



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

Case Reference : **MAN/00CA/LSC/2020/0077**

Properties : **20 and 26 Chindit Close, Formby, Liverpool
L37 2 JH**

Applicant : **Mr J Wooder and Mr R McDonald**

Respondents : **One Vision Housing Limited (represented by
Miss L James, Solicitor)**

**Type of
Application** : **Landlord and Tenant Act 1985, Section 27A
and Section 20C playability of service charges**

Tribunal Members : **Mr J R Rimmer
Mr A Hossain**

Date of decision : **1st July 2022**

DECISION

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Order : The service charges for the years 2018-2019 and 2019-2020 are reasonably incurred at reasonable cost with the exception of the amount of £54.86 in respect of the rotary drier.

A. Application and background

- 1 The Applicants are each the holders of a long lease of a flat situated at Chindit Close, Formby Merseyside. The two flats are situated in a block of similar deck-access properties at the head of Chindit Close, a cul-de-sac situated to the West of the local railway station, near a local amenity area of pinewoods and beaches. This block is in turn situated amongst other properties owned by One Vision Housing, a local social landlord.
- 2 The Respondent, as landlord, has the responsibility of providing the services sanctioned by the leases of the flats in the block where the Applicants' properties are situated. They each contribute 1/18th of the cost of those services provided to the 18 flats within the block.
- 3 The catalyst for the making of the application is the view, held jointly by the Applicants, that a number of charges raised by the Respondent relate to services that have not been reasonably required at costs that have themselves not been reasonable.
- 4 Notwithstanding a number of efforts made to explain the nature of the charges in question and to narrow the issues between the parties and ultimately for the benefit of the Tribunal, there remain a number of matters that remain unresolved and upon which the Tribunal is asked to exercise its judgement.
- 5 All parties were able to assist the Tribunal by providing appropriate statements of cases and relevant witness statements and observations, together with bundles of documents that would subsequently assist the Tribunal at its hearing at the Liverpool Civil Justice Centre on 24th May 2022.
- 6 The Tribunal also took the opportunity to inspect the exterior of the premises later that day. It considered this to be an appropriate step, given the matters raised at the hearing and the fact that the risks associated with such a visit could be assessed with relative ease, given the nature of the building within which the two flats were situated.
- 7 The Tribunal also issued a further direction to the Respondent to provide additional information in relation to a number of invoices relating to the use of scaffolding at the premises in view of the confusion that it experienced in equating the Respondent's explanations with the complaints raised by the Applicants. The Tribunal was subsequently

provided with sufficient further information to enable it to proceed to determine the matters raised.

The lease

- 8 While the terms of the lease were not the subject of any direct dispute between the parties it is appropriate for the Tribunal to note that no suggestion is made that any of the matters under consideration fall outside the terms of the service charge provisions in the lease, merely that they are unreasonably incurred at unreasonable cost. The Respondent does, however, make reference in the “Scott Schedule” (referred to below) to the relevant provisions of the Fifth and Sixth Schedules to the leases to justify some charges as being within the service charge provision. Notice should also be taken of the views set out below in relation to the rotary drier.

The Law

- 9 The law relating to jurisdiction in relation to service charges falling within Section 18 Landlord and Tenant Act 1985 is found in Section 19 of the Act which provides:
 - (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
10. Further section 27A Landlord and Tenant Act 1985 provides:
 - (1) An application may be made to 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

and the application may cover the costs incurred providing the services etc and may be made irrespective of whether, or not, the Applicant has yet made any full or partial payment for those services (subsections 2 and 3)

Subsection 4 provides for certain situations in which an application may not be made but none of them apply to the situation in this case.

- 11 Section 20c is quite straightforward in its wording and sets out what the powers are that the Tribunal has in relation to charging of costs incurred in these proceedings in future service charge years:
- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred by the landlord in connection with proceeding before a court. or First -tier Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application
 - (2) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

The Inspection

12. On the afternoon of 24th May 2022 the Tribunal inspected the premises at Chindit Close. They are situated as described in paragraph 1, above, in the area of Formby that is residential in nature but in respect of which considerable local amenity is available nearby.
13. Flats 20 and 26 are situated in a block of 18 similar flats at the head of a cul-de-sac of housing in various styles provided by a public sector housing agency. The block is of brick construction under tiled roof with the flats having deck access to the rear from open staircases. There are therefore limited common parts comprising the exterior of the structure and the accessways, together with grounds to the front, sides and rear.

The submissions and hearing

14. As outlined above, the parties sought, within reasonable parameters to limit their representations to those matters within the application and which had not been resolved in the attempt to limit the issues, and which provided the Tribunal with a definitive list of what remained outstanding.

15. From that meeting a “Scott Schedule” had been produced upon which the Applicants and the Respondent had made appropriate comment. From that document the following items were of concern to the Applicants in respect of the 2018-19 service charge year:

- 15 (1) Periodic inspection and servicing of the emergency lighting in respect of which the Applicants’ concerns were:
- (a) The overall cost (£521.80) relative to the work required.
 - (b) The need for the work at all if, as the Applicants suspect, the lighting was “self-testing”.
 - (c) The need for this lighting to have replaced existing adequate lighting.

- (2) A cost of £2681.28 which apparently started out as the replacement of 5 roof tiles but, metamorphosed into gutter clearing and cleaning. The Applicants' view being that whichever the job, it could be done without the need for scaffolding.
 - (3) The rodding and clearing of a blocked drain at £66.26 which the Applicants regarded as work on a private, rather than common, drain.
 - (3) repairs to a drain at the front of the building to alleviate flooding. The cost was £510.06, originally described as lifting and reflagging of paving.
- 16 5 further matters were raised in relation to the 2019-20 accounts:
- (1) The provision of a new rotary drier at a cost of £54.86 which the Applicants did not accept as being the leaseholders' responsibility.
 - (2) Scaffolding provided for further roof works at a cost of £689.08 but apparently involving scaffolding to a far greater height than that of the building itself.
 - (3) A Landlords inspection of lighting at a cost of £28.44 in respect of a 2-storey building described as "NE 4 storeys"
 - (4) A roof inspection carried out from ground level at a cost of £25.88 where one of the Applicants conducted his own inspection and found matters not apparent to the Respondent
 - (5) £212.94 for the replacement of 5 roof tiles where the same initial description of roof tile replacement had resulted in the cost noted in paragraph 18, above, the previous year.
- 17 The Tribunal would express the view that some greater element of communication between the parties might have limited matters even more, or conceivably resulted in some agreement, however reluctant. It does however appreciate that the dynamics within the parties may not make that easy and does not offer any criticism in that regard. The Tribunal was particularly concerned to note that on more than one occasion items had been coded incorrectly into the Respondent's accounting system (noting specifically gutter works referred to as tile replacement and drainage repairs as re-flagging). Such matters only serve to aggravate what should be a better relationship between landlord and tenant.
- 18 Similarly, confusion was caused by references to categories of work within particular codings that were not clear to the Applicants, but the Tribunal accepts the Respondent's view that an endless number of codes for every eventuality is not possible. Equally, when matched with the concern in the preceding paragraph it is clear how the Applicants may have become concerned. Further misunderstanding resulted from what appeared to be a

- situation whereby one item of roof repair scaffolding had not been charged for, although it had been supplied and erected.
- 19 Notwithstanding those matters above, the Tribunal was able to consider at some length the concerns of the Applicants and seek appropriate observations upon them from the Respondent and their solicitor.
 - 20 It was perhaps symbolic of the confusion that had arisen that the Tribunal needed to embark upon two courses of action to assist it with its deliberations:
 - (1) An inspection of the block in which the flats were situated in order to ascertain how matters of particular concern could be related to the situation within the block itself
 - (2) Further directions were required to clarify, so far as possible the relevant works upon the building that had required scaffolding and how it had been determined that scaffolding was required and sourced.
 - 21 The Tribunal was aided in the former by being able to attend at the property immediately after the hearing had concluded and in the latter by subsequent receipt from the Respondent of details as to how relevant works had been identified, the process undertaken to determine the need for scaffolding and its sourcing, together with the period of time over which relevant work extended. It also assisted the Tribunal to consider with greater clarity the photographs provided by the Applicants.

Deliberations

- 22 It is useful to proceed with consideration of the charges levied, but challenged, in the order in which they appear in paragraphs 17 and 18, above.
- 23 Inspection and servicing of emergency lighting (£521.80)

New lighting had apparently replaced a more basic system of lighting that relied on timers in order to operate during darkness. The Applicants considered that previous lighting was sufficient and adequate. The replacement system was understood by the Applicants to be self-testing, although it was never made entirely clear to the Tribunal the source of information suggesting this was the case, as the Respondents denied that this system was in any way “self-testing”. It had always been the case that the Applicants considered the new system superior and more reliable than the old.
- 24 The Applicants also questioned the cost of inspections relative to the amount of work noted as being required, time spent and the need for a “responsible person” to conduct tests of the equipment. If such a person was required, the Applicants would have volunteered themselves as such people.

- 25 The Tribunal frequently meets the situation when considering the reasonableness of service charge costs that in dealing with matters themselves residential occupiers would accept situations where a landlord would not and should not do so. This applies to the selection of a responsible person, the need for regular checks as to the operation of the system and its inspection, together with the provision of a robust and weatherproof system to assist evacuation of the building, should that be required.
- 26 Against that background the Tribunal would consider the costs to be reasonably incurred and the costs themselves reasonable.
- 27 Gutter cleaning at a cost of £2681.28
Having accepted the coding issue as resolved the Applicants nevertheless regard the costs as excessive, particularly with regard to the scaffolding, which Mr McDonald regards as unnecessary with the job being much cheaper if carried out from the deck access landing.
- 28 From its inspection of the building the Tribunal is entirely satisfied that the only safe access for work to the gutters at the rear would be by way of scaffolding. Whatever personal risks might be acceptable to Mr McDonald would be entirely inappropriate for any employer to take with its workmen.
- 29 The breakdown now provided by the Respondent, showing how the need for the work was reported, identified, assessed and costed, together with the time taken for its completion, satisfies the Tribunal that the work was reasonably undertaken at reasonable cost. The professional experience of the Tribunal members is such that it appreciates that the cost of safe scaffolding is by far the major element of an overall costs total.
- 30 Drain blockage cost £66.26
During the course of its inspection the Tribunal was able to inspect the site of this work. It is satisfied that, notwithstanding the observations to the contrary by the Applicants, it relates to drainage from the common parts of the exterior pathways to the building and as such is a charge properly made within the service charge provision.
- 31 Grid Blockage £510.06.
This is the other matter originally miscoded, in this case as re-flagging. Having identified the correct nature of the work as being to drains outside the front door of 21, Chindit close, it is the view of the Tribunal that although the cost appears to be high there is no evidence that the work was not required, nor that there is any other evidence of a cost to suggest that

- this cost is unreasonable. Without an appropriate reference point the Tribunal is unable to say the cost is in any way excessive.
- 32 Renewal of rotary drier £54.86
The Applicants suggest that this is not a leaseholder responsibility. The Respondent is satisfied that it falls within paragraph a) of the Sixth Schedule of the lease as an obligation upon the Respondents to repair or renew as appropriate.
- 33 This may not be the largest bill in the world, but it does require some obligation on the part of the leaseholders to pay it. The Tribunal has considered at length paragraph a) of the Sixth Schedule and the description of the property and associated right in the Second and Third Schedules to the lease, and although there is reference to laundry accommodation and clothes drying areas there is no reference to drying equipment nor is there reference to “associated equipment” as in the case of television aerials.
- 34 The Tribunal is happy to be directed to a clearer provision, but in the absence of such this item would not appear to fall within the provisions of the lease. That may, in the long term, be an unfortunate situation for those who might use the dryer.
- 35 Scaffolding for roof works costing £689.08
The Respondent’s response to the further direction of the Tribunal to try to obtain further clarity in relation to scaffolding now demonstrates that this is a separate matter, instigated by a separate tenant in relation to problems with the rear guttering. In the absence of any other information to suggest that the work was either unreasonable, or unreasonably costed, the Tribunal is of the view that it is properly charged to the service charge account.
- 36 Lighting inspection costs of £28.44
The Applicant’s complaint is that this cost has been incurred under a description as an inspection of a building “NE 4 storeys”. The subject flats are in such a building, it being two storeys high. The descriptor does not in any way suggest that the cost is unreasonable. As the respondent pointed out, it would be unrealistic to have coding descriptors for every precise eventuality.
- 37 Roof inspection £25.88
The concern of the Applicants in respect of this matter appeared to be that to assess the work required from ground level would be impracticable and the costs therefore would be a waste. The explanation from the Respondents suggests that as a cost for assessing likely scaffolding requirements to proceed further it is reasonable.

38 Roof tile replacement £212.94

Once again, confusion appears to have been caused to the Applicants that the replacement of 5 tiles is recorded as “not exceeding 12”; which is explainable. Rather less so, without further enquiry, was the cost relative to the other roof costs where scaffolding has been erected, but on this occasion it would appear that no cost for scaffolding has been included in the bill, hence the considerable difference when compared with those other roof works (above). There is nothing to suggest that those costs are unreasonable.

39 The Tribunal is therefore satisfied that the service charge costs challenged by the Applicants are reasonable with the exception of the rotary drier cost referred to at paragraph 34, above.

40 The Tribunal does note that the obligation upon a leaseholder to pay a service charge is contained in the covenant by the leaseholder to pay by way of further rent the costs referred to in the Sixth Schedule of the lease. These costs do not appear to include any legal or other professional costs incurred in dealing with tribunal proceedings so there is no need to consider the application or otherwise of Section 20C Landlord and Tenant Act 1985. If any party is not in agreement with that view they are invited to make written representations within 28 days of the issue of this decision,

J R RIMMER (CHAIRMAN)

