FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

V: CVPREMOTE

Case Reference	**:**	**CAM/11UF/LSC/2021/0050**
Property	**:**	**Flat 27** **Wirethorn Furlong** **Haddenham** **Buckinghamshire** **HP17 8LQ.**
Applicant	**:**	**Mr Mike Burton**
Represented by	**:**	**In person**
Respondents	**:**	**Catalyst Housing Ltd**
Represented by	**:**	**Mrs Rekha Patel**
Type of Application	**:**	**Application for the determination of the reasonableness and payability of service charges**
Tribunal Members	**:**	**Tribunal Judge Stephen Evans** **Mr Gerard Smith MRICS FAAV**
Date and venue of Hearing	**:**	**24 February 2022, by video**
Date of Decision	**:**	**16 March 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which was not objected to by the Parties. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to were a bundle of 148 pages plus the Applicant's brief response.

DECISION

The Tribunal determines that, for the service charge year of 2021/2022:

(a) No sum is payable by the Applicant in respect of the estimated cost of a reserve fund;

(b) An estimated cost for cleaning is payable by the Applicant, but limited to £368.68 for the year (£39.01 pcm);

(c) An estimated cost for repairs & maintenance is payable by the Applicant, but limited to £800 for the year (£66.66 pcm).

Introduction

1. The Tribunal is asked to determine the payability and reasonableness of service charges pursuant to an Application made under s.27A of the Landlord and Tenant Act 1985.

Relevant law

2. The relevant statutory provisions are set out in Appendix 1 to this decision.

Background Facts

3. The Property is a 2 bedroom flat in a purpose-built block constructed circa 2010. There are 5 other flats in the block.

4. By a lease dated 18 May 2011, the Property was demised for a term of 125 years from 25 March 2009.

5. The Applicant is the Leaseholder of the Property.

6. The Respondent took over management of the block in which the Property is situated in about 2011.

7. On 18 February 2021 the Respondent made a demand of the Applicant in respect of estimated service charges for the year 1 April 2021 to 31 March 2022.

8. The said demand included estimated services charges in relation to the following:

   (1) Reserve fund: (£34.72 pcm)
   (2) Cleaning: (£10.76 pcm)
   (3) Health & safety (£13.69 pcm)
   (4) Repairs and maintenance: (£12.39 pcm)

9. The above demand was received by the Applicant on 5 March 2021, whereupon he began to complain in writing about what he considered to be a 90% increase in the service charges without any adequate explanation from the Respondent.

10. The Respondent replied in writing on 10 March 2021, and further correspondence followed between the parties, right up to 22 June 2021, without resolution.

11. On 26 July 2021 the Applicant drafted the instant application, which was received by the Tribunal on 30 July 2021.

12. In that application, he indicated a challenge to certain 2020/2021 (sic) charges; and that he did not wish to make a s.20C application, but did wish to pursue a paragraph 5A Schedule 11 application. The Applicant further asked the Tribunal to determine whether the service charge was reasonable, the reasonableness of demanding a reserve fund contribution, and to rule on some alleged breaches of clauses 4, 6, 8 and 11 in the Lease.

13. On 21 September 2021 the Tribunal gave directions. The procedural Judge made clear that the Tribunal, within its jurisdiction under s.27A of the Landlord and Tenant Act 1985, could not determine breach of covenants per se.

The Lease

14. The Lease is a tripartite lease between the Landlord, the Tenant and a Management Company.

15. By clause 3, the Applicant as Tenant covenants to pay a service charge to the Management Company, defined as including any company, person or other organisation which has for the time being undertaken the obligations imposed on the Management Company by this deed.

16. By clause 3(A)(1)(a) the Leaseholder covenants to pay a fair and reasonable proportion of the reasonable estimated amount required to cover the costs and expenses incurred, or to be incurred, by the Management Company in carrying out obligations contained in the covenants set out in the 6th Schedule, Part 1.

17. By clause 3(A)(1)(b) the Tenant covenants to pay a contribution to reserves "to meet the future liability of carrying out major works to the Property or that part of the Reserved Property not comprising buildings and parking spaces…"

18. By clause 4, the Management Company covenants to comply with the 6th Schedule, Part 1.

19. By clause 6, the parties agree and declare that "the Management Company shall be entitled at all times during the term hereby granted to manage and conduct the management of the Property in all respects as it may think fit for the purpose of constituting and maintaining high class residential flats on a high class residential estate…"

20. By the 6th Schedule, Part 1 the Management Company covenants to undertake various services, including:

    (1) By paragraphs 1 and 2, to repair etc. the main structure of the building and other parts;
    (2) By paragraph 6 to clean the external surfaces of the windows of the Property

21. Moreover, paragraphs 4 and 8 thereof provide:

    "4. In every third year of the said term and also during the last year thereof

        (a) to clean burn off stop prime (as may be necessary) and varnish with proper materials with adequate coats and in a workmanlike manner all external woodwork and

(b) To clean brush and remove old paintwork and paint with one undercoat and two finishing coats of good quality paint in a workmanlike manner all external and exposed metal work and
(c) To clean rub down and paint with two coats of good quality paint in a workmanlike manner all such parts of the exterior of the buildings forming part of the property as are now painted and
(d) To cut out and repair with cement and sand and mastic all loose or faulty joints in brickwork and around window frames and
(e) To clean out all gutters and hopper heads and repair or replace as required and
(f) To cut out and repoint with cement or other suitable material all faulty joints.

8. To keep in good and substantial repair and condition (and whenever necessary rebuild and renew and replace all worn and damaged parts) the main entrance door and the common halls and internal fire doors and in every fifth year of the term hereby granted and in the last year thereof to paint with two coats of good quality paint and in a workmanlike manner and to grain varnish paper and redecorate in like manner all parts of the common halls staircases landings steps passages external main doors and internal doors and to keep the same clean and tidy and to keep the common halls and staircases and landings fully carpeted and whenever necessary to clean and replace the same."

The Hearing

22. Mr Burton as Applicant opened his case by stating that he considered it regrettable that matters had ended up at this point. He complained about inadequate communication and consultation on the part of the Respondent for some years. He accepted that some of his complaints fell outside what he called the curtilage of the application, being allegations of non-compliance by the Respondent with the Lease terms. He indicated that, dependent on the outcome of these proceedings, he might bring separate proceedings in the appropriate forum.

23. He complained that the service charge increase for last year was almost 90% on that immediately prior. He complained that this had occurred without any consultation or explanation.

24. He further complained that, in relation to the contribution to the Reserve Fund newly imposed, he should have been given more information. He also complained that the Respondent says it employs an independent auditor but the figures kept increasing.

25. He argued that it had taken the Respondent 8 years to realise it had failed to request contributions to the reserve fund. The Respondent and its independent auditors had been negligent in that regard, Mr Burton alleged. He argued that tenants should not suffer from high catch-up payments resulting from that negligence.

26. He continued his opening by saying that it was unreasonable to request a contribution to the reserve fund when routine maintenance had been so poorly undertaken.

27. The Applicant recognised that it was a tenant's obligation to pay a service charge, but argued he had been given no details as to how the amounts were calculated for 2021/2022. He said that in the absence of such calculation, it was unreasonable for the Respondent to collect the sums demanded.

28. The Applicant also made clear he was not saying that he should pay nothing at all. He did not dispute the payment of a reasonable contribution to the reserve fund. He challenged the Respondent's maladministration of this. He further complained of neglect which had resulted in a degraded building, in what was meant to be a high-class residential estate. That deterioration and neglect, he alleged, had occurred for the past 11-12 years.

29. The Tribunal then took time to clarify with the Applicant precisely what was in issue at the hearing. It was confirmed that he was seeking to challenge items for the year 2021/2022, and not any other year. It was further clarified that the only items in dispute were those in paragraph 8 above. It was also confirmed that these were estimated service charges.

30. The Tribunal heard representations as follows:

Reserve Fund

31. The Applicant asserted that the Respondent should have considered the Lease terms more carefully. He complained of the lack of calculation. He said he would not repeat what he had earlier submitted about the Respondent's maladministration in not collecting such a contribution before. He had received no evidence to confirm that the sum demanded had been benchmarked, despite the Tribunal's directions. He said that the reserve fund should not be used for routine maintenance and decoration.

32. The Applicant further contended that as a matter of lease construction, "major works" in clause 3(A)(1)(b) of the Lease did not include items of routine maintenance and external decoration, especially those items

expressly cited at paragraphs 4 and 8 of Part 1 of the 6th Schedule to the Lease.

33. He further contended the Respondent was unable to state what a reasonable amount would be. There had been no stock survey undertaken to his knowledge. He took the Tribunal to various correspondence.

34. Mrs Patel for the Respondent was then asked if she had any questions for Mr Burton, and she said not.

35. Mrs Patel then addressed the Tribunal. She said it was extremely unfortunate that the Respondent had missed off contributions to the reserve fund in previous years. As soon as it was apparent it has been missed off, it was demanded (a new service charge staff member doing some work on budgets noticed its absence). Mrs Patel said that the Respondent does fully apologise for this.

36. She added that they were currently working with the asset team to obtain a full breakdown of what assets there are, and what they are going to put into the reserves; that a major works specialist is also working with the asset team to ensure that the sum being charged is accurate.

37. Mrs Patel confirmed that the major works specialist, Max Aker, had set the budget for the year in question. She could not say precisely when, but it is the practice to set the budget in the November before the service charge year begins. She believed that the budget figure of £34.72 was based on a similar sized scheme and block.

38. She could not give a breakdown of the above figure as between individual items. She could only point to what was in the correspondence as being what was included in Mr Aker's budget figure:

    - Common parts (internal)
    - External decorations
    - External rainwater goods
    - Scaffold access
    - Intercom

39. Mr Burton had no questions of Mrs Patel.

40. At this point, Mrs Patel gave way to Mr Paul Shulver, a paralegal employed by the Respondent, to address the Tribunal on the lease construction points.

41. He accepted that Mr Burton had raised a good point concerning the inclusion of cyclical works within the reserve budget; rather than invoicing for such matters at the time, the Respondent had included sums for cyclical works in the budget. He candidly accepted it would be difficult for the Respondent to include the items mentioned in para. 4 of clause 3A(1)(b) within the definition of "major works". He accepted that instead it was something the Respondent had covenanted to do every 3 years but had not, putting it in the reserve fund on a 10 year cycle rather than raising a large bill every 3 years. The additional reason it had not been done every 3 years, he said, was that the Respondent had simply taken over the practice of the former agents. He also accepted that the Respondent had treated the estate as if it was a "normal" site with less stringent lease terms. He went as far as accepting that the estate had not been kept to date as a high-end residential site.

42. When asked questions by the Tribunal, Mr Shulver said he could not attest to what had happened before his involvement (in 2021); he would hope that the managers would have read the Lease. He could not say if anyone had inspected the Property. Mrs Patel interposed to say she would have to ask the asset team about that.

43. The Tribunal was also informed there is a neighbourhood manager, but that person did not give evidence to us.

44. Mr Burton then asked questions of Mr Shulver. Mr Shulver agreed the site was not a normal site, given the context of the tripartite agreement, and the profile of the Catalyst group of over 7000 shared ownership leases; this was by contrast a block of just 6 flats.

45. Mr Shulver gave evidence that the Respondent was used to being a landlord to blocks of flats working to standard and modern leases. However, this was a bespoke site as regards the Lease. Catalyst Housing had taken on and applied a template standard to the site, whereas (as the Applicant had stated) this a high-class flat in a high-class estate according to the terms of the Lease.

46. He did not accept the site had fallen off the Respondent's radar, as it were, but he did accept and acknowledge that the level of maintenance required had demonstrably not been met.

47. In closing submissions, Mrs Patel said she would be happy to recalculate the sum under this heading, by removing the cyclical works, but she still argued there should be some contribution from the Applicant.

Cleaning costs

48. Mr Burton did not complain about the standard of works; indeed he accepted that internal cleaning was very good. He argued, however, that the time taken should be limited to 45 minutes per week instead of 1.5 hours, and that it should include window cleaning, which currently it does not. Therefore he was prepared to pay only half the charge demanded.

49. Mr Burton initially argued that the bin area had not been cleaned, but when asked by the Tribunal where there was evidence of prior complaint about this, he withdrew the allegation.

50. Mrs Patel explained that the figure of £40.96 pcm was calculated on the basis of £28.36 per hour (which includes unform costs, petrol etc) over 78 hours. The Tribunal, however, pointed out that this calculation resulted in a yearly charge per flat of £368.68, which was lower than the £491.52 stated on the Respondent's demand. As the Respondent's letter of 22 June 2021 explains, the 78 hours at £28.36 ph is for 2019/2020, not the year being challenged.

51. Mrs Patel said this was an internal service (in house) by the Respondent's Estate Services. She said the Respondent does go externally to check prices, and benchmarking across services does take place. She said she had very close contact with the Estate Services Team, but accepted there were no timesheets in the bundle, although they do exist as far as she was aware.

52. She explained she had spoken to the Estate Services Team on the issue of window cleaning. She accepted it had not been done across all of the sites. This would be restarted in the year 2022/2023. She argued that the Respondent does try to clean windows wherever operatives can reach them. She maintained 1.5 hours was necessary to do the job.

Health & Safety

53. Mrs Patel explained that this charge was for the supply and fitting and checking of smoke detectors and smoke alarms, as well as maintenance of fire doors and any fire extinguishers, and regular testing, including emergency lighting. This was arranged by the Respondent's Health & Safety department, who contracted out the works. The Respondent has over 36,000 units of accommodation.

54. She further explained that the Respondent had capped the cost to each leaseholder, because there had been no consultation - and it was therefore only a contribution which was being sought.

55. Mr Burton, to his credit, informed the Tribunal he was not going to pursue this item in the light of the explanation given.

Repairs and Maintenance

56. The Applicant repeated that he did not consider repairs and maintenance were, nor had been, taking place properly. Again, there was the issue of major works vs cyclical repairs.

57. He submitted the Respondent should be limited to an estimate of £800, based on the actual figure for 2020/2021 (£771.65), plus 5% or so.

58. Mrs Patel explained that the specialist staff member setting the budget would have looked at 2018/2019 actuals (£672) as well as 2019/2020 (£623) and 2020/2021 (£771.65) in setting the estimate for 2021/2022, but she could not give evidence as to why it was £900 and not some other figure.

59. An external contractor "Connect" invoices the maintenance team, but the Respondent was unable to look on the system and provide a running total of maintenance costs; it was a new computer program which did not permit this.

60. Mr Burton had no questions of Mrs Patel on this item.

Determination

Reserve Fund

61. The Tribunal disallows this cost for this year.

62. The Respondent was simply unable to provide justification as to (a) whether this was a cost reasonably incurred and (b) whether the monthly sum of £34.72 was reasonable in amount. The Lease does allow a sum to be recovered as a reserve in respect of "major works". However, the Tribunal agrees with the Applicant (essentially conceded by the Respondent) that the items detailed in paragraph 38 above, perhaps with the exception of the intercom system, are not items of major works, but are by contrast cyclical items which are required every 3-5 years, by express covenant on the part of the Respondent.

63. In relation to replacement of the intercom (or any other item not falling comfortably within paragraphs 4 or 8 of the 6th Schedule, Part 1) the Respondent was unable to produce any evidence of any programme for such works.

64. Nor was the Respondent able to provide any evidence as to how the sum was calculated, or of any benchmarking exercise. The written case was this figure was a "starter figure". There was no evidence how the sum had in fact been reached.

Cleaning

65. The Applicant agrees that a cost for cleaning would be reasonably incurred.

66. The Tribunal was not persuaded that 1.5 hours was an unreasonable time to spend, despite the absence of timesheets. Mr Burton was happy with the standard of work which the 1.5 hours produced. He withdrew his argument concerning lack of bin area cleaning.

67. However, the Respondent could not explain the rate/hours for this year. Accordingly, the Tribunal limits the Respondent to the figure which it can explain (£2212.08 p.a. for 6 flats, or £368.68 p. a. per flat).

Health & Safety

68. No determination is required, given Mr Burton withdrew his challenge.

Repairs and maintenance

69. Again, Mr Burton accepts the Respondent was right to estimate that some costs were likely to be incurred under this heading.

70. As to amount, the Tribunal agrees with the Applicant's submissions that the estimated amount should be capped at £800, based on the previous year's actual figure plus an increase just short of 5%, to represent inflation of costs and materials.

71. The Respondent's practice of looking at previous years in order to set the estimated amount is a reasonable one, but Mrs Patel was unable to explain why the figure was £900 and not some other figure.

Section 20C/Paragraph 5A

72. Mr Burton stated that he made no application for a s.20C order, and no application for a paragraph 5A, Schedule 11 CLARA application either.

73. Nor did he claim for reimbursement of the application and management fee.

74. We therefore make no determination on any of those matters.

Concluding remarks

75. In closing submissions, the Applicant expressed his thanks for Mrs Patel's candour, and volunteered that he would be happy to work with her moving forwards. In response, Mrs Patel apologised for historical mismanagement and said she would be taking back observations on transparency and repairs, in particular. She also expressed a willingness to work with Mr Burton moving forward.

76. The Tribunal expresses its sincere wish that the parties can co-operate in the future on these and any other issues.

Judge:

S J Evans

Date:
16/3/22

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the Application is not made within the 28-day time limit, such Application must include a request to 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 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.

Appendix 1

Landlord and Tenant Act 1985

Section 18

(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.

Section 19

(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 provisions 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.

Section 27A

(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.

(4) No Application under subsection (1) or (3) may be made in respect of a matter which -
   (a) has been agreed or admitted by the tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.