FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/11UB/LIS/2020/0002**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**27 Quercetum Close, Aylesbury, HP19 8JN**
Applicant	**:**	**Paul Desmond Rogan**
Representative	**:**	**Colin John Rogan**
Respondent	**:**	**1. Abbey Developments Limited** **2. Holman Place Management Limited**
Representative	**:**	**Crabtree Property Management and PDC Law**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 and administration charges under Schedule 11 to the Commonhold and Leasehold Reform Act 2002**
Tribunal members	**:**	**Judge Ruth Wayte** **Marina Krisko FRICS**
Date of decision	**:**	**14 April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held due to the pandemic. The documents are in a bundle of 358 pages, the contents of which I have noted. The order made is described below.

Decisions of the tribunal

(1) The tribunal determines that the sum of £ 574.53 is payable by the applicant in respect of the actual service charge for 2016/17;

(2) The tribunal determines that the sum of £ 841.42 is payable by the applicant in respect of the actual service charge for 2017/18;

(3) The tribunal determines that the sum of £ 1,034.40 is payable by the applicant in respect of the interim service charge for 2018/19;

(4) The tribunal determines that neither administration charge of £300 or £250 are payable by the applicant;

(5) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, preventing the respondent from passing on the costs of the proceedings through the service charge.

(6) This matter should now be referred back to the Reading County Court (unless the parties can reach an agreement).

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and (where applicable) administration charges payable by him in respect of the service charge years 2016/17, 2017/18 and 2018/9.

2. This application has a slightly unusual backstory. Debt proceedings were issued by PDC Law in the County Court Money Claims Centre under claim no. PBA0087579 in or about January 2019. After a series of slightly unfortunate events from the perspective of the applicant, those proceedings were stayed to allow him to apply for a determination by the tribunal as to the payability of the service charges and some administration charges in dispute. The original proceedings have not been transferred to the tribunal and therefore there is no jurisdiction in respect of County Court issues such as interest and costs incurred in the County Court.

3. Directions were ordered on 11 December 2020 requiring the applicant to complete a schedule setting out the items in dispute and for the respondent to provide a reply and copies of relevant invoices in respect of those items. In accordance with the interim arrangements for hearings during the pandemic, it was agreed with the parties that the

hearing would be conducted remotely via the Cloud Video Platform (CVP) used by HMCTS on 25 March 2021.

The hearing

4. The applicant was represented by his father Colin Rogan at the hearing and the respondents were represented by Mr Wragg of counsel, with Jack Miller of Crabtree Property Management as their witness. The hearing bundle had been prepared by the respondents in accordance with the directions.

5. As a result of a query by the tribunal, the respondents were asked to provide additional evidence in support of a claim for a rent collection fee in addition to their management charges and the applicant was given an opportunity to respond to that evidence. That item is dealt with below in consideration of the 2017/18 and 2018/19 service charges years.

The background

6. The subject property is a flat and parking space in a modern development built by Abbey Developments (the developer) in or about 2015/16. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

7. The applicant bought the flat on a long lease dated 15 July 2016. The lease is between the developer as landlord and Holmans Place Management Limited as the management company (the Company), which provides services for which the tenant is liable to pay a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges from the date of purchase to 2018/19. The first two service charge years are now based on actual expenditure set out in company accounts, the final year is in relation to the interim demand only as the accounts have not been finalised.

   (ii) The administration charge of £300 described as a referral fee, charged on 18 October 2018.

   (iii) The administration charge of £250 for instruction of PDC.

9. The Applicant's schedule of items in dispute included interest, ground rent and County Court costs but it was explained that the tribunal has no jurisdiction to consider any of those items under the Applicant's s27A/Schedule 11 application.

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charge year 2016/17

11. Under the lease the service charge year runs from 1 May to 30 April. At the time of the Applicant's purchase on 15 July 2016, he paid £1,145 as an Interim Service Charge. His case was that this should have been sufficient to cover all or most of the expenses for the period in dispute. Alternatively, his case was that the charges levied for that period were excessive and unfounded. He disputed that the accounts were a true reflection of expenditure by the Company as he considered that the developer would have remained liable for expenditure on the property until formal handover which was advised by Crabtree by letter dated 27 February 2018.

12. Mr Rogan also clarified that as a member of the Company he and his son (they both own a flat in the development) were customers of Crabtree. He did not have a copy of the lease until 2019 and considered that Crabtree had acted unreasonably in escalating their debt control procedures while he was in discussion with them about the accounts. He said that the debt control company had confused matters by dealing separately with the two flats and wrongly allocating payments made in relation to 27 Quercetum Close to his own flat at 17 Quercetum Close. These points were really raised in relation to the challenge to the administration fees dealt with later on in this decision.

13. Mr Rogan's challenge to the 2016/17 service charge year expanded to an attack on specific service charge items which he claimed had not been expended. His initial point was that those costs were the developer's responsibility and not that of the Company as set out above. Mr Wragg objected to the challenge on an item by item basis as it had not been foreshadowed by Mr Rogan in his schedule of items in dispute. There was a short adjournment to enable both parties to consider their position as to whether they could proceed without further documentation. When the parties reconvened, Mr Rogan emphasised that his issue was reasonableness of the service charge and management fees in general. His reference to specific invoices was intended to illustrate that claim and the fact that he felt the respondents had rushed to proceedings rather than deal with his queries in a reasonable manner.

14. Mr Miller confirmed the contents of his witness statement. Unfortunately, he had only recently become responsible for the

development but had worked for Crabtree since 2015 and was able to give evidence about their relationship with the developer on newly built sites. In particular, he confirmed that once the lease had been signed, the tenant would be responsible for service charges, with a contribution from the developer in respect of any unsold flats, described in the accounts as "voids". Crabtree did not take full responsibility until the development was complete and the snagging issues resolved but since 2015 it had managed the site for the Company in tandem with the developer, including the arrangement of buildings insurance and the company accounts.

15. Mr Rogan pointed out that not all of the invoices supporting items in the accounts had been produced by the respondents. Over the lunch break Mr Miller provided copies of the building insurance certificates for most of the period in dispute and a copy of Crabtree's management agreement, although the schedule setting out the charges was missing. Mr Wragg reiterated his argument that in the absence of specific issues being raised in the schedule by the applicant, the respondent should not be penalised for a lack of invoices in the bundle.

The tribunal's decision

16. It would appear that this dispute was largely due to Mr Rogan's lack of understanding of what the interim service charge was intended to cover and confusion caused by Crabtree's letter in February 2018 which he took as confirmation that their management had started on that date and not before. He had only received a copy of the lease in 2019 and had not appreciated that the liability to pay a service charge covered both the Company and the landlord's (i.e. developer's) expenditure as set out in clause 10.

17. The tribunal also agrees with the respondent that the applicant may not challenge specific items on the basis of missing information unless they were foreshadowed in the schedule of disputed items.

18. Under the terms of the lease, the service charges are to be set out in a "*certificate*", defined in the lease as "*a summary of the expenses and outgoings incurred by the Company or (in default thereof) by the Landlord during the Company's financial Year to which it relates together with details of figures forming the basis of the Service Charge*".

19. The respondents had produced Company Accounts which reference Quercetum Close on page 115 of the bundle. That same page contains a report by the accountants dated 26 February 2018 stating that they had carried out various checks on the figures provided by the Company. Their work was neither an audit nor a review as that was not required under the terms of the lease. The tribunal have treated the accounts as the certificate referred to in the lease and used the actual expenditure to determine the applicant's liability under the terms of his lease.

20. Mr Rogan had queried some of the expenditure in the accounts on the basis that he doubted it had been incurred, for example the figures for communal electricity and water were suspiciously round numbers. The tribunal pointed out that the cost was clearly based on estimates and a subsequent credit shown in the draft accounts for 2018/19 meant that the cost to the applicant for communal electricity was in the region of £10 a year which would appear reasonable. Mr Miller also confirmed that in new developments, it was usual to put an accrual charge in the accounts for electricity as developers would not usually hand over the details of actual expenditure for 2 to 3 years.

21. Mr Rogan also queried the management charges. As set out above, Mr Miller was unable to confirm the exact charges but the tribunal calculated that the fees appeared to be in the region of £200 for 2015/16, which is within a reasonable range for the Aylesbury area.

22. Finally for this year, Mr Rogan pointed out that the invoices provided for the accountancy charges did not add up to the £970 claimed as actual expenditure. Mr Miller was able to point to invoices in the bundle amounting to £910 and confirmed that the balance of £60 was for the filing fee. The tribunal was satisfied with this explanation.

23. In the circumstances, the tribunal is satisfied that the accounts provide sufficient evidence to determine the service charges payable by the applicant and that the charges are reasonable in the context of a new development.

24. Taking the actual expenditure set out on page 117 of the bundle and applying the Service Charge Proportion stated in the Sixth Schedule of the applicant's lease, together with a deduction to take account of the fact that the applicant bought the property on 15 July 2016, the tribunal determines that £574.53 is payable in respect of 2016/17.

Service charge year 2017/18

25. Service charge accounts were also available for this year, again supported by an accountant's report. No new arguments were raised by Mr Rogan in respect of this year which the tribunal has considered using the actual expenditure set out on page 125 of the bundle. As might be expected, the costs were higher than for the previous year, due mainly to the commencement of contracts for cleaning and landscaping.

26. The Company costs had increased from around £3,000 in 2017 to almost £5,000 in 2018. One item stood out to the tribunal entitled "Ground Rent Collection Fee". This was said to be the cost to the landlord for collecting the ground rent, which amounted to £86 for the applicant. The tribunal requested details from the respondent which relied on a previously unseen extract of the management agreement setting out

charges of 10% plus Vat of the total ground rent collected with a minimum fee of £10 plus Vat per lessee. The respondent also pointed to the lease which contains a covenant on the part of the Company to collect the ground rent (Clause 7) and provision for the recovery of the costs of the managing agent (Clause 10 of the Fourth Schedule). The applicant did not reply to that part of the respondent's representations.

The tribunal's decision

27. Again, the tribunal is satisfied that the accounts provide sufficient evidence to determine the service charges payable and that the charges are reasonable in the context of a new development, save for the Ground Rent Collection Fee.

28. The tribunal's query expressed at the hearing was whether a separate fee for some £86 could be justified. As explained above, the respondent was unable to produce the schedule detailing the basic management fee at the hearing and the representations only contain the extract providing for the charge for the collection of ground rent and no argument to support the reasonableness of the sum claimed apart from the comment that it was higher in 2018 as no fee was collected in 2017. The RICS Management Code (3rd Edition) is clear that charges should be proportionate to the time and amount of work involved. It also prefers a fixed fee rather than a percentage so that leaseholders can budget. The tribunal does not consider that £86 is reasonable for the collection of ground rent, even if it is to cover two years. In any event, the 2016/17 charges were based on the accounts and it therefore seems to the tribunal that it is too late to add this charge in now. In the circumstances the tribunal allows £24, inclusive of Vat, double the minimum amount stated in the agreement.

29. Applying the Service Charge Proportion to the actual expenditure shown in the accounts and taking into account the reduction of the Ground Rent Collection Fee, the tribunal determines that the amount payable by the applicant for 2017/2018 is £841.42.

Service charge year 2018/19

30. The service charge accounts for this year have not yet been finalised and therefore the tribunal has considered the interim charge only. Most of the copy invoices provided by the respondents relate to this period and Mr Rogan pointed to issues in respect of the dates, address of the subject property and what appeared to be a duplicate invoice. The tribunal assumes that those issues will be resolved during the accounts checking process but in any event the respondent is on notice of the problem. In the event that the applicant wishes to challenge the actual expenditure for this period in due course he will need to be specific about each item in dispute and try and obtain evidence to support any claim that the cost is excessive.

The tribunal's decision

31. The applicant was charged £223.62 for the reserve fund and £1,010.78 for the service charge, the same as the interim charge for 2017/18. Although the tribunal is looking at the budget for this year, large credits were applied in respect of the electricity and lift costs, indicating that maintaining the budget at the previous level was unreasonable. In these circumstances, the tribunal considers that a reduction of £200 should be applied, meaning that a total of £1,034.40 is payable by the applicant in respect of the interim service charge including the reserve fund contribution for 2018/19.

32. Incidentally, nothing was charged for Rent Collection as an interim payment for this year but the draft accounts indicate a charge of some £39 is intended for the final accounts. On the basis of the finding above, the tribunal does not consider this a reasonable charge for the collection of ground rent. As stated in the RICS Residential Management Code, Crabtree should explain to the leaseholders and members of the management company what their total liability for management fees is and how it has been calculated. That should enable both the applicant and any others who are concerned about the scale of the charges to have a better understanding of what they are paying for and to consider whether they wish to apply for a determination from this tribunal in the future.

Administration charges

33. In addition to the three service charge years, the applicant also challenged two administration charges: £300 for the handover by Crabtree to its debt collection company and £250 for instruction of the debt collection company.

34. As stated above, Mr Rogan's challenge was that it was unreasonable to add these charges when he was in correspondence about the arrears.

35. The £300 described as "additional management fees" had been debited to the applicant's account on 16 October 2018. No correspondence was included in the bundle from Crabtree giving a warning of escalation or any additional fee and no invoice was produced to justify the amount. The tribunal refused an application by Mr Wragge for time to produce further documentation as this item had been clearly stated in the applicant's schedule as being in dispute. Despite this refusal, the respondent included several letters in their representations about the rent collection fee. The tribunal also notes that the letters are in standard form and make no attempt to answer any of Mr Rogan's queries.

36. Mr Rogan had produced various emails, including an exchange with Crabtree in February 2018 and several emails between him and PDC, the

debt collection company, dating from November 2018. Those emails were originally about his own flat at 17 Quercetum Close but he subsequently amended the title to include his son's flat at 27. The emails explained that Crabtree had not responded to his earlier queries and ended on 20 December 2018 with an email stating that PDC would request comments from their client and update him with a response. He stated that no response was forthcoming and that the next development was in fact the County Court claim issued in or around January 2019. In his response to the representations made after the hearing he included some more emails dating back to earlier in 2018 where a promise was made by Crabtree to respond to his queries. He also reiterated that he had received no formal letter before action prior to the issue of County Court proceedings, although that is irrelevant to the administration fees under consideration.

37. Mr Wragge responded that PDC had endeavoured to deal with Mr Rogan's queries and the fees were reasonable in the face of the arrears which amounted to a breach of the lease, triggering the applicant's obligation to pay the recovery costs. Mr Wragge conceded that a payment of £1,335.14 on 3 June 2019 had been wrongly allocated to 17 Quercetum Close, although this was in relation to the interim service charge for 2019/20 and therefore outside the period in dispute.

The tribunal's decision

38. There was absolutely no evidence in the bundle, prepared by the respondents, that Crabtree had considered Mr Rogan's objections in February 2018 before passing the file to its debt collectors in October 2018. Similarly, there was nothing in the bundle to justify the additional fee of £250, which appears to have been incurred at the same time, although no date was given in the Statement of Sums claimed attached to the Particulars of Claim. Copies of further chasing letters were slipped into the representations on the rent collection fee, including reference to the additional management fee but the respondent had already been refused permission to adduce new documents at the hearing and in any event none of the new letters attempt to address Mr Rogan's queries.

39. The tribunal considers that if Crabtree had explained in clear terms that the handover date was a red herring and explained why additional monies were due, the entire problem would have gone away. That said, Mr Rogan should have taken advice and now accepts that if he wishes to challenge service charges in future he should pay them under protest and apply to the tribunal for a determination, as opposed to being on the wrong end of a County Court summons. He has already paid a considerable amount in legal costs as a result.

40. In the light of the failure by Crabtree to engage meaningfully with Mr Rogan, the tribunal determines that the £300 "additional management fee" is not payable.

41. No information was provided to support the alleged charge of £250. Assuming that it is a charge triggered by the referral to PDC by Crabtree, it falls for the same reason: Crabtree should have made an attempt to clearly explain the position to Mr Rogan before escalating the matter to their debt collectors. In the circumstances, the charge of £250 for instruction of PDC is not payable.

Application under s.20C and paragraph 5A

42. In the application form, the applicant applied for an order under section 20C of the 1985 Act and/or paragraph 5A of the 2002 Act, limiting any costs of the proceedings.

43. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable for an order to be made under section 20C of the 1985 Act so that none of the costs incurred by the Company in connection with the proceedings can be passed through the service charge. This application was mainly due to the failure of Crabtree to explain to a leaseholder and Company member why his liability arose. Their letter in respect of the handover from the developer was the initial cause of the confusion and they made no meaningful attempt to assist Mr Rogan by dealing with his queries. Mr Rogan's son, as the leaseholder, does bear a responsibility to understand the lease but the tribunal considers that a straightforward explanation by Crabtree would have been sufficient to resolve matters back in 2018.

44. In terms of the application under paragraph 5A of the 2002 Act, Mr Wragge confirmed that no order for costs was being sought against the applicant in these proceedings. The tribunal agrees that as the application was by the leaseholder it would not appear to trigger liability under the lease in any event. There is therefore no need to consider a 5A order.

The next steps

45. The tribunal hopes that the parties will now be able to agree terms to avoid further costs being incurred in the County Court.

Name: Judge Wayte

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).