



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

Case Reference : **MAN/00CJ/LSC/2019/0037**

Property : **6 Wrendale Court, William Street, Gosforth,
Newcastle Upon Tyne, NE3 1TF**

Applicants : **Miss Emily Barryman Walton**

Representative : **Ms Linda Berriman**

Respondents : **Kingston Property Services**

Type of Application : **Landlord and Tenant Act 1985, ss.19 and
27A**

Tribunal Members : **Tribunal Judge Caroline Hunter
Tribunal Member Peter Mountain**

Date of Determination : **25 January 2021**

Date of Decision : **31 January 2021**

DECISION

Summary Decision

1. The Tribunal finds the service charges for the years 2018-2020 were not excessive nor unreasonable.

Application

2. On 19 March 2020 the applicant, Emily Barryman Walton, issued an application pursuant to sections 27A and 19 of the Landlord and Tenant Act 1985 (which are set out in full in the appendix to this decision), challenging the reasonableness of the service charges for her flat at 6 Wrendale Court, William Street, Gosforth, Newcastle Upon Tyne, NE3 1TF. The respondents, Kingston Property Services, are the management company named in the lease on the flat.
3. The application was concerned with the water charges for the flat that were included in the service accounts for 2018 and 2019 and the current charges for 2020.
4. Directions were made on 18 September 2020. The Tribunal considered it was appropriate for the application to be determined on the without holding a hearing and without an inspection. Neither opposed that direction. For reasons that are not known by the Tribunal the Directions were not received by the respondents until December 2020, and the decision was delayed until the directions were followed.

Background

5. Wrendale Court is a purpose built block of 23 flats in Gosforth, Newcastle, constructed in 2007 to 2010. The lease is dated 18 August 2009. The applicant bought her 2 bed flat in 2016. Wrendale Court was built with a communal water meter serving the whole building which records the actual water usage for 23 apartments and any common areas.

The lease

6. The lease is in a common tripartite format. The property, i.e. the flat, is described in the First Schedule. The tenant covenants in Clause 3 to observe and perform the obligations set out in the Fourth and Seventh Schedules. The management company in Clause 5 covenants to do the same in terms of the Sixth and Seventh Schedules. Part One of the Sixth Schedule sets out the covenants for works and services on the part of the management company. They do not include requirement to maintain repair or replace any service installation in the property.
7. In terms of the Schedules to the lease the following are relevant:

The Fourth Schedule (The Tenant's Covenants):

4. SERVICE INDEMNITY

To keep the Management Company and the Landlord indemnified in respect of any charges for water electricity and gas or other services in respect of the Property such sums to be repaid to the Landlord or the Management Company on demand.

16. SERVICE CHARGE

To pay the Management Company the Service Charge in accordance with the provisions of the Seventh to this lease.

Clause of the Sixth Schedule Part Two

1. The Service Costs of any Accounting Period are the expenditure, liabilities and overheads....paid or incurred by or on behalf of the Management Company during or respect of the Accounting Period of and incidental to:
1.6 the payment of all existing and future rates, assessments, impositions and outgoings charged or imposed or payable on or in respect of the Block as a whole or the Common Parts;
8. The Seventh Schedule sets out the covenants on the part of the management company and the tenant in respect of the service charges. The tenant covenants to pay the management company the service charges in accordance with the schedule.

The Law

9. The applicable statutory provisions are set out in the Appendix of this decision. In effect we are being asked to decide whether the service charges are payable under the lease at all (1985 Act, s.27A) and whether they are reasonable both in being incurred and in relation to the standard provided (1985 Act, s.19).

The matters in dispute

10. The matters in dispute are the service charges in 2018, 2019 and 2020 for the water rates. The budgets and actual amounts were for the whole block were:

	Budgeted	Actual
2018	£12,000	£23,905.71
2019	£12,000	£23,043.54
2020	£16,000	

11. Water is supplied to the building by Northumbrian Water, who bill the respondent. The bill based on the actual water usage for the building that is then divided by the relevant service percentage, in the applicant's case of 4.5%.
12. The applicant first complained about the water changes in a letter to the respondents on 23 January 2018. The new water meter for the building was installed in February 2018 to try to improve the position.
13. In December 2018 a leak detection survey was commissioned by the respondents. This confirmed that there were no leaks in the supply to the building and ruled out Northumbrian Water as being responsible. The survey identified a collective usage of 1.5m³ per hour being caused by 4 specific properties in the block.
14. In the following weeks the respondents arranged access for 3 of the 4 properties to investigate further. All had issues with their toilet flushes passing water. The owners were informed of the repair responsibilities and asked to resolve this. On 29 April 2019 the applicant queried the charges again. The respondent did contact all residents to ask them to check for the issue of faulty toilet flushes.
15. On applicant and the respondent have continued to correspond since then, with the applicant continuing to complain. The applicant has sought to have individual meters for each property installed. In a letter dated 12 November 2020 to the

residents the respondents stated that it had switched to individualising the water meters to combat the increases in the service charge as a priority.

16. The applicant's case is that the respondent should have acted more quickly and decisively when aware of such a major leak. The water charges are excessive. The respondent could and should have questioned the reasonableness of the bill. The leak has continued for three years. Furthermore she paid a plumber to mend the toilet, but the respondent did not notify the leaseholders that Northumbrian Water provides a free toilet leak service.
17. In response the respondent notes that the water bills record the actual amount used in the building. They ask whether the Tribunal can make a determination whether the water charges are excessive. In any event they have taken action to try to reduce the water consumption. Under the lease they are not responsible for repairs to apparatus within individual properties.

Decision

18. We have a lot of sympathy for the applicant who, because of her job as a carer is required to sleep over in other homes, does not consume a lot of water. However, our decision can only follow the law.
19. In our view the service charges were not excessive. They were based on the actual water use and applied in accordance with the lease. We have also asked ourselves whether they are reasonable in terms of the response by the respondents to the complaints by the applicant. Were their efforts to limit the charges reasonable? In our view they were. There were limited options because the evidence was that the leaks came from individual flats.
20. The respondents were not obliged in law to change the water meter from a collective to individual ones. However, we encourage them to complete this as quickly as possible in order to make the position fair for property owners in the block, like the applicant, who use smaller amounts of water.

Appendix – relevant legislation

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.

Tribunal Judge C Hunter
31 January 2021