



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE BIRMINGHAM COUNTY
COURT, sitting at Centre City Tower,
Birmingham B5 4UA**

Tribunal reference : **BIR/00CN/LIS/2022/0018**

Court claim number : **G45YY891**

Property : **Flat 6, Compton Court, Walsall
Road, Four Oaks, Birmingham B74
4QY**

Applicant/Claimant : **Compton Court (Four Oaks) RTM
Company Limited**

Representative : **Swaine Allen, Solicitors**

Respondent/Defendant : **Jatinder Kaur Mattu**

Representative : **None**

Tribunal members : **Judge C Goodall
Mr I Humphries FRICS**

In the county court : **Judge C Goodall**

Date of decision : **5 October 2022**

DECISION

Summary of the decisions made by the First-Tier Tribunal

The sums claimed as service charges in advance for the service charge year 1 April 2020 to 31 March 2021 in the sum of £1,592.37 were reasonable in amount, pursuant to section 19(2) of the Landlord and Tenant Act 1985.

Summary of the decisions made by the County Court

No order is made on the money claim for £867.48 as it had already been paid as at the date of the hearing of this case.

The Respondent do pay the Claimant's costs of the proceedings, assessed in the sum of £4,541.76.

Background

1. The Applicant issued proceedings against the Respondent on 8 December 2020 in the County Court Money Claims Centre under claim number G45YY891. We were told that judgement was entered in default, which was then set aside. The Respondent filed a Defence dated 31 August 2021. On 23 September 2021 the claim became a defended claim, by virtue of an order of Walsall County Court of that date. The proceedings were then transferred by the County Court to this tribunal by the order of District Judge Edden dated 16 March 2022. By order of even date, the Walsall County Court transferred the County Court file to Birmingham County Court.
2. The tribunal issued directions dated 23 May 2022 and the matter eventually came to hearing on 28 September 2022, at the FTT hearing rooms at Centre City Tower, Birmingham. The Applicant was represented by Mrs L Thompson of Swaine Allen, Solicitors. She was accompanied by Miss S Ellis from the Applicants managing agents. The Respondent appeared in person.
3. The Property is a first floor flat in a block of eight flats off Walsall Road in Sutton Coldfield. It is accessed via a communal entrance and passageway serving Flat 6 and the ground floor flat below. There is a flat roof above the Property. The other six flats in the block are laid out over three storeys with their own separate entrances and communal stairs.
4. The Property itself has a bathroom, lounge, kitchen, and two bedrooms accessed along a single passageway. There is a small service cupboard on the right hand side of the passage in which a hot water cylinder is located. There is some evidence of plasterboard damage in the ceiling of that cupboard.
5. The Respondent holds a long lease of the subject property, which requires the landlord to provide services and for the Respondent to contribute towards their costs by way a variable service charge. The

specific provisions of the lease will be referred to below, where appropriate.

6. The claim against the Respondent in the County Court comprised of the following:
 - (i) A service charge amounting to £862.00;
 - (ii) Interest on arrears of service charges of £5.48.
 - (iii) Costs of the action.
7. The order transferring the case to the tribunal was in very wide terms: “The matter to be transferred to the First Tier Tribunal, Residential Property.”
8. All First-tier Tribunal (“FTT”) judges are now judges of the County Court. Accordingly, where FTT judges sit in the capacity as judges of the County Court, they have jurisdiction to determine issues relating to interest and/or costs, that would normally not be dealt with by the tribunal.
9. Accordingly, the Tribunal informed the parties in the Directions dated 23 May 2022 that all the issues in the proceedings would be decided by a combination of the FTT and the Tribunal Judge member of the FTT sitting as a Judge of the County Court.
10. Accordingly, Judge Goodall conducted the County Court aspects of the hearing alone. Judge Goodall and Mr Humphries together formed the FTT panel for the FTT elements of the case.
11. This decision will act as both the reasons for the tribunal decision and the reasoned judgment of the County Court.

The issues & decisions in the FTT

The Applicants claim

12. The Respondent’s lease obliges the Respondent to pay a Service Charge in accordance with the provisions of the Seventh Schedule of the lease.
13. The Service Charge is defined in the lease as one eighth of the Lessor’s Expenses. Those are defined as “the monies expended or reserved for expenditure by or on behalf of the Lessor to carry out its obligations as set out in the Sixth Schedule”.
14. The Sixth Schedule sets out a list of the Lessors Expenses, including (by reference also to the Second Schedule) keeping in repair the main structural parts of Compton Court, including the roofs, and the halls

stairs and landings used in common with other flat owners, to insure, and to decorate the parts used in common with other flat owners.

15. Clause 4(e) of the lease allows the Applicant to provide an estimate of the service charges for the forthcoming year. The Applicant operates an accounting year starting on 1 April and ending on the following 31 March.
16. The Seventh Schedule requires that the Respondent must pay “half-yearly in advance an estimated sum on account of the service charge in accordance with the demand submitted by the Lessor”.
17. The Applicant is not the lessor, nor a successor in title to the lessor. It is a Right to Manage company, which has acquired the right to manage by virtue of the provisions of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). Section 96(2) of that Act provides that it has acquired the management functions of the landlord.
18. On 31 March 2020, the Applicant’s managing agent sent a budget for the service charge year 2020/21 to the Respondent in the sum of £12,738.99 in total, of which the Respondent’s share was £1,592.37. The budget was accompanied by a half-year demand for £796.19. On the 3 September 2020, a second invoice for the second half-yearly payment, in the same sum, was sent to the Respondent. The Applicant had developed the practice of allowing the Respondent to make monthly payments, rather than half-yearly payments. The monthly sum the Respondent was paying was £90.00. The monthly sum required to discharge the invoices for the advance service charge for 2020/21 was £132.70 per month. Arrears were therefore building up each month.
19. Shortly after the issue of the second invoice, the Applicant decided to commence the County Court claim. At that point, arrears were £862.00.
20. By the time of the hearing of this case, the sums claimed in the county court claim had been discharged through ongoing monthly payments by the Respondent. Hence, as the Applicant accepted in its statement of case (paragraph 19), the sum claimed in the particulars of claim had been discharged as at the date of the hearing.
21. The Applicant therefore sought only a determination that the budgeted advance service charges claimed in the 2020/21 half-yearly invoices was reasonable. It did not require any money judgement for any sum. It also sought its costs.

The Respondent’s case on the Applicant’s claim

22. The Respondent accepted that she had no issues to raise on the content of the budget submitted in the hearing bundle which formed the basis of the invoices for the 2020/21 advance service charge.

The Defence

23. The Respondent filed a defence to the County Court claim. She was invited in the FTT's directions of 23 May 2022 to submit a statement of case to assist the FTT in its deliberations, in which she could have outlined in more detail what objection she had to the payment of the service charge demands served on her, or indeed to the payment of service charges generally, but she declined to do so. The Defence therefore stood as her case in the hearing before us.

24. The Defence is not easy to interrogate. It covers 10 pages and contains between 5-6,000 words. Doing the best we can, the Respondents issues are:
 - a. A suggestion that there is no legal relationship between the Respondent and the Applicant on the basis of which service charges are payable, and no formal provisions that detail the terms of the relationship;
 - b. That the accounting year 2020/21 had not expired at the point that proceedings for recovery of service charges were commenced;
 - c. That the service charge had increased year by year;
 - d. That the Applicant had provided a poor service; in particular that in March 2020 there had been a roof collapse resulting in water ingress into her flat and some damage to the electrics ("the Roof Failure issue");
 - e. The insurance policy did not cover the damage arising from the roof collapse (implying that it should have done);
 - f. She has a claim against the Applicant for professional negligence;
 - g. There has been professional misconduct on the part of the Applicant and/or their advisers in these proceedings.

25. At the hearing, the Judge explained to the Respondent that the Roof Failure issue, which it seemed from the Defence was attributed by the Respondent to failure to maintain the Property, could be adjudicated upon by the Tribunal as part of its consideration of the payability of the service charge (see *Canary Riverside Pte v Schilling* (LRX/65/2005 decision dated December 16, 2005) and *Continental Properties v White* [2007] L&TR 4 (LRX/65/2005)). However, the Respondent did not want us to do that. She recognised that the claim had not been fully pleaded.

26. The difficulty for the Respondent arising from either a determination against the Respondent on the Roof Failure issue, or a decision by the FTT not deal with it, was that in any subsequent proceedings, the Respondent could be prevented by the legal principles of res judicata and the rule in *Henderson v Henderson*, from obtaining a ruling on it. However, the Applicant had provided the Respondent with an open confirmation that it would not object to a future claim on the basis of the res judicata/*Henderson v Henderson* principles in relation to claims which were the subject matter of these proceedings.

Law

27. Sections 18 to 30 of the Landlord & Tenant Act 1985 (“the Act”) contain statutory provisions relating to recovery of service charges in residential leases. Normally, payment of these charges is governed by the terms of the lease – i.e. the contract that has been entered into by the parties. The Act contains additional measures which generally give tenants additional protection in this specific landlord/tenant relationship.
28. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-
- a. The person by whom it is or would be payable
 - b. The person to whom it is or would be payable
 - c. The amount, which is or would be payable
 - d. The date at or by which it is or would be payable; and
 - e. The manner in which it is or would be payable
29. Section 19(1) of the Act provides that:
30. “Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:
- and the amount payable shall be limited accordingly.”

31. Section 19(2) of the Act provides that:

“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.”

Discussion

32. The role of the FTT in this case is to determine, under section 27A of the Act, what sum was payable as a service charge as a result of the issuing of the invoices for advance payment of the 2020/21 service charge.

33. As invoices were for service charges payable in advance, Section 19(2) of the Act comes in to play. Our decision must be focussed on consideration of whether the budget on which the invoices were based was reasonable.

34. Having inspected the Property and reviewed the budget for 2020/21 which was provided to us, in our view the budget is a reasonable estimate of the likely service charge costs for the Property for 2020/21.

35. The Respondent did not seek to challenge any of the proposed expenditure in that budget.

36. We therefore determine that the sums claimed in the two half-yearly invoices for 2020/21 were reasonably demanded and were payable by the Respondent. Of course, she has now paid them.

37. Having reached this conclusion, we have to determine whether any of the arguments presented in the Defence cause us to determine that the amount of any service charge which is payable should be adjusted at this point due to the points made by the Respondent in her defence. Our conclusion is that they do not, for the following reasons (readers should cross-refer to paragraph 24 above):

a. The Respondent’s concern about the lack of any contractual relationship between her and the Applicant has no merit. The relationship is governed by the lease. The Applicant exercises the management functions of the landlord by virtue of section 96 of the 2002 Act;

b. On the timing of the county court claim, the Respondent’s failure to increase her monthly payment in March 2020 meant that arrears would inevitably accrue, and indeed they had accrued at the date of issue of the proceedings. There is no merit in any argument that proceedings should not have commenced when

they did – failure to pay an invoice which is contractually due is actionable once breach of contract has occurred, as it had at the date of issue of the claim;

- c. The service charge has indeed increased year by year. Costs do. That has no impact on the recoverability of the charges for the following year, unless the Respondent claims that the amount requested is unreasonable. She did not make that claim in these proceedings;
 - d. On the issues at paragraph 24(d), (e) and (f), the Respondent had not prepared her case adequately and did not want us to hear these issues at the hearing. She can bring new proceedings if she is so advised.
 - e. On the Applicant’s conduct, that was not an issue, in our view, that impacted the payability of the service charge invoices.
38. There is no reason to depart from our conclusion set out in paragraph 30 above, and we so determine.

The issues & decisions in the County Court – Judge Goodall sitting alone

Interest

39. The Applicant had claimed interest under s.69 County Courts Act 1984 in the sum of £5.48. At the hearing, Mrs Thompson indicated she would not pursue that claim. No award was made.

Costs

40. The Applicant produced a schedule of costs on Form N260 (which had been sent to the tribunal offices and to the leaseholder a week before the final hearing) amounting to £5,837.76.
41. The Applicant claimed costs were payable contractually, and relied on clause 28 in the Seventh Schedule of the lease (Covenants by the lessee) which, it said, entitled it to claim the costs of proceedings in respect of service charges on an indemnity basis.
42. Clause 28 states as follows:

“To pay all costs charges and expenses (including legal costs and fees payable to a surveyor) incurred by the lessor in or in contemplation of any proceedings ...”

43. The first issue for the County Court is whether to award some or all of the costs. The second issue is then the qualification of such costs as are awarded.
44. It is apparent, and the Court so finds, that the clause above entitles the Applicant to contractual costs of the proceedings, both in the County Court and in the Tribunal, subject to the court being satisfied that it should exercise its discretion to award such costs, as even contractual costs are always at the discretion of the court under section 51 of the Senior Courts Act 1981.
45. The court took into account the decision in *Church Commissioners v Ibrahim* [1997] EGLR 13 which stated:
35. In our opinion, the following principles emerge from the cases and dicta to which I have referred.
- (i) An order for the payment of costs of proceedings by one party to another party is always a discretionary order: section 51 of the Act of 1981.
- (ii) Where there is a contractual right to the costs, the discretion should ordinarily be exercised so as to reflect that contractual right.
46. The court also noted, in relation to the exercise of the discretion, the principle from *Forcelux v Martyn Ewan Binnie* [2009] EWCA Civ 1077, in which it is stated:
- “But the general principle is not a rule of law and it may well be that in a particular case, or even in a class of case, the court’s discretion should be used to override the contractual right.”
47. The above principles have been endorsed in *Chaplain Ltd v Kumari* [2015] EWCA Civ 798 which established two principles, firstly that the costs awarded pursuant to s.51 can include the costs of the FTT and further that the contractual provision displaces the provisions of CPR 27.14 which limits the costs in the Small Claims Track. Again the above principles have been endorsed in the decision in *Avon Ground Rents Limited v Sarah Louise Child* [2018] UKUT 204 (LC).
48. The court concluded that the discretion to award contractual costs should be exercised in favour of the Applicant in this case. It would be unfair on the other members of the Applicant RTM Company, and/or upon the service charge payers as a body (who might otherwise have to pay the costs), for the court to determine otherwise.
49. The costs therefore are assessed in accordance with CPR 44.3; 44.4, and; 44.5. The proportionality test does not apply. Costs which have been unreasonably incurred or which are unreasonable in amount will not be

allowed. However, there is a rebuttable presumption that costs have been reasonably incurred and that they are reasonable in amount. In assessing the costs, all the circumstances have to be taken into account, particularly those in CPR 44.4(3).

50. Applying those principles to the costs claimed in this case, the Court makes the following observations:

- a. The Applicant’s solicitors’ hourly rate is claimed at £201.00 per hour for Grade A fee earners work and at £111.00 for Grades B & D fee earners work. These rates are reasonable and are allowed;
- b. Attendances on the client (letters, emails, and telephone calls totalled 2 hours 18 minutes over the period of the proceedings (roughly November 2020 to October 2022). Attendance on the Respondent is timed at 2 hours 36 minutes. Attendance on others (court and tribunal) is timed at 2 hours. These appear reasonable.;
- c. Hearing costs (including travel time) are claimed at £2,010.00 allowing for a 5 hour hearing and 5 hours of travel. The solicitor came from Hull. The hearing lasted just short of 2 hours, so the hearing time is reduced by 3 hours. It was reasonable for the solicitor who had had conduct of the case throughout to attend, as the cost of instructing an agent, and the cost of that agent mastering the intricacies of the case, meant that the agents costs would be likely to have exceeded the travel costs of the solicitor who attended. However, it is difficult to justify as reasonable a charge for travel time equivalent to the solicitor’s full hourly rate. A fair and reasonable sum would be £750.00;
- d. Work on considering the Defence filed in the County Court was said to have taken 2 hours. This is allowed, as the Defence was an excessively complex and confusing document. Preparation of the hearing bundle is claimed at 6 hours. The bundle comprised 274 pages and was well prepared. However, the time spent appears to be excessive. 2 hours at the lower fee earner rate are deducted.

51. Summarising the Courts decision on assessment of costs, the costs as claimed and allowed are shown below.

	Claimed (£)	Allowed (£)
Attendances	927.90	927.90
Attendance at hearing	1,005.00	402.00
Travel	1,005.00	750.00
Documents	1,701.90	1,479.90

Sub-total	4,639.80	3,559.80
VAT on solicitors fees	927.96	711.96
Court fees	270.00	270.00
Total	5,837.76	4,541.76

52. Accordingly, the Court finds that the sum of £4,541.76 is payable in respect of costs.
53. The Respondent was informed by the Tribunal of her right to apply for an order under paragraph 5A of Schedule 11 to the 2002 Act which provides a jurisdiction for the Tribunal to reduce or extinguish a costs order if it is just and equitable to do so. However, she failed to make an application for such an order.
54. Given that the FTT has made a decision regarding the Service Charges, the applicant is entitled to a judgement for the sum claimed as costs. A separate County Court order, reflecting this decision is attached.

Name: Judge C Goodall

Date:

Rights of appeal

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the xx

County Court office within 14 days after the date the refusal of permission decision is sent to the parties.

7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.”