



FIRST-TIER TRIBUNAL

**PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference	:	MAN/00BN/LSC/2018/0059
Property	:	20 Chichester Road, Hulme, Manchester, M15 5QQ
Applicant	:	Firstport Property Services LTD
Representative	:	J B Leitch
Respondent	:	Mr. Andrew Milne
Representative	:	
Type of application	:	For the determination of the reasonableness of and the liability to pay a service charge
Tribunal members	:	J White S Latham (valuer)
Venue	:	Paper (p)
Date of determination	:	22 March 2021
Date of Decision	:	6 April 2021

DECISION

Decisions of the tribunal

The tribunal determines that the sum of £906.36 is payable by the Respondent in respect of the service charges for the years 2016-2017.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Respondent in respect of the service charge year for the period 1 September 2016 to 31 August 2017.
2. Proceedings were originally issued in the Manchester County Court Business Centre under claim no. D3CW7R9P. Following the filing of a Defence, judgement was entered. By consent the judgement was set aside. There was no order for costs. The claim was transferred to this tribunal, by order of District Judge Pickup on 27 September 2018.
3. Directions were issued on 6 February 2019 . The matter was set down for an oral hearing. This was postponed due to Covid. On 24 November 2020, the Tribunal directed that the matter be listed for a video hearing and requested availability. The Respondent did not respond.
4. The Applicant requested the matter to be determined on the papers. They had been directed to submit a joint bundle. On 19 February 2021 they submitted a bundle stating that they could not locate a statement of case from the Respondent. Before the hearing listed for 3 March 2021 the Tribunal wrote to the Respondent giving him permission to submit a separate bundle or statement of case.
5. On 3 March 2021, the Tribunal convened to determine the matter. The Tribunal file contains a letter from the Respondent dated 23 July 2019 that makes reference to a bundle dated 23 June 2019 sent to the Applicant on 5 July 2019. This has not been sent to the Tribunal by either party.
6. The Tribunal adjourned the matter with directions for the Respondent to submit his bundle. He failed to do so. The Tribunal reconvened on 22 March 2021 to decide the matter. It decided that it could decide the matter fairly on the papers considering the issues in dispute and that the Respondent had not engaged with the Tribunal for several months. He had been afforded several opportunities to do so.
7. The relevant legal provisions are set out in the Appendix to this decision.

The background

8. The Property which is the subject of this application is a flat in a development known as Princeton 22. It consists of two four storey blocks of flats, that are connected via a central row of six, three-storey semi-detached townhouses. Each block has a key and buzzer-controlled entrance to the front and rear. Each leaseholder has access to a car park space and garage. There are two bin stores.
9. 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.
10. The Respondent holds a long lease of the Property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
11. All 22 properties are subject to tri-partite residential underleases, made between “the Landlord”, Proxima GR Properties Ltd (“Proxima”), “the Manager”, FirstPort Property Services Ltd (“FirstPort”) and the lessees.

The issues

12. The order of District Judge Pickup transferred the claim for the Tribunal “to determine the reasonableness or otherwise payability of the service charge for the period of 1 September 2016 to 31 August 2017”.
13. The Applicants Statement of Case sets out the bases on which the amount has been demanded. It is supported by a Witness Statement of Gary Cox, property manager of the Respondent.
14. The Respondent’s defence in the county court proceedings identified the relevant issues for determination as follows:
 - (i) That no advance demands have been issued by the Respondent upon its resumption of management from January 2017
 - (ii) No management services have been provided for the 2016-2017 service charge year. He was preparing a counterclaim for damages.
15. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The tribunal's decision

Issue 1: demand

16. Since 13 August 2013, the development had been subject of a Tribunal appointed manager in accordance with Section 24 of the Landlord and Tenant Act 1985. The appointment of Revolution Property Management Ltd was discharged on 9 December 2016. As a party with contractual management responsibilities, the Applicant resumed management from 1 January 2017.
17. A number of leaseholders, including the Respondent, have made several applications to appoint alternative managers. The first application made on 22 September 2016 was struck out. The second application to reinstate was refused by the Tribunal on 20 January 2017.
18. On 28 February 2018, the leaseholders made another application to appoint an alternative manager. Mr Milne was a party to the application. On 17 June 2019, the application was struck out.
19. Revolution demanded the service charge from the Respondent for both 2016 and 2017. The certified year end accounts for the year ending 31 August 2106 and for the period up to 31 December 2016 were issued by Revolution. On 1 March 2017, the Applicant issued a formal demand supported by an invoice showing the amount due as £906.36. They issued the certified and audited accounts for the period 1 January 2107 and 31 August 2017. The audited accounts and demands are supplied in evidence at Annex A and B of the Statement of Case. The audited accounts are qualified as the service charge income of £12,928 levied by Revolution are not supported by any documentation. On the same basis the opening balances could not be verified [84].
20. Part A and C of the Sixth Schedule of the Lease provides the Respondent to pay 3.56% in respect of the Estates Costs. The amount for 2017 in the Accounts is £19,392. The Respondents proportion is £690.35.
21. Part B and C of the Sixth Schedule of the Lease provides the Respondent to pay 5.87% in respect of the Internal Common Area Costs. The amount for 2017 in the Accounts is £3,680. The Respondents proportion is £216.01.
22. The Respondent's proportion therefore amounts to £906.36. His account has been credited £8.21 as a year-end adjustment. The balance due is £898.15. It has been properly demanded in accordance with section 21B of the Act.

Issue 2 payability

23. In determining the reasonableness of a service charge, the Tribunal must take into account all relevant circumstances as they exist at the date of the hearing in a broad, common sense way giving weight as it thinks right to the various factors in the situation in order to determine whether a charge is reasonable.
24. The Respondent states that no services have been provided by the Applicant. There are two potential difficulties, firstly the Applicant only resumed services midway through the year and secondly the second set of Accounts are qualified as the auditor did not have sufficient documentation to check the Accounts in accordance with its protocols. The earlier accounts were not audited. In addition, the Property Manager for the period left the Applicants employment in in January 2019 and Mr Cox was only employed from that date. Notwithstanding, Mr Cox has set out in statement the basis of the costs for each heading of expenditure, presumably taken from the records kept at the time. He has annexed supporting evidence. His evidence is comprehensive and credible.
25. In his application to set aside the judgement in default Mr Milnes states that FirstPoint are ranked worst agent by customers generally. He concentrates on the application under s24 to appoint a manager. This has been dealt with already in a separate matter MAN/OOBN/LAM/2018/0001.
26. In his Defence to the county court claim, Mr Milne merely denies the claim and does not set out any reasons for the denial beyond an assertion that the Respondent has not set undertaken any management of the development. He says little more in his application to set aside the judgement. He has not filed a Statement of Case, nor any evidence, despite been given a further opportunity to do so. The note in the papers of a bundle, may refer to a bundle submitted in the separate matter. In any event it has not been submitted to the Tribunal. He has not availed himself of the opportunity given to him to submit it to the Tribunal for this hearing. Without more, the Applicants evidence is accepted by this Tribunal.
27. In the absence of any particularly in the defence or other evidence put forward, beyond mere denial, the Tribunal has concluded that £906. 36 is payable for service charge year 2017.

Costs

28. Following transfer from the County Court, the Applicant has not set out any claim for costs in connection with this application. If a demand is made, either to the Respondent directly as an administration charge

or passed to the service charge, the Respondent may apply to this Tribunal in a separate application to have the recovery of the costs determined.

Judge J White

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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.

21B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
 - (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.