



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CHI/29UN/LIS/2020/0059**

Property : **91 West Cliff Road,
Ramsgate,
CT11 9NS**

Applicant : **Ian Humberstone Ltd.**

Respondents : **Sarah Jane Cass (flat 1)
Mhia Nicole Neiderman (flat 2)
Tina Shand flat 3)**

Date of Application : **undated**

Type of Application : **to determine reasonableness and
payability of service charges**

The Tribunal : **Judge Bruce Edgington**

Date of determination : **30th March 2021 upon a consideration of
the papers**

DECISION

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1. In respect of the Applicant's claim for monies on account of service charges for the year commencing 1st September 2020, the Tribunal determines that the amount that is reasonable and payable is £2,020.00 i.e. £673.33 per flat which should be paid by the Respondents to the Applicant by 4.00 pm on the 20th April 2021.

Reasons

Introduction

2. For the purpose of this determination I have been presented with an 81-page e-bundle of documents which I shall assume everyone has. Any page numbers quoted in this decision will be the page numbers in that bundle.
3. This is a claim by the freehold owner of the property for payment of money on account of service charges alleged to be reasonable and payable under the terms of the long leases of the 3 flats at the property granted by the Applicant's predecessor in title to the Respondents.
4. The application asks the Tribunal to assess the reasonableness of service charges claimed in a demand made covering budgeted expenses for the year ending 31st August 2021. The documents also show a possible dispute between the 1st Respondent and the Applicant for the previous year but as the application itself makes no mention of this, I will not be making a determination on that issue.
5. A copy of the demand sent to the 3rd Respondent is at page 18 in the bundle. It appears to be dated 16th February 2021, but that date has been crossed out. It then asks for £1,160 to cover the 12 months period to 31st August 2021. There is a copy of the budget at page 17 setting out the following figures:

<u>Service charges</u>	<u>Expenses (£)</u>	<u>(previous year)</u>
Cleaning	240.00	120.00
Insurance	750.00	976.29
Electric supply	140.00	99.58
Management fees	750.00	412.50
Health & safety	400.00	100.00
Maintenance	200.00	0.00
Sinking fund	<u>1,000.00</u>	<u>0.00</u>
	3,480.00	1,708.37

It is then said that this represents £1,160 per flat for the demanded year and £569.45 per flat for the previous year. It is also said that a rebate is expected from the previous owner relating to the insurance for the previous year.

6. The Respondents are saying that the amount being demanded is too high both compared with the previous year and generally. The 1st Respondent has presented her case and she is supported by the other 2.

7. Judge Barber made a directions order on the 11th December 2020 timetabling the case to a final determination. It was directed that there be no inspection of the property unless anyone objected, which they did not. It was also directed that the case would be determined on the papers unless anyone objected or the bundle of papers indicated that a hearing would be necessary. Neither appears to have been the case.

The Lease

8. I have not seen any of the 3 leases. I have been presented with what is said to be a copy of the lease of flat 2 commencing at page 44. In fact, there is a gap on page 48 which is not explained. The Applicant says that all 3 leases are in the same general terms and this is not disputed by the Respondents.
9. This copy lease is said to be dated 31st October 2018 and is for a term of 125 years from the 1st January 2018. As far as service charges are concerned, the process is set out in the Fourth and Fifth Schedules. The 'service charge' is said to be a sum comprising (a) the estimated expenditure likely to be incurred in the service charge year, (b) a sinking fund and (c) administrative and management expenses including a profit element which is not defined. It is then said that this total sum will be reduced by anything taken out of the sinking fund.
10. The service charge year is defined on page 50 as being 1st September to 31st August each year. Clause 4.3 on page 53 says that the leaseholder has to pay the service charge to the landlord on the 2 half yearly dates in each year. These are defined on page 49 as being 1st September and 1st March. The Applicant appears to have agreed to monthly payments which is obviously a matter between the parties and not in accordance with the leases with which I am concerned.
11. In paragraph 4 of the Fourth Schedule (page 73), there has to be a reconciliation at the end of each service charge year.

The Law

12. Sub-section 27A(3) of the **Landlord and Tenant Act 1985** ("the 1985 Act") says that this Tribunal has jurisdiction to determine "*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...*" who would pay and the amount that would be payable.
13. Sub-section 18(2) of the 1985 Act defines a service charge as being "*an amount payable by a tenant*" being "*the costs or estimated costs incurred or to be incurred by or on behalf of the landlord*".

The Inspection

14. As has been said, Judge Barber ordered that there would be no inspection unless any party objected, which they have not done. However, I have been assisted by having photographs of the small entrance hall which is common to flats 2 and 3, and the front of the property at pages 31 and 32. I have also looked at Google Earth and note that the property is in a pleasant residential area, reasonably close to the sea front.

15. The property is mid-terraced over 3 floors plus what appears to be a room in the roof. It is said to have been a Victorian house originally and I would accept that. The front windows and doors would appear to be uPVC and/or aluminium.

Discussion

16. It should be said at the outset that the Respondents are clearly very upset by what they see as an injustice. However, they have not actually produced any evidence save for their own comments. Mention is made by Ms. Case of the fact that the Government is currently looking at landlord and tenant law to see whether changes should be made. However, I have to look at the law as it is now.
17. The main complaint is that the service charges are far more than the previous year and that is unreasonable. The 1st Respondent also refers to her own income which has been dramatically affected by the Covid pandemic. Sadly, both of these matters are irrelevant so far as my task is concerned. All I can do is to look at the service charges demanded and determine whether they are reasonable estimates of reasonable charges to be incurred. It is also worth mentioning that in paragraph 4 of the recitals on page 47, it is clear that KCSO Developments Ltd. are intending to sell on the freehold very quickly from which it may be inferred that they were not really interested in the long-term service charge figures.
18. The 1st Respondent, at page 42, responds to something that Mr. Humberstone, who appears to own the Applicant, says about the figure of £525 in the lease for annual service charges. She says that this is not only for the first year. I assume that this is the missing figure I mention above on page 48 which is described as “*Current Service Charge*”. I confirm that this is only for the first year. It is clear from the wording in the Fourth and Fifth Schedules, that the service charges will vary from year to year and this is what was agreed by the parties in the leases.
19. The relevance of all of this is important because this is not a public enquiry. It is a dispute between parties and all I can do is look at the application and then consider the evidence and submissions put before me. I can use my experience as a member of the Property Chamber and a judge of this Tribunal but that does not mean that I can create evidence. Therefore, comments such as “*This is completely outrageous, unreasonable, unsubstantiated and frankly unacceptable*” (page 26) do not, with the greatest of respect, help me.
20. I will look at the specific items of dispute and consider each, in turn. As far as the burden of proof is concerned, I refer to the case of **Schilling v Canary Riverside Development PTD Ltd** LRX/26/2005; LRX/31/2005 & LRX/47/2005. His Honour Judge Rich QC had to consider this issue in a service charge case. Those service charges had actually been incurred, but the same principle applies. At paragraph 15 he stated:

“If the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services

or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook case make clear the necessity for the (Tribunal) to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard.”

21. As far as **cleaning** of common parts is concerned, I assume that the Respondents have agreed to this being undertaken by the landlord. However, there is no specific mention of the cleaning of this area in either the Fourth or the Fifth Schedule. The previous freeholder appears to have charged for this item and presumably the cleaning has continued. Ms. Cass has offered to do this. If she doesn't then the affected leaseholders can no doubt employ someone local to do this.
22. My decision is that the current cleaning arrangement should stop although the expenses incurred so far can be claimed because the Respondents clearly agreed to pay for the cleaning. The Respondents say that with such a small area, a local cleaner would take 30 minutes each month to vacuum the small carpet i.e. 30 minutes at £10 per hour per month would be £60 per annum. The landlord says, quite rightly, in my view, that it is simply unrealistic to expect it to employ a commercial cleaner to go there for £5 per visit.
23. As far as the amount is concerned, the claim is for £240 because, the landlord says at page 39, that the previous owners were charging £20 per month. Their own evidence, however, at page 17, is that they charged £120 per annum i.e. £10 per month. I allow a total of £80 i.e. 8 months @ £10 per month.
24. As far as **insurance** is concerned, I confess that I am having difficulty in understanding the position. The Applicant acquired the freehold title 'around 29 May 2020' (page 37) and they say that they assumed the property was made ready for letting 'shortly before October 2018'. If that is right, then the insurance obtained by the previous freeholder would have run from about October 2018. It is then said on page 39 that it was cancelled by the previous freeholder, presumably in May 2020.
25. It is then said that the Applicant obtained a short policy to get the insurance onto their block policy. A copy of this short policy is at page 24 and the premium is £250.36. The annual premium from the later date is then £698.41 i.e. a total of £948.77.
26. However, the Applicant says that although a 'rebate' of £308.27 was unobtainable from the vendors, it will credit that amount back to the leaseholders but "*that fell into the next service charge year*". This is noted. The only conclusion I can draw is that the figure of £750 was a reasonable estimate of the insurance liability for the year and this will be allowed. The reconciliation will take place at the end of the service charge year.

27. As far as **electricity** is concerned, I am confused. At page 17 it says that the previous year's figure was £99.58 and this year it is £140.00. On page 27, the 1st Respondent says that the previous year's figure was £180.00 i.e. more than this year. As the Applicant says that it is paying some £12 per month, I will leave that figure as it is.
28. **Management fees** have gone up from £412.50 (page 17) or £225.00 (page 27) to £750.00. I have a real problem over this. Mr. Humberstone says that Chestnut Tree Property Management Ltd. is wholly owned by the Applicant landlord, Ian Humberstone Ltd.
29. The addresses of the 2 companies appear to be the same i.e. 1 Great Warley Street, Great Warley, Brentwood, Essex i.e. many miles from the property. On Google Earth, the address appears to be a residence known as Chestnut Tree Cottage or Golding Cottages. Chestnut Tree Property Management Ltd. does not have a website and has a hotmail e-mail address which is unusual for a commercial organisation. The 1st Respondent says that no-one answers the contact telephone number on their headed paper. Mr. Humberstone is listed at Companies House as being a GP. He does not describe himself as 'Dr.'
30. Despite the Respondents' criticisms, Mr. Humberstone does not say how he justifies the figure claimed or what his costs or company's profit elements are. He says that £250 per flat per year is reasonable for this type of property which it would be for a commercial letting agent reasonably close to the property with procedures for contacting them in an emergency etc. and following the RICS code of practice. No information about any of these very relevant matters has been supplied. It is odd that the demands for money are not dated and there seems to be no indication that the statutory information is included with the demand (section 21B of the 1985 Act).
31. The only comments about the cost of management are on page 40 where Mr. Humberstone says of the letting agent "*It performs its role conscientiously. I myself do not deal with the day to day management of our properties, we employ a property manager and accounts manager to deal with those issues. I am not an employee of the company and I'm surprised the leaseholder suggests this when they have had contact with my property manager. When I do work dealing with more complex problems the company is entitled to reflect in their charges the value of my time as it relates to service charge matters*".
32. This property is small and appears to have been renovated for the purpose of creating the long leases in 2018. From the photograph of the front, the windows and doors appear to have been recently installed and the roof and general condition appear to be good. Thus, the property would not appear to require much management and in the circumstances mentioned above, I would be prepared to accept the Respondents figure of £250 on page 29. If I am wrong about this and a higher figure can be justified, then no doubt the relevant information can be provided for this year's reconciliation and next year's estimate.

33. The **health and safety** claim of £400 is, again difficult to follow. If the property was renovated in 2018, then matters such as asbestos and fire alarms would have been dealt with. In those circumstances, the cost of an annual inspection will simply be for the cost of a check to ensure that there has been no change. The common parts are very small indeed and with this limited information I would allow £100.
34. The cost of **maintenance** is set at £200. If the managing agents had complied with the RICS code of practice, they would have made an annual inspection which would show whether there are any foreseeable maintenance issues. Nevertheless, I will allow the £200 claimed which would cover such matters as clearing out gutters etc. as there are some trees in the vicinity. Obviously if no expense is incurred, this credit will pass to the next year.
35. The provision of a **sinking fund** is good practice and is specifically provided for in the lease. It does not yet appear to have been created and the longer it is delayed, the higher the contributions will have to be. The 1st Respondent's suggestion that her insurance could be extended to cover replacement of the roof is unrealistic because buildings insurance never covers the cost of replacement after general deterioration with age.
36. Any competent managing agent would provide a plan setting out the life expectancy of such matters as the roof and windows and the likely cost of renewal. This enables a realistic sinking fund to be created. This does not appear to have been done. The Respondents have offered, in effect, about £250 per annum as against the claim of £1,000 per annum. Without a proper analysis, I shall determine that £500 per annum would be reasonable so that, for example, a new roof would be affordable in 20 years' time. With a proper schedule of likely future expenditure, this could well change.

Conclusions

37. Having taken all the evidence and representations into account, I determine that the amount of £2,020.00 i.e. £673.33 per flat is reasonable and payable under the terms of the lease. This is made up as follows:

<u>Service charges</u>	<u>Expenses (£)</u>
Cleaning	80.00
Insurance	750.00
Electric supply	140.00
Management fees	250.00
Health & safety	100.00
Maintenance	200.00
Sinking fund	<u>500.00</u>
	2,020.00

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.