



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

P: PAPERREMOTE

Case Reference : **CAM/26UG/LIS/2021/0021**

Property : **5 Nero House
Charrington Place
St. Albans
Herts
AL1 3GW.**

Applicant : **1. Mario and Gwen Borgatti
2. Matthew Thomas Borgatti**

Respondent : **Firstport Property Services No.4
Limited**

Type of Application : **Application for the determination of the
reasonableness and payability of service
charges**

Tribunal Members : **Tribunal Judge Stephen Evans**

**Date and venue of
Hearing** : **Paper application and
determination**

Date of Decision : **1 February 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote paper defemination without a hearing, which was not objected to by the Parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents referred to are within an Applicant's bundle and a Respondent's bundle, the contents of which the Tribunal has read in full.

DECISION

The Tribunal determines that:

- (1) The disputed sum of £265.98 is payable by the First Applicants to the Respondent;**
- (2) The application by the First Applicants for an order under s.20C of the Landlord and Tenant Act 1985/ para. 5A of Sch.11 to CLARA 2002 is declined;**
- (3) The application by the First Applicants for an order for reimbursement of the application fee is declined.**

The Application

1. The Application concerns a 2 bedroom flat in a purpose built block.
2. The Application is brought by Mario Borgatti and Gwen Borgatti, who are alleged to be the lessees of the Property.
3. The Application challenges a sum of £265.98, being part of a service charge debt for the year 1 January 2019 to 31 December 2019.
4. By directions dated 12 October 2021 the Tribunal joined Matthew Borgatti as Second Applicant, and amended the Respondent to be Firstport Property Services No.4 Ltd.

The Lease

5. By an underlease dated 28 November 2011, the Property was demised for a term of 999 years to K Bailey and N Bailey from 30 June 2008.
6. The Respondent is the successor in title to the Manager named in the Lease.

7. By clause 1.32 of the Lease, the Tenant is defined as “the Tenant specified at LR3”, which names Kathleen Anne Bailey and Neil Paul Bailey.
8. By clause 7.4 of the Lease it is agreed and declared:

“that all the rights and obligations of the Landlord and the Tenant respectively under this lease shall be incidental to and devolve with the legal reversion immediately expectant on the Term specified at LR6 and with the leasehold interest created by this lease and shall accordingly be enjoyed and performed by the person in whom such reversion and leasehold interest respectively shall for the time being be vested.”
9. The Manager’s covenants are contained in clause 5 of the Lease. Pursuant to the 5th Schedule, the Manager may incur various expenses and costs, which may constitute relevant costs for the purposes of sections 18 to 20 of the Landlord and Tenant Act 1985.
10. By the 6th Schedule of the Lease the Tenant covenants to pay a due proportion of the service charge in relation to those relevant costs.
11. By the 7th Schedule, paragraph 16.2, the Tenant covenants to require a Deed of Covenant with the Manager to be entered into by any assignee/purchaser of the Lease, in accordance with the form set out in the 9th Schedule to the Lease.

Relevant Law

12. See attached Appendix.

Background Facts

13. On 8 July 2015 the Second Applicant acquired leasehold title to the Property at the Land Registry (HD514527).
14. The Second Applicant is the son of the First Applicants.
15. On 30 June 2020 the Respondent wrote a s.20B notice addressed to the Second Applicant, attaching a draft income and expenditure account for the year end 31 December 2019, relating to actual costs incurred in that period.
16. On or about 26 April 2021 the First Applicants allege they “took over” the Lease, by which the Tribunal assumes that they allege that they purchased/were assigned the leasehold interest in the Property.
17. On 18 May 2021 service charge accounts for the calendar year ending 31 December 2019 were prepared.

18. On 20 May 2021 the Respondent wrote an invoice addressed to the Second Applicant, in the sum of £265.98.
19. An Official Copy of Entry for Title for title no. HD514527 dated 16 June 2021 reveals the leasehold proprietor of the Property to remain the Second Applicant.
20. On 27 July 2021 the Respondent issued an invoice to the First Applicants, in the sum of £989.20, which includes a demand for the sum of £265.98, being a year end adjustment for 2019.
21. The First Applicants did not pay the £265.98, but paid the balance of £723.22 on 4 August 2021, being payments on account of service charges for 2021.
22. Between 3 August 2021 and 10 August 2021 the First Applicants and the Respondent corresponded on the issue of the £265.98, the former complaining it had been demanded too late.
23. During this period, on 7 August 2021, the Respondent issued an invoice to the First Applicants, which included a demand for the sum of £265.98.
24. On 12 August 2021 the First Applicants filed their Application to the Tribunal.
25. On 12 October 2021 the Tribunal gave directions, and identified the following issues:
 - (1) Whether the costs are payable by reason of s.20B of the Landlord and Tenant Act 1985;
 - (2) Whether the relevant charges are payable under the Lease;
 - (3) Whether the relevant costs were reasonably incurred;
 - (4) Whether the relevant costs were reasonable in amount;
 - (5) Whether an order should be made under s.20C of the Act and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold reform Act 2002;
 - (6) Whether the First Applicants should be reimbursed the Tribunal fees.
26. It would appear from the First Applicants' subsequent letter dated 28th October 2021 that the disputed sum of £265.98 has now been paid by them.
27. In the same letter they state that the "We took over the lease from our son...Land Registry has still not updated the details but we enclose an email from our solicitor...confirming the title transfer".

Whether the costs are payable by reason of s.20B of the Landlord and Tenant Act 1985

28. The Second Applicant has made no representations on this application.
29. The First Applicants' arguments, by their application dated 12 August 2021 and 28 October 2021, are limited to the following:
- (1) A section 20B demand has not been made of them, only their son;
 - (2) Such a notice (if issued) was not within the legal time allowed;
 - (3) "A service charge left on a lease does not equate to a demand for payment from the new owner".
30. No other arguments are advanced, legal or otherwise, about the validity of the s.20B notice dated 30 June 2020, which appears only in the First Applicants' bundle. Nor is any argument advanced that the Second Applicant did not receive that s.20B notice.
31. The Tribunal determines that the s.20B letter dated 30 June 2020 is valid for the following reasons:
32. Firstly, it was made within the time frame permitted by the law. The service charge year runs in the calendar year. If the Respondent had incurred relevant costs as early as 1 January 2019, the notice was dated (and assumed served) within 18 months of that date.
33. Secondly, it was issued to the correct tenant at that time: the Second Applicant. It matters not, in the Tribunal's judgment, that the First Applicants did not receive it at that time, or thereafter.
34. Thirdly, in the Tribunal's determination, it matters not that the leasehold interest of the First Applicants does not appear to have been registered. Their rights and obligations were devolved to them at the point the lease became vested in them, per clause 7.4 of the Lease. The evidence before the Tribunal is that solicitors called Neves Solicitors LLP arranged a transfer/assignment of the Lease from the Second Applicant to the First Applicants in or around April 2021. The Respondent does not dispute this, and accepts that service charge payments have been received from the First Applicants in relation to sums other than the disputed sum.
35. The Tribunal also assumes that the First Applicants would have entered into a Deed of Covenant with the Respondent in accordance with the 7th and 9th Schedules to the Lease.

36. As to any issue under s.27A(1)(a) of the Landlord and Tenant Act 1985, namely by whom the sum is payable, in the Tribunal's judgment this is the First Applicants, for the following reasons:

37. As regards the First Applicants, they have accepted all obligations owed to the Respondent by virtue of clause 7.4 and the 7th and 9th Schedules to the Lease. Demands for the sum of £265.98 were made of them on 27 July 2021 and 7 August 2021. The second of those letters at least was accompanied by a Summary of Rights and Obligations and details of the landlord (the copy of the letter of 27 July 2021 is incomplete). No argument is advanced by the First Applicants that they did not receive those 2 demands. Accordingly, that sum is payable by them.

38. As regards the Second Applicant, a demand for the £265.98 was made on 20th May 2021. No argument is advanced that this demand was not received by him. However, this demand was later than 6 months after the date the charge became due, as required by section 17 of the Landlord and Tenant (Covenants) Act 1995 (assuming that the Second Applicant remains bound by the original covenant, which is not free from doubt, and on which the Tribunal has not heard any argument).

39. Accordingly, in the Tribunal's determination, on the representations before it now, the disputed sum is not payable by the Second Applicant.

- (2) **Whether the relevant charges are payable under the Lease;**
- (3) **Whether the relevant costs were reasonably incurred;**
- (4) **Whether the relevant costs were reasonable in amount;**

40. No dispute is advanced by the Applicants on any of these issues.

(5) Section 20C/para 5A application

41. In *Tenants of Langford Court v Doren Ltd* (LRX/37/2000), HHJ Rich held:

"In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.....In my judgement the primary consideration that the LVT should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in

circumstances that makes its use unjust. Excessive costs unreasonably incurred will not, in any event, be recoverable by reason of s.19 of the Landlord and Tenant Act 1985. Section 20C may provide a short route by which a Tribunal which has heard the litigation giving rise to the costs can avoid arguments under s.19, but its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them."

42. The Tribunal determines there shall be no order in favour of the Applicants under s.20C or paragraph 5A, because it would not be just and equitable to do so. The matter should not have reached the Tribunal door, the fact being that payment was rightly demanded by the Respondent and was not suspended merely by the making of this application. Further, the First Applicants state that they have not had the benefit of legal advice, but it is entirely unclear why they have not sought advice from the conveyancing solicitors concerned. The Respondents, on the correspondence before the Tribunal, have not been entirely helpful in clarifying some issues. Be that as it may, and taking into account all the circumstances, in particular that the Tribunal has ultimately found the First Applicants to be liable for the disputed sum, it would not be just to make any order against the Respondent.

(6) Tribunal fees

43. According to the First Applicants' letter dated 28th October 2021, only an application fee has been incurred by them. Given that the First Applicants have not been successful on their application, the Tribunal does not exercise its discretion so as to direct the reimbursement of that fee.

Judge:

S J Evans

Date:

1/2/22

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

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 20B

20B Limitation of service charges: time limit on making demands.

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(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 proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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 application shall be made—

- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) 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.

Schedule 11 para 5A of the Commonhold and Leasehold Reform Act 2002

- (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.
- (3) In this paragraph-
 - (a) "litigation costs" means costs incurred or to be incurred by the landlord in connection with proceedings of a kind mentioned in the table [First-tier Tribunal proceedings].

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.

Landlord and Tenant (Covenants) Act 1995

17(1) This section applies where a person ('the former tenant') is as a result of an assignment no longer a tenant under a tenancy but:

(a) (in the case of a tenancy which is a new tenancy) he has under an authorised guarantee agreement guaranteed the performance by his assignee of a tenant covenant of the tenancy under which any fixed charge is payable; or

(b) (in the case of any tenancy) he remains bound by such a covenant.

(2) The former tenant shall not be liable under that agreement or (as the case may be) the covenant to pay any amount in respect of any fixed charge payable under the covenant unless, within the period of six months beginning with the date when the charge becomes due, the landlord serves on the former tenant a notice informing him— (a) that the charge is now due; and (b) that in respect of the charge the landlord intends to recover from the former tenant such amount as is specified in the notice and (where payable) interest calculated on such basis as is so specified.”

In the Landlord and Tenant (Covenants) Act 1995 s.17, the expression “fixed charge” means:

“(a) rent; (b) any service charge (within the meaning of the Landlord and Tenant Act 1985 s.18 with the words ‘of a dwelling’ being disregarded for this purpose) and even though a service charge almost by its very nature cannot be described as ‘fixed’; and (c) any amount payable under a tenant covenant of the tenancy providing for the payment of a liquidated sum in the event of a failure to comply with any such covenant...”

Further, in Landlord and Tenant (Covenants) Act 1995 s.17, “landlord”, in relation to a fixed charge, includes any person who has a right to enforce payment of the charge.