



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

Case reference : **LON/00BJ/LSC/2022/0230**
Property : **17 Thrale Road, London SW16 1NS**
Applicants : **(1) Mr D Kallin (flat A)**
(2) Ms U Mireku (flat B)
Representative : **In person**
Respondent : **CH Chesterford Ltd**
Representative : **Mr S Attwood**
Type of application : **Reasonableness and payability of
service charges under s.27A Landlord
and Tenant Act 1985**
Tribunal : **Judge S Brilliant**
Mr JA Naylor MRICS MIRPM
**Date and place of
hearing** : **21 November 2022**
10 Alfred Place, London WC1E 7LR

DECISION

1. The amounts payable by the tenants by way of service charges for the service charge years (1) 2019/2020, (2) 2020/2021 and (3) 2021/2022 and for the estimated service charges for the year 2022/2023 are summarised in the appendix below. We have in all cases rounded up and down the figures to the nearest pound.

Background

2. The tenants seek a determination under section 27A of the Landlord and Tenant Act 1985 as to whether certain service charges are payable.

3. The tenants also sought an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985. However, we were assured that the managing agents were not charging the landlord for representing it in these proceedings so there are no charges to be passed on through the service charges.

4. 17 Thrale Road, London SW16 1NS comprises commercial premises on the ground floor and two flats above. There is another residential unit at the rear. The common parts are little in size. A front door at street level gives access

to a stairway leading up to a very small landing off which are the doors to the two flats. The upper flat is then reached by an internal staircase.

5. The electricity for the common parts is supplied from the tenants' meters and not by the landlord.

6. The tenants own their respective flats on long leases, and pay a variable service charge in respect of services provided to them by the landlord under the leases. The service charge year runs from 01 July to 30 June in any given year.

The hearing

7. The hearing took place on a face to face basis. The tenants appeared in person and the landlord was represented by Mr Attwood, who is employed by the managing agents HML. Mr Tejada, also employed by HML, accompanied him. We were presented with a number of electronic documents, including a bundle of 93 pages. References in square brackets are to the electronic pages in the bundle.

The issues

8. The following items were in issue:

- (a) buildings insurance;
- (b) terrorism insurance;
- (c) fire doors;
- (d) insurance reinstatement value;
- (e) general repairs;
- (f) cleaning;
- (g) accountancy fees;
- (h) health and safety risk assessment;
- (i) out of hours emergency cover;
- (j) asbestos survey;
- (k) management fees;
- (l) bank charges;
- (m) legal and professional fees;
- (n) interest;
- (o) general reserve; and
- (p) costs of the 2020 internal works.

Buildings insurance

9. The amounts claimed are as follows:

| | |
|-----------|------|
| 2019/2020 | £574 |
|-----------|------|

| | |
|-----------|------|
| 2020/2021 | £672 |
| 2021/2022 | £822 |
| 2022/2023 | £950 |

10. The tenants argue that these costs are excessive, and point to the considerable increases year on year. They wondered if commission was payable, but the managing agents were not able to assist as it is the landlord which arranges the insurance.

11. Mr Attwood said the landlord had a block policy and that it was a difficult market in which costs had risen considerably in recent years.

12. The tenants accepted that they did not have any comparable quotations, so were not in a position realistically to challenge any of the figures.

13. The amounts did not seem to us to be unreasonable, and the landlord is entitled to recover the amounts claimed.

Terrorism insurance

14. The amounts claimed are as follows

| | |
|-----------|------|
| 2019/2020 | £218 |
| 2020/2021 | £231 |
| 2021/2022 | £252 |
| 2022/2023 | £290 |

15. The tenants accepted in principle that the landlord was entitled to insure against the threat of terrorism. Whilst they suggested that the amounts were excessive, they accepted that they had no comparable quotations, so were not in a position realistically to challenge any of the figures.

16. The amounts did not seem to us to be unreasonable, and the landlord is entitled to recover the amounts claimed.

Fire doors

17. The only claim related to an estimate of £300 for the current year. It was agreed that Mrs Mireku, whose daughter lives in her flat and works in the industry, would be responsible for installing the fire doors and that the landlord would not do so. Mr Attwood said that this charge would be removed from the budget.

Insurance reinstatement value

18. The only claim related to expenditure of £480 in the service charge year 2019/2020.

19. The tenants did not challenge this.

General repairs

20. The amounts claimed are as follows

| | |
|-----------|------|
| 2019/2020 | £170 |
| 2020/2021 | £243 |
| 2021/2022 | £189 |
| 2022/2023 | £300 |

21. For the service charge year 2019/2020 we were shown an invoice for £156 [27] which we allow in place of the £170 claimed.

22. The invoice for £243 in the service charge year 2020/2021 was for an electrical certificate for the common parts [25]. Since the landlord provides no electricity to the common parts we do not allow this item.

23. The managing agents were unable to find in the bundle an invoice relating to the expenditure of £189 in the service charge year 2021/2022, so we do not allow this item.

24. We consider the budgeted cost of £300 for the service charge 2020/2023 to be reasonable.

Cleaning

25. The landlord had budgeted £360 in the service charge year 2019/2020, £300 in the service charge year 2020/2021, and £650 in the service charge year 2021/2022. For the service charge year 2022/2023 it had budgeted £450.

26. It was common ground that no day to day cleaning is carried out in the common parts of the building.

27. Mr Attwood explained that the charges were for a substantial clean in case of an emergency. He gave an example of a fox getting in and soiling the common parts. The amounts budgeted for in the past service charge years were always credited back to the tenant as no such emergencies had occurred during the relevant years.

28. The tenants told us that in 37 years there had never been such an emergency.

29. We do not consider it reasonable that any amount is budgeted for in the service charge 2022/2023, given that the chance of an emergency is so small.

Accountancy fees

30. The amounts claimed are as follows

| | |
|-----------|------|
| 2019/2020 | £630 |
| 2020/2021 | £660 |
| 2021/2022 | £660 |

| | |
|-----------|------|
| 2022/2023 | £690 |
|-----------|------|

32. The invoices for the accountancy services certifying the annual service charges did not coincide with the amounts claimed. Mr Attwood explained that this was because of the bookkeeping. There needed to be adjustments for accruals and prepayments.

33. The tenants understood this once it had been explained to them. We do not consider these charges unreasonable, and they are recoverable.

Health and safety and fire risk assessment

34. The amounts claimed are £425 for the service charge year 2019/2020, and £425 for the service charge year 2021/2022. The invoices are at [21] and [67] respectively.

35. Mr Attwood explained that the inspections and assessments were carried out by an internal team of employees of the managing agents who were fully qualified to undertake this work.

36. The tenants argued that these costs were unreasonably high as the common parts were so small.

37. However, it was not just the common parts which were inspected. It is also necessary to inspect the exterior in case there are any problems with matters such as guttering, window sills or broken glass in any of the windows.

38. We do not consider these charges unreasonable, and they are recoverable.

Out of hours emergency cover

39. The amounts claimed are as follows

| | |
|-----------|-----|
| 2019/2020 | £12 |
| 2020/2021 | £24 |
| 2021/2022 | £24 |
| 2022/2023 | £24 |

40. It is perfectly normal practice for managing agents to provide a phone number for an out of hours service to the tenants to enable them to make contact with the managing agents out of hours. We consider the amounts charged are reasonable.

41. There was a conflict of evidence as to whether or not the out of hours telephone number was displayed in the common parts so that the tenants could make use of it. We prefer the evidence of Mr Attwood to that of the tenants and we find that on the balance of probabilities the phone number was displayed. The charges are therefore recoverable.

Asbestos survey

42. The claim is for £276 in respect of the service charge year 2019/2020. This was not challenged and is recoverable.

Management fees

43. The amounts claimed are as follows

| | |
|-----------|--------|
| 2019/2020 | £1,068 |
| 2020/2021 | £1,120 |
| 2021/2022 | £1,176 |
| 2022/2023 | £1,235 |

44. The tenants argued that these costs were too high. However, they did not produce any comparables.

45. The above amounts are calculated as a result of a 5% per annum increase. Mr Attwood explained that this was as a result of an agreement between the landlord and managing agents.

46. He told the tribunal that the managing agents made four visits annually. They dealt with any queries arising, maintenance issues, they paid the invoices of any contractors, they did general accounting, sent out demands, provided draft accounts for the accountants and made a full report each year.

47. He also explained that the larger the units the smaller the charge for each unit. This is a matter well within the experience of the tribunal and is considered reasonable. Broadly speaking, where there are two units each tenant pays £650, and where there are a hundred tenants, each pays £450.

48. We find these charges reasonable and are recoverable.

Bank charges

49. The amounts claimed are £5 for the service charge year 2019/2020, £1 for the service charge year 2021/2022 and £15 budgeted for the service charge year 2022/2023. The sums are not challenged.

Legal and professional fees

50. The landlord had budgeted £300 in the service charge year 2019/2020, £500 in the service charge year 2020/2021, and £500 in the service charge year 2021/2022. For the service charge year 2022/2023 it had budgeted £500.

51. Mr Attwood explained that these sums were for the anticipated costs of surveyors and solicitors should the need arise for them to be employed.

52. There had been no need for such payments in the relevant service charge years, and they were always credited back to the tenants. We therefore do not consider it reasonable that any amount is budgeted for in the service charge year 2022/2023.

Interest

53. The only claim was for £6 in the service charge year 2022/2021, and this was not challenged.

General reserve

54. Clause 5(q) of the lease allows for the collection of a reserve fund through the service charge.

55. The amounts claimed are as follows

| | |
|-----------|---------|
| 2019/2020 | £2,500 |
| 2020/2021 | £1,500 |
| 2021/2022 | £1,500 |
| 2022/2023 | £38,000 |

56. The amounts attributed to the general reserve in the service charge years 2019/2020, 2020/2021 and 2021/2022 are reasonable, and we do not understand the tenants to be challenging them.

57. The reserve of £38,000 budgeted for in the service charge year 2022/2023 is of a wholly different nature. It is in effect a demand in advance for the cost of specific works of exterior renovation and redecoration planned to take place sometime in the future, as part of a 10 year capital expenditure plan.

58. The amount budgeted for the roof was £5,175. There is no evidence that this roof is out of condition. At the hearing Mr Attwood pared down the figure to £22,000, less £5,000 in respect of the roof, leaving a figure of £17,000 plus VAT, equalling £20,400.

59. In our view, these figures are somewhat speculative. It is very early in the day and no quotations have been obtained, and no s.20 consultation process has yet to take place.

60. The tenants suggested that a figure of £10,000 was an appropriate one. We consider that this is on the low side. In our judgment a reasonable sum would be £20,400 (£17,000 plus VAT) spread over the service charge years 2022/2023 and 2023/2024 (£10,200 for each year).

Internal works carried out in the service charge year 2020/2021

61. This work included sanding down the existing chipboard wallpaper in the common parts, replacing the floor, repainting, removing asbestos and putting in smoke detectors.

62. The amount paid by the tenants was £18,198. In fact, the cost of the works was £12,352. The invoices are at [45], [47] and [50]. So the tenants overpaid by £5,846.

63. We were told that the amount paid in excess of the final cost was attributed to the reserve fund. It should not have been, and credit should be given by the landlord for the overpayment.

64. As to whether the cost itself was reasonable, a s.20 consultation did take place and the tenants, whilst trying to obtain other quotations, were unable to produce any other quotations to the landlord. We do not consider the amount charged was unreasonable.

65. As to the quality of the works, the tenants explained that the state of the common parts have been diabolical for many years. The works carried out were of a very poor standard. As the walls had not been stripped, the new wallpaper was springy and they had wanted hard flooring which had not been provided.

66. However, the photographs did not reveal to us a poor standard of finish, and no evidence was called from a surveyor in support of the allegations made.

67. Accordingly, we find that the figure of £12,352 must stand.

Conclusion

68. In summary, the amounts payable are set out in the appendix below. The landlord will not charge for the costs of the proceedings, so no s.20C order is required. £5,846 paid into reserve fund should be returned to the tenants.

69. We repeat what we said at the end of the hearing that we were grateful that both sides had conducted themselves with civility and moderation. We felt that the relations between the parties were now on a better footing, and hope that any future disputes can be resolved more easily than in the past.

Simon Brilliant

01 December 2022

Appendix

| Item | 2019/2020 | 2020/2021 | 2021/2022 | 2022/2023 |
|-------------------------------|-----------|-----------|-----------|-----------|
| Building insurance | £574 | £672 | £822 | £950 |
| Terrorism insurance | £218 | £231 | £252 | £290 |
| Fire doors | -- | -- | -- | -- |
| Insurance reinstatement value | £480 | -- | -- | -- |
| General repairs | £156 | -- | -- | £300 |
| Cleaning | -- | -- | -- | -- |
| Accountancy fees | £630 | £660 | £660 | £690 |
| H&S risk assessment | £425 | -- | £425 | -- |

| | | | | |
|------------------------------|--------|---------|--------|----------|
| Out of hours emergency cover | £12 | £24 | £24 | £24 |
| Asbestos survey | £276 | -- | -- | -- |
| Management fees | £1,068 | £1,120 | £1,176 | £1,235 |
| Bank charges | £5 | £1 | -- | £15 |
| Legal and professional | -- | -- | -- | -- |
| Interest | -- | £6 | -- | -- |
| General reserve | £2,500 | £1,500 | £1,500 | £10,200* |
| 2020 internal works | | £12,352 | | |

- £10,200 also to be paid in 2023/2024.

ANNEX - RIGHTS OF APPEAL

- i. 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 Tribunal at the Regional office which has been dealing with the case.
- ii. 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.
- iii. If the application is not made within the 28 day time limit, such application must include a request for 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.
- iv. 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.