



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

Case Reference : **MAN/00CY/LSC/2021/0025**

Property : **Flat 3, The Royal Lofts, Sowerby Street,
Sowerby Bridge.**

Applicant : **Sowerby Street RTM Company**

Representative : **J B Leitch**

Respondent : **PropertyProWorld Limited**

Representative : **Creative Legal Solutions**

Type of Application : **Section 27A Landlord and Tenant Act 1985
– Service charges**

Tribunal Members : **Tribunal Judge J. E. Oliver (also sitting as
a County Court Judge
Tribunal Member S.A. Kendall**

**Date of
Determination** : **9th November 2021**

Date of Decision : **8th December 2021**

DECISION

Decision of the First-tier Tribunal

1. The following sums are payable by the Respondent:
 - (1) Service charges of £780
 - (2) An administration charge of £150.

Decision of the County Court

- (3) Costs and interest are payable as claimed in the sum of £1026.16.

Application

2. This is an application transferred to the First-tier Tribunal by District Judge Gill sitting at Luton County court on 16th March 2021 for the Tribunal to make a determination as to whether service charges and administration charges are reasonable and payable in respect of Flat 3, The Royal Lofts, Sowerby Street, Sowerby Bridge (“the Property”). The years in issue are 2019 and 2020.
3. The amount claimed against PropertyProWorld (“the Respondent”) is in the sum of £930.00 plus interest and costs, in the total sum of **. The sum of £930 comprises arrears of service charge for the period 1st October 2019 to 30th September 2020 in the sum of £780, together with an administration charge of £150 charged on 24th June 2019.
4. The Respondent filed a defence with the Court refuting all aspects of the claim.
5. The Tribunal directed a Case Management Conference be held on 18th June 2021 following which directions were issued on 29th July 2021 providing for the application to be determined without a hearing and for the parties to file statements. Both parties filed statements upon which the Tribunal relied in making its determination.

The Lease

6. The Property is held under a Lease dated 16th April 2003 and made between Cheriton Properties Limited (1) and Oakland Estates Limited (2) for a term of 999 years from the date of the Lease. The Lease describes the Demised Premises as:

“The premises on the first floor of the Building which are shown for identification purposes edged orange on the attached Plan 1 and as more particularly described in Clause 1.6 and known as Apartment 3”.

7. The Lease further describes the Retained Premises as:

“Means the whole of the Property comprised in the title to the Building excluding the Demised Premises”.

8. Clause 1.2 defines the Building as:

“the Building (of which the Demised Premises forms part briefly described in the Particulars and comprising the properties comprised in the Tile described in the Particulars and each and every part thereof and all the appurtenances belonging thereto including all the landlord’s fittings plant machinery apparatus and equipment now or hereafter in or upon the same all additions alterations and improvements thereto”

9. Clause 1.3 Defines the Common Parts as:

“the entrances exits lobbies stairs passages lift meter rooms refuse storage areas and other areas and facilities and Conducting Media which serve or benefit or are usable by some or all of the occupiers of the Building

10. Clause 3.3 of the Lease provides for the Respondent to pay:

“the Service Charge payments as additional rent in accordance with the provisions of the Third Schedule”.

11. The Third Schedule provides for the services to be provided within the service charge:

1. *The Landlord covenants with the Tenant to provide the following services (“the Services”):-*

1.1. *To repair (and whenever the Landlord regards it as necessary in order to repair to replace or renew parts of) the exterior and structure of the Building including for example the roofs foundations and the load bearing walls and columns and the external walls and floors ceilings and all other structural parts (but excluding any such parts comprised within the Demised premises or that would be comprised within a lease of the Retained Premises in a similar form to this Lease)*

1.2. *To decorate the external parts of the building as often as the Landlord shall deem necessary but not more often than once every three years*

1.3. *To maintain decorate clean and when reasonably necessary replace the Common Parts*

1.4. *To maintain clean and service and whenever the Landlord considers it appropriate renew replace any conducting Media that serve the Demised Premises in common with the Retained Premises*

1.5. *To maintain any other works or services in the Building which provide common facilities enjoyed at any time by the Demised Premises and the Retained Premises.*

4. *The Tenant’s Share shall be one-thirteenth part of the relevant expenditure properly attributable to the Demised Premises to be determined in the absence of agreement by the Landlord’s surveyor (save in case of manifest error).*

12. Clause 3.5 of the Lease further provides for the Respondent to pay:

“throughout the Term by way of additional rent within 7 days of demand all reasonable costs charges and expenses which the Landlord may from time to time properly incur in connection with or in procuring the remedying of any breach non- performance or non-observance by the Tenant of any of the covenants or obligations on the part of the Tenant contained in this Lease”.

13. Clause 3.6 and Clause 4.2 of the Lease provide for the payment of interest on any arrears outstanding for more than 21 days.
14. Clause 4.3.4 provides for the Respondent:

“to pay a due proportion (to be fairly and properly determined by the Surveyor in the absence of agreement between the parties) of the cost of maintenance and repair of any Conduits the use of which is common to the Demised Premises and the Retained Premises and/or any Adjoining Property”

15. Clause 4.18 provides:

“To pay and indemnify the Landlord and any superior Landlord against all reasonable costs fees charges disbursements and expenses reasonable and properly incurred by the Landlord or such superior Landlord including but not limited to those payable to solicitors counsel architects surveyors and bailiffs:-

.....in connection with the recovery or attempted recovery of arrears of rent or other sums due from the Tenant or in procuring the remedying of the breach of any covenant by the Tenant”.

The Law

16. Section 27A(1) of the Landlord & Tenant Act 1985 provides:

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.*

17. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.
18. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It 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.*

19. In making any determination under section 27A, the Tribunal must have regard to section 19(1) of the 1985 Act:

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.

20. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

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.

21. Paragraph 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 contains the definition of an administration charge for the purposes of the Schedule:

1 (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly-

- (a) for or in connection with the grant of approvals under his lease, or in applications for such approvals,*
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord as a person who is party to his lease otherwise than as landlord and tenant,*
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant,*
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease*

(1) In this part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither-

- (a) specified in his lease, nor*
- (b) calculated in accordance with a formula specified in his lease.*

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

22. Paragraph 5 of Schedule 11 of the 2002 Act provides:

(1) An application may be made to [the appropriate tribunal] for a determination whether an administration 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*
- (f) *the manner in which it is payable.*

Submissions

23. The Respondent accepted the obligation to pay the Service Charge as set out within the Lease but disputed the amount payable in respect of certain elements of the service charge. This has been charged in advance and, for the years in dispute, has been in the sum of £780 per annum. The Respondent submitted "*that because the service charges are payable in advance, the estimations are marred by inaccuracy which can easily be reconciled by compensatory spending*".
24. The Respondent identified those items of expenditure in dispute as follows:
- (1) Monies claimed for work undertaken by the Applicant on the basement, this being part of the Retained Premises described within the Lease and is therefore outside the service charge.
 - (2) The costs claimed for gardening, cleaning and carpet cleaning.
25. The Respondent sought an order pursuant to section 20C of the 1985 Act to prevent the cost of the proceedings being recovered as part of the service charge.
26. The Respondent further asked the Tribunal to reduce or extinguish the administration charges forming part of the claim before the County Court.

Basement

27. The Respondent challenged a charge made to the accounts of £9900 for the cleaning/sanitising of the basement, being part of the Retained premises as described within the Lease. It was argued that since the area did not form part of the Demised premises, it did not fall within the definition of the services provided for in the Third Schedule of the Lease.
28. The Respondent submitted the Lease does not provide for any contribution "*to matters involving the Basement save for the common parts or facilities thereof which are defined as entrances, exits, lobbies, stairs, passages, lift, meter rooms, refuse storage areas and other areas and facilities and conducting media which serve or benefit or are useable by some or all of the occupiers of the Building*".
29. The Respondent further argued a charge of legal fees of £900 for work relating to the Basement should be excluded from the service charge.
30. The Applicant confirmed the Basement within the building is empty and is prone to flooding and rat infestation. The charge of £9900 arose from damage cause by Storm Ciara when water levels in the basement rose to 2 metres.
31. The remedial work was carried out by Calder Flood and Damp Proofing and the work is described on their invoice, other than the provision of skips and lighting as "*Removal of plaster and plasterboard and reinstatement, removal*

of and total clean up of flood water residue and faeces, jet wash and sanitize all walls, Jet wash and sanitise floor”.

32. The cost of the remedial work was claimed and paid for by the insurance company responsible for the building and the only charge made to the service charge account was the excess of £200. The Respondent’s share of 1/13th is to £15.38.
33. The Applicant submitted the relevant part of the Basement is within the communal areas as defined by Clause 1.3 of the Lease. The sewage pipes for the building are in there, including the mains.
34. The Applicant advised the charge of £900 for legal fees arose from advice relating to the Basement given it was unoccupied and repeatedly floods. The advice was for the benefit of all the residents within the Building. It is a charge recoverable under paragraph 1.5 of Schedule 3 of the Lease which provides “*for any other services*” to be included.

Cleaning and Gardening services

35. The Respondent stated the estimate for these services for the years 2019 and 2020 was £3,250 in each year. However, in the accounts, the amount charged was £1,800 for each year.
36. The Respondent argued the amount for gardening is unnecessary since there are no gardens to maintain. This amount is therefore “*redundant or unreasonable at best*”.
37. The Applicant advised the amount charged for the Year 2019 for these items were:

Gardening services	£600
Window Cleaning	£432.00
Cleaning Services	£1,200

The charges for 2020 were:

Window Cleaning	£108
Cleaning Services	£1,200
Gardening	£600

38. The Applicant produced photographs to show a communal lawn area to the rear of the Development which forms part of the Common Parts to which a payment is due via the service charge.
39. Whilst an estimate was provided for carpet cleaning, this was not carried out due to a deficiency of funds. There is no charge for this item in either year in the accounts.
40. The Applicant confirmed the Respondent had been charged in accordance with the accounts and not the estimates.

Administration charges

41. The Respondent submitted the claim of £150, charged on 24th June 2019, should be reduced or extinguished on the basis it had been necessary to bring the proceedings before the Tribunal for it to determine the reasonableness of the service charges.
42. The Applicant did not make any direct representations regarding the administration charge, but provided details of their correspondence with the

Respondent. The service charge demands were issued to the Applicant for the period 1st October 2019 to 30th September 2020 totalling the sum of £780, the amounts being charged quarterly in the sum of £195. On the 24th June 2020 an invoice was sent for the late payment fee of £150. Prior to that charge, the Applicant produced copies of 5 reminders sent to the Applicant relating the non-payment of the service charge.

43. The Applicant stated there was no objection to the reasonableness of the service charge or administration charge until proceedings for recovery had been issued in the County Court.

Determination

The Tribunal Decision

44. In respect of the service charges for the years 2019-2020, the Tribunal determines those are reasonable and payable.
45. The Tribunal notes the Respondent states a charge of £9900 has been made within the accounts for the Basement cleaning, but in this, it has misunderstood the accounts. There is a credit of £9700 from the insurance company that confirms the amount charged to the leaseholders under the service charge was the excess of £200. The amount in dispute is therefore £15.38 and not as stated by the Respondent.
46. The Tribunal considered the Respondent's submissions that this charge was outside the scope of the service charge and is therefore not payable. The Tribunal determines the cleaning of the Basement falls within the service charge.
47. Clause 1.3 defines the Common Parts of the Building as *the entrances exits lobbies stairs passages lift meter rooms refuse storage areas and other areas and facilities and Conducting Media which serve or benefit or are useable by some or all of the occupiers of the Building*". The Applicant has confirmed the Basement contains the sewage pipes and the mains for the Building. It therefore falls within the description of "facilities" that "serve or benefit or are usable by some... of the occupiers of the Building". Under the terms of the Lease the Respondent has covenanted to pay the service charge. Clause 1.3 of the Third Schedule defines the service charge as including the Common Parts.
48. The Tribunal further finds the cleaning of the Basement would also fall within Clause 1.5 that is further described in paragraph 11 above.
49. The Tribunal determines the amount claimed for legal fees of £900 to be reasonable.
50. The Tribunal does not accept the amounts charged for the cleaning services, gardening and carpet cleaning are unreasonable, nor does it accept the Respondent's submissions that the estimates are such that they allow for compensatory spending. The payments made on the basis of the estimates are verified in the yearly accounts and adjustments made. The amounts charged are reasonable. There is a garden area and an annual amount of £600 for the maintenance of that area is not unreasonable. Similarly, a charge of £1,200 for the cleaning of the Common parts is also reasonable, amounting to £100 per month. There has not been any charge for carpet cleaning in the disputed years, but it is not unreasonable for a charge to be made within the estimate to allow for this cost in future years, should funds become available.

51. The Respondent has challenged the administration charge of £150. The Tribunal determines Clause 4.18 of the Lease provides for the payment of an administration fee. The Applicant has provided the Tribunal with evidence of its correspondence with the Respondent. At the time the charge was made the service charge account was in arrears and was therefore properly charged. The Tribunal did not accept the Respondent's argument that the administration charge was inappropriate given she had brought proceedings in respect the reasonableness of the service charge. There was no evidence to show the Respondent had raised the question of reasonableness until the issue of enforcement proceedings by the Applicant. The charge had been made in 2019 before such proceedings were contemplated; the amount of £150 is reasonable and payable.
52. The Respondent has applied for an order to be made pursuant to section 20C of the 1985 Act. In the light of the Tribunal's decision, this is refused.

The County Court Decision

53. The proceedings before the County Court include one for interest and costs. The Respondent has not challenged this element of the application. Accordingly, the claim made by the Applicant for costs and interest is payable by the Respondent in the amount claimed of £1026.16.
54. This matter is transferred back to the County Court for debt recovery.