



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

Case Reference : **BIR/31UB/LIS/2019/0060**

HMCTS (paper, video, audio) : **V: SKYPEREMOTE**

Property : **22 Co-Operation Street, Enderby, Leicester, LE19 4NG**

Applicant : **Stephen McLeod**

Respondent : **Andrew King (having been substituted for Options (East Midlands) Ltd)**

Type of Application : **An application in respect of the liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985 (“the Act”).**

An application for an Order under section 20C of the Landlord and Tenant Act 1985.

An application for an Order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Tribunal Members : **V Ward BSc Hons FRICS – Regional Surveyor
Tribunal Judge Anthony Verduyn**

Date of Decision : **3 August 2020**

DECISION

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Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing on the papers which has been consented to by the parties. The form of remote hearing was Video (V: SKYPEREMOTE). A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Under Rule 33A the Tribunal has directed that the hearing be recorded using UK Courts Skype. Any person may apply, within 28 days of the date of this Decision to the Regional Manager, First-tier Tribunal Property Chamber for the Midlands Region for an audio copy of the recording to be supplied to them electronically. A copy of the recording will be made available for the sole purpose of the fair and accurate reporting of the judicial proceedings of the First-tier Tribunal. The re-use, capture, re-editing or redistribution of the recording of the hearing in any form is not permitted. Any such use could attract liability for breach of copyright or defamation and, in some circumstances, could constitute a contempt of court.

BACKGROUND

1. By way of an application received on 18 December 2019, the Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985 as to whether or not service charges, in respect of the Property, were reasonable, due and payable for the years 2013 - 2018 and for future years, 2018 – 2019 and 2019 - 2020.
2. The Applicant also sought an Order for the Limitation of the Respondent's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an Order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
3. Upon consideration of the application, the Tribunal noted that service charges for the years 2013 – 2018 were the subject of a Tribunal determination dated 4 September 2019 (BIR/31UB/LIS/2018/0070).

4. The Tribunal was therefore minded to strike out this element of the application out under Rule 9 (3) (c) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which states as follows:

9 - (3) The Tribunal may strike out the whole or a part of the proceedings or case if—

(c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal.

5. In respect of a determination for the future periods, the Tribunal will only be able to make a determination in respect of costs actually incurred.
6. Accordingly, the parties were invited to make representations as to whether or not the elements of the application relating to the years 2013 – 2018 should be struck out.
7. By the same date, the parties were to make representations as to whether or not costs had actually been incurred for the periods; 2018 – 2019 and 2019 – 2020.

Submissions of the Parties on the Preliminary Issue

8. In his submissions, the Applicant sought to withdraw the part of the application relating to the years 2013 – 2018. As the Applicant had not yet received a service charge demand for the period 2019 – 2020, he also sought to withdraw that application on the proviso that if a demand was received before the other elements of the case were determined, it would be reinstated.
9. The Applicant provided a statement of case for the year 2018 – 2019.
10. The Respondent made no submissions.

Decision in respect of Preliminary Issues

11. By way of a decision dated 20 January 2020, the Tribunal determined that the part of the application relating to the years 2013 – 2018 should be struck out. Service charges for this period had in principle already been the subject of a Tribunal decision.
12. The Tribunal determined that the part of the application relating to the years 2019 – 2020 should also be struck out as no service charges have yet been levied for this period.
13. The application was hence limited to service charges for the period 2018 – 2019 and Directions issued accordingly.

14. Following receipt of the parties' submissions in respect of this matter, a Procedural Judge noted two further issues in respect of this matter. Firstly, whether the service charge demands complied with the provisions of the Landlord and Tenant 1987 and secondly, who should be the correct Respondent to this application. In the latter regard, a copy of the Land Title register for the Property indicated that the freeholder was Andrew Vincent King. Accordingly, on 23 April 2020, Judge D Barlow substituted Andrew Vincent King for Options (East Midlands) Limited as the Respondent to this application. The former matter was left to be dealt with at the substantive hearing.
15. Due to the Covid – 19 Public Health Emergency (PHE), the Tribunal advised the parties that they proposed to determination this application without an inspection. Neither party objected to the matter being determined without an inspection.

Lease provisions relevant to this application.

16. The lease provisions relevant to this application are annexed to this decision at Appendix One.

The Law

17. The provisions of the Landlord and Tenant 1985 and the Commonhold and Leasehold Reform Act 2002, relevant to this application are annexed to this decision at Appendix Two.

The Hearing

18. As a result of the PHE, the hearing was held by Skype video conferencing on 3 July 2020. The Applicant and Respondent both took part in the hearing.

The Service Charge Demand

19. At the outset of the hearing, the Tribunal agreed with the parties that the demand of the definitive service charge demand to be considered was that dated 21 January 2020 in the sum of £430.93.

Validity of the Service Charge Demand

20. The Tribunal initially considered the validity of the demand. Under section 47 of the Landlord and Tenant Act 1987, demands for service must be in writing and must contain the landlord's name and address. In addition, the provisions of the Commonhold and Leasehold Reform Act 2002, in section 153, require that:

“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”.

21. The demand before the Tribunal failed on both these counts; the demand was issued by Options (East Midlands) Limited (the Respondent's company) ("Options") and there was no summary of a tenant's rights and obligations.
22. The demand is therefore invalid, and no service charges are payable until the Respondent has issued a valid demand.
23. The Tribunal, however continued to determine the individual service costs to enable the parties to move forward with no issues left unresolved when a valid demand is issued.
24. It should be noted that there are in fact eight properties within the development however due to an error in drafting the lease, the service charge costs are apportioned on the basis of one ninth. The Respondent mentioned that in the past, he had considered an application under the lease variation provisions within the Landlord and Tenant Act 1987 but had not proceeded with the same as he intended to dispose of the freehold interest, hopefully to the tenants. The Tribunal commented that any prospective purchaser would be mindful of the fact that the service charge provisions within the lease failed to allow full recovery of monies expended.

Service charge determination

25. The Tribunal finds it convenient to list each service charge item with the parties' comments in respect of the same followed by the Tribunal's determination.
26. Service charge costs for the period 18 November 2018 to 17 November 2019 (Insurance Period 18 November 2019 to 17 November 2020) . Apportioned on the basis of one ninth.
 - a) Insurance including administration costs. Invoiced amount £96.52 plus VAT - period of cover 18 November 2019 to 17 November 2020.

Applicant. The Applicant noted that the Insured Party was Options and further that VAT had been added onto the policy cost.

Respondent. The Respondent stated that the policy was arranged via his company's brokers and hence the reason it was addressed to Options. In response to the Tribunal's query that some of the items forming part of the schedule, for instance glass and sanitary ware cover, were not commensurate with a usual property policy, the Respondent stated that his brokers had selected appropriate cover for the development.

The Tribunal. Whilst the Tribunal has some reservations about the items covered in the schedule, the premises specified included 22 Co-Operation Street and the premium itself is not unreasonable. However, insurance costs are not subject to VAT but are subject to Insurance Premium Tax (IPT). The

renewal premium is £496.89 plus IPT of £59.62, total £556.51. Administration costs of 10% are allowed.

Tribunal Determination £68.02 (one ninth).

- b) Management fees. Invoiced amount £112.60 plus VAT
Book keeping. Invoiced amount £60.00 plus
The Tribunal deals with both of these items together as they are interlinked.

Applicant. The Applicant stated that book keeping charges were a recent addition and appeared very high.

Respondent. The Applicant stated that management fees were levied by Options for dealing with matters relating to the development and queries from tenants. Total charges in this respect were £1,216.08 including VAT. In terms of book keeping costs, he provided a copy of the invoice from Jane Bowley where the total costs were £600.80 including VAT for one hour per month although the Tribunal notes that the invoice records 18 hours during the course of the year.

The Tribunal. A managing agent would as part of their regular duties expect to keep books and records sufficient that an accountant could take that information and prepare certified accounts. The total charges levied by the Respondent for management and book keeping are £1816.88 which on the basis of one ninth equates to a charge of £201.88 (£168.22 plus VAT). Professional managing agents in the vicinity of the subject property would generally charge £125 to £150 per property per annum plus VAT. The Respondent is by his own admission not a professional managing agent and the service provided to the Applicant unsurprisingly falls well short of what would be expected from a professional manager. The Respondent appears to deal with queries from the Applicant and other leaseholders in a rudimentary fashion and there are no meetings held or any kind of formalised process for obtaining details of works or costs. The Tribunal therefore allows management charges of £75 plus VAT which are to include any book keeping costs. If the Respondent wishes to employ a book keeper, then it his choice but any cost should not be borne by the Applicant or other leaseholders.

Tribunal Determination Management fees £90.00 (one ninth).

Tribunal Determination Book keeping charges disallowed.

- c) Accountancy fees. Invoiced amount £89.99 plus VAT

Applicant. The Applicant noted that the accountancy invoice from Robert Whowell & Partners in the sum of £913.20 including VAT was addressed to Vanst UK Limited and further that he had not received any copies of accounts in any event.

Respondent. The Respondent stated that Vanst UK Limited was the name of the bank account where the service charge funds were collected as that had originally been the intended name of the freeholder. When questioned by the Tribunal, the Respondent confirmed that the only monies within this account were that relating to the development itself and no other monies were held within the same.

The Tribunal. The previous Tribunal decision allowed £300 for accountancy fees which the parties had subsequently been unable to agree was either for the scheme itself or an individual property. This Tribunal is not bound by another Tribunal decision however £300 plus VAT for accountancy fees for the entire development is considered reasonable. In accountancy terms, this is a simple matter, there are only eight properties and a handful of invoices. In addition, the Respondent is not an incorporated body hence there are no submissions to Companies House required. If the accountant is making submissions to Companies House in respect of Vanst UK Limited, then that is to the Respondent's own cost as that entity has no connection whatsoever to the development. The name of the bank account should in any event be changed to a correct designation forthwith. The Respondent also made the comment that his accountant couldn't provide accounts for £300 plus VAT. The Tribunal is aware that some accountants have a minimum fee however simple the matter, however, in the Tribunal's experience there are some accountants that will provide the required service for this amount.

Tribunal Determination accountancy fees £40.00 (one ninth).

27. The Tribunal had originally struck out the part of the application relating to the service charge year 2017 to 2018. However, having concluded the previous year, the Applicant asked if the Tribunal would consider the items from that year that had not been dealt with by the previous decision – repairs and management. The Tribunal asked the Respondent if he was happy that the outstanding items were considered as part of this determination and he confirmed that he was. The parties were keen to settle all outstanding matters between them and had in fact provided submissions on these matters.
28. The Tribunal therefore considers the following costs for the period 18 November 2017 to 17 November 2018. Invoice dated 12 January 2019.
 - a) Repairs. Total amount £940.60 plus VAT. This was made up of the following:
 - i. Render and decoration work. Total invoice £590 plus VAT. This was accepted by the Applicant.
 - ii. Repairs to the roof of No. 30. Total amount £200 plus VAT. The invoice provided was undated. After questioning it appeared that these works had been arranged by a previous leaseholder who had left the development approximately four years ago i.e. approximately 3 years before the date of the demand. Under section 20B of the

Landlord and Tenant Act 1985, a landlord has 18 months within which to notify a leaseholder of service charge costs being incurred or demand payment. If the Landlord fails to either notify the leaseholder or demand payment within 18 months, they are not able to recover charges. This cost is therefore disallowed.

- iii. Gate fob invoice. Total amount £73.00 plus VAT. This invoice is dated 15 April 2016 and is also disallowed under section 20B.
- iv. Six “jobs” totalling £55.32 plus VAT. There was no documentation relating to these items. The Tribunal therefore allowed the Respondent 7 days after the hearing to provide this information. No information was provided to the Tribunal accordingly these costs are disallowed.
- v. Administration cost £77.00 plus VAT. Whilst it is conceivable a manager may make an additional charge for supervising major works these do not fall into that category and would be expected to be dealt with by a manager as part of the management fee. These items are therefore disallowed.

Total amount allowed £590 plus VAT i.e. £708 in total. Amount attributable to the Applicant £78.67 (one ninth).

- b) Management fees. Invoiced amount £900.80 plus VAT.

The Tribunal would reiterate the comments made above in respect of management and booking keeping and makes the same award.

Tribunal Determination Management fees £90.00 (one ninth).

29. Summary of the service determination:

<u>Service Charge Year</u>	<u>18/11/2018</u>	<u>17/11/2019</u>
Item	Award	
Insurance	£	68.02
Management fees	£	90.00
Book keeping	£	-
Accountancy fees	£	40.00
Total	£	198.02

Service Charge Year	18/11/2017	17/11/2018
Item	Award	
Repairs	£	78.67
Management fees	£	90.00
Total	£	168.67

Section 20C application.

30. The Applicant had also sought an Order for the Limitation of the Respondent's costs in these proceedings under section 20C of the Landlord and Tenant Act 1985 and an Order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
31. Neither party had made written submissions in respect of these applications. During the hearing, the Respondent was asked if he intended to recover any costs incurred as a result of these proceedings from the service charge account? The Respondent stated no, and that he would waive any costs that were incurred.
32. The Tribunal therefore declines to make the Orders as requested. However, for the avoidance of doubt if costs relating to these proceedings were intending to be applied to the service charge account, then the Tribunal would have had no hesitation in making the Orders as the Applicant was fully justified in making the substantive application.
33. The Tribunal would recommend that, at the very least, the Respondent takes professional advice with regard to the management of the development; as well as the administrative and procedural requirements of this form of management, there are potentially serious health and safety implications for a lay manager.

Rule 13 Costs application

34. During the hearing, the Applicant advised that he sought to recover the costs of his application under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
35. The Applicant should note that the Tribunal has only limited cost shifting powers however if he wishes to make an application under this rule, he must within the next 21 days provide to the Tribunal and the Respondent a written submission setting out the grounds relied upon under Rule 13 and setting out an itemised schedule of costs claimed. The Tribunal will then issue Directions accordingly.

Appeal

36. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V Ward

Appendix One – Relevant lease provisions

“3. THE Tenant covenants with the Landlord as follows

3.14.

To pay all proper costs charges and expenses (including legal costs and fees payable to the Landlord’s surveyor) incurred by the Landlord in or in contemplation of any proceedings under sections 146 and 147 of the Law of Property Act 1925 in respect of the Flat notwithstanding forfeiture is avoided otherwise than by relief granted by the court...’

4. THE Tenant covenants with the Landlord and with and for the benefit of the owners and lessees for the time being of the other flat or flats in the Building as follows

4.2.

to contribute and pay to the Landlord as a maintenance and service charge (“the Service Charge”) the Tenant’s Proportion specified in paragraph 6 of the Particulars of the amount of the annual costs expenses and outgoings incurred by the Landlord in complying with the obligations contained in the fourth schedule and of the other matters which without prejudice to their generality are set out in the fifth schedule”.

Paragraph 6 of the Particulars in the lease provides that the tenants’ (leaseholders’) proportion of the service charge for 22 Co-Operation Street is one ninth (1/9th).

The following provide for the calculation and payment of the service charge.

“4.3.

The service charge shall be calculated and paid in accordance with the following provisions

4.3.1.

On each of the Payment Days the Tenant shall pay to the Landlord or his managing agents (as the case may be) in advance such sum as the Landlord or his managing agents shall specify at their discretion to be a fair and reasonable Interim Payment on account of the Tenant’s liability under clause 4.2...

4.3.2.

As soon as possible after the end of each Accounting Period the respective annual costs expenses and outgoings of the matters referred to in clause 4.2 shall be calculated and if the Tenant’s Proportion shall fall short of or exceed the aggregate

of the sums paid by him on account of his contribution the Tenant shall forthwith pay to or shall be refunded by the Landlord the amount of such shortfall or excess as the case may be notwithstanding any devolution of this lease to the Tenant for the time being subsequent to the commencement of the Accounting Period to which such shortfall or excess (as the case may be) relates”.

Paragraph 1 of the Particulars in the lease provides that the Accounting Period runs from 1 January to 31 December in any year.

Subject to the payment of the service charge, the landlord covenants

“6.1.

To observe and perform the covenants stipulations and obligations on his part set out in the fourth schedule...”.

7.

To employ such persons as shall be reasonably necessary for the due performance of the covenants on his part contained in this schedule and for the purposes of management of the Building

8.

To keep or cause to be kept proper books of account for all costs charges and expenses incurred by the Landlord in carrying out his obligations contained in this lease and to make the same available for inspection by the Tenant”.

The landlord’s obligations in the fourth schedule, which are relevant to the matter are as follows:

“1. To keep the Reserved Property in good and tenantable repair and condition throughout the Term...

2.

To paint or otherwise decorate whenever the Landlord considers it reasonably necessary so to do such of the following as have previously been or would normally be expected to be decorated except in so far as they are specifically the responsibility of the Tenant or the lessee of any other flat in the Building

2.1.

The external wood and iron work and the stone work and outside rendering of the Building and any external boundary walls fences and railings and

2.2.

The external surfaces of any windows and window frames external doors and door frames and

2.3.

The Common Parts of the Building

3.

To keep the Common Parts of the Estate properly cleaned and to keep properly lighted such of the Common Parts as may be appropriate...

4.

At all times during the Term...to insure and keep insured the Buildings (including the Flat) and the Landlord's fixtures fittings furnishings apparatus and chattels in and about the Building and such of the Common Facilities as the Landlord shall think fit to its full reinstatement value in such insurance office as the Landlord may select against loss or damage by fire and such other risks as are normally covered by a policy of comprehensive insurance...and against such other risks as the Landlord may from time to time in his absolute discretion consider it desirable to insure in such sums as shall be considered necessary for these purposes and to pay the premium for such insurance...and whenever reasonably required so to do to produce to the Tenant a copy of the policy or policies of such insurance and the receipt for the last premium for the same...

Clause 1.16. of the lease defines the 'reserved property' as:

"...FIRSTLY the main structural parts of the Buildings including the roof the roof timbers chimneys and chimney pots foundations external walls boundary walls fences and railings balconies and other external parts of the Buildings (except such as may be specifically included in the demise of the Flat or within the equivalent definition of any other flat in the Building) SECONDLY all cisterns tanks boilers sewers watercourses drains pipes wires gutters ducts and conduits not used solely for the purposes of the Flat or any other flat in the Building THIRDLY the Common Parts and FOURTHLY the Common Facilities

Clause 1.6. and clause 1.7. of the lease define the 'common facilities' and the 'common parts' as follows:

"1.6.

"the Common Facilities" means any communal television aerial satellite dish door answering system the entry gates and other facilities provided by the Landlord for the common use of more than one flat in the Buildings

1.7.

“the Common Parts” means all and any communal paths passageways staircases refuse disposal areas roads parking areas gardens and any other areas included within the Buildings and the Estate used in common by or provided for the common use of the lessees of more than one flat in the Buildings and their licensees and not included within a demise the reversion to which the Landlord is entitled”.

- 20 The fifth schedule sets out those expenses in respect of which the Tenant (leaseholder) is to contribute through the Tenant’s (leaseholder’s) proportion of the service charge. For the purposes of the Application, these include expenses of compliance with the landlord’s obligations in the fourth schedule, accountants’ fees for the preparation of yearly statements and other work necessary in connection with the service charge accounts, and legal fees incurred in connection with management.

Appendix Two – Relevant legislation

Application under Section 27A of the Landlord and Tenant Act 1985

Sections 18 and 19 provide:

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 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’ include 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.

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 for the carrying out of works, only if the services are of a reasonable standard;

and the amount 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, so far as relevant, provides:

(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) Sub-section (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 included for services, repairs, maintenance, improvements, insurance or management of any description, a service charge would be payable for the costs, 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 payable.

The ‘appropriate tribunal’ is this Tribunal.

Application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

Paragraph 5A of Part 1 of Schedule 11 to the 2002 Act provides, so far as relevant for the limitation of administration charges in respect of the costs of proceedings as follows:

5A(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant’s liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

The First-tier Tribunal is a ‘relevant court or tribunal’.