FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT AT CENTRAL LONDON, sitting at 10 Alfred Place, London WC1E7LR

Case Reference	**:**	**LON/00AW/LSC/2019/0068**
Property	**:**	**Flat B, 24-26 Hans Crescent, London SW1XOLL**
Applicant	**:**	**David Hallam Peel("the Applicant")**
Representative	**:**	
Respondent	**:**	**24-26 Hans Crescent RTM Company Ltd ("the Respondent")**
Representative	**:**	**Ms Katie Fray, Counsel**
Type of Application	**:**	**Payability of service charge.**
Tribunal Members	**:**	**Jim Shepherd** **Luis Jarero BSc FRICS**
Date of Decision	**:**	**15 November 2019**

DECISION

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1. The Tribunal determines that the service charges listed under the heading *Summary of decision on individual costs* below are payable.

Background

2. The Applicant, David Hallam-Peel is the leasehold owner of Flat B,24-26 Hans Crescent, London SW1XOLL ("The premises"). This is a flat in a building with 14 other flats ("The building"). The Respondent is a RTM company that took over the building in around March 2016.

3. The Applicant purchased his lease in July 2001. The lease was originally granted in October 1979 for a term of 79 years.

4. The Applicant is seeking a determination as to the reasonableness and payability of service charges for the periods:

2016-2017

2017-2018

2018-2019

5. He also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

6. The Applicant's challenges to the service charge accounts were widespread including a challenge to the payability and reasonableness of security costs; legal fees; accountancy fees; insurance premiums; repairs and staff salaries.

7. The parties had prepared a useful Scott Schedule which identified all of the sums in issue together with those conceded by the Respondent and those no longer pursued by the Applicant. Reference is made to these items in the

determination below. The Applicant also prepared an excellent hearing bundle which provided considerable assistance to the Tribunal in preparing for the hearing.

The lease

8. Under the lease the Applicant is liable to pay in advance by equal half yearly instalments (April and October) a proportion of the estimated costs and outgoings incurred by the Respondent in carrying out its obligations under Clause 5 of the lease (Clause 4(2) (A)). The apportionment that the Applicant was required to pay under the lease is 5%. There was some discussion about the correct amount of the apportionment but the lease appears clear in its terms and nothing really turned on this issue.

9. Under Clause 4(2)(B) there was a balancing mechanism whereby any surplus collected by the Respondent was applied to the annual cost for the next or future accounting period and any deficit was recoverable form the leaseholder. The lease provided no proper provision for a sinking fund although there was some confusion during the hearing as to whether or not the Respondent was operating one.

10. Clause 5 of the lease contains the Respondent's obligations. These include

- Clause 5(1) under which the Respondent is required to insure and keep insured the building and equipment. The Respondent is also obliged to insure against third party claims made against it in respect of the management of the building.

- Clause 5(2) under which the Respondent is obliged to maintain and keep in good and substantial repair and condition the structure and main parts of the building.

- Clause5(9) under which the Respondent will employ necessary staff in the performance of its covenants.

- Clause 5(13) which is a sweeping up clause requiring the Respondent to do all works in its discretion which are necessary or advisable for the proper maintenance , safety and administration of the building

The hearing

11. The hearing took place on 23rd September 2019. An inspection was not deemed necessary. The Applicant who is a solicitor represented himself and the Respondent was represented by Katie Gray of Counsel. The Tribunal had the benefit of detailed witness statements from the Applicant (B1-B54), Gen Scott (B98) and Thomas Young for the Respondent (B55-97). The contents of the statements will not be repeated here but reference will be made to submissions made during the Tribunal hearing.

12. The Applicant opened his submissions by making the point that there are a lot of flats in the building that have been let out through Airbnb. This brought with it problems of nuisance and anti-social behaviour. The list he provided of occupants at A-7 of the bundle appeared to bear out that there were at least 8 flats using Airbnb. This was in breach of the lease. The Respondent accepted that it had an ongoing problem with security in the building. The main door had been breached on a number of occasions when, one presumes, AirbnB visitors had not been able to gain access. The other main issues identified by the Applicant were legal fees, insurance and recoverable expenditure for repairs.

13. The Applicant brought our attention to a photo in the bundle of the entry phone on the main front door. He said it looked shabby and that appeared to be the case. The wiring on the entryphone had been cut on three occasions. It could not currently be used.

14. The Applicant took us through each of the items in the Scott Schedule. The first issue (Items 1-3) was the problems with the security system. The original front door lock had been a Banham type system. This meant that the lessees could not control the key distribution. It was controlled by the managing agents. It was changed to a magnetic digital system with a magnetic fob. Each owner was

given a fob. The Applicant said this did nothing to control security. He said that on the fob system the wiring passes through the intercom. Certain people have opened up the box to tamper with the wiring. The management company had introduced a special switch so that people could telephone and the door would open automatically.

The Airbnb occupants caused rubbish in the communal stairway, and there was excessive noise, broken glass etc.

15. In response the Respondent said it had to address the problem of security. It candidly accepted that there was a problem with the Airbnb use in the building which was in breach of the lease. Under the old system keys could be copied. Under the new system four fobs only were issued to each lessee. A name and address had to be provided in order to get a fob. Lessees had gained access by force. The sums were recoverable under Clause 5(13) of the lease - see above. The works were necessary and advisable for safety and security in the building. There was no reserve fund to meet this cost. The RTM had expended a lot of cost and energy on pursuing one leaseholder, Ms Al- Moudi who owned three flats. She was now protected by the Court of Protection because she did not have capacity. The case had now settled.

16. The Respondent said it was reasonable for the RTM to keep repairing the system. There was a small level of repairs each year. They were now planning to consult and find a better security system. It was hard to find a system that was impenetrable. Previous attempts had been reasonable and on each occasion the expenditure had been reasonable.

17. Item 5 on the Scott Schedule concerned venting the radiator in Flat 5. The Applicant said that this cost should be borne by that flat. The Respondent said this was recoverable under clause 5(8) of the lease. The radiator in the flat had to be bled in order to maintain the function of the heating to the premises. The Applicant conceded to 50 % of the cost.

18. Item 8 concerned a lock to the rear basement door (invoice at D6). The Applicant said there had never been a lock fitted. The Respondent said it actually concerned a front door lock and that it was reasonable.

19. Item 9 (D7) concerned a padlock and chain to the basement gate. The lock had been stolen. The Applicant said the cost was excessive and offered £150.

20. Item 10 (D8) concerned the cost of rubbish removal that the Applicant said should be met by the lessee. The Respondent said it had not been able to identify the perpetrator. It said the cost was recoverable under Clause 5 (2) of the lease.

21. Item 13 was a security item to which the same arguments applied as have been rehearsed above.

22. Item 14 was the cost of replacement of front door glass. The Respondent said it did not know who had caused the damage and the amount was not large enough to claim on the insurance.

23. Items 15, 16 and 18 concerned the introduction of the CCTV system in the block. The Applicant claimed this was not recoverable under the lease. The system involved 3 cameras. The Respondent had been able to identify a perpetrator of a burglary by the CCTV system. The sums they said were recoverable under clause 5(13) of the lease.

24. Item 17 concerned the damage to the door which came under the security category.

25. Item 20 concerned disconnecting an electricity supply in the garages at the building. These were storage units which were not let by the head lessor as garages. The power supply to the storage units had to be disconnected. The Applicant said that the head lessor should have paid this. The Respondent said that the sum was recoverable under clause 5(13) of the lease. The RTM had spent money disconnecting the gas supply so that the garages no longer benefitted at the cost to the lessees. They said this was a proportionate cost.

26. Item 26 was now agreed

27. Item 27 was now conceded by the Applicant.

28. Item 28 concerned the cost of insurance. The Applicant said that the cost of insuring the building was unreasonable. Also no account had been taken of the commissions received by the Respondent. He had not received answers about the claim history at page B-46. The Applicant produced comparables from Landsdown Insurance Brokers (B-31) and Stephen Lower Insurance Services (B-36) which were lower than the Respondent's insurers.

29. The Respondent challenged the Applicant's comparables. The lift and flat roof had not been considered. The Landsdown quote contained no reference to terrorism. The contents insurance was also undervalued. The commissions were used to fund the brokerage system. The Respondent relied on the authority *Blackstone Investments Ltd v Middleton - Dell Management Co Ltd* [1997] 1 E.G.L.R. 75. It said that the RTM had no other way of raising the funds to carry out the work unless a charge was made of its membership. The Respondent therefore reasonably retained the commissions. In relation to the premiums the Respondent was not obliged to obtain the cheapest cover, so long as the transaction is in the market place and at arm's length - relying on *Avon Estates (Kensington) Limited* [2013] UKUT 0264 (LC). The Respondent approached the broker, Lockton, they tendered the market and provided the three lowest tenders and the winner was chosen by the board.

30. Item 29 concerned Directors and Officers insurance. This sum was now conceded by the Applicant.

31. Item 31 concerned the recovery of legal fees for the cost of formation of the RTM (D20). The Applicant said that the costs were not recoverable because the sum predated the RTM. The Respondent said that it had contacted the solicitors Birketts who had confirmed that the cost concerned advice on work on service

charges which was post handover. The work on creating the RTM had been paid by the members themselves.

32. The Applicant said that if the legal advice concerned specific properties the leaseholders should be recharged. The Respondent said its not unusual for the RTM to take advice. It is a lay company that needs assistance. In terms of contractual recoverability the Respondents said that Clause 5(9) - the employment clause - allowed the Respondent to employ staff to assist it and Clause 5(13) allowed administration costs to be incurred. The Respondents relied on *Assethold v Watts* [2014]UKUT0537 (LC) in that case the landlords legal costs of obtaining a party wall injunction were found to be recoverable under a maintenance and safety clause in the lease. The reasoning of the Upper Tribunal is at para [57 -58] although the language of the lease was general it was sufficiently clear to allow recovery.

33. The Respondent said the legal costs were reasonable and recoverable including the cost of getting legal advice before board meetings and the cost of attendance of solicitors at board meetings.

34. Items 32 and 33 concerned the legal cost of addressing a breach of tenant user covenants. The Applicant challenged the payability of this cost saying that it should be incurred by the individual lessees concerned. The Respondent said the costs were reasonable.

35. Item 35 concerned general advice regarding the garages at the building and whether it was possible to disconnect the electricity supply.

36. Items 36 and 37 concerned general legal advice given at a board meeting regarding service charge issues. The Applicant said that the costs were not recoverable or reasonable. The Respondent said it was reasonable to incur these costs.

37. Items 38- 42 were security items for which the same arguments above applied. Items 49-50 were insurance items for which the same arguments above applied also.

38. Item 52 concerned legal fees in pursuing a defaulting leaseholder. The Applicant said that the leaseholder should be pursued.

39. Items 53, 56 and 57 concerned company secretarial fees. The Applicant said the fees were not recoverable under the lease and they were only being incurred because there was a company involved. The Respondent said that the sum was recoverable under clause 5(9) of the lease. It was part of the cost of keeping the RTM functioning. Without the secretary the RTM can't exist.

40. Item 58 concerned further legal fees. The invoice is at D38. The explanation for the cost was provided in the email at B-48. Part of the cost relates to general administration and part relates to individual service charge recovery.

41. Item 59 related to the legal costs of pursuing an individual lessee, namely in relation to the service charge arrears for Flat 8 (D39) .

42. Item 60 concerned legal advice and preparation for another leaseholders meeting. The Applicant maintained that the sum was not recoverable and the Respondent said that it was recoverable pursuant to clause 5(9) of the lease,

43. Items 62 and 63 were now conceded by the Applicant.

44. The final accounts for 2018-2019 were unfortunately not available at the time of the hearing. Therefore the Tribunal could only consider the budget costings at page C23.The Applicant highlighted the large increase in salary costs between 2018-2019 and 2019-2020. This is because the RTM was continuing to incur agency fees. The Respondent said that the porter had resigned and an agency had been approached to provide cover. When the budget was drawn the figure was reasonable. It had not been possible to rehire a porter until the summer of 2019.

45. The Applicant said that the roof repairs, internal decorations and CCTV costs would all be subject to s.20 consultation. The Respondent referred to *23 Dollis Avenue (1998) Ltd v Vejdani* [2016] UKUT 0365 (LC) in which it was held that the limitation in s.20 does not apply to work to be carried out in the future. It is not necessary that there should be a valid consultation process before a sum in excess of £250 can be recovered by way of an interim service charge.

Analysis

46. The decision will set out general comments and then list those items allowed and disallowed.

Security

47. The Tribunal accepts the Respondent's evidence that it has a problem with security in the building which has required expenditure in trying to counter intrusions into the building mainly it would appear by Airbnb occupiers. The Tribunal also accepts that the sums are *per se* recoverable under clause 5(13) of the lease. It is reasonable to incur the costs of installation of the new system in 2016-2017 and to incur the cost of repair of that system in 2017-2018 due to continued vandalism. The Respondent appears to have accepted that the system needs replacement and plan to carry out a consultation process. This does not negate from the fact that the previous work was carried out in good faith with the aim of addressing the ongoing problem.

Repairs

48. The repair costs are on the whole reasonable. It was reasonable for example to vent the radiators in flat 14 in seeking to maintain the main central heating system to the premises.

Insurance

49. The insurance costs are reasonable. The comparables provided by the Applicant are not direct comparables for the reasons raised by the Respondent and the Tribunal accepts that ultimately insurance cover is a matter for the RTM. They are not obliged to accept the lowest quote as long as the insurance is obtained at arms length. The Tribunal also accepts that the brokerage fees were used to manage the insurance administration. The Respondent needs to be more transparent in this regard however.

Legal fees

50. The Tribunal accepts that clause 5 (9) allow some recovery of legal charges in so far as they relate to the performance of the lessor's own covenants. The Tribunal notes the comments of Martin Rodger QC Deputy President of the Upper Tribunal in *Assethold Limited v Watts* [2014] UKUT 0537 (LC) at [58] where he stated that language in a covenant that was clearly intended to encompass a wide variety of situations should not necessarily be restrictively construed to deprive it of any real effect. Here clause 5(9) was plainly envisaged to cover a wide variety of situations including certain legal fees relating to general matters. However the clause is not sufficiently specific to cover the cost of legal fees incurred in pursuing individual lessees. These latter costs are not recoverable. Clause 5(13) is not specific enough for this purpose either.

Budget for 2018-2019

51. The Tribunal does not consider the budget figures are open to any real challenge. The Applicant provided no real evidence to do this. It is of course open to him to challenge the reasonableness of the final accounts.

Summary of decision on individual costs

Items 1 - 3 - allowed in full (£3552)

Item 5 - allow in full (£201.84)

Item 8 - allow in full (£3270)

Item 9 - allow in part (£150)

Item 10 - allow in full (£288)

Item 13 - allow in full (£300)

Item 14 - allow in full (£541.20)

Item 15 - allow in full (£2232)

Item 16 - allow in full (£273.38)

Item 17 - allow in full (£228)

Item 18 - allow in full (£768.74)

Item 20 - allow in full (£144)

Item 28 - allow in full (£8571.65)

Item 31 - allow in full (£1047.48)

Item 32 - disallowed

Item 33 - disallowed

Item 35 - allow in full (£ 300)

Item 36 - allow in full (£540)

Item 37- allow in full (£840)

Items 38 -42 - allowed in full (£1440)

Items 49-50 - allowed in full (£8626)

Item 52 - disallowed

Item 53 - allowed in full (£193.14)

Item 56- allow in full (£540)

Item 57 - allow in full (£474)

Item 58 - allowed in part (£ 2158)

Item 59 - disallow

Item 60 -allow in full (£1601.40)

52. In summary the total sum allowed by the Tribunal is £38280.83.

Section 20C of the Landlord and Tenant Act 1985/Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

53. The Applicant was largely unsuccessful in his application. The Respondent had plainly been put to cost in defending the application. Having regard to all the circumstances of the case the Tribunal does not consider that the Respondents should be prevented from seeking to recover their costs through the service charge.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Judge Shepherd

15 November 2019