FIRST-TIER TRIBUNALh
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/22UL/LIS/2020/0009**
Property	**:**	**Flat 6 Central Apartments, 151B High Street, Rayleigh, Essex, SS6 7QA**
Applicant	**:**	**Colin Garfield Mayor ("the tenant")**
Representative	**:**	**In person**
Respondent	**:**	**Overpier Ltd**
Representative	**:**	**Mr Mills of Counsel**
Type of Application	**:**	**Determination as reasonableness and payability of service charges pursuant to Landlord and Tenant Act 1985,s.27A**
Tribunal Members	**:**	**Judge Jim Shepherd**
Date of Decision	**:**	**9th January 2021**

DECISION

The service charges claimed by the Respondents for the period 2014 to date are reasonable. The Tribunal will not exercise its discretion under s.20C of the Landlord and Tenant Act 1985.

The application

1. The applicant seeks a determination as to whether service charges claimed by the Respondents for the period between 2014- 2020 are payable under the lease and reasonable.

2. Specifically, he questions in his application what his apportionment of the service charge should be; whether the cleaning costs are reasonable; whether roof repairs should be recovered as part of the service charge in light of the fact that there is a guarantee in place and who should pay the costs of the application.

Background

3. The Applicant has a lease of Flat 6, 151B High Street, Rayleigh, Essex, SS67QA (" The premises"). The lease began on 31st January 2013.

4. The lease requires the tenant to pay a fair and reasonable proportion of the service charge , to be determined by the Managing Agents or the Landlord's surveyor. The service charge is dealt with in the Sixth Schedule.

The proceedings

5. Despite directions to do so the Applicant failed to file any evidence. The Tribunal ordered that his application form and an email with attachments would stand as his statement of case. In his email dated 7th June 2020 he states the following in summary:

I. That his apportionment should be 2.2663% which was the amount used in a projected statement he was given at the time he was purchasing the premises.

II. That the cleaning costs are inflated and cheaper cleaners could be utilised. He cited a quote by Expert Cleaning Company at £22 plus VAT per week

III. That the roof works should have been covered by a guarantee form Tor Coating Li9mited who treated the flat roof when the building was converted.

6. Mr Elliot James Taylor provided witness evidence for the Respondents. He is a Director of Taylor Surveyors Ltd who were instructed as agents by the Landlords, Overpier Limited in July 2014.

7. In response to the various issues raised by the Applicant:

I. He stated that the Respondents had no record of the projected statement referred to by the Applicant. In any event this was not a binding contract between the parties. The apportionment had been based on floor areas which were measured by Matthew Fox on 19th May 2014. The Applicant's flat was the largest in the block.

II. That the cleaning costs were reasonable. The cleaners were Property Support Services based 35 minutes from the premises. The cost was £292.50 plus VAT per month to attend two hours each week which was not unreasonable. This was £33.75 per hour. Another cleaning service used by the Respondents charged £45 per hour.

III. That the guarantee in relation to the roof given by Tor Coatings Ltd was limited to materials and did not cover labour etc. The majority of the costs incurred in relation to the roof did not come under the guarantee. He provided a calculation which confirmed that even if the guarantee applied to the roof works it would only reduce the Applicant's liability by £40.01.

The hearing

8. The hearing was conducted virtually. The Applicant, Mr Garfield Mayor represented himself and Mr Mills represented the Respondents. The Tribunal is grateful for the assistance of both parties.

9. Mr Garfield Mayor put forward the additional argument that the building in which the premises was located should have been protected by the NHBC because it had been converted soon before his occupation. He relied on sales information which confirmed that there was some sort of guarantee in place. Mr Taylor for the Respondents said that there was no record of the NHBC being involved and even if they were it is the lessees who would be party to the guarantee. The Tribunal had no evidence either

way to determine whether or not the building was covered by the NHBC guarantee.

10. Mr Garfield Mayor repeated the arguments in relation to the apportionment of his service charge. He said that he had been led to believe that his apportionment was 2.2663% before he purchased the premises. He accepted however that the lease allowed the landlord to set the apportionment. The Respondents maintained their position that an apportionment based on floor area was reasonable and they were not bound by the projected statement relied on by the Applicant.

11. Mr Taylor gave evidence in relation to the roof guarantee. He was cross examined at some length about each roof invoice in order to ascertain whether the cost should have been covered by the guarantee. He gave clear and cogent evidence. Some of the invoices did not relate to the area under guarantee. Other invoices were largely for labour and not materials and would not therefore be covered by the guarantee.

12. Mr Taylor accepted that four invoices for works had been wrongly recharged to the Applicant. These were the invoices at page 244,311,313 and 348 of the bundle. A deduction of £31.68 was agreed. This will need to be deducted from the Applicant's outstanding service charge arrears.

13. Mr Mills submitted that the projected statement relied on by the Applicant was an estimate of projected service charges and the charges were clarified when the floor measurements were taken in 2014. The Applicant's flat was the largest flat in the building and his apportionment based on floor area was fair and reasonable. He said that the cleaning charges were also reasonable. The only other evidence available to the Tribunal was the charge by Danson cleaners which was £45 per hour and the estimate by Expert Cleaners for £22 per hour. The current figure lay somewhere in the middle of the two comparables.

Summary of findings

Apportionment

14. The lease allows the Respondents to apportion the service charge. They have done this in accordance with floor area which is a reasonable method of apportionment. The fact that the Applicant was told during his purchase that the apportionment would be a certain figure does not bind the Respondents. The projected statement was at best an estimate which was later clarified when the floor areas were measured.

Cleaning costs

15. The cleaning costs appear entirely reasonable to the Tribunal. It is accepted that the landlord can decide which cleaning firm to use and providing the costs are not unreasonable can recover those costs from the leaseholders. Mr Taylor justified the costs incurred. There is no reason to doubt his evidence. The comparable used by the Applicant did not provide sufficient information to determine if it was comparing like for like.

Roofing /maintenance

16. The roofing and maintenance expenditure appeared reasonable overall. The Applicant's challenge based on the guarantee and the NHBC did not survive cogent and careful analysis of each invoice by Mr Taylor. The lessees themselves would be parties to any NHBC cover if there was any cover. The Applicant did not provide any evidence of this. The Respondents conceded that four invoices should not have been recharged to the Applicant and a credit of £31.68 will be given. It is not unusual for a building to incur regular maintenance costs even in the early years after conversion. Significantly this building has a flat roof element. Such roofs are notorious for incurring extra

maintenance costs. The costs of such maintenance in the present case were reasonable.

S.20 C Landlord and Tenant Act 1985

17. The Tribunal can find no basis for exercising its discretion under s.20C. The Applicant lost on all counts. Although heartfelt his challenge was misguided.

Postscript

18. The Tribunal was heartened to note the respectful way in which the parties behaved in this hearing. Both sides expressed a desire to find an amicable resolution to the issues between them. It is hoped that this can be taken forward and further disputes can be avoided.

Name: Jim Shepherd **Date:** 9th January 2021

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).