FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/21UD/LSC/2022/0028
Property	**:**	Flat 7, 3-5 The Ridge, Hastings, East Sussex, TN34 2AA
Applicant	**:**	Claire Arebi (Nee Hooley) & Carla Hooley
Representative	**:**	Claire Arebi
Respondent	**:**	Assethold Limited
Representative	**:**	Mr J. Griffin, counsel
Type of Application	**:**	Determination of liability to pay and reasonableness of service charges and administration charges
Tribunal Member(s)	**:**	Judge D Whitney Mr C Davies FRICS Mr E Shaylor MCIEH
Date of Hearing	**:**	7th December 2022
Date of Decision	**:**	9th January 2023

DECISION

Background

1. On 14 March 2022 the Applicant applied for a determination of liability to pay and reasonableness of service charges for the years 2017 to 2022. The Applicant also applied for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002.

2. On 10 May 2022 the Tribunal issued directions requiring the parties to exchange statements of case and directing a determination on the papers. The directions raised the point that certain items being challenged may be administration charges. The Tribunal also noted that the Application was made on behalf of all the leaseholders but no details of those leaseholders were provided.

3. On 7 June 2022 the Respondent indicated that a hearing might be necessary.

4. On 29 July 2022 the Applicant applied for the Respondent to be debarred from the proceedings on the grounds that the Respondent's statement of case had not been received by 26 July 2022 as directed.

5. On 1 August 2022 the Respondent made an application for an extension of 7 days for the delivery of the statement of case. The grounds were that they did not receive the statement of case as it was in a spam folder.

6. On 8 August 2022 the Tribunal assumed that the Respondent had complied with the directions, and set a new date for the production of a hearing bundle by 7 September 2022.

7. On 11 August 2022 the Respondent wrote to the Tribunal requesting a "few extra days" to deal with the statement of case. The Tribunal replied requiring a formal case management application setting out the length of extension requested and how far directions had been complied with to date.

8. On 15 August 2022 the Respondent submitted a case management application, requesting an extension of 7 days from that date, due to a bereavement, but omitting to set out details of compliance with directions to date.

9. On 18 August 2022 the Tribunal informed the Respondent that it would deal with the application once the details of compliance as requested were provided. No response was received from the Respondent.

10. On 12 September 2022 the Tribunal issued a Notice to bar the Respondent from taking a further part in the proceedings.

11. On 3 October 2022 the Tribunal decided not to bar the Respondent, and extended the directions for the Applicant's reply by 18 October 2022, and the directions for the bundle by 1 November 2022.

12. On 26 October 2022 the Applicant sent a copy of the Applicant's statement of case with the following comment:

> "Please find attached the original bundle that we submitted on 27/6/22. Due to my daughter having surgery I have not been able to amend this bundle since submission but do feel that it is still complete, as the respondent's response didn't state anything new and I did reply to their response, which could be used if required. The whole process has taken far longer than it should have due to the respondent's ignorance and constant attempts to delay or disrupt the application, to the point that it has affected my family's health. The property sale is now going through plus another FTT (contesting RTM with no valid reason) due to the respondent's unethical practices and no doubt will also disrupt the sale going through with every tactic that they can muster up. When deciding please take into consideration the behaviour of the respondent throughout this FTT process".

13. On 2 November 2022 the Respondent objected stating that this was not acceptable as the bundle did not include all the documents.

14. The Tribunal has put together the bundle including all the documents, and issued further directions listing the matter for an in person hearing on 28th November 2022.

15. The Respondent sought to change the date of the hearing as their representative, Mr Gurvits, was due to be out of the country. An earlier date was proposed but Mr Gurvits again indicated he could not attend and the matter was re-listed for the 7th December 2022.

16. On Thursday 1st December 2022 Mr Gurvits applied to attend the hearing remotely. The application was refused. He renewed the application on Monday 5th December 2022 referring to further grounds but the application was again refused with reasons given on 6th December 2022.

17. The hearing proceeded in person at Bexhill Town Hall. The Tribunal relied upon a bundle prepared by Tribunal staff running to some 144 pages. All parties had a copy and references in [ ] are to pdf page numbers within that bundle.

Inspection

18. The Tribunal inspected the Property immediately prior to the hearing. Present were the First Applicants and Mr Griffin. The Tribunal only inspected the external parts of the Property and the parties agreed the Tribunal did not need to inspect any internal parts.

19. The subject property is a large detached building probably constructed in the Victorian era. It has been converted into flats at some point and is on a sloping site. Looking from the rear there are 4 storeys with additional accommodation in a 5th storey covering part of the main roof.

20. The front of the site abuts the Ridge which is a busy main road. Parking spaces are at the front of the site. To the rear is an area of garden.

21. Storeys 1 to 3 appear to be concrete rendered, with cladding visible on storey 4 and the roof structures, which has the appearance of UPVC.

22. The communal rear garden is mainly laid to lawn with a small area of flower beds to certain edges of the garden. The rear of the site has a coniferous hedge. There is also a brick store/shed which appears to be in poor repair.

Hearing

23. The hearing took place following the inspection.

24. The hearing was attended by the Applicants and Mr Griffin.

25. Certain other leaseholders had provided authority to the Tribunal that they wished to be Applicants. Those leaseholders are:

- David Jameson Flat 4
- Glen Littler Flat 2
- Wayne Iddon Flat 11
- Mr and Mrs Young Flat 10

26. Mr Littler and Mr Iddon attended the hearing.

27. The Tribunal identified that the issues for determination related to service charges for the years 2017 to 2021 and the estimate for 2022. This related to the period of time the Respondent had owned the freehold and had appointed Eagerstates Ltd to manage on its behalf. The Applicants also sought orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 of the 2002 Act.

28. Mrs Arebi for the Applicants confirmed there was no dispute relating to the lease terms [70-93].

29. It was agreed the correct Respondent should be Assethold Limited as freeholder and not Eagerstates Ltd who were only the managing agents.

30. Below is a precis of the submissions and evidence given at the hearing.

31. Mrs Arebi explained the flat had been purchased in 2017. The service charges then were about £600 per annum which she was satisfied were reasonable. Since the Respondent had acquired the freehold the charges had risen substantially such that they now exceeded the amount of the mortgage payments on the Property.

32. Mrs Arebi explained she was trying to sell the flat but believed the Respondent and their agents were doing all they could to delay these proceedings to disrupt her sale. Eagerstates Ltd have advised her that they will not send the LPE1 unless there is no dispute over the accounts which she cannot agree to until these proceedings are concluded.

33. Mrs Arebi explained that her ground rent payments are mixed in with service charges on any statements produced so she cannot properly ascertain the amounts. She believes she has been charged the incorrect amount for ground rent, in excess of the £150 annual ground rent provided for within the lease. She explained her solicitors have written to the Respondent about this but were ignored.

34. Turning to the specific items challenged the first being gardening. Mrs Arebi explained in 2018 £338 was charged and £430 in 2019. She was satisfied with these amounts. The estimate for 2020 was £600 and the actual charge levied was £3600. The estimate for 2021 was £4,000 and £3,600 was charged. She queried whether or not any statutory consultation should have taken place. She understands the gardener attends for one or two hours a time and appears to charge for two visits a month. In her opinion this is excessive. She had obtained a quote she said of £18 per hour.

35. Turning next to the EWS1 cost, Mrs Arebi accepted that the Fire Risk Assessment suggested works were required to cladding [119] but in her opinion there was no need for an EWS1.

36. The next item was in respect of a leak from the Applicant's flat. In her opinion an insurance claim should have been made for the costs. She accepts she should pay the costs of any repair to the faulty element which caused the leak itself. Mrs Arebi said she has been told a claim has been made but has seen no evidence of the same.

37. Finally, in respect of solicitors' fees these were only being charged to the Applicant and none of the other leaseholders.

38. Ms Hooley confirmed she had nothing to add as did Mr Littler.

39. Mr Iddon reiterated that the amounts just appear to rise all the time with little or no explanation.

40. Mr Griffin explained in respect of the administration costs he understood these were charges for pursuing unpaid charges. He could not provide any further information.

41. In his submission we had the invoices for the gardening and the costs recently charged were within the range of what is reasonable, previous charges having been unreasonably low. He could not go beyond the evidence within the hearing bundle. He submitted the gardening appeared to be an ad hoc contract but accepted given the lack of evidence a finding either way could be made with regard to whether it was a qualifying long term agreement.

42. In respect of the EWS1 this is in the bundle [140]. He is unsure why there are two charges levied but in his opinion it is reasonable for the Respondent to have undertaken the same. He submitted matters relating to fire safety are of the utmost importance.

43. In respect of the leak Mr Griffin indicated that the accounts included repairs not just trace costs. A claim has been made and will in due course be credited to the service charge account but only once settled.

44. Mr Griffin had no instructions why the Respondent's statements had no statement of truth.

45. Turning to the costs applications, Mrs Arebi explained in her opinion she had no choice but to make the application as her requests and those of her solicitors for replies to questions are ignored. For these reasons the Respondent should pay the costs of dealing with the application.

46. In reply Mr Griffin suggested that if the majority of costs are recoverable then no order should be made. He accepted, however, that if his client was not successful then that would provide a basis for an order.

47. At the conclusion of the hearing all parties confirmed they had been given opportunity to make all the submissions and statements they wished to make.

Determination

48. We thank all parties for their helpful submissions and the way the hearing was conducted.

49. We pointed out to the parties that we have no jurisdiction over matters relating to ground rent. We note, however, it does appear

that the Respondent has on occasion demanded the incorrect ground rent (see [21]). The ground rent recorded in the lease within the bundle we had is currently £150 per annum.

50. We thank the parties for agreeing that the lease allowed recovery of the items and the apportionments were correct. Further we were only invited to determine certain specific amounts and our decision is limited to those items.

51. We record that the response to these proceedings by the Respondent was very limited and contained little proper explanation of the sums claimed. Certainly the Respondents statement fell below the information we would typically expect to receive in response to such an application.

52. The first item to consider relates to the administration and solicitors' costs charged in 2021 totalling £1080. These were raised in the initial application and are included on the statement from the Respondent's agent [23]. The Respondent in their statement of case [94] does not address these points save to suggest a separate application should be made.

53. We record that Mr Griffin did not suggest we could not adjudicate on such matters.

54. We are unclear as to what these sums relate to. The Respondent has had ample opportunity to explain and it was clear these were matters we were being asked to determine. These charges it is accepted by both parties are administration charges. As such this Tribunal has jurisdiction to determine the Applicant's liability to pay and the reasonableness of the same.

55. We are satisfied that these sums are not payable or reasonable. No explanation has been provided by the Respondent despite the Applicant's case being clear in our judgment as to the challenge of the same.

56. Turning to the gardening costs we find that the gardening is provided under a qualifying long term agreement. We make such finding having regard to the fact the Applicant in her application suggested that a statutory consultation should be undertaken [11]. The Respondent in its statement of case fails to address this point [94]. Mr Griffin quite properly accepted given the lack of evidence a finding that the agreement was a qualifying long term agreement could be reached.

57. It appears Apple Garden Services have been supplying gardening services for in excess of 12 months. The charge to the Applicant and other leaseholders who have joined in this application exceeds £100 per annum. We find having considered all of the evidence that the supply of such services is a Qualifying Long Term

Agreement and no consultation has been undertaken. As a result the gardening costs for the years 2020 and 2021 are limited to £100.

58. If we are wrong on that point we would have found the sums charged are not reasonable. We inspected the garden which is very modest in size and the work required to maintain it is equally modest. Whilst we accept no alternative quote was within the bundle in our judgement the number of visits was excessive for a garden of this size, being 18 in each of 2020 and 2021, each visit being invoiced at £200. Mrs Arebi suggested she had a quote (not in the bundle) that indicated a charge of about £1500 per annum would be levied. We have considered this but think this is too low. In our judgment a charge of £200 per month would be reasonable and so a total charge of £2400 would be a reasonable charge.

59. We find that the estimated charge for 2022 for gardening should be £2400 only.

60. The next item for us to consider is the EWS1. A copy of this was within the bundle [140] although we are told had not previously been provided despite requests for the same. The same was obtained after the Fire Risk Assessment raised issues over the cladding [119]. We have sympathy with the Applicants that the conversion works had supposedly only recently been undertaken but in our judgment a prudent landlord would have acted as the Respondent did and have arranged to have an EWS1 undertaken. If they had not they would have been open to criticism.

61. Two charges are raised. One for £360 [26] and a second for £6,927 [28]. No explanation has been given as to why there are two invoices.

62. We accept no alternative quotes have been provided. We find that the charge of £360 in the account for the year ending December 2020 is not reasonable or payable. No explanation has been given and we would have expected one invoice only. We are satisfied that the charge in 2021 of £6,927 falls within the level of what is reasonable for obtaining an EWS1 for a building of this type. In so determining we take account of our own expertise and knowledge that such reports are notoriously expensive to obtain.

63. This leaves the position relating to the leak. The Respondent states that an insurance claim has been lodged and if and when settled credit will be given to the service charge account. We are satisfied that this is a reasonable approach and that in the first instance the costs may be allocated to the service charge. We would remind the Respondent it is for them to diligently pursue the insurance claim and a failure to do so may be a breach of the covenants they owe to the leaseholders.

64. Finally we turn to the various costs applications. The Applicant has been successful in respect of certain challenges and not in others. However we are mindful of the general conduct of this application. In our judgment the Respondent acting through its agents has been dismissive of the same and has acted to lengthen the proceedings. The procedural history makes this very plain.

65. The Applicant has produced correspondence from her and her solicitors and states the Respondents and their agents have not engaged meaningfully with that correspondence. We find that this has been the case.

66. Taking account of all such matters we exercise our discretion and make an order pursuant to Section 20C and paragraph 5A that no costs may be claimed from the Applicant or those leaseholders set out in paragraph 25 above.

67. Further, this is a case where we find that the Respondent should reimburse the Applicant for the fees of £300 within 28 days of this decision. We make such a determination having regard to our general findings as set out in this decision and the fact a hearing was listed at the express request of the Respondent. We are satisfied that it is just and equitable on the facts of this case to make such order.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.