FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BH/LSC/2019/0106**
Property	**:**	**Flat 27b Kings Road, London E11 1AU**
Applicants	**:**	**Mr Colm Kavanagh**
Representative	**:**	**Mr Kavanagh did not attend and was not represented**
Respondent	**:**	**Navy Properties Ltd**
Representative	**:**	**Mr Martin Paine**
Also in attendance	**:**	
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Daley** **Mrs A Flynn MRICS**
Date and venue of Hearing	**:**	**22 May 2019 at 1.30 pm 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**10 July 2019**

DECISION

Decisions of the tribunal

The tribunal makes the determinations set out below.

The application

1. The Applicant sought a determination under section 27A of the Landlord and Tenant Act 1985, in respect of the service charges for the years 2017, and 2018 in the total sum of £3,275.76.

2. Directions for the determination of this matter were given at a case management conference on 15 March 2019.

The background

3. The premises which are the subject of this application is a building, comprising two, 2 bedroom flats. A ground floor flat and a first floor flat.

4. The premises are subject to a lease agreement dated 2 September 1994. The lease was subsequently assigned and subject to a deed of surrender and re-grant on 29 March 2017. The lease provides that the Respondent will provide services, the costs of which are payable by the leaseholder as a service charge.

5. Where specific clauses of the lease are referred to, they are set out in the determination.

The Hearing

Preliminary Matter

6. The Applicant did not attend the hearing, by letter dated 3 May 2019, he indicated that he would not be in attendance, as he lived and worked in Amsterdam. He was content for the matter to be dealt with in his absence. His letter also addressed the Respondent's application for a direction under rule 13 of the Tribunal Procedure Rules 2013.

7. Mr Paine Property manager appeared on behalf of the Respondent. Mr Paine referred the Tribunal to the Scott Schedule for 2017, the service charges was in the sum of £1010.13. The service charges were made up of the following charges

Item	**Service Charge 2017**
Health, Safety & Fire Risk Assessment	£264.00
Accounting	£281.50
Management Fee	£464.63
Total	£1,010.13

Health, Safety & Fire Risk Assessment

8. Mr Paine informed the Tribunal that he acted for Navy Properties and that as a manager he acted for approximately 50 freeholders. He was instructed to manage the property in 2017. The premises were a converted Victorian terraced property. The premises comprised small internal common parts.

9. Mr Paine explained that there was no historical information on the property when he took over the management. Given this, the Respondent commissioned a number of reports, such as a health and safety report and a fire risk assessment. He said that such reports were necessary because of the management of health and safety at work, as it was a requirement to ensure that contractors were operating in a safe work space.

10. The reports were carried out by 4 Site and the tenants had been notified beforehand of the surveys. He said that surveys were always carried out on taking over the management of properties unless they were available on taking over the management of the property.

11. Copies of an invoice relating to this charge and a copy of the report was included in the bundle. The inspection took place on 4 December 2017 with a recommendation for a re-inspection 12 months later.

12. The Applicant in his supporting documents attached to his Application stated-: "…The services they claim to provide are all frivolous and unrequired and there is no evidence any services were provided. I

believe the motive to levy these charges was a ploy by the freeholder to force the leaseholders into buying the freehold given the value of the freehold was no longer of much financial value after I extended my lease in 2017…"

13. In support of his contention, he listed Arguments one of which was that the building only consisted of 2 flats and minimal communal areas so there was no need for any management or services save for building insurance. He further stated that no consultation or notification was provided by the freeholders for any services.

14. The Applicant in his reply at paragraph 2 stated-: " The laws and regulations referred to as "statutory requirements" in point 3 of the Respondents Statement and appear in the … "Service Charge Schedule" tables are not applicable. My flat is a residential property and these laws refer to "work regulations" and "non-domestic residences…Therefore I reaffirm my position that providing these services is unreasonable."

15. The service charges provided for under the terms of the lease, were set out in Part II of the Second Schedule of the lease, the relevant clause in terms of the common parts was clause 1(iii) (b) which stated-: *"… any other services provided by the Landlord from time to time and not expressly mentioned herein Provided always that the Landlord may at his absolute but reasonably exercised discretion perform or introduce new services withhold add to extend vary or make any alteration in the rendering of the said services or any of them from time to time."*

Accounting

16. The Accounting was in the sum of £281.50, Mr Paine accepted that it was a small block however this was a basic charge for preparing the accounts and the certificates based on the invoices. The Tribunal was referred to the Statement of Account dated 7 March 2017, which included an Accountant's Report.

17. The Accountant's Report stated "…We have examined the foregoing statement of expenditure. In our opinion the statement fairly summarises the details of expenditure which have been presented to us in accordance with the requirements of section 21 of the Landlord & Tenant Act 1985, and are sufficiently supported by accounts, receipts and other documents produced…"

18. In his witness statement he stated at 6.1.1 that -: " In the case of *Fernandez –v- Shanterton* the position of the Court was that costs incurred in seeking professional advice are likely to be considered reasonable and conversely failing to take the relevant advice is in fact evidence of unreasonableness. 6.1.2 It is the Respondent's position that

the cost provision is appropriate, proportionate and reasonable given the size and level of expenditure on this property."

Management Fees

19. The Tribunal was informed that the Lease provides for the Lessor to employ a managing agent and to pay the fees for the managing agent.

20. Mr Paine referred to the statement for the period ending 31 December 2017, he stated that the cost involved a setup fee for the management of the property which included setting up the systems and a welcome pack, thereafter the charge to the leaseholders was £185.00 per unit.

21. Mr Kavanagh in his written reply stated that "… to hire a management company and charge Management fees and Accounting Fees to the leaseholders is also not reasonable. The building in question contains only 2 residential flats and has minimal communal areas and thus requires minimal/no management. During the period I have been a leaseholder (Dec 2000 to Oct 2017) no management company was deemed necessary by the Respondent and the previous freeholder so it is not necessary now…"

Item	**Service Charge 2018**
Asbestos Management Survey	£330.00
Accident Book	£25.00
EICR Report	£210.00
Insurance	£1094.00
Insurance Valuation	£576.00
Management Fee	£445.19
Total	£2,680.28

The Asbestos Survey

22. The Tribunal was informed that the Asbestos survey was provided by 4 Site, this was considered necessary as there was no information concerning asbestos in the building. The decision to have a report was for the same reasons that the other health and safety report had been commissioned.

The Accident book

23. The cost of this was £25.00. Mr Paine stated that this was a statutory requirement. The Tribunal asked where the book was located. Mr Paine informed the Tribunal that it was located in the management company's offices.

The EICR Report

24. This report was a domestic electrical installation condition report. Mr Paine stated that he had negotiated a fixed price survey, and that they had received a bulk order discount. As a result of the report it was noted that the premises were not fully compliant.

The Insurance Valuation

25. The Tribunal was informed that the reinstatement cost was carried out by Accolaide Surveyors. This was a bulk contract which provided economies of scale. Their recommendation which was set out in 1.3, a recommendation for a reinstatement value for the premises in the sum of £510,000. The rebuild calculations were provided in the report. Mr Paine noted that a re-valuation had not taken place before, and that the information obtained enabled the Landlord to insure for the correct amount.

The cost of insurance

26. Mr Paine referred the Tribunal to the provisions in the lease which provided for insurance to be obtained by the landlord, Clause 4 (i) stated that-: " Subject to the tenant paying the premium in accordance with the provisions of this clause the Landlord will insure the Building…subject to availability of cover and to such excesses exclusions limitation or conditions as the Landlord or his insures may require in such reputable insurance office or with such underwriters

and though such agency as the Landlord may from time to time decide in the full reinstatement value of the Demised Premises…"

27. Mr Paine, in answer to questions from the Tribunal, informed the Tribunal that the landlord provided the insurance and that commission of 20% was paid by the insurance company for the placement of insurance. The insurance was obtained through Aviva, however specialist terrorism cover was provided separately. Mr Paine referred to the case of *Dime Ltd –v- Bath Building and Various Leaseholders* in which the obtaining of terrorism cover was approved by the courts.

28. In respect of the management fees the issues concerning this were the same for 2017. Mr Paine referred to the RICS Code of Guidance, which set out what the responsibilities undertaken by the manager involved.

29. Mr Paine had made a separate application under Rule 13 (1) (b) (iii) of The Tribunal Procedure Rules 2013. The Application was supported with written submissions, dated 15 April 2019 together with a schedule of costs in the sum of £2265.00. In his letter to the Tribunal dated 3 May 2019, the applicant Mr Kavanagh had replied to this application. The Tribunal accordingly determined that it had sufficient information before it to deal with the Application under Rule 13. The Tribunal's decision is set out below.

The Decision of the Tribunal and reason for the decision

30. The Tribunal having read the written submissions of the Applicant and having heard from Mr Paine on behalf of the Respondent and having considered the service charge accounts and invoices, has made the following decisions.

Service charges for 2017

31. The Tribunal noted that the Applicant's contentions were based on what had happened in the past and also the fact that the premises consisted of two flats. The Tribunal noted that it was not uncommon for leaseholders who owned the freehold to carry out work themselves in that situation. However this was not the case here, in that the Respondent owned the freehold and had obligations pursuant to the lease. The starting point for the Tribunal was the wording of the lease and whether the services provided were in accordance with the lease.

32. The Tribunal noted the wording of the lease at clause 1(iii) (b) which stated-: *"… any other services provided by the Landlord from time to time and not expressly mentioned herein Provided always that the Landlord may at his absolute but reasonably exercised discretion perform or introduce new services"* although the works order had

been raised, and the contractor attended to inspect the premises, access was refused by Ms Rose.

33. The wording of this clause was very important as it provided the landlord with "…absolute but reasonably exercised discretion…" Mr Paine in his submissions to the Tribunal noted that his company had been asked to manage the premises, and that it was the practice of the management company to obtain health and safety reports where none were available. The Tribunal therefore had to consider whether it was reasonable to obtain the reports, and if so, whether the cost of the reports were reasonable and payable.

34. The Tribunal having heard from Mr Paine, and having considered the representations of the Applicant have determined that on balance it was reasonable to obtain a health and safety report, as the premises must be kept safe not only for the residents but also for contractors who may have occasion to attend at the premises. Even though the premises are small and a householder may not choose to obtain such a report, the freeholder is responsible for the health and safety of all contractors at the premises. Accordingly the Tribunal finds that it was reasonable to obtain a report.

35. The Applicant did not provide any comparable evidence. The Tribunal has considered the report and the invoice, the Tribunal are aware of *4 Site* who are a company who are regularly used to provide such reports. In the absence of any other evidence, the Tribunal has used its own knowledge and experience to determine that the cost of the work is reasonable and payable in accordance with the terms of the lease.

36. The Tribunal having heard the evidence of Mr Paine, and on reading the submissions of Mr Kavanagh, has determined that the cost of the accounting in the sum of £281.00 was reasonable and payable. The Tribunal noted that the preparation of the accounts was a straight forward exercise however; the Applicant provided no comparable evidence upon which the Tribunal could say demonstrated that it was possible to undertake this work at a lower amount than the sum charged. Accordingly the Tribunal accepted this charge as reasonable and payable.

37. In respect of the management fees, the Tribunal accepts that the wording of the lease at clause 2 of part 11 of the Second Schedule is sufficiently wide to permit the employment of a managing agent. The Tribunal is also aware from our own knowledge and experience that the management fees are consistent with the management charges for other properties levied by other managing agents. However, given the size of the premises, and the limited amount of invoices and the limited scope for management, the Tribunal consider that the charge of a setup fee ought to be reduced to reflect the limited amount of work involved.

Accordingly the Tribunal has reduced the management fees by £100.00 across (2017/18) reducing each year by £50.00.

38. The amount payable for 2017, for service charges is £959.63

Service charges for 2018

39. The Tribunal finds that the reports obtained for Asbestos and for the electrical survey and also for the Insurance Re-valuation were reasonable and payable. In reaching this decision the Tribunal has applied the same reasoning as set out in paragraph 31-34 as set out above. The Tribunal has applied the same provisions of the lease and has also examined the invoices. Upon the basis of the information before it, the Tribunal has determined that the service charges for the reports are reasonable and payable.

40. The Tribunal considered the sum spent for the accident book, the Tribunal considered that given the size of the dwelling, the Respondent could have held a data base for accidents to be reported and on the basis of the Tribunal's experience a dedicated book is not the only method of keeping records of accidents.

41. The Tribunal noted that the book was kept at the management company's offices, given this the Tribunal is not satisfied that the cost of this book was reasonable or payable, accordingly the Tribunal has decided that the cost of this book in the sum of £25.00 is not reasonable or payable.

42. The Tribunal having considered the invoices for Insurance and having heard from Mr Paine and having considered the submissions of Mr Kavanagh is satisfied that the cost of insurance including terrorism insurance is reasonable and payable. The Tribunal has noted that commission is paid for insurance and whilst this of itself is not unreasonable given the size of the property the Tribunal considers that the commission payable should be reduced to 10%. Accordingly the Respondent should reduce the cost of the insurance by 10% and refund the Leaseholders.

43. Accordingly the sum payable for Service Charges for 2018 is £2,285.79.

The Respondent's Application for costs under rule 13 of (1) (b) (iii) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

44. In his submissions Mr Paine sought costs on the basis that the Applicant had not attempted to settle this matter. The Applicant had issued the Application to an address which was not the Respondent's address or that of their managing agents. The Application also referred to unfounded allegations which were made against Mr Paine as a manager. The Tribunal has considered this last allegation to be particularly unfortunate, and it has brought unnecessary heat to this matter.

45. In his reply Mr Kavanagh made a cross application. Mr Kavanagh refutes the allegations pointing to reports of the reputation of Circle 33 Management. He further stated that he was not previously aware of an option to recover costs and that he wished to make an application

46. He stated that "… I affirm that the services charges invoiced by the Respondent in this case constitute unreasonable behaviour. This case would not have been necessary but for the Respondent's decision to levy frivolous charge for unrequired services."

47. In his submissions for costs, Mr Paine referred to Willow Court Management Company Ltd -v- Alexander (2016) UKUT in his submission Mr Paine referred to three tests firstly the tribunal must assess whether the conduct is objectively unreasonable, if the conduct is unreasonable the tribunal should consider whether to exercise its discretion and if it is exercising its discretion to grant costs, determine the quantum of such an award.

48. Mr Paine made a response to the cross application.

49. The Tribunal in deciding whether to make an order has decided that this is a relatively simple case involving a challenge to the reasonableness of the service charges, which the Applicant indicated that he was happy to deal with on the papers without a hearing. It is therefore unfortunate that this matter was pursued by the Applicant in bringing in extraneous matters which have not assisted the Tribunal, in determining the matters that were before it. However the Tribunal is an experienced Tribunal and has not allowed itself to become side tracked. It accordingly lost no time in dealing with these allegations.

50. The Tribunal considers the manner of litigating to be unfortunate, rather than frivolous and vexatious. However it has noted that this is not unusual in the context of contested litigation and that it is for the more experienced parties before the Tribunal to assist the Tribunal in

its furtherance of the overriding objective to deal with cases expeditiously in a manner that is fair and just.

51. The Tribunal is a no cost jurisdiction and it is not satisfied that there is a good reason to depart from this, although it understands Mr Paine's concern about the tone of the litigation.

52. The Tribunal however understands that the service charges were levied in the context of this dwelling, in circumstances were the Applicant had not paid such charges before and found the payment of service charges to be highly unusual and not in keeping with his understanding of the nature and character of the building, in the circumstances he challenged this. Although the tone of his challenge could have been more temperately expressed, Mr Paine is an experienced property manager and was aware of the allegations that had been referred to by Mr Kavanagh.

53. Accordingly the Tribunal has balanced this against the Applicant's conduct and has decided not to exercise its discretion not to make a cost order under rule 13.

54. The Tribunal has also considered the Applicant's Application for costs and in keeping with its findings and for the reasons set out above as determined that it is not appropriate to make an order for costs in the Applicant's favour under Rule 13.

Application under s.20C and refund of fees

55. In the Application, the Applicant indicated that he wished to apply for an order under section 20C of The Landlord and Tenant Act 1985. Based on the Tribunal's findings which substantially found that the charges were reasonable. The Tribunal is not satisfied that it is reasonable to make an order.

Signed Judge Daley

Date: 10 July 2019

Appendix of relevant legislation

Landlord and Tenant Act 1985

(1) **Section 27A**

(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.

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

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with

proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

of any question which may be the subject matter of an application under sub-paragraph (1).