



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) & IN THE COUNTY
COURT at LEICESTER sitting at The Tribunal
Hearing Centre Leicester**

Case Reference : **BIR/00FN/LIS/2019/0054**
Court Claim Number : **F83YJ848**

Property : **Flat 6 James Court, 84 Uppingham Road,
Leicester. LE5 0QE**

Applicant : **Acies Property Limited**

**Applicant's
Representative** : **Frisby & Small LLP Solicitors**

Respondent : **Nasrin Mahomed**

Type of Application : **(1) Liability to pay and reasonableness of
service charges
(2) Liability to pay ground rent
(3) Liability to pay interest
(4) Liability to pay contractual costs**

Inspection & Hearing : **26 February 2020**

Tribunal : **Tribunal Judge Mr.P. J. Ellis
Tribunal Member Mr Colin Gell FRICS**

County Court : **Tribunal Judge P.J. Ellis (sitting as a
Judge of the county court District Judge)**

Date of Decision : **16 March 2020**

DECISION

Decisions by the First-tier Tribunal

- (1) The Respondent is liable to pay service charges of £666.00 for the service charge year 2018-9***

Decisions made by the county court

- (1) Judgment for the Applicant for the sum of 1416.00***
- (2) Interest at 4.75% as provided for in the lease from the date of demands for service charges to the date of judgment in the sum of £45.36 and continuing at £0.18 per day***
- (3) Costs summarily assessed at £2415.00 inclusive of court fee and vat.***

Introduction

1. On 20 June 2019 the Applicant Acies Property Limited of 5 De Montfort Street, Leicester LE1 7GE issued proceedings in the county court at Leicester claiming the sum of £2328.82 from the Respondent Mrs Nasrin Mahomed of 75 Staveley Road Leicester.
2. The sum claimed was for unpaid ground rent, insurance premiums and service charges in respect of Flat 6 James Court, 84 Uppingham Road, Leicester LE5 0QE together with interest on the unpaid amounts. The sum due for ground rent was £750.00. The sum due in respect of insurance rent was £346.24. The sum for service charge was £1082.58. A sum of £150.00 in respect of ground rent was not pursued.
3. Interest from 10 June 2019 the date of the demand, was claimed in addition at the rate of 4.75% in the sum of £133.99 and continuing at the daily rate of £0.28. Interest was calculated on the total sum due of £2178.82.

4. On 2 July 2019 the Respondent filed a Defence and on 11 July 2019 the claim was allocated to the small claims track. On 15 October 2019 Deputy District Judge McClure (as she then was) transferred the matter to the First-tier Tribunal (Property Chamber) Birmingham under s176A of the Commonhold and Leasehold Reform Act 2002 for determination of matters within the jurisdiction of the Tribunal. All other matters including costs and interest to be decided by a Tribunal Judge sitting as a judge of the county court exercising jurisdiction of a district judge under s5(2)(t) & (v) of the County Court Act 1984 in accordance with the Civil Justice Council pilot scheme set up by the working group on flexible deployment.
5. On 8 November 2019 the Tribunal gave directions for hearing the matter and submission of evidence.

The Property

6. The subject property was one apartment in an apartment block known as James Court. The building comprising six apartments was constructed in or about 2003 of conventional brick and tile construction with some ornamental stone tile cladding.
7. The building was set back to the line of other properties on Uppingham Road. There was parking to the rear with a small area for additional parking at the front.
8. Entrance to the block was by an unlocked door into a small lobby and staircase to the upper floors. Electricity meters were situated in a cupboard off the entrance lobby. A fire alarm installation was fixed to the wall of the lobby. The staircase was carpeted. Walls were painted in pale colours.
9. Rubbish bins were situated at the front of the property adjacent to the pavement.

The Lease

10. The lease was made on 19 December 2003 between DAC Property Construction Limited (landlord) and Michaela Hayes and Ranbir Sharma (tenant) for a term of 125 years from 1 January 2004.
11. Relevant clauses of the lease are:
 - a. Clause 2 which at sub clause 1 imposes an obligation to pay the Rent (defined at paragraph 1.6 as £150.00 per annum) in advance without deduction on 1 January each year and by sub clause 2 to pay *“by way of further rent the Insurance contribution and the Service Charge Contribution both payable in advance on 1 January or on any such other date as the Landlord in his absolute discretion shall see fit”*
 - b. By clause 1.8 and 1.19 the Insurance contribution and the Service Charge contribution are defined as being one sixth of the total expenses incurred by the Landlord in providing insurance and services, being the services described in the eighth schedule.
 - c. By clause 34 of the fifth Schedule (Tenant’s covenants) *“If the rent for any other sum due under this lease is unpaid 14 days from the date due whether formally demanded or not to pay to the Landlord interest on the Rent or other sum due from the date on which payment was due to the date of payment both before and after any judgment at the Interest Rate”*
 - d. And by clause 1.12 the Interest Rate means 4% above the Law Society’s Interest Rate for the time being.

The Statutory Framework

12. Sections 18 -30 of the Landlord and Tenant Act 1985 provide a statutory framework for the regulation of the relationship between a landlord and tenant of residential property in connection with service charges.
13. Section 19 provides .
 - (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 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.

(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.

14. S20 (1) provides

Where this section applies to any qualifying works or qualifying long-term agreement the relevant contributions of tenants are limited in accordance with subsection (6) or (7) or both unless the consultation requirements have been by either

(a) complied with in relation to the works for agreement

Or

(b) dispensed with in relation to the works for agreement

(2) In this section “relevant contribution” in relation to a tenant and any works or agreement is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount

And by subsection 6

Where an appropriate amount is set at by virtue of (regulations made by the Secretary of State) the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount thereof

15. S27A provides *(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.

16. The Service Charges (Consultation Requirements)(England) Regulations 2003 provide at paragraph 6

“For the purposes of subsection (3) of Section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.00”

The Submissions

17. Each side made written submissions in accordance with the Tribunal directions.

18. Mr Crowson on behalf of the Applicant was unable to say when the Applicant acquired the property although he believed the acquisition was in or around 2011. He conceded that no service charge demands had been served for some years as it was not considered necessary to do so having regard to the minimal amount of service work undertaken. Also ground rent demands, if served, had not been pursued as any income from rent was not justified by the costs involved in preparing and submitting demands.

19. He submitted that as the building was relatively new, routine maintenance was unnecessary for many years. In 2018 the Applicant decided some work was

required. An agent was appointed to carry out all and any work required. The agent Maximus FM Ltd of Evington Road Leicester were appointed to manage the block.

20. The service charge claim of £1082.58 is one sixth of the charges raised by Maximus for services rendered by them between 1 June 2018 and 31 May 2019. From perusal of the invoices for the services it was apparent the services were rendered substantially between December 2018 and April 2019.

21. A certificate of actual expenditure in the relevant year claims the charges for the entire building are made up from:

a. Management and accountancy fees	841.00
b. Fire safety	2008.00
c. General Maintenance	2114.00
d. Electricity	382.51
e. Emergency Lighting	1150.00
Total	6495.51

22. An invoice for insurance rent in the sum of £267.63 was rendered on 10 June 2013 in respect of the insurance premiums paid by the Applicant in 2012 and 2013. Mr Crowson asserted the payment term of the invoice was 30 days being 9 July 2013. Consequently as the Applicant had issued proceedings on 20 June 2019 the debt was not subject to limitation. A further claim for insurance rent in the sum of £78.61 was included in the service charge invoice rendered on 31 May 2019.

23. Ground rent invoices were rendered for years 2014-2018 in the sum of £150.00pa making the claim £750.00. Mr Crowson conceded claims for rent due in 2013 and earlier years was irrecoverable.

24. He adduced evidence that although the Applicant had not pursued service charges, insurance and rent claims in recent years, the Respondent had made

payments for service charges rendered in 2009, 2010 and 2011. The payments made were in response to invoices but there was a history of late and inadequate payments so that by June 2013 there was a debt of £1430.26 which the Applicants were not pursuing.

25. Mrs Mahomed represented herself with the assistance of her husband. She had consulted the Citizens Advice Bureau before attending the hearing. She denied that the work the subject of the service charges was required or that the work done was adequate. The Respondent complained that the Applicant had failed to attend to general maintenance notwithstanding complaints which she made and according to her other tenants had also complained. The complaints related to failure to clear rubbish from the front of the property, failing to repair a fence in a timely manner, not cleaning the interior common parts and failing to attend to a broken lock on the front door. Mrs Mahomed maintained that she and other tenants had carried out cleaning.

26. In so far as the fire safety and emergency lighting work was concerned, with the assistance of Mr Mahomed she asserted the work was too expensive and there had been no consultation with the tenants before the work was undertaken.

27. Mrs Mahomed complained that by failing to render invoices in accordance with the lease she was faced with a large bill which is hard for her to pay because of her circumstances.

28. In response Mr Crowson asserted the value fire safety and lighting work was below the sum prescribed for consultation. He confirmed that apart from an accountant's report and a fire safety risk assessment all work had been carried out by Maximus FM and that there was no formal contract with that company. Work was undertaken by it in response to instructions typically given over the telephone.

29. In answer to a question from the Tribunal regarding the invoice from Carters for accountancy service, Mr Crowson admitted the terms of the invoice did not refer to the supply of services related to the property but described tax and other

services supplied to Acies Limited. He explained that Carter had used the same text when preparing an invoice for work done in relation to calculating service charges as for their corporate work. The sum claimed for the accountant's fee was £492.00 inclusive of VAT.

30. He also asserted that the work related to fire safety and emergency lighting was carried out under separate and distinct instructions. Similarly an invoice for painting work was not connected to other work.

The Decision

31. The Tribunal considered the submissions and made a decision to reduce the sum claimed for the service charges for the reasons set out in the table below. It is not satisfied that the work related to fire safety, the risk assessment, emergency lighting and redecoration can be regarded as entirely separate work falling below the consultation requirements. All work other than the risk assessment was carried out by Maximus. The invoices for the relevant work are numbered sequentially although dated on three separate days namely 14, 21 and 24 January 2019. The date the work was carried out is not given.

32. The charge for fire safety work was £2008.00 comprising £1480.00 (invoice no. 85) for Maximus installation of the fire panel, smoke alarms and other work and £528.00 (including VAT) for a fire risk assessment undertaken by Marpal Limited of Derby. Their invoice is dated 13 February 2019 but the date of the assessment is not given.

33. The Maximus invoice for emergency lighting (84) dated 21 January 2019 without specifying the date of the work, is for the sum of £1150.00.

34. Together the work associated with fire safety and lighting is £3158.00. The invoice for decoration suggests the work was done before the installation of the fire safety means. The Tribunal was unable to determine whether the work was part of the fire safety instructions but having regard to the probable damage incurred by installing emergency lighting and fire safety panels it is surprised that painting was undertaken before the other work.

35. However, the Tribunal is satisfied the value of the fire safety work and emergency lighting taken together was such as to require consultation in accordance with s20(3) Landlord and Tenant Act 1985 and Section 6 the Service Charges (Consultation Requirements)(England) Regulations 2003 limiting the Respondents contribution to the sum of £250.00. There was no application for dispensation before the Tribunal.

36. As far as the accountancy fee is concerned the Tribunal is not satisfied the invoice related to relevant work. The invoice describes services unrelated to the property or the calculation of service charges. Moreover and in any event the sum charges for collating a small number of invoices appears excessive.

37. Also, the Tribunal has deducted the management charges raised by Maximus because it was apparent from the evidence that the company is not providing any management services. It responds to instructions from the Applicant.

38. Accordingly the sum payable by the Respondent for service charges in the year 2018-9 is as set out in the table below:

Item	Amount	Delete	Reasons	Allow	Tenant Share
Management & Accountancy	841	492	Inadequate explanation	nil	nil
Fire Safety*	2008	1062	Maximum allowed	946	158
General Maintenance	2114	No	Evidence supplied	2114	352
Electricity	382.15	No	Evidence supplied	382	64
Emergency Lighting*	1150	596	Maximum Allowed	554	92
Total	6495.15	2150		3996.00	666.00

- Items marked * aggregated and rateably apportioned in accordance with paragraph 30.

Ground Rent

39. There was no significant dispute that the sum of £750.00 is due in respect of five years unpaid ground rent. The Respondent further admitted liability for ground rent due in 2019 and the current year and stated an intention to pay the sums due.

Interest

40. The Applicant is entitled to interest at 4.75% on £1474.00 from 19 June 2019, the date of the demand, to the date of hearing (252 days) in the sum of £47.88 and continuing at the rate of £0.19 per day until payment.

The Costs

41. The Applicant contended that it is entitled to claim costs on a contractual basis and submitted a claim for the sum of £3,161.60 inclusive of the court fees (£315) and £569.32 VAT. That sum was reduced when Mr Crowson accepted that the charge for the hearing could be reduced by 2 hours and some work was suitable for a grade B fee earner. The concession reduced the Applicants claim by £442.80 resulting in an amended claim of £2403.80 for profit costs.

42. There was no application under either s20C Landlord and Tenant Act 1985 or paragraph 5A Schedule 11 Commonhold and Leasehold Reform Act 2002.

43. The Applicant's schedule of costs proposes hourly rates of £201.00 for a grade A fee earner and £177.00 for grade B fee earner. Those rates are not unreasonable but the distribution of work indicates the grade A fee earner was heavily engaged in the conduct of the case even after the reduction conceded by Mr Crowson. The case was a simple debt collecting matter which did not

warrant the time claimed by a grade A fee earner. As stated in *Avon Ground Rents v Child* [2018] UKUT 0204 (LC):

“The procedure before the FTT is intended to be relatively informal and cost effective. The legal principles for assessing the reasonableness of service charges are well-established and clear. In many cases there will be no issue about the relevant principles to be applied, and their application will not be so difficult as to make legal representation essential or even necessary. In such cases a representative from the landlord’s managing agents should be able to deal with the issues involved. After all, those agents will have been directly involved in the decisions taken pursuant to the lease to provide services, to set annual budgets and estimated charges, to incur service charge costs and to serve demands for service charges. Where that is so, a court may reach the conclusion that it was unreasonable for the costs of legal representation to be incurred, whether in whole or in part”

44. The Applicant relied upon paragraph 22.2 Fifth Schedule which imposes an obligation on the tenant *“to keep the Landlord fully indemnified against all....costs....suffered or incurred by the Landlord arising directly or indirectly out of any breach or non-observance by the Tenant of the covenants conditions or other provisions of this lease”* .

45. Judge Ellis concluded that the landlord had a contractual entitlement to its costs in taking proceedings to recover service charges, ground rent and interest but it does not entitle the Applicant to indemnity costs. Although the terms of the lease make costs recovery possible the court has a discretion to decide on the reasonableness of the costs claimed (44.5 CPR) which provides

“(1) Subject to paragraphs (2) and (3), where the court assesses (whether by summary or detailed assessment) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which—

(a) have been reasonably incurred; and

(b) are reasonable in amount,

and the court will assess them accordingly.

(2) The presumptions in paragraph (1) are rebuttable”.

46. There was no reason for the Respondent to fail to pay ground rent but the Tribunal has determined the Applicant should have consulted with the tenants before authorising its agent to undertake fire safety and emergency lighting work.
47. The Applicant is entitled to its costs of issuing proceedings and associated court fees. It was necessary for a hearing as the Respondent maintained a denial of her liability until trial. The court considers the sum of £1750.00 is reasonable for costs with vat of £350.00 and court fees of £315.00 being £2415.00 in total.

Appeals

Appeals in respect of decisions made by the FTI

48. 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 (Rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).

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).

Appeals in respect of decisions made by the Tribunal Judge in his capacity as a Judge of the County Court

49. An application for permission to appeal may be made to the Tribunal Judge who dealt with your case or to an appeal judge in the County Court.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal.

Further information can be found at the County Court offices (not the Tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in his capacity as a Judge of the County Court and in respect the decisions made by the FTT

50. An applicant must follow both routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.

Tribunal Judge PJ Ellis