribunal, and
 - b. all proceedings in the Upper Tribunal,shall be in the discretion of the Tribunal in which the proceedings take place.
- (2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.
- (3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.
- (4) In any proceedings mentioned in subsection (1), the relevant Tribunal may –
 - a. disallow, or
 - b. (as the case may be) order the legal or other representative concerned to meet,the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.
- (5) In subsection (4) "wasted costs" means any costs incurred by a party –
 - a. as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
 - b. which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.
- (6) In the section "legal or other representative", in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.
- (7) In the application of this section in relation to Scotland, any reference in this section to costs is to be read as a reference to expenses.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169

Rule 13

- (1) The Tribunal may make an order in respect of costs only –
 - a. under section 29 (4) of the 2007 act (wasted costs) and the costs incurred in applying for such costs;
 - b. if a person has acted unreasonably in bringing, defending or conducting proceedings –
 - i. in an agricultural land and drainage case,
 - ii. a residential property case, or
 - iii. a leasehold case; or

- c. in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
 - (3) The Tribunal may make an order under this rule on an application or on its own initiative.
 - (4) A person making an application for an order for costs –
 - a. must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and the person against whom the order is sought to be made; and
 - b. may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
 - (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends –
 - a. a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - b. notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
 - (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
 - (7) The amount of costs to be paid under an order under this rule may be determined by –
 - a. Summary assessment by the Tribunal;
 - b. agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
 - c. detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
 - (8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph 7(c) as if the proceedings in the Tribunal had been proceedings in court to which the Civil Procedure Rules 1998 apply.
 - (9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.