FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/26UB/LSC/2020/0002**
Property	**:**	**Flat 3, Millennium Court Flamstead End Road Cheshunt Herts EN8 0HH**
Applicant	**:**	**Jake Jackman**
Represented by	**:**	**In person**
First Respondent	**:**	**Kyriacos Antoniou**
Represented by	**:**	**Michael Vakalis of Symon Smith & Partners Ltd (Managing Agents)**
Second Respondent	**:**	**Flamstead End Management Ltd**
Represented by:		**No appearance**
Type of Application	**:**	**Application for the determination of the reasonableness and payability of service charges**
Tribunal Members	**:**	**Tribunal Judge Stephen Evans Mr Chris Gowman MCIEH MCMI**
Date and venue of Hearing	**:**	**21 April 2021, by video**
Date of Decision	**:**	**28 April 2021**

DECISION

DECISION

1. **The Tribunal determines that, in respect of the disputed items set out below, all the First Respondent's costs were reasonably incurred and reasonable in amount, with the exception of the following:**

   (1) 2019:

      (a) The Applicant's contribution to the management fee is reduced to £317.56 inclusive of VAT;

   (2) 2020:

      (a) The Applicant's estimated contribution to the management fee is reduced to £317.56 inclusive of VAT;

      (b) The parties agree that the budgeted figure in respect of accountancy is to be reduced to £480;

2. **The First Respondent's costs (if any) of defending this application should not be regarded as relevant costs to be taken into account in determining the amount of any service charge or administration charge payable by the Applicant.**

Introduction

1. The Tribunal is asked to determine the payability and reasonableness of relevant costs incurred and to be incurred by way of service charges pursuant to an Application made under s.27A of the Landlord and Tenant Act 1985.

Relevant law

2. The relevant statutory provisions are set out in Appendix 1 to this decision.

Parties

3. The Applicant is the Leasehold owner of flat 3, Millennium Court, Flamstead End Road, Cheshunt, Herts, EN8 0HH. This is a 2 bedroom flat in a purpose-built block of 10 flats, and there are 3 bungalows on the estate also. The total land area is about ½ acre.

4. The First Respondent is the lessor under the Applicant's Lease.

5. The Second Respondent is a management company under the Lease. However, at all material times the First Respondent has carried out the management company's covenants, and the Second Respondent has taken no part in this Application.

The Lease

6. The Lease is dated 24 April 2015.

7. As there is no dispute about the interpretation or construction of the Lease, the provisions can be summarised briefly, as follows:

8. The accounting period for service charge purposes is the calendar year starting on the 1st January and ending on the 31st December in each year.

9. By clause 2.3 of the Lease, the Applicant is obliged to pay by way of additional rent on demand 1/10th of the total maintenance expenses which the lessor or management company may pay or incur.

10. By clause 3.1 there is a covenant on the lessee to pay the rent and any additional rent.

11. By clause 4.4 of the Lease there is a covenant on the lessee to pay the service charge by interim and further payments.

12. Clause 6 imposes covenants on the management company, which include at clause 6.2 expenditure of maintenance charge. This is further subdivided into matters such as repairs and maintenance, redecoration of the external and internal parts, plus adequate lighting and cleaning of the common parts.

13. By clause 6.4, the lessor and/or management company may at their discretion employ persons for the purpose of performance of the covenants above, including (at 6.4.2) the employment of managing agents and accountants , and (at 6.4.3) surveyors, builders, architects, engineers, tradesmen or other professional parties as may be necessary or desirable for the proper maintenance, safety and administration of the building.

14. By clause 6.6, the lessor may maintain a sinking fund which may comprise such sums as the lessor shall reasonably require to meet such future costs as the lessor and/or management company shall reasonably expect to incur.

15. By clause 8.3, the lessor is not required to install or provide a system or service not in existence at the date of the Lease.

16. Under the 5th Schedule to the Lease, provision is made for payment of an interim maintenance charge on the 1st January and 1st July in each year, plus a mechanism for balancing final payments.

17. Finally, by paragraph 7 of the 5th schedule, as soon as practicable after the 31st December in each year, the lessor is to provide to the lessee a certificate setting out the amount of the maintenance charge, together with the amounts of maintenance expenditure made, and details of any excess or deficiency in respect of the same.

The Application

18. The Application was originally couched in general terms, and did not specify the service charge years to be considered.

19. The main points made in the Application dated 2 January 2020 were that the managing agents are "skimming money from us, they don't reply to anything, all they do is send you bills. They blame the gates for the high and increasing service fees but they are broken more than 100 days a year. They send a person round to hoover every two weeks and do not much more. They don't let you have access to bills, insurance etc … They have never sent letters informing of increases just court threats if we don't pay what they ask. … They charge £4000 to manage but never respond to us plus I'm sure they doubled all invoices which is why we can't see them … the communal lights have been faulty for weeks but they won't fix."

20. Directions were given on 13 February 2020 in writing by the Tribunal.

The hearings

21. The matter first came before this Tribunal by telephone in November 2020. The Applicant appeared in person. Mr Michael Vakalis of Symon Smith and Partners Limited, the managing agents for the lessor, represented the First Respondent. It was clear to the Tribunal that neither party had adequately complied with the directions given, in particular the Applicant had not set out the disputed charges year by year in the Scott schedule provided with the original directions. Equally, the First Respondent had not provided all the documentation directed by the Tribunal.

22. In the circumstances, the Tribunal clarified the service charge years in dispute as 2019 and 2020, and identified 6 items to be challenged. The

Tribunal issued further written directions, and attached to each of those a sanction for non-compliance.

23. The Tribunal reconvened for hearing on 21 April 2021. The same parties appeared. It was clear to the Tribunal once again that neither party had fully complied with the directions; however, given that neither the Applicant nor the First Respondent wished to argue that the other was to be held bound to the sanctions made by the Tribunal, the hearing proceeded with each party willing and able to advance its case orally, together with the documents which had been disclosed. Both the Applicant and Mr Vakalis were afforded full opportunity to ask questions of each other, and the Tribunal adopted a line-by-line approach to the 6 items in dispute.

24. Give the above, insofar as it is necessary for the Tribunal to grant permission for reinstatement of each of the parties cases under Rule 9 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, such permission is hereby given.

25. Finally, it should be recorded that, owing to technical difficulties, Mr Vakalis was unable to join the hearing by video. He was able to join the hearing by telephone and he took a full part in the proceedings, without any apparent difficulty, except for a few occasions when he became disconnected and had to re-join.

Matters in dispute

26. At the outset of the hearing, it was confirmed that the Applicant was seeking to dispute only 2 service charge years ending 2019 (actual figures) and 2020 (estimated figures), as follows:

Year	**Item**	**Total Management Cost (£)**
2019	Management Fees	4587
	Repairs	2762
	Cleaning/Gardening	2900
2020	Management Fees	4845.60
	Repairs	6847
	Accounts	880

The Issues

27. The issues defined were:

    (1) Whether the above costs were reasonably incurred/ to be incurred;

    (2) Whether the above costs were reasonable in amount;

    (3) Whether an order under s.20C of the Landlord and Tenant Act 1985 and/or paragraph 5A to Sch.11 to the Commonhold and Leasehold Reform Act 2002 should be made.

The Parties' Arguments

Management fees

28. Aside from the representations made in his original Application, in his further written submissions the Applicant complained of:

    (1) A lack of invoices or actual statements of account for 2020;

    (2) Accounting deficiencies;

    (3) That the charge for each of the owners of over £450 for management fees was "terrible";

    (4) The managing agents have not followed the procedures other agents carry out;

    (5) He has never seen the agents visiting the block;

    (6) The agents just ring anyone up to repair items, who see the agents' Central London (Oxford St) location and double the price;

    (7) No one inspects the work, so it is "bodged" and would often break again within weeks;

    (8) Invoices for repairs were not sent contemporaneously, so he was not able to challenge them at the time.

29. In oral submissions, the Applicant suggested a suitable figure would be £150 inc VAT per annum, repeating his point that the lessor should not be using a manging agent in Central London. He said he had enquired of local

managers in Hoddesdon and Hertfordshire about a year ago, but did not have written quotations. He said that 2 hours per week, say 100 hours per annum for the whole block would be enough. He said he had experience of a RTM block. He added his block was only about 10 years old, and that he had never seen Alan Millinder of the managing agents ever visit it.

30. Mr Vakalis explained that he did not get involved in tendering of services; the management team including his manager Mr Mario Anastasis arranged the management fee, based on price per unit. He was unable to say if there was a written contract, but could inform the Tribunal that the Applicant was charged £294.29 plus VAT (£353) for 2019, being 1/13th of the sum of £4587.

31. Mr Vakalis explained that, for this basic fee, the following management services were provided:

- Providing the service charge budget
- Sending out the service charge budget
- Preparing a statement of income and expenditure for the accountants
- Preparing and sending out demands
- Producing and circulating service charge accounts
- Emailing the finalised account to the Leaseholders
- Creating any demand letter if there is a credit or deficit
- Liaising with the lessor as regards the accounts
- Administering all insurances, including the placing of insurance with a broker
- Administering any claims in respect of insurance, such as happened with the electric gates in 2019
- Engaging and supervising staff , to include the gardener /cleaner and operatives' testing of lighting
- Considering the reports of such contractors, either orally (from the cleaner) or by email (from other contractors)
- Managing maintenance contracts, for example those in place for the drains and for the gates
- Undertaking quarterly property inspections (by Mr Vakalis' colleague Alan Millender)
- Dealing with routine inquiries from Leaseholders
- Administering and arranging for checks of the common parts in respect of health and safety, fire risk assessment or compliance with duties under the Equality Act.

32. Mr Vakalis further explained that, if there was at any time a section 20 consultation process which they were asked to see through to the end, the

managing agents would charge 2.5% of the contract works, but if (for any reason) they did not see it through, there would be a separate charge individually agreed with the lessor.

33. Mr Vakalis confirmed that he had never visited the block himself. Mr Vakalis pointed to the quarterly invoices in the documents supporting the figures claimed.

34. Mr Vakalis accepted that his written submissions acknowledged that the management fee was not the cheapest, and that some companies have automated systems, but Symon Smith & Partners employ a more old-fashioned approach, and personal touch, given that most of their properties contain elderly occupants.

35. He added that the management fee increase for the year ending 2020 was simply an RPI increase over the £4589 for 2019. The 2020 figure was budgeted in approx. late November/early Dec 2019, by comparing the RPI figure for the month before with the corresponding month in 2018.

Cleaning/gardening

36. The Tribunal drew the parties attention to the fact that pages 98 to 110 in the supplemental bundle contained a number of invoices which did add up to the figure claimed for 2019.

37. Aside from the representations made in his original Application, the Applicant disputed that the work should take any more than 1.5 hours and that he suspected that the cleaner/ gardener was "fluffing up" the amount of work undertaken. His position was that a maximum of £45 should be charged for regular cleaning (every fortnight) with a quarterly figure for the car park of £35.

38. Mr Vakalis on behalf of the lessor explained that the gardener/cleaner was someone they inherited from the previous managers; that there was no written contract with the gardener/cleaner; that they had never had any complaints; that he was a nice gentleman; and that his fee was not excessive.

39. In response to questions from the Tribunal, Mr Vakalis explained that they agreed the fee for cleaning (habitually £80 on each occasion) as being a price they thought was reasonable, given the requirement to clean the internal common parts, the external common areas, and the litter in the car park. This would take an estimated 5 hours on each visit. In addition, as the invoices show, there were various jobs that were individually

negotiated, like hedge cutting and changing of lights, which were cheaper for the cleaner /gardener to do than negotiating a separate contract.

40. Mr Vakalis indicated the lessor would have been happy to re-tender if asked, but had never done so, because there had been no complaints about the cleaner/gardener.

41. In answer to the questions posed by the Tribunal as to what the managing agents did to satisfy themselves that the works had been undertaken, Mr Vakalis indicated that they did nothing as regards the cleaning, but did ask for pictures for matters such as hedge trimming. They did not undertake spot checks. They relied on complaints being made. However, Mr Millender did carry out quarterly inspections. On 1 occasion, he found that the common parts had been poorly done and requested the cleaner re-do the work for no additional fee.

Accountancy

42. The Applicant disputed the figure of £880 for the year ending 2020. Mr Vakalis explained that the additional £400 over and above the 2019 figure of £480 related to a request by an individual Leaseholder or Leaseholders for accounts for the year ending 2016, in order to assist the sale of their flat. When questioned by the Tribunal as to why this should be a cost to be shared by all the Leaseholders, Mr Vakalis accepted on behalf of the First Respondent that the additional £400 should properly be removed from the budget.

43. The Applicant was then asked whether or not he challenged the remaining £480, and he indicated that he did not.

Repairs (2019)

44. The Applicant was unclear which invoices in the supplemental bundle made up the sum of £2762, and Mr Vakalis indicated there were 9 pages [115-119, 121-124] which so related, only 2 of which the Applicant then challenged.

45. As to p.116, the Applicant considered the lessor was at fault in not rectifying an electrical light issue which had been faulty for some time.

46. As to p.122, which related to (a) line painting in the car park and (b) replacement fence panels, the Applicant's position was as follows:

(1) £650 was too high for the painting, which took 2 men only a few hours, with materials which could not have cost more than £50-100, since only about 40 linear feet was re-painted, albeit by hand;

(2) The Applicant had rung up to get his own quote for the fence panels, at £150, so the £260 claimed was too high. It had also not been confirmed that these panels were ones which the lessor (as opposed to the neighbours) had any obligation to maintain.

47. The 1st Respondent's response was:

(1) The builders made 2 visits, the first to measure up, the second to execute the works;

(2) It was unclear which fence panels were involved, but the lessor would not be expending monies on panels which it did not have an obligation to repair.

Repairs (2020)

48. The Applicant clarified, with reference to the estimate of service charges for 2020 in the bundle, that the sum of £6847 which he challenged compromised (1) £3000 for general repairs and maintenance under "Type A expenditure" (2) £2308 for electric gate repairs/maintenance under "Type B" expenditure and (3) £1539 for gardening/car park/electricity contribution, also under Type B.

49. Mr Vakalis indicated that invoices on pages 26-38 and 40 showed works actually carried out in 2020, which indirectly justified the sums budgeted in late 2019. He said the bundle contained all invoices up to 25 January 2021 (the date they had to be disclosed to the Applicant), and there might possibly be some invoices after that date which were missing.

50. He explained that all estimates were undertaken by carrying out an audit trail of the previous year's expenditure and rounding it up. There might also be some adjustment for inflation.

51. As to the electric gate, the parties accepted it had been a recurrent problem up to 29 June 2020 when CCTV was installed, meaning that previous misuse of the gates (by forcing them or pushing them) was less prevalent. The Applicant claimed the issues had led to over 212 days of the gates being out of operation over the last 2 years or so. He pointed to the fact that in the first half of 2020 over £4000 had been spent on the gate by way of repairs, inspections and risk assessments, when a new electric double

gate would only have cost £5000 in his view (some builders had looked into it, he said).

52. Mr Vakalis, in response to Tribunal questions as to whether replacement of the gate had been considered, rather than constant repair, admitted that the agents had not yet investigated this in any detail. He said replacement gates would cost more like £12,000, however. He confirmed the risk assessment in 2020 had been carried out on the advice of the company servicing the gates, because there was no record of one historically.

53. Mr Vakalis explained the figure of £1539 as being the flat owners' proportion of the £2000 estimated for both flat owners and bungalow occupiers contributions to gardening, electricity (external lighting) and the car park (cleaning). In other words, the sum was (2000/13) x 10.

54. Again, he said all estimates were undertaken by carrying out an audit trail of the previous year's expenditure and rounding it up. There might have been some adjustment for inflation.

55. In closing representations, Mr Vakalis stated that he believed there were issues with construction of the block and accepted that management may not have been to the best standard at all times.

56. The Applicant emphasised that he does want to sell his Leasehold interest, but the figures for service charges are putting off prospective buyers.

Determination

Management fees

57. The Tribunal considers that the services provided by the Managing Agents in this case are broadly similar to those in paragraphs 3.3 to 3.5 of the RICS Service Charge Residential Code, approved by the Secretary of State under s.87 of the Leasehold Reform Housing and Urban Development Act 1993. Whilst we are not bound by this guidance, the Tribunal has regard to this Code as a good indication that fees have been "reasonably incurred".

58. In the Tribunal's view, the management costs were reasonably incurred in this case.

59. As to the amount, the Tribunal reminds itself that the lessor is not required at law to pay the cheapest fee in respect of any management fees: *Forcelux v Sweetman* [2001] 2 EGLR 173. It is therefore not enough for the Applicant to complain that the fees of themselves are on the high side, or that they have simply increased from year to year. It is notable that the

Applicant has not obtained any documentary evidence of alternative quotes of his own.

60. Whilst the fee is, in the Tribunal's experience, on the high side for management of a block of this size, if the management had been optimal, £353 would not be one with which this Tribunal would interfere.

61. However, Mr Vakalis candidly accepts that the standard of management services has not been as high as it might. In addition, whilst we reject the Applicant's contention that there was a need to supply documentary evidence (invoices etc) of repairs contemporaneously, the Tribunal is concerned about the lack of oversight in relation to cleaning, gardening and repairs. Further, the Managing Agents have, in the Tribunal's determination, been late in addressing the long-standing issues with the electric gates.

62. Where the quality of the services delivered by the agents themselves and/or the condition of the development is below normal expectations, the Upper Tribunal has accepted this as being indicative of the management function not being executed to a reasonable standard. In *Kullar and Prior Place Residents Association v Kingsoak Homes Ltd* [2013] UKUT (LC) the management agent's fees were reduced by 10% on account of the problems experienced in the block.

63. The Tribunal considers, for all the above reasons, that there should be a similar reduction of 10% in this case.

64. The Tribunal is not satisfied that an RPI increase for 2020 is justified on the evidence before us. In particular no contract has been disclosed, and the mathematics have not been justified by the First Respondent. The Tribunal is concerned generally that management fees have escalated since 2016 (£3000) to date, without obvious justification.

65. Accordingly, in respect of the Applicant's leasehold interest, the Tribunal determines the management fees for both 2019 and 2020 should be 90% of £4587 inc VAT, i.e £4128.30.

66. This results in a determination of £317.56 inclusive of VAT payable by the Applicant for 2019, and a reduced estimated cost for 2020 in the same amount.

Repairs (2019)

67. The Tribunal prefers the Respondent's submissions that the works were reasonably incurred.

68. In respect of the electrical invoice on p.116, the Tribunal has no reason to doubt its authenticity, or that the £228.68 inc VAT was expended on actual works. The Tribunal understands the Applicant's concern that lighting was a recurrent issue, but that does not necessarily mean that the works on this occasion in December 2019 were not necessary. The amount does not appear excessive to the Tribunal, for what would appear to be the replacement of 8 lamps.

69. As to p.122, the Applicant did not seriously dispute that the line painting was necessary. His complaint was the figure of £650. However, once again, provided works are reasonable, a tenant cannot insist on a cheaper or more limited remedial works or a minimum standard of repair: *Plough Investments Ltd v Manchester City Council* [1989] 1 EGLR 244.

70. In the Tribunal's view, for the labour of 2 men plus materials, the cost may have been on the high side, but not one with which the Tribunal can interfere.

71. As regards the fencing works, there was insufficient evidence before the Tribunal for it to determine the works were not reasonably incurred. It was unclear whether this was a fence panel which had previously been repaired (the fencing appears to be affected by the wind somewhat regularly).

72. As to amount, the Tribunal considers £260 to be entirely reasonable for the builders to (a) order the 2 panels, (b) pay for them (c) collect them, (d) deliver them to site, (e) fit them, (f) remove the broken ones and clear the site, and (g) cover their return travel costs.

Repairs (2020)

73. The Tribunal reminds itself this is an estimated figure, and the Applicant will have a further opportunity to challenge any further demand when the reconciliation of figures takes place.

74. The Tribunal has every reason to believe these are costs likely to be incurred, given the repairs in fact undertaken in 2019, and in the light of the invoices received since obtained during 2020.

75. As to amount, the Tribunal accepts Mr Vakalis' explanation of the methodology of reaching these estimated figures, being as they are the result of an audit trail exercise.

76. We accept that there have been issues with the electric gates, and the Tribunal's decision on management fees reflects the sub-standard management in this regard. However, more than the estimated sum has been expended on the gates in 2020. Therefore, the Tribunal determines that the estimated sum in respect of the gates is reasonable in amount.

Accountancy costs

77. Given the reduction from £880 to £480 (which the Applicant did not challenge) no determination is required by the Tribunal.

78. The estimated accountancy cost for 2020 is therefore a cost which it is agreed is reasonable to expect the lessor to incur, at a reasonable sum.

S.20C/ paragraph 5A Application

79. Given the Tribunal's determination in respect of the management of this block, and in all the circumstances, we consider that it would be just and equitable to order that the First Respondent's costs (if any) of defending this application should not be regarded as relevant costs to be taken into account in determining the amount of any service charge or administration charge payable by the Applicant.

Judge: _____
S J Evans

Date:
28/4/21

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written Application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. 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.
3. If the Application is not made within the 28-day time limit, such Application must include a request to 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.

4. 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.

Appendix 1

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 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.