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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/40UB/LSC/2017/0066
Property	:	Flat 5, Leaze House, 14 Vallis Road, Frome, BA11 3EF
Applicant	:	Tom Darwen
Representative	:	In person
Respondent	:	Shahid Pervez
Representative	:	In person
Type of Application	:	Liability to pay service charges
Tribunal Member	:	Judge Mark Loveday
Date and venue of hearing	:	N/A
Date of Decision	:	12 December 2017

DETERMINATION

Introduction

1. This is an application under s.27A of the Landlord and Tenant Act 1985 ("LTA 1985") to determine liability to pay service charges under a lease of Flat 5, Leaze House, 14 Vallis Road, Frome, BA11 3EF. The Applicant lessee seeks a determination in respect of the 2011 to 2013 service charge years. Directions given on 21 July 2017 ordered that the application was to be determined on the papers without a hearing under rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The parties are unrepresented, but they have both have provided fairly limited evidence and submissions.

2. For the purposes of this decision, the Tribunal adopts the definitions of "service charge" and "relevant costs" in ss.18(1) and (2) LTA 1985.

The premises

3. The Tribunal did not carry out an inspection. However, from the papers it is clear the premises comprise a 1 bedroom flat in the roof space of a converted detached period house which includes another 6 flats.

The lease

4. A copy of the lease for the premises has been provided, but regrettably part of the first page (which defines "the Estate") and part of the Tenth Schedule are omitted. The main service charge obligation is clear enough:
   (a) By clause 1(i), the Applicant must pay an annual ground rent of £75 "yearly in advance on the first day of April in every year".
   (b) By clause 1(2) the Applicant is obliged to pay a "service rent" as follows:

> **2. Service Rent**
> (i) The service rent shall consist of the fraction set out in the Tenth Schedule hereto of the costs expenses outgoings and other matters mentioned in the Ninth Schedule hereto (hereinafter called the "Service Expenses"
> (ii) The Service Expenses for each calendar year shall be estimated by the Lessor's Managing Agents (hereinafter called "the Managing Agents") or if none the Lessor (whose decision

shall be final) as soon as practicable after the first day of March of each year and the Lessee shall pay the estimated contribution by two equal instalments on the first day of March of each year and the Lessee shall pay the estimated contribution by two equal instalments on the first day of April and the first day of October in each year and the appropriate proportion thereof on the date of this Lease"

Further material covenants appear in Appx.I to this decision.

5. The service charge provisions therefore provide for relevant costs to be assessed on the basis of calendar years: clause 2(ii). They provide for the landlord or its managing agent to assess an interim service as soon as possible after 1 March in each year: clause 2(ii). The lessee is required to pay that interim charge by two equal instalments on 1 April and 1 October in each year: clause 2(ii). The landlord must then supply the lessees with a summary of the relevant coats actually incurred for the previous calendar year: Sch.8 para 11. The service charges are assessed by reference to the relevant costs set out in the Ninth Schedule to the Lease. However, the Lease does not include the usual express provision for adjustment of the service charge after the yearly accounts are prepared (i.e. a requirement for the lessee to pay a subsequent 'balancing' service charge or for the landlord to repay to the lessees any shortfall between the interim charges and the balancing charges).

6. The Tenth Schedule to the Lease ought to set out the apportionment which the landlord must apply to its relevant costs or estimated relevant costs to arrive at the service charges for the flat. As explained above, this is largely omitted. However, the Tribunal notes the landlord has applied an apportionment of one seventh in the past without any apparent objection[1], and it therefore adopts an apportionment of one seventh.

[1] See: "SERVICE CHARGE (FIRST HALF) 01.01.,13-31.12.2013" and undated manuscript demand for payment

The service charges in dispute

7. The lessees have exercised the Right to Manage the flats with effect from 1 April 2014. The RTM Company is not a party to the application, and the service charges in dispute solely relate to sums due before that date.

8. The Application specifically raised questions of liability to pay and reasonableness, and this is reflected in the first issue identified in paragraph 3 of the Directions. However, the Directions identified a number of other potential issues:
    - Whether the sums claimed have been validly demanded;
    - Whether the works are within the landlord's obligations under the lease / whether the cost of works are payable by the leaseholder under the lease;
    - Whether the costs are payable by reason of Section 20B of the 1985 Act;
    - What works have actually been undertaken and how are the sums claimed to be made up;
    - Whether an order under Section 20C of the 1985 Act should be made, and;
    - Whether an order for reimbursement of the application / hearing fees should be made.

9. The Directions ordered the parties to prepare a Scott Schedule setting out the items in dispute and the reasons for the dispute. They also ordered the parties to prepare statements setting out the relevant provisions of the Lease "and any legal submissions in support of the challenge to the service charges claimed, including argument, if liability to pay is at issue". Both parties have attempted to complete the Scott Schedule but regrettably neither has provided the further statement referred to above. In addition, the supporting documents which have been provided are somewhat haphazard and plainly omit important material. However, the Tribunal reaches its decision on the basis of the arguments and evidence actually presented.

10. This decision will first start with the issues specifically identified by the parties, before turning to the other matters raised in the Directions.

Sums due to previous landlord: £1,265.07

11. The Respondent acquired the freehold from the previous owners Freehold Estates Ltd on 20 October 2011. The disputed sum of £1,265.07 relates to charges for the flat which arose prior to the date of the transfer and which have been demanded by the Respondent.

12. The Applicant's case mainly appears in the Application form itself which states that the sum of £1,265.07 was "an amount the freeholder claims was owed when he bought the freehold". The Application goes on to suggest that "all the leaseholders disputed this amounts [sic] (including myself), which seemed arbitrary and unfounded". It is said the Respondent "has never been able to justify these amounts to any of the leaseholders even when we served formal notice for the right to manage". A letter was apparently written on 13 March 2017 requesting details of the service charges, although there is no copy of this letter in the papers. In the Scott Schedule, the Applicant says the sum is an "ungrounded and unproven claim to service charges from predecessors" and that there are no "invoices from previous management/ contractors".

13. The Respondent's case appears in the Scott Schedule. He suggests that "ample opportunity was given in this regard – as per Attached Stevenson's letter + Statement at my completion". The attached letter is from Stevensons Solicitors (who were acting for Freehold Estates) dated 20 October 2011. The letter notifies the lessee of Flat 5 about the transfer and directs that ground rent and service charges should be paid to the Respondent. The attached Statement is undated, but gives a "Service Charge Balance" of £1,265.07 for flat 5.

14. In addition, the bundle provided to the Tribunal includes further documents:

(a) Another undated statement headed "Credit Account: Flat 5" showing a "Balance C/F (as per invoice)" of £1,265.07. The statement must have been produced after February 2013, since it refers to payments made on that date.

(b) A manuscript invoice addressed to the Applicant, which demands payment of various sums including a sum of £1,265.07 described as "Bal. as per attached AUTHORITY". The date of this invoice is unclear, but it demands payment of "SC + Est. Charges" for both 2012 and 2013 plus "G/Rent 2013-2014".

(c) An email from BGW Solicitors (who the Applicant retained for the proposed sale of his flat) dated 19 June 2017 addressed to Clyde Solicitors (who were acting for the Respondent). The email states that "the arrears claimed by your client [are] disputed. A break-down of the sums claimed has bene requested but never forthcoming. The final request was made in the formal process of taking over the Right to Manage company, a copy of which is enclosed". The email goes on to state that "Your client has never identified what the sums demanded relate to, and has simply referred to payments requested by his predecessor".

(d) An email from the Applicant to the Respondent dated 20 September 2017. This states that "once again you have failed to provide evidence for the service charges that you say I owe. There are no invoices that correspond to the amounts you are asking or proof of payment or letter from the auction house when you purchased the freehold for the amounts outstanding".

15. The Tribunal finds the following facts:

(a) Prior to completion of the transfer of the freehold on 20 October 2011, Freehold Estates provided the Respondent with the Statement referred to in para 13 showing a balance of £1,265.07. The Tribunal accepts the Respondent's evidence in that respect, brief though it is. This conclusion is consistent with the

Statement itself, which was clearly prepared at some stage between 1 April 2011 and 1 April 2012.

(b) Subsequent to that, the Respondent demanded payment of the balance from the Applicant. The only demand provided is the manuscript invoice in the bundle. Given that there is a demand for the 2013/14 ground rent (which under clause 1(i) of the Lease is payable in advance) the most plausible time for this invoice was around April 2013.

(c) The Applicant and others have requested details of the service charges, but the Respondent has consistently failed to provide any evidence of the relevant costs or indeed what was owed. The Tribunal accepts what is said by the Applicant, which is supported by the email of 19 June 2017, the letter of 20 September 2017 and the absence of any documentation from the Respondent in relation to pre-2011 charges.

(d) Paragraph 10 of the Directions of 21 July 2017 expressly required the Respondent to disclose "copies of all relevant service charge accounts and estimates for the years in dispute (audited and certified where so required by the lease), together with all demands for payment and details of any payments made." For the period before 20 October 2011, the Tribunal finds that the Respondent landlord has not provided any service charge accounts and estimates and/or any demands for payment. The only such information is the Statement referred to above, the manuscript demand for payment and the Credit Account: Flat 5" document. None give any real detail of relevant costs or other component parts of the service charges demanded.

16. The Tribunal determines that no sum is payable by the Respondent to the Applicant in respect of service charges for the period prior to 20 October 2011. It does not accept the Respondent has given an "ample" explanation of what the charges relate to. The only evidence to support liability for £1,265.07 is the "Service Charge Balance" in the statement provided by the outgoing freeholder in 2011. The reference to a

"balance" does not explain what the alleged charges related to, it does not provide any evidence at all that those charges were recoverable under the Lease, that the charges related to relevant costs which could properly be taken into account when assessing the service charges or that those relevant costs were reasonably incurred. Indeed, the balance of "£1,265.07" could have included administration charges, service charges which were incurred many years before and which were statute-barred or subject to s.20B LTA 1985. The Respondent landlord was given every opportunity to explain the figure of £1,265.07, including the express requirement in the directions of 21 July 2017 to provide supporting accounts etc., but did not do so. In circumstances where the 2011 service charges were expressly disputed, it is insufficient to rely on a bare statement from the previous landlords that the Applicant was liable to pay.

17. In short, the Applicant succeeds in respect of the charge of £1,265.07 for 2011. There is no evidence this sum was payable by the Applicants to the Respondent under clause 2(ii) of the Lease or at all. Moreover, there is no evidence it relates to relevant costs (or estimated relevant costs) under the Ninth Schedule to the Lease.

Service charges 2012: £1,029.48

18. The papers include an (undated) demand for payment for various sums made in or around the winter of 2012/13 headed "SERVICE CHARGE (FIRST HALF) 01.01.13-31.12.2013 and which was signed by the Respondent landlord. This itemises various elements as follows:
"2nd half of management charges £559.81
27.06.12 £1494 divided by 7 units £213.42
27.12.12 £1104 divided by 7 units £157.71
2nd half Gardening Charges .....£98.53"
These amount to £1,029.48. The above figures also appear in the manuscript demand for payment mentioned above.

19. As far as these figures are concerned:

(a) The Application states that the £559.81 was a "payment ... for the first half of 2012". The "SERVICE CHARGE (FIRST HALF) 01.01.13-31.12.2013" document refers to "2nd half of management charges ... 559.81" under the heading of "2012". Similarly, the Credit Account: Flat 5 document refers to "2012 Second Half Service Charge" of "559.81". The undated manuscript invoice also refers to "2012} SC. 2nd Half".

(b) The Application states that the £213.43 was "a share of Invoice dated 27.06.12" for an "inspection of a water leak". It appears from the papers the Respondent employed Hexagon Property Co to provide management services from time to time, and the papers include an email from Mr Peter Potter of Able Group to Hexagon on 27 June 2012. The email is headed "Nadeem Ullah" of "Flat 3 Leaze House, 14 Vallis Road Frome BA113EF" and refers to an engineer who had attended and used a cherry picker to gain access. The engineer found water was coming from the overflow of "an unvented cylinder ... in the top-flat" which was coming down the side of walls" and causing damage to rendering. Rain water had also got "in from there". The engineer recommended that the wall should be re-rendered and a heating engineer should attend to deal with the cylinder overflow. Mr Potter then refers to charges of £1,245 + VAT (i.e. £1,494) for the engineer to attend.

(c) The £157.71 is supported by an invoice for £1,104 from Shaun Nash (Bruton) Ltd dated 27 December 2012. This in turn refers to certain minor repairs, of which £390 is described as being to the "outside" of the property, £180 is to the ground floor flat ("stain block water damaged areas")" and £350 is to the Upper Flat ("stain block and decorate bathroom").

(d) The Application and the "Credit Account: Flat 5" document suggest the £98.53 is an "Estate Charge" for the "second half" of 2012. However, the document referred to in paragraph 18 above describes this as "2nd half gardening charges".

20. In the Application itself, the Applicant repeated the arguments made before, namely that the Respondent had never been able to justify these sums. The Applicant stated that "no work was being carried out save the invoice for £213.43 – inspection of a water leak". He went on to suggest that "the grounds were not being tended or cleaning being carried out and the leaseholders were having to do the work themselves". Also, there was "an issue with insurance of the building" because "the costs were extortionate and only protecting the freeholder's ownership...". The Scott Schedule stated that "no service [was provided by the] managing agent although [the Applicant] continued to make payments". The lessees had "decided to form [a] Right to Manage Company and pay into that account". The Applicant concluded that the relevant costs were "not reasonable in amount/standard."

21. The Respondent's arguments in the Scott Schedule were that the figure of £559.81 "only relates to [the] 2nd HALF (2012)" as do the claims for £213.63, £157.71 and £98.53. The Respondent was not demanding the "1st HALF (2012)".

22. The Tribunal finds the following facts:

(a) The sum of £559.81 was a contribution to relevant costs incurred (or purportedly incurred) by the landlord in the period 1 January 2012 to 30 June 2012. The Tribunal accepts the Respondent's evidence on this, which is supported by the three demands/statements referred to above.

(b) The sum of £213.43 was a 1/7th contribution to relevant costs of £1,494 incurred for inspection of water ingress into Flat 3 by Able Group. When Able gained access, they discovered that the water ingress was largely caused by an overflowing unvented cylinder in the flat above.

(c) The sum of £157.71 was a 1/7th contribution to relevant costs of £1,104 incurred for repairs undertaken by the landlord in or about December 2012. The £1,104 comprised £390 (+VAT) for

repairs to the "outside" of the property, £180 (+VAT) to the interior of one flat and £350 (+VAT) to the interior of another flat.

(d) The sum of £98.53 was a contribution, whether directly or indirectly, to the relevant costs of providing gardening incurred between 1 June and 31 December 2012.

(e) The Applicant has stated that no services were provided in 2012, other the inspection of a water leak. Although this is a broad-brush statement, it is made on more than one occasion, and the argument has not been challenged by the Respondent at any stage. Unless where there is clear evidence to the contrary, the Tribunal finds that no services were in fact provided in 2012.

23. Before turning to its decision, the Tribunal would make two preliminary points.

24. First, the material before the Tribunal is very limited indeed. There is no breakdown of the figure of £559.81 to show the relevant costs it relates to or the process which was adopted to arrive at the sum claimed from Flat 5. There is no invoice to support the claim for £1,245 + VAT or any explanation of the circumstances which gave rise to the engineer's attendance. There is no evidence at all about the 'gardening' charges of £98.53 – and whether they were charged for gardening for the grounds of the block itself (or as might be inferred from the references to "Estate Charge") or for works to some wider area. The most detailed documentation is the invoice for the minor repairs amounting to £1,104. But even this is unclear as to precise which "outside" works it refers to.

25. Secondly, it seems highly likely that none of the charges were demanded in accordance with the service charge machinery set out in the Lease. As explained above, the only express provision for payment of service charges is at clause 2(ii) of the Lease, which provides for an interim charge to be paid by two equal annual instalments based on

estimated relevant costs to be incurred. By contrast, the various demands and statements produced to the Tribunal suggest the Respondent has levied single annual charges in arrear for costs which have already been incurred. Moreover, the Lease does not provide for the relevant costs to be disaggregated in the way that the Respondent has done. Clause 2(ii) provides for the "Service Expenses" (i.e. the relevant costs) for the relevant calendar year to be assessed as a whole, and the apportionment applied to this overall estimated figure. Quite apart form this, there is no evidence that the Respondent has complied with the requirement to produce summaries of relevant costs under paragraph 11 of the Eighth Schedule.

26. Turning to each of the items of cost for 2013, the Tribunal's determination is as follows:

(a) The Tribunal finds that the Applicant is not liable to pay the sum of £559.81. There is no evidence to show that the sum relates to relevant costs under the Ninth Schedule to the Lease. In circumstances where liability was denied, and a direction was made for the Respondent to produce accounts and supporting documents, the absence of such evidence is material to the Tribunal's decision. Moreover, the Tribunal has already found that services were not provided in 2013 (save for the attendance of an engineer). The Tribunal therefore finds (i) the charges do not relate to recoverable relevant costs under the Ninth Schedule to the Lease (ii) no costs were "incurred" for the purposes of s.19(1) LTA 1985 (iii) the relevant costs were not "reasonably" incurred under s.19(1) and (iv) the services provided were not of a reasonable standard under s.19(2).

(b) It is admitted that the Respondent incurred relevant costs for inspecting the premises for a water leak and there is evidence of what this charge relates to in the email of 27 June 2012. However, the Tribunal finds the sum of £213.43 was not payable under the Lease. Investigation of a leak from a cistern within one of the flats is not repair or maintenance of the "roofs main

structure" etc. of the Building in paragraph 1(a) of the Ninth Schedule – and there is no other obvious provision which allows the landlord to add such costs to the service charge. It may well be that this cost would be directly payable by one or other of the lessees involved (or recoverable from insurers), but the investigation of a leak from installations in one flat which causes damage to another flat is not in this case a recoverable service charge item.

(c) There is some evidence to support the charge for £213.43 in the invoice from Shaun Nash (Bruton) Ltd and the Tribunal finds that part of this sum was payable under the Lease. The Tribunal is satisfied the relevant cost of repairs to an "outside" wall and gutters (£390) fall within paragraph 1 of the Ninth Schedule and that they are therefore recoverable relevant costs. The invoice is evidence that the relevant costs were in fact "incurred" and there is no suggestion the cost was excessive, or the works were not to a reasonable standard. However, the "stain blocking" of water damaged areas to the interiors of two flats (£180 and £350) are not service charge items. They do not fall within paragraph 1 of the Ninth Schedule to the Lease. It follows that the only relevant cost recoverable relates to the "outside" repairs (£390), of which the Applicant is liable to pay 1/7th, or £55.71.

(d) There is a provision at paragraph 1(c) of the Ninth Schedule to the Lease which would enable the Respondent to include gardening costs of £98.53 provided they related to grass and planting areas of "the Estate". Once again, however, the Tribunal has found that no relevant gardening services were provided. The Tribunal therefore finds (i) no costs were "incurred" for the purposes of s.19(1) LTA 1985 (ii) the relevant costs were not "reasonably" incurred under s.19(1) and (iii) the services provided were not of a reasonable standard under s.19(2).

Service charges 2013: £1,394.40

27. The Application refers to three charges in 2013, namely "SC & Estate Charge for the First half of 2013 £659.57", "SC & Estate Charge for the Second half of 2013 £659.57" and "Ground Rent 2013/14 £75". The Applicant states that "These amounts I do not dispute and am happy to pay with reasonable interest to the freeholder (even though as below no details were ... forthcoming when we assumed the right to manage)".

28. The statement in the Application is an agreement or admission of a relevant matter, and the Tribunal therefore has no jurisdiction to determine liability to pay the first two sums under LTA 1985 s.27A(4). Moreover, the Tribunal has no jurisdiction to determine ground rent, since they do not fall within the definition of a "service charge" in LTA 1985 ss.18(1) and 27A.

Other matters

29. A number of other issues were identified by the Directions, although not addressed by the parties. The Tribunal will deal with each briefly.

30. First, the issue was raised whether the sums claimed were "validly demanded". The argument was not made by the Applicant in the Application or (despite the Directions) addressed by either party in the Scott Schedule. *Prima facie*, none of the demands in the bundle comply with LTA 1985 s.21B or LTA 1987 s.48. But since the issue has not been addressed by either party, the Tribunal does not make any determination in this respect.

31. Secondly, the issue was raised whether the sums claimed were payable by reason of s.20B LTA 1985. Once again, no argument was made in this respect by the Applicant in the Application itself in the Scott Schedule. There was no evidence of the date that the relevant costs of any of the relevant costs were "incurred" – or indeed any evidence of the date the service charges were demanded. Once again, the Tribunal does not make any determination in this respect.

32. Third, the Directions referred to the cost of "major works". The question is asked about what works were undertaken and how the sums were said to be made up. Major works are not referred to by the Applicant in the Scott Schedule and no evidence has been provided about this potential issue at all. The Tribunal does not make any determination in this respect.

33. The Applicant checked the box in the Application form seeking an order under LTA 1985 s.20C, although he provided no reasons. The issue was no addressed in the Scott Schedule. It is far from clear whether the Respondent has in fact incurred any costs in connection with the application to the Tribunal. But if he has, the Tribunal considers if just and equitable to make such an order for the following reasons:
    (a) The Applicant has largely succeeded in the Application.
    (b) The Respondent has acted in an unsatisfactory manner in relation to the general conduct of the service charges. He has failed to provide any accounts or estimates and largely failed to provide any meaningful receipts for those relevant costs – despite the Directions and demands from the Applicant and others. Demands for payment appeared haphazard, and *prima facie* were not in the form required by LTA 1985 s.20B or LTA 1987 s.48.
    (c) The Respondent has conducted the proceedings in an unsatisfactory manner. His submissions are very limited indeed (essentially the brief manuscript notes to the Scott Schedule) and as explained above, very limited disclosure was given.

34. Finally, the Directions invited consideration whether an order for reimbursement of the application / hearing fees should be made. No such application is made in the Application or the Scott Schedule. The Tribunal does not therefore make any determination in this respect.

Conclusions

35. The Tribunal finds:

(a) **Sums due to previous landlord: £1,265.07.** The Applicant is not liable to pay the sum of £1,265.07 said to be due to the previous landlord.

- **Service Charges 2012**: £1,029.48. The Applicant is not liable to pay the sums of £559.81, £213.43 or £98.53. The only recoverable relevant costs relate to "outside" repairs (£390), of which the Applicant is liable to pay 1/7th, or £55.71.
- **Service charges 2013: £1,340.** Liability to pay service charges have been agreed or admitted and the Tribunal in any event has no jurisdiction to determine liability to pay ground rent.
- **LTA 1985 S.20C.** None of the costs incurred by the Respondent in connection with the proceedings before the Tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the Applicant.

Judge Mark Loveday
12 December 2017

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.