FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/OOHB/LIS/2018/0057**
Property	**:**	**FFF 1 Rockleaze, Sneyd Park, Bristol BS9 1ND**
Applicant	**:**	**1 Rockleaze Management Ltd**
Represented by	**:**	**Mr Andrew Gibbs-Ripley of LPC Law instructed by SLC Solicitors**
Respondent	**:**	**Mr Andrew Bones and Ms Gabriella Molnar**
Type of Applications	**:**	**Transferred application from the county court under section 176A Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") of matters governed by the Landlord and Tenant Act 1985, section 27A and by paragraph 5(1) of Schedule 11 to the 2002 Act.**
Tribunal Members	**:**	**Judge M Davey** **Mr M Ayres FRICS**
Date and venue of Hearing		**10 September 2019** **Bristol Civil and Family Justice Centre**
Date of Decision with reasons	**:**	**17 October 2019**

DECISIONS

The Section 27A Landlord and Tenant Act 1985 application

The reasonable service charge sum of £14,269.45 is payable by the Respondents

The paragraph 5(1) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 application

The administration charge of £252.00 is not payable.

REASONS

The Application

1. This Application concerns the payability and reasonableness of service charges and administration charges under a lease ("the Lease") of the first floor flat at the property known as 1 Rockleaze, Sneyd Park, Bristol, BS9 1ND ("the Building"). The Lease was granted on 24 March 1986 for a term of 999 years from 7 December 1970. The Applicant, 1 Rocklease Management Ltd. (a residents' management company) is the freeholder Landlord under the Lease and the Respondents are the joint long leaseholder tenants under that Lease, who acquired their interest by purchase on 18 May 2007. Hillcrest Estate Management, 5 Grove Road, Redland, Bristol BS6 6UJ, ("Hillcrest") manages the Building on behalf of the Applicant.

2. On 14 February 2018, the Applicant issued a county court claim against the Respondents for recovery of unpaid service charges, administration charges, interest and legal costs. The total sum claimed came to £31,491.05. The sum claimed was made up of: £21,044.27 in arrears and administration charges; £4,909.81 in respect of interest; £4,037.40 in respect of legal costs up to the date of issue, the court issue fee of £1,499.57 and £100 in respect of fixed costs. The claim covered service charges and other charges for the period from 1 April 2013 to 31 December 2017. The Second Respondent, Ms. Gabriella Molnar, filed a Defence to the claim, which was ordered by the county court to stand as the Defence of both Respondents. In her defence to the court claim, Ms Molnar explained that Mr Bones moved out of the property (which she says that they bought "50%-50%") in October 2007 and in 2017 he had "declared to put his share of the flat into a Trust for our daughter, Angelina Bones." However, it would appear that Mr Bones remains a joint registered proprietor of the leasehold interest in the flat and he was therefore made a Respondent to the proceedings.

3. On 15 October 2018, District Judge Rowe (sitting in Bristol county court) ordered that the matter of the reasonableness of the service charges claimed be transferred to the Leasehold Valuation Tribunal (*sic*) for determination. The Order stated that, "on determination of the question the file shall be referred to a district judge to deal with any outstanding issues including interest and costs and any other part of the claim not determined by the Leasehold Valuation Tribunal."

4. It should be noted that the functions of leasehold valuation tribunals were transferred to the First-tier Tribunal (Property Chamber) ("the Tribunal") on 1 July 2013. It is accordingly that Tribunal to which the matter has been transferred. The First Respondent, Mr Bones, has taken no part in the court or Tribunal proceedings from the outset.

5. Following Directions issued by the Tribunal on 7 November 2018, the Tribunal held a Case Management Hearing ("CMH") on 11 December 2018. The Tribunal then issued further Directions on that date following which the parties entered into mediation, which proved to be unsuccessful. The Tribunal subsequently issued a series of Directions, on 1 February 2019, 27 March 2019, 3 April 2019, 6 June 2019 and 12 July 2019 to bring the case to a determination.

6. The Directions of 12 July 2019 debarred the First Respondent from taking any further part in the proceedings due to his failure to comply with the Directions of the Tribunal. The same Directions also ordered that the Second Respondent be barred from serving and relying upon any statement of case or supporting documents because (a) she had failed to serve a statement in reply by 4 July 2019 as required by the Directions of 6 June 2019 and (b) had failed to establish good cause why an extension of time be granted to enable such a statement to be served. Ms. Molnar had earlier filed a schedule of disputed charges following the Directions of 7 November 2018.

The Lease

7. The Lease reserves a rent of £10.50 payable annually on the 7 December each year. The Lease also reserves "by way of further or additional rent a sum equal to one quarter of the costs expenses and outgoings actually expended in connection with complying with the Lessors obligations under the provisions of clause three sub- clause (d) to (f) and (i) inclusive of this Lease including the costs properly incurred by the Lessor in respect of the maintenance of the Building (but as to the cost of keeping the staircase leading to the demised premises adequately lighted and cleansed the proportion to be found by the Lessees shall be one third) by way of Surveyors charges and charges for accountancy the amount of such costs expenses outgoings and matters to be certified by the Lessors Surveyor who shall be a member of one of the Chartered bodies of Surveyors and such additional rent to be summarily recoverable after demand as

a debt of an ascertained amount to be paid to the Lessor or his Surveyor on the day fixed for payment of rent."

8. Clause 3(d) contains an obligation by the Lessor to "(i) maintain repair and renew the roof the main walls and structure the foundations the stairs leading to the area and other parts thereof and the common parts of the Building (but not the boundary wall surrounding the Building) (ii) keep the staircase leading to the demised premises adequately lighted and cleansed. Clause 3(e) provides a covenant by the Lessor "Subject as aforesaid in a good and workmanlike manner in every seventh year to paint the exterior stucco and wood and iron and other work usually painted of the said Building and properly to redecorate the entrance hall and staircase thereof." Clause (f) obliges the Lessor to insure and keep insured the Building throughout the term. Clause (i) contains a covenant that "the Lessor shall throughout the term hereby granted engage the services of a Managing agent to carry out or cause to be carried out all or any of the obligations imposed on the Lessor by this clause and its sub-clause and to collect the maintenance or service charges payable hereunder yearly and if the Lessor so desires to collect the rent from the Lessees and other occupiers of the Building and generally to manage the Building."

The Inspection

9. The Tribunal members, Judge Martin Davey (Chairman) and Mr M Ayres, inspected the property on the morning of 10 September 2019 in the presence of: Mr Andrew Gibbs-Ripley, solicitor for the Applicant; Mr Martin Hucker and Mr Joe Goss of Hillcrest; and Miss Laura Hoyland, a Director of the Applicant Company. The same persons attended the hearing together with two other Directors, Miss Claire Turner and Dr Alex Middleditch.

10 The Respondents were not present at the inspection or the hearing nor were they represented. However, on the morning of the hearing the Tribunal received an email from Mr Simon Pressdee of Davies and Co solicitors, who explained that he had been acting for Ms Molnar in this matter. He stated that since he last reported to her on 21 June 2019 he had received only one communication from her, on 3 July 2019, to the effect that she would be out of the country until early September. His application for an extension of time to enable her to file a statement of case had been rejected by the Tribunal on 12 July 2019 (see paragraph 6 above). Mr Pressdee said that his subsequent attempts to contact Ms Molnar by email and telephone had proved fruitless.

11. The inspection revealed the property to be a substantial c.1850s Grade 2 listed building comprising four stories and fronting the Downs. It includes 5 flats: a basement flat, a ground floor flat, a first floor flat (the subject property) and two smaller second floor flats. The flats are correspondingly identified in the service charge accounts as Flats 1-5 accordingly. Thus the subject of this Application is the first floor flat,

Flat 3. Access to the upper floors is by a staircase in a rear extension to the building. The Tribunal noted the very poor state of the communal staircase walls. At the inspection the Tribunal's attention was drawn to the various roof defects identified in the Application.

The hearing

12. Following the inspection, the Tribunal conducted an oral hearing of the Application at Bristol Civil and Family Justice Centre. Mr Gibbs-Ripley of LPC Law, instructed by SLC Solicitors, presented the Applicant's case at the hearing.

The Applicant's case

13. The Applicant's case is simply put. It is that the Respondents have remained in arrears with their service charge payments for many years. The Applicant says that the Lessor has incurred costs in carrying out its obligations under the Lease and has demanded service charges in respect of those costs which were payable by the Respondents under the terms of their Lease. It submits that the costs were reasonably incurred and reasonable in amount as required by section 19 of the Landlord and Tenant Act 1985. The sums claimed are in respect of the period from 1 April 2013 to 31 December 2017. Mr Gibbs-Ripley told the Tribunal that the sum of £6,522.82 had been deducted from the claim and therefore the sum claimed by way of service charge and administration charges now amounted to £14,521.45. That sum, derived from the arrears schedule attached to the claim, is made up as follows.

Year	Service charge (ESC)	Levy	Admin charge	Credit	Balance
2013-14	£ 462.85				
2014-15	£3,271.40	£8,160.85	£252.00	£ 750.00	
2015-16	£1,739.50			£1,500.00	
2016-17	£1,755.50				
2017-18	£1,629.75*			£ 500.00	
Total	£8,858.60	£8,160.85	£252.00	- £2,750	£14,521.45

- Claim is only for 3 quarterly ESC payments up to 31 December 2017

It should be noted that although the ESC for the year 1 April 2013 to 31 March 2014 was £2,611.50 the only sum demanded in the Applicant's claim was £462.85. The Tribunal infers that the balance of the ESC that year was paid by one or both of the Respondents.

The levy sum of £8,160.85 comprised a levy of £4,375.00 demanded on 1 April 2014 and a supplementary levy of £3,785.85 demanded on 17 October 2014.

14. Mr Gibbs Ripley submitted that because the Respondents were directed to set out in a schedule the charges and years that were disputed the Applicant assumes that only the items listed in the schedule submitted by the Second Respondent are in dispute and that all other items included in the claim are not disputed. The items listed are as follows:

Item	Date	Disputed charge	Respondent's comments
1	1/4/13	£2,611.50 ESC	The expenses incurred were £8,745.00. The Respondents' contribution should therefore be £2,186.25 (i.e. £425.25 less than the ESC demanded). The Respondent also disputes a management fee of £375.00.
2	1/4/14	£817.95 ESC	The Respondent admits an ESC of £673.25 but disputes the management fee of £144.50
3	1/7/14	£817.75 ESC	The Respondent admits an ESC of £673.25 but disputes the management fee of £144.50
4	1/10/14	£817.75 ESC	The Respondent admits an ESC of £673.25 but disputes the management fee of £144.50
5	17/10/14	£3,785.85 levy	The Respondent submits that the maintenance works to which the charge relates were poorly managed and took too long and the costs were thereby inflated. She admitted a sum of £630.98.
6	6/11/14	£252.00 drafting and correspondence	The Respondent disputes that this is chargeable and is in any event unreasonable.
7	1/1/15	£817.75 ESC	The Respondent admits an ESC of £657.14 but disputes the management fee of £160.61.
8	18/12/15	£48.00 trace fee	The Respondent submits that this fee was neither chargeable nor necessary.
9	1/04/15	£434.88 ESC	The Respondent admits an ESC of £349.47 but disputes the management fee of £85.41.
10	1/07/15	£434.88 ESC	The Respondent admits an ESC of £349.47 but disputes the management fee of £85.41.
11	1/10/15	£434.88 ESC	The Respondent admits an ESC of

			£349.47 but disputes the management fee of £85.41.
12	1/1/16	£434.86 ESC	The Respondent admits an ESC of £301.31 but disputes the management fee of £133.55.
13	1/4/16	£434.86 ESC	The Respondent admits an ESC of £304.10 but disputes the management fee of £134.78.
14	1/7/16	£434.86 ESC	The Respondent admits an ESC of £304.10 but disputes the management fee of £134.78.
15	1/10/16	£434.86 ESC	The Respondent admits an ESC of £304.10 but disputes the management fee of £134.78.
16	1/1/17	£434.86 ESC	The Respondent admits an ESC of £302.42 but disputes the management fee of £136.44.
17	1/4/17	£543.25 ESC	The Respondent admits an ESC of £374.35 but disputes the management fee of £168.90
18	1/7/17	£543.25 ESC	The Respondent admits an ESC of £374.35 but disputes the management fee of £168.90
19	1/10/17	£543.25 ESC	The Respondent admits an ESC of £374.35 but disputes the management fee of £168.90

15. One of the items in the schedule (omitted from the above) was the levy of £6,522.82, dated 2 November 2015, and related to the cost of proposed extensive repairs to the turret (the circular bay), but as stated above the Applicant has since withdrawn this demand from the claim. Another item related to a refund on 10 June 2016, of a payment of £4,142.76 made by the Second Respondent, Ms Molnar, to the Applicant on 7 June 2016 in respect of undisputed charges. The Respondent stated in the schedule that she had not presented that refund for payment. The Applicant says that it has now been credited to Ms Molnar's account.

16. Ms Molnar also challenges three items that fall outside the Applicant's claim and in respect of which she has not made an application. The first is an administration charge of £50 levied on 22 August 2012 by the managing agent in respect of service charge arrears. The second is a levy of £2,510.00 demanded on 5 October 2012 and the third is a Land registry search fee of £3 for a copy of the Respondents' leasehold title and charged by the managing agent. The Applicant argues that both charges are legitimate and reasonable and charged in accordance with clause 3(i) of the Lease. Because these charges are outside the scope of the claim the Tribunal will not deal with them as part of this Application.

The Law

17. The law is set out in the Annex to these reasons.

The Hearing

18. At the hearing Mr Gibbs-Ripley dealt with each disputed item referred to in Ms Molnar's schedule as summarised and enumerated above. He made the following submissions.

Item 1

19. The sum of £2,611.50 was the estimated service charge (ESC) for the period from 1 April 2013 to 31 March 2014. He noted that the Respondent only challenges a sum of £425.25, which includes the managing agent's fee of £375. The Applicant says that the agent's fee is chargeable, reasonable in amount and accordingly should be allowed. Mr Gibbs-Ripley said that it was not clear what the other £50.25 in dispute relates to.

Items 2, 3, 4 and 7

20. These were the estimated quarterly service charge demands of £817.75 per quarter relating to the period from 1 April 2014 to 31 March 2015 (£3,271.00). In each case the only sums challenged were the managing agent's fee (£144.50 in respect of the first three charges and £160.61 in respect of the fourth – total £594.11). Once again the Applicant says that the agent's fees are chargeable, reasonable in amount and accordingly should be allowed.

Item 5

21. The £3,785.85 levy, dated 17 October 2014, was issued in respect of roof and elevation works. The Applicant says that the sums charged were reasonable. The Respondent admits £630.98 but asserts that the balance should not be due because the work was unnecessarily protracted due to the managing agent's poor project management, the delay caused an avoidable increase in costs and the works should have been completed in two months instead of twelve.

22. The Applicant explained that a levy of £2,510.00 had been issued on 5 October 2012. The levy related to masonry repairs and pointing to rear gables, tower, rear elevation and minor repairs around the lower ground floor entrance and lounge windows. The Applicant carried out a consultation process under section 20 of the Landlord and Tenant Act 1985 and tenders were obtained. The Applicant says that the works covered by the levy did not take place at the time because the Respondent did not pay the levy.

23. The Applicant then held an Extraordinary General meeting on 20 November 2013 at which it was decided to raise another levy to

cover the cost of anticipated works due to take place in 2014. That is to say the works original scheduled in 2012 (see paragraph 22 above) plus anticipated additional works later identified in a Planned Preventative Maintenance Report ("PPMR") prepared by Hartnell Taylor Cook LLP and dated April 2014. The levy sum of £8,160.85 was raised in two stages; first a levy of £4,375.00 demanded on 1 April 2014 and second the supplementary levy of £3,785.85 demanded on 17 October 2014.

24. The Applicant says that it carried out a section 20 consultation and subsequently agreed to award the contract to a contractor ("Spillers") nominated (outside the statutory consultation time limit) by Ms Molnar. This development delayed implementation of the works, which commenced in January 2015. The Applicant says that the delay was not caused by how the managing agent managed the works. The Contract Administrator, an independent chartered surveyor, managed the works, which were completed in 2015.

Item 6

25. The Applicant states that this item relates to legal costs incurred in respect of the Respondent's arrears, which were charged to the managing agent. The Applicant submits that they are reasonable in amount and should be charged.

Item 8

26. The Applicant says that this was in respect of a trace fee incurred by solicitors. No demand was issued. The Applicant says that the fee was charged to the managing agent, is reasonable in amount and should be allowed.

Items 9 to 12 inclusive.

27. These were the estimated quarterly service charge demands relating to the period from 1 April 2015 to 31 March 2016. The sums demanded were £434.88 for the first three quarters and £434.86 in the last quarter. In each case the only sums challenged were the managing agent's fee (£144.50 in respect of the first three charges and £160.61 in respect of the fourth). Once again the Applicant says that the agent's fees are chargeable, reasonable in amount and accordingly should be allowed.

Items 13 to 16 inclusive

28. These were the estimated quarterly service charge demands relating to the period from 1 April 2016 to 31 March 2016. The sums demanded were £434.86 for each quarter. In each case the only sums challenged were the managing agent's fee (£134.78 in respect of the first three charges and £136.44 in respect of the fourth). Once again the Applicant

says that the agent's fees are chargeable, reasonable in amount and accordingly should be allowed.

Items 17 to 19 inclusive

29. These were the estimated quarterly service charge demands relating to the period from 1 April 2017 to 31 December 2017. The sums demanded were £543.25 for each of the three quarters. In each case the only sums challenged were the managing agent's fee (£168.90 in respect of each of the three charges). Once again the Applicant says that the agent's fees are chargeable, reasonable in amount and accordingly should be allowed.

Discussion and determinations

30. The Application to the Tribunal is a "transferred application" from Bristol county court made on 15 October 2018 by District Judge Rowe under section 176A of the Commonhold and Leasehold Reform Act 2002. The sums claimed, by way of what the Applicant describes as service charges and levies (and an administration charge), amount to £14,521.85. This is made up of ESC demands of £8,859.00; levies of £8,160.85 and an administration charge of £252.00 (total £17,271.85), less payment made, of £2,750. The original claim also included a levy of £6,522.82 made on 2 November 2015 but this has been withdrawn because the works never went ahead. The claim covers the period from 1 April 2013 to 31 December 2017.

31. The court claim, initiated in Northampton county court, was made on 14 February 2018. Ms Molnar disputed the claim from the outset and in a letter of response to the court of 26 February 2018, stated that she had paid the ESC in full. However, in the same letter she also stated that she was "working hard to be able to pay more than £250 a month towards the ESC and Levy." By an Order dated 5 April 2018, Deputy District Judge Perry, sitting in Salford County Court, ordered that Ms Molnar's letter be deemed as a defence on behalf of Mr Bones and Ms Molnar, the former not having responded to the claim. The only additional written submission to the Tribunal by either Respondent was the Schedule of disputed charges produced by Ms Molnar (see paragraph 6 above).

32. The Application is treated as made under section 27A of the Landlord and Tenant Act 1985 which provides that "An application may be made to the [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 and (d) the date at or by which it is payable and (e) the manner in which it is payable."

33. Section 18(1) of the 1985 Act defines a "service charge" as:

"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."

34. Section 19(1), provides that:

"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 provision 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".

"Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as "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.

35. The Applicant submits that the sums demanded of the Respondent are payable because (a) the costs in respect of which the demands have been made were incurred on items of expenditure that fall within the service charge provisions of the Lease and (b) the Respondents do not dispute the ESCs demanded each year, save for management charges, which the Applicant submits are reasonable in amount. Ms Molnar, for her part, as the Applicant submits, does not dispute the ESC demands save for the management fees each year, or the levy of 1 April 2014 for £4,375.00. She does dispute the levy of 17 October 2014 of £3,785.85 and says that it should only be £630.98.

36. The first issue therefore is whether a service charge is payable by the Respondents. Clause 1 of the Lease reserves a rent of £10.50 payable annually on the 7 December each year and also reserves "by way of further or additional rent a sum equal to one quarter of the costs expenses and outgoings actually expended in connection with complying with the Lessors obligations under the provisions of clause three sub-clause (d) to (f) and (i) inclusive of this Lease including the costs properly incurred by the Lessor in respect of the maintenance of the Building (but as to the cost of keeping the staircase leading to the demised premises adequately lighted and cleansed the proportion to be found by the Lessees shall be one third) by way of Surveyors charges and charges for accountancy the amount of such costs expenses outgoings and matters to be certified by the Lessors Surveyor who shall be a member of one of the Chartered bodies of

Surveyors and such additional rent to be summarily recoverable after demand as a debt of an ascertained amount to be paid to the Lessor or his Surveyor on the day fixed for payment of rent."

37. This clause creates a number of difficulties. First it does not provide for budgeted estimated service charges to be payable in advance with a balancing debit or credit operation to be carried out at the end of the service charge year. It refers only to costs expenses and outgoings actually expended. Second the service charge period is itself unclear. The costs and expenses on which the service charge is based are to be certified by the "Lessors Surveyor" and are then payable on demand as a debt to be paid to the Lessor or his Surveyor on 7 December each year. However, the Lease does not define the period over which the relevant costs are incurred.

38. In practice the Landlord and its managing agent have decided to put in place a different regime altogether to that contained in the Lease. They have (a) adopted a service charge year of 1 April to 31 March (b) prepared a budget each year based on the previous year's costs and have sought payment in advance of quarterly charges on 1 April, 1 July, 1 October and 1 January each year. The agent has produced service charge accounts at the end of each year, which sets out the budgeted and actual sums and performs a reconciliation of the service charge account for each flat. No further demands appear to have been made in the event of a shortfall nor any repayment made in the event of a surplus.

39. Furthermore, when major works have been required from time to time the Landlord and Agent have sought to raise a "levy", in respect of which demands for payment have been sent to all leaseholders. The accounts reveal that levy funds not expended were simply held in the service charge account allocated to each leaseholder payee.

40. The accounts also reveal a reserve fund to which the following transfers were made: 2014: £5,000; 2015: £1,000. In 2015 a further transfer of £2,500 was made to a roof repair fund. The Lease makes no provision for payment of levies or transfers to a reserve fund. By 31 March 2018 capital and reserves amounted to £48,972.00. The funds had been augmented by an insurance settlement of £19,350 in 2014 in respect of storm damage (although some of this had been used to complete repairs to the turret).

41. The service charge accounts for Flat 3 reveal the sums spent to be as set out below:

Year	ESC spent £	Levy spent £	Total £			
2013/14	462.85		462.85	(part year)		
2014/15	3,271.00	187.80	3,458.80			

2015/16	1,277.20	4,795.60	6,072.80			
2016/17	1,688.00		1,688.00			
*2017/18	1,629.75		1,629.75			
	8,328.80	4,983.40	13,312.20			

* Full year.

42. The ESC demanded by the Applicant of the Respondents in 2013-14 was £2,611.50 (being one quarter of the total budget of £10,446). The service charge accounts for the year reveal that actual service charge expenditure for the Building proved to be £8,745.00. Thus Ms Molnar argues that the Respondent's "share" for that year should be one quarter of that sum, viz; £2,186.25. However, she has not argued that the claim for subsequent years should be limited to actual sums spent as opposed to the sums demanded by way of ESC. Furthermore, the claim for 2013-14 only extends to a sum of £462.85, which was clearly covered by the actual ESC expenditure of £1277.20 attributable to Flat 3 for that year.

43. Ms Molnar appears to dispute the whole management fee element of the ESC in each of the years in question, although there is a discrepancy between the sums that she has specified as such in her Schedule and the sums shown in the service charge accounts as being attributable to the management fee in respect of flat 3.

Year	Ms Molnar	ESC Budget (Flat 3)
2013-14	375.00	375.00
2014-15	594.11	475.50
2015-16	392.67	487.50
2016-17	540.78	487.50
2017-18*	474.24*	372.93*

*1 April 2017-31 December 2018

44. At the hearing the Applicant submitted that the management fee was reasonable. Mr Martin Husker and Mr Joe Goss of Hillcrest explained that their contract with the Applicant entails regular site visits once every two months or more frequently if contractors need to be engaged to deal with leaks and other disrepair. They considered that in their experience the management fee charged was reasonable for a block of this age and condition containing five flats. The Tribunal, which was not presented with any compelling evidence to the contrary, finds that the sums charged by way of management fees, bearing in mind the nature of the building and the management tasks required are reasonable.

45. It can be seen from the state of the arrears schedule provided by the Applicant that the sum demanded of the Respondents by way of

ESC and levies amount to a total of £17,019.45. Ms Molnar has paid £2,750, which leaves £14,269.45 plus the administration charge of £252 making a total of £14,521.45 being the amount of the claim.

46. However, it is also clear from the Applicant's audited accounts that sums of £13,312.20 have been expended by way of service costs in the period from 1 April 2013 to 30 March 2018. This necessarily means that the statement in paragraph 31 of the Applicant's statement of case that

> "The Applicant will say in this respect that with regards to the sums claimed from the Respondents, with the exception of the £6,552.82 levy, the sums in question have actually been incurred…."

is not supported by the accounts provided by the Applicant.

47. It follows therefore that if the only sums recoverable under the Lease by way of service charge are costs that have been expended, the Respondents' liability would be limited to that sum less the £2,750.00 that Ms Molnar has paid. That is to say the sum of £10,562.20. Furthermore, it is clear that the Lease does not provide for a reserve fund and therefore Flat 3's share of the sums transferred to reserves (i.e. £2,125.00 being one quarter of £8,500 would be irrecoverable, reducing the recoverable amount to £8,437.20.

48. Mindful of this the Applicant submits, if necessary, that even though the service charge has not been demanded in accordance with the terms of the Lease the Respondents are, by virtue of the doctrine of estoppel by convention, estopped from denying that the sums claimed are recoverable (a) because Ms Molnar has admitted that the sums claimed are payable, save for the managing agent's fees, and (b) because, according to paragraph 33 of the Applicant's statement of case

> "the parties to the lease have proceeded on a clear and unequivocal assumed state of facts or law. This assumed state (the fact that service charges could be claimed in advance) was shared by them, or made by one and acquiesced in by the other. The assumed state was communicated between the parties by conduct; the demanding of service charges in advance and payment of the said charges from time to time. The assumption was relied upon by The Applicant as the party seeking to raise the estoppel. The Applicant will suffer detriment if the Respondents are allowed to withdraw from the shared position and it would be unjust or unconscionable to allow them to do so."

49. The starting point of course is that service charges should be raised in accordance with the terms of the Lease. If the leases are not workable for whatever reason the parties are able to effect variations of the leases by agreement or make an application to the Tribunal under Part IV of the Landlord and Tenant Act 1987 for an order to vary the leases.

In the absence of such variations a party faced with an insistence by another party or parties on strict compliance with the terms of the lease is driven to rely on the doctrine of estoppel.

50. The leading authority on that doctrine is the case of *Republic of India v India Steam Ship Company Limited* [1998] AC 878 in which Lord Steyn described the principle as:

" estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, the assumption being shared by both of them all made by one and acquiesced in by the other. The effect of the estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on an assumption....it is not enough that each of the two parties acts on an assumption not communicated to the other. But..... a concluded agreement is not required for an estoppel by convention."

51. It is important to note that in the present case the Landlord is a company of which the leaseholders are all members. Its actions are directed by the members who hold meetings to discuss necessary maintenance work on the Building advised by the managing agents and then vote on action to be taken. It is in this context therefore that the Landlord and tenants have considered it prudent to adopt the regime that has been operated in practice by the Company's managing agent, if they are to raise the necessary funds for works to the Building that are required, or may be required from time to time. It is clear that the flat owners all have a vested interest in the maintenance of the Building because it has a direct bearing on the value and saleability of their flats. Works to the building have been identified as necessary from time to time but it has not proved possible to carry out all of the recommended works because the Respondents have not been able or willing to contribute to the costs.

52. Ms Molnar has not sought to argue for a strict application of the terms of the Lease. She has at all times been aware of, and indeed party to, the service charge regime operated by the Applicant and its agent, who have produced accounts and budgets each year, which demonstrate the basis on which service charges have been levied expended and paid. Indeed, subject to her challenge to the management fees, Ms Molnar has expressly accepted an obligation to make ESC payments. She has also accepted an obligation to make contributions to service charge expenditure by way of ad hoc levies, in respect of which the Applicant has consulted in accordance with section 20 of the 1985 Act. Ms Molnar does not challenge the need for the levy imposed on 17 October 2014 but has not produced any compelling evidence as to why the Respondents' contribution should be limited to £630.98. Indeed the Applicant has explained that the Respondents had contributed to the delay in completion of the works by not paying the levy. Furthermore, the contract was by agreement of all residents awarded to a company nominated by Ms Molnar outside the consultation process. Had Ms Molnar sought to rely

on the strict terms of the Lease the Tribunal would have concluded that an estoppel by convention had arisen based on the above facts. Whilst it is the law that one party may end an estoppel by convention by calling an end to the course of dealing that has not happened in this case.

53. The Tribunal therefore concludes that the sums of £14,269.45 demanded by the Applicant by way of service charges whether by way of ESC payments or by levies. The Tribunal finds that the management fees disputed by Ms Molnar are reasonable and payable as is the levy of 17 October 2014 for the reasons given above.

54. The Tribunal finds that the charge of 6 November 2014 is not payable. The Applicant says that the charge, which was charged to the managing agent, is reasonable in amount and related to legal costs incurred in respect of the Respondents' service charge arrears. It submits that the charge should be allowed. The charge is clearly not a service charge cost payable by all lessees, unlike the costs provided for by clause 3(i) of the Lease. It is an administration charge incurred in respect of one lessee. Paragraph 5(1) of the 2002 Act provides that an application may be made to the Tribunal for a determination whether an administration charge is payable and if so whether it is reasonable in amount. To be payable there must be a contractual or statutory entitlement to levy the charge. Because there is no provision in the Lease for payment of such a charge the Tribunal accordingly finds that the charge is not payable by way of administration charge.

55. The decision in this case solely relates to the claim before the Tribunal. The Applicant and its agent may wish to consider to what extent the property should continue to be managed and financed in the way that they have chosen to adopt so far or whether they should obtain variations of the relevant leases in order to achieve their objectives

RIGHTS OF APPEAL

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, that 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.

Martin Davey
Chairman of the Tribunal
17 October 2019

Annex: The Law

Landlord and Tenant Act 1985

Section 18(1) defines a "service charge" as:

"an amount payable by a tenant of a dwelling as part of or in addition to the rent:-

(c) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(d) the whole or part of which varies or may vary according to the relevant costs."

Section 19(1), provides that:

"Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

(c) only to the extent that they are reasonably incurred, and
(d) where they are incurred on the provision 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".

"Relevant costs" are defined for these purposes by **section 18(2)** of the 1985 Act as "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.