



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **MAN/OOCB/LSC/2020/0024V**

**Property** : **181 Poulton Road, Wallasey, CH44 9DG**

**Applicant** : **The Ground Rent Trst Limited**

**Representative** : **Mr Paul Simon**

**Respondent** : **Ms Vivienne Jurrius**

**Type of Application** : **Under the Landlord and Tenant Act 1985 s.27A**

**Tribunal Member** : **Judge P Forster  
Mr W Reynolds MRICS**

**Date of Hearing** : **29 April 2021**

**Date of Decision** : **9 May 2021**

**Date of Determination** : **19 May 2021**

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**DECISION**

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## **Decision**

The Respondent is liable to pay the Applicant the sum of £745.33 for the service charge payable in respect of the 2019 service charge year. In addition, a further sum of £240.00 is a reasonable as an administration charge for 2019.

## **Introduction**

1. This case was transferred to the First-tier Tribunal (Property Chamber) by an order made on 14 February 2020 in proceedings in the County Court at Birkenhead under claim number F8QZ74QZ. The Tribunal is asked to consider the issues raised by the Respondent in relation to the service charges claimed in respect of 181 Poulton Road, Wallasey, CH44 9DG (“the Premises”).
2. The Applicant is the freehold owner of 1 Halstead Road, Wallasey, CH4 4BB registered at HM Land Registry under title number MS620996. The property includes and is subject to a lease of the Premises registered under title number MS632356. The Respondent was until 6 April 2020 the leasehold owner of the Premises which she held under a lease dated 3 May 2016 (“the Lease”) made between (1) 365 Asset Management Ltd. and (2) the Respondent.
3. On 6 April 2020, the Respondent purported to assign the Lease to Andrew Peter Lea. The Applicant asserts that this was done in breach of clause 18.4 of the Lease under which the Respondent covenanted not to assign the Lease unless she had first paid all monies due to the landlord. The Tribunal is not concerned with this issue.
4. The Tribunal is asked to determine whether service charges are payable and if so, how much is payable by the Respondent to the Applicant.
5. The tribunal did not carry out an inspection. The Premises are shown by the lease plan to comprise the ground floor flat in a three-storey building accommodating one other flat at first and second floor level. The property is on the corner of Poulton Road and Halstead Road, with the front door to the subject premises on Poulton Road with the upper floor flat accessed from Halstead Road.
6. Directions were issued by the Tribunal on 18 November 2020 that required the parties to exchange statements of case, copies of all documents on which they intend to rely and any witness statements. The Applicant has complied with the Directions. The Respondent’s letter dated 13 January 2021 stands as her statement of case. She has not produced or sought to rely on any other documents.

## **The Law**

7. The law relevant to the case is set out in the annex to this decision.

## Reasons for the decision

8. Under the terms of the Lease, the Respondent is liable to pay to the Applicant the rent, the service charge, all interest payable under the Lease and all other sums due under the Lease (clause 2.3). This is not in dispute.

9. The Applicant issued proceedings on 19 December 2019 to recover the sum of £2,262.25 said to be due from the Respondent for “*service charges and administration charges*”. The particulars do not identify the relevant service charge year or distinguish between service charges and administration charges.

10. During the course of the hearing, it appeared that the claim for which the County Court proceedings were issued was in respect of both 2019 and 2020. On further consideration, the Tribunal is satisfied that the claim only relates to 2019. Whilst the Tribunal considered all the evidence put forward by the parties, the Tribunal’s jurisdiction is limited to the matters referred to it by the County Court and therefore only the service charge for 2019 falls to be determined.

11. The proceedings were issued in the County Court before the end of 2019 and before the actual costs were known. The claim was based on the budgeted service charge expenditure for 2019. The total expenditure was £3,312.00, for which the Respondent was liable for 50% amounting to £1,656.25. The Respondent’s “tenant account” shows that in addition to the service charge debited on 1 January 2019, administration charges were also debited including a charge of £30.00 each for three arrears letters and a charge of £450.00 for a letter before action. The total was £2,196.25. There is a shortfall of £66.00 between this and the amount stated in the particulars of claim.

12. The Applicant submitted an undated service charge account reconciliation showing that the actual service charge costs incurred in 2019 amounted to £2,565.66 of which the Respondent was liable to pay £1,282.83.

13. The service charge claim is made up as follows:

• Bank Charges	£15.00
• Health & Safety	£175.00
• Insurance Reinstatement Cost Assessment	£1,200.00
• Management Fee	£375.00
• Property Insurance	£800.66
<u>£2,565.66</u>	

The Respondent’s liability @ 50% £1,282.83

14. The Respondent filed a defence in the County Court proceedings objecting to the claim because the “...*Claimant has never done any maintenance on the building since we have owned the lease*”. The Respondent referred to a previous Tribunal decision in 2019 (MAN/OOCB/LAC/2018/0005) where she successfully raised issues relating to the Applicant’s failure to carry out repairs in 2017 and 2018. The Respondent’s case in the present proceedings is that the Applicant has still not done any works.

15. Although the budgeted service charge expenditure for 2019 included £500.00 for general maintenance that was not carried through into the actual costs expended because no works were done. There is no claim for any works. The Respondent was asked to consider at the hearing the elements that make up the claim.

16. Under Part 2 of Schedule 7 to the Lease the service costs payable by the Respondent, are identified, in particular at 34(a)(iv) to (vii). Mr Simon submitted that each of the items claimed by the Applicant fall within these provisions. The Respondent did not raise any objection in principle to any of the items of costs but at the hearing questioned the amount claimed in respect of the management fee and the insurance premium and stated that she was not aware any individual who was responsible for “health & safety”, nor was she aware of any inspections of the property having been undertaken on behalf of the landlord.

### **The service charge**

17. The Applicant included an invoice dated 2 October 2019 for a disbursement of £15.00 for bank charges for the period 1 January 2019 to 31 December 2019. Although the invoice was premature, the Tribunal allows the claim for £15.00.

18. For the Applicant, Mr Simon submitted that the Health & Safety fee of £175 was incurred because of the requirement for a named individual to be the ‘responsible person’ for all health & safety matters affecting the property. The Respondent stated that she was unaware of the identity of any such individual. No supporting invoice for this fee was provided by the Applicant for 2019 although the Applicant’s bundle included an invoice raised by Moreland Estate Management for 2020 in the same sum. Section 8.3 of the RICS Service Charge Code identifies that managing agents are likely to be identified as being the ‘responsible person’. Accordingly, the Tribunal takes the view that to the extent that such a charge may be properly payable under the service charge, it should be incorporated within the management fee for the property.

19. In support of the fee for insurance cost reassessment, an invoice dated 4 February 2019 was provided from Dunphys. The invoice is for £1,200 gross and does not expressly include VAT although Dunphys’ VAT registration number is on the invoice. Mr Simon stated that the Applicant is not registered for VAT and accordingly, could not recover any element of VAT. The invoice references instructions received dated 11<sup>th</sup> December 2018. During the hearing, Mr Simon explained that the service charge reconciliation each year was based upon actual expenditure in the calendar year rather than a system of accruals and prepayments. This explains why the charge was incorporated in the 2019 service charge reconciliation. Mr Simon also stated that the

landlord's practice was to require an insurance cost reassessment to be undertaken not more frequently than every 3 years nor less frequently than every 5 years and submitted that when the cost was considered on an annualised basis over those periods of time, it was much less significant.

20. The service costs are defined in Part 2 of Schedule 7 of the lease and are qualified by a requirement for reasonableness. Clause 34 (a) (ii) specifically provides for any professional fees for carrying out any insurance valuation of the Reinstatement Cost to be included within the service charge costs. The Tribunal notes that the insurance premium for the period 24 August 2018 to 23 August 2019 provided for a buildings reinsurance figure of £257,500 with the premium being £783.19. For the period 24 August 2019 to 23 August 2020, the buildings reinsurance figure was increased by 45.86% to £375,597 with the new premium being £826.98, an increase of £43.79. In the context of the increased premium payable as a result of the cost assessment, the Tribunal does not consider the cost of the assessment itself to be a proportionate or reasonable cost.

21. The Tribunal also notes the landlord's title to the property was entered at the Land Registry in December 2016 with the insurance cost assessment instructed only two years later in December 2018. The Tribunal is of the opinion that the landlord's managing agents should have considered a straightforward index based cost reassessment.

22. The Tribunal was not provided with a copy of the instructions given to Dunphy's. It is clear from Mr Simons' submission that the cost re-assessment was intended to cover a number of years and by any measure (e.g the two year period between the title being registered and Dunphy's being instructed or the 5 year period Mr Simon referenced as being the maximum interval between cost reassessments), the insurance cost reassessment that is included within the service charge would equate to an annualised charge of between £240 and £600 with each of the tenants bearing half the cost.

23. Falling outside the 2019 service charge year, Dunphys issued an invoice dated 27 August 2020 for £75.00 plus VAT for carrying out an inspection of the Premises to ascertain whether an EWS1 form was required. The EWS1 form is designed to be used for residential properties such as blocks of flats, student accommodation, care homes and Houses in Multiple Occupation. It has no obvious application in the present case. It is a way for a building owner to confirm that an external wall system on residential buildings has been assessed for safety by a suitable expert, in line with government guidance. The process involves a "qualified professional" conducting a fire-risk assessment on the external wall system, before signing an EWS1 form. Dunphys is based in Hounslow and it may be that a local agent was instructed to carry out the inspection. In any event, the charge made for this work merits comparison with the charge of £1,200.00 (the invoice does not include VAT) for the insurance reassessment in 2019. Both required a suitably expert to carry out an inspection. The Tribunal considers the fee of £1,200.00 to be excessive and applying its relevant knowledge and

experience assesses that a reasonable cost for the work would be £300.00 inclusive of VAT.

24. The management fee of £375.00 included within the 2019 service charge reconciliation is evidenced by three separate invoices of £125 which are identified as having been raised by Moreland Estate Management, a trading name of Moreland Estate Property Management Ltd. whose directors are also directors of the Applicant. The management fee is supported by invoices dated 29 March 2019 for the quarter to 25/03/2019, 24 June 2019 for the quarter to 24 June 2019 and October 2019 for the quarter to 29 September 2019. The management fee for the quarter to 25 December 2019 was increased to £133 and invoiced on 15 January 2020. As previously identified, Mr Simon submitted that the service charge reconciliation each year was based upon actual expenditure in the calendar year and accordingly, the invoice for the quarter to 25 December 2019 was not allocated to the 2019 service charge year.

25. The Tribunal was not provided with and did not hear evidence on the nature of the management agreement between the Applicant and Moreland Estate Management however, the Tribunal notes that the management agreement used by Moreland Estate Property Management Ltd was previously the subject of a Court of Appeal decision in Corvan (Properties) Ltd v Abdel-Mahmoud [2018] EWCA Civ 1102 which was decided in 2018. As a consequence of that decision, the Tribunal understands that the management agreement utilised by Moreland Estate Management was amended so as to ensure that it was not deemed to be a qualifying long term agreement under section 20ZA(2) of the Landlord and Tenant Act 1985. The Tribunal proceeds on this basis.

26. The Respondent argues that because no works were carried out at the Premises there was nothing to manage and therefore nothing to charge for. This view ignores the need for the agent on behalf of the landlord to oversee all aspects of the Premises including dealing with any statutory requirements and obligations under the Lease such as insuring the Premises. The Tribunal does not consider an annual management fee, which is specifically provided for by clause 34(a)(vi) of the lease, of £375 relating to the management of two units of accommodation within a single property to be an unreasonable annual management fee and allows this cost.

27. The cost of insurance is a large part of the Applicant's claim. The question is whether the costs of £800.66 were reasonably incurred. The Respondent at the hearing referred to an internet search she had undertaken with a comparison website such as comparethemarket.com which provided a premium for the block on Poulton Road of £350.00. She did not produce any evidence of the search nor fully explain the basis upon which the quote was obtained. The Applicant submits that without such evidence it would be like comparing apples and pears.

28. On behalf of the Applicant, it was submitted that the insurance was obtained on the Applicant's behalf by an insurance broker, M&N Insurance, as part of a block policy covering a variety of premises in the landlord's ownership and that the premium payable was net of any commission or discount in accordance with clause 34 (a) (ii) of the lease . It was submitted that the insurance broker tested the market annually but

that this exercise had resulted in the Premises continuing to be insured with AXA for at least three years with the insurer having knowledge of the claims history. The Applicant further identified that the block policy arrangement allowed not only for economies of scale but that it also ensured that all of the premises remained insured irrespective of whether or not premiums were actually recovered from the tenants of any individual property or were the subject of dispute as in the present case.

29. It is a basic principle of leasehold law and practice, that it is a matter for a landlord to decide the manner in which obligations under a lease are to be discharged. As observed in Cos Services Limited v Nicholson & Willans [2017] UKUT 82 (LC) it will not be necessary for the landlord to show that the insurance premium sought to be recovered from the tenant is the lowest that can be obtained in the market. However, the premium must be reasonably incurred. In the Cos Services case, HH Judge Stuart Bridge said that tenants may, as has loosely happened in this case, place quotations before the Tribunal, but in doing so they must ensure that the policies are genuinely comparable (that they “compare like with like”). In the present case, the Tribunal is not satisfied that the Respondent’s verbal reference to quotes obtained from comparison websites were “like for like” and in the absence of further evidence, finds the insurance premium of £800.66 to be properly recoverable under the service charge provisions contained within the lease.

30. The Tribunal therefore finds that the following sums are reasonably and properly payable in respect of the service charge costs for the 2019 service charge year.

• Bank charges	£15.00
• Insurance Reinstatement Cost Assessment	£300.00
• Management Fee	£375
• Insurance	£800.66
	<u>£1,490.66</u>
Respondent’s liability @ 50%	<u>£745.33</u>

31. The Respondent is liable for further service charges in respect of the 2020 service charge year, until 6 April 2020 when she assigned the Lease to Mr Lea. Although outside the scope of the current application, the issues raised in respect to 2019 also arise in respect of 2020 and the Tribunal’s decision is also relevant to 2020.

### **Administration charge**

32. The charges for the three arrears letters and the charge for a letter before action included in the claim in the County Court, fall within the definition of an administration charge rather than being a service charge payable under the terms of the lease.

33. The Tribunal's jurisdiction is limited solely to the issues referred to it by the County Court. The Court order dated 14 February 2020 only refers to the service charge and not to the administration charge. However, it is appropriate and expedient for the Tribunal to consider the issue of the administration charge and express a view about payability and reasonableness. If the County Court had referred the administration charge to the Tribunal, its powers are set out in paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 which provides that the Tribunal may determine whether an administration charge is payable, and if it is, the amount which is payable.

34. Clause 16 (a) of the lease contains a widely drawn provision relating to the landlord's ability to recover costs associated with the enforcement of any of the tenant covenants. The arrears letters are in a standard form that would have only required the template to be populated with the relevant basic information. The Applicant has not explained how the £30 charge has been calculated. In context and considering the time needed to draft the letters, the Tribunal considers a charge of £30 for each letter is reasonable as claimed.

35. The Respondent has not explained how the charge of £450 made for the letter before action is calculated. There is no information about the time taken or the charge rate applied. This is a standard letter which should have taken no more than 30 minutes to prepare. The Tribunal assess a reasonable cost for such a letter to be £150.

36. The Tribunal would allow the sum of £240 for the administration charge.

### **Summary**

37. The total sum claimed in the County Court in respect of 2019 was £2,262.25, made up of £1,656.00 for the service charge and £540.00 for the administration charges. The amount for the service charge reduces to £1,282.83 to take account of the difference between the budgeted costs and the actual costs incurred. Of the amount claimed in respect of the service charge, the Tribunal allows the sum of £745.33.

38. Although outside the Tribunal's terms of reference, the Tribunal would allow £240.00 for the administration charge.

**Dated 9 May 2021**

**Judge P Forster**



## **RIGHT OF APPEAL**

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

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.

If the person wishing to appeal does not comply with the 28-day time limit, that 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.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

## **ANNEX**

S.18 of the Landlord and Tenant Act 1985 defines “service charges” and “relevant costs”:

- (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose—
  - (a) “costs” includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

S.19 of the 1985 Act deals with limitation of service charges:

- (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.

S.27A of the 1985 Act deals with the liability to pay service charges:

(1) An application may be made to a leasehold valuation 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.