



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/21UD/LSC/2019/0099

Property : 213 Priory Road, Hastings, East Sussex
TN34 3JB

Applicant : Eloise Rene & Kevin Beaney

Representative :

Respondent : Assethold Limited

Representative :

Type of Application : Liability to pay service charges and/or
Administration Charges

Tribunal Member : Mr D Banfield FRICS

Date of Decision : 5 February 2020

DECISION

Summary of Decision

The Applicants share of the service charges are determined as follows;

• 2018/19	£550.96
• 2019/20	<u>£1,225.60</u>
• Total	<u>£1,776.56</u>

Background

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) as to whether service charges are payable and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) as to whether administration charges are payable.
2. The years and sums at issue were;
 - a. 2018/19 £575.92
 - b. 2019/20 £1,485.35
 - c. Notice of proceeding £120.00
3. The Applicants also seek an order for the limitation of the landlord's costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985 and Part 5A of Schedule 11 of the 2002 Act.
4. Following a telephone case management hearing the Tribunal made Directions on 21 November 2019 setting out a timetable for the exchange of papers between the parties and the submission of a hearing bundle to the Tribunal.
5. The Tribunal indicated that the application was to be determined on the papers **without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013** unless a party objected. No objection has been received and the determination is therefore made on the bundle received.

The Evidence

6. In accordance with the Order for disclosure the following documents have been provided;
 - A letter dated 4 March 2019 from Eagerstates requiring payment of £1,318.59 made up of actual charges for "2018/19 and a half yearly payment for estimated charges for 2019/2020.
 - A certificate of insurance from AXA for the period 15/11/18 to 30/11/19 indicating a premium of £876.93
 - An invoice from Eager Estates dated 26/2/19 for management fees for the period November to March 2019
 - A Health Safety and Fire Risk Assessment from 4site Consulting Limited
 - An insurance policy document from Lockton
 - The Management Agency Agreement between Assethold and Eagerstates Ltd dated 5th February 2019 and at a cost of £238 per unit plus VAT

The Issues

Applicants

7. In a letter to the Respondent dated 16 December 2019 the Applicants challenge the following items;
 - Notice of Proceedings – £120
 - Service charge September 2019 – March 2020 -£742.68 made up of the following full year amounts;
 - Fire Health and Safety - £300
 - There are no common parts and fire health and safety is the responsibility of the lessees.
 - Window cleaning - £180
 - Too expensive and not carried out.
 - Drainage cleaning - £150
 - Too high, Hastings Council have inspected and provided a report as to work required.
 - Repair Fund - £750
 - New roof 2 years ago, no repairs needed.

8. In a further letter dated 15 January 2020 the Applicants referred to an alternative quote received the same day from AXA for £754.21. It was further noted that the landlord's insurance certificate had expired. Alternative quotes for window cleaning and gutter cleaning were also enclosed.

Respondent

9. In a letter dated 8 January 2020 Eagerstates Ltd responded to the challenges;
 - a. Notice of Proceedings – charge dropped.
 - b. Fire Health & Safety – Required under Regulatory Reform (Fire Safety) Order 2004(sic) covering both internal and external areas.
 - c. Window Cleaning – This is an estimated amount and may be lower
 - d. Drain Clearance – An estimate only, intended to carry out work during the year and refers to both underground drainage and gutters.
 - e. Repair Fund – 1(d) of the sixth schedule to the lease permits the landlord to operate a reserve fund.

The Lease

10. The lease is of the ground and first floors of the property clause 1 of which sets out the extent of the demise including at (c) the windows of the flat including the glass and frames but excluding the paintwork.
11. The Fourth Schedule recites the Landlord's Covenants those relevant to this application being (2) (a) To keep in good repair the roofs, walls, foundations gutters drains etc. 3. To paint the exterior. 4. To keep the outside of the windows regularly cleaned and (5) to insure.
12. The Sixth Schedule defines the maintenance charge to be paid by the lessees comprising;
 - i. 1.(a) the landlord's costs of carrying out the matters referred to in the Fourth Schedule.
 - ii. (b)the fees of managing agents for the management of the building
 - iii. (c) Accountancy charges
 - iv. (d) a reserve fund to cover accruing and anticipated expenditure
13. Clause 2(a) requires payment of the estimated expenditure by two equal payments on 25 March and 29 September. 2(b) requires any balance to be paid within 7 days of service on the tenant of the Landlord's auditors certificate as to the total expended in the previous year.

The Law

14. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can construe the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable.
15. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. Section 19 (2) concerns where a service charge is payable before the relevant costs are incurred no greater amount than is reasonable is payable.

Discussion and Decision

16. The Applicants' property comprises a maisonette on raised ground and first floors in a turn of the last century terrace. Access to the property is up external front steps leading to the front door. On the lower ground floor is a flat with separate entrance from the front area reached by external steps. There are no internal communal areas.
17. The lease however provides for the landlord to carry out certain responsibilities at the lessees' expense. These include the maintenance

of the structure, the external decoration and buildings insurance. The landlord is also entitled to maintain a fund for anticipated expenditure. Payments may be demanded twice each year and are the sum of the anticipated expenditure for the forthcoming year and any difference between the sum actually spent and received by way of advance payment for the preceding year. The landlord is also entitled to recover the cost of employing an agent.

18. The application is in respect of costs actually incurred for 2018/19 and estimated costs for 2019/20.
19. An estimate of future expenditure can only be made on what was known at the time it is made and if it is later shown to be either an over or underestimate that does not in itself render it unreasonable.
20. Turning now to the individual items challenged: -

2018/19

Management Fees

21. Although referred to in the application no challenge in respect of agent's fees has been particularised. I am satisfied however that the charge made reflects the limited duties imposed upon the landlord. Insurance must be arranged and external decoration and maintenance must be organised. For these reasons I am satisfied that the amount charged in both years is reasonable.

Insurance

22. A landlord is not obliged to accept the cheapest quote for insurance as long as it is obtained "in the usual course of business" from a reputable insurer. A landlord is however expected to regularly test the market to ensure that the premiums paid are competitive. In this case the cost of insurance was £926.83 of which the premium was £876.93 the remainder being the brokers fee. The alternative quotation obtained by the Applicants from AXA was £754.21. Whilst clearly there is a difference between the premiums I do not consider it sufficiently large to render the premium obtained by the landlord unreasonable. I do not however consider that the brokers fee is recoverable and is therefore disallowed.
23. The total service charge for **2018/19** is determined to be;

a. Insurance	£876.93
b. Management fee	<u>£225.00</u>
Total	<u>£1,101.93</u>

Applicants' share at 50% £550.96

2019/20

Management Fees

24. Allowed in full £ £571.20

Insurance

25. Given that I am determining whether an estimated cost was reasonable or not I consider that a modest increase on the previous year's premium should be permitted which I determine at £1,000.
26. Whilst not binding on any future Tribunal I would comment that I would expect the Respondent to take advantage of the lower quotations that are available as demonstrated by the applicants.

Fire Safety Report

27. I accept that the property has no common parts and is to all appearances similar to a single terraced dwelling. However, The Regulatory Reform (Fire Safety) Order 2015 makes a distinction between houses and flats whether or not they have common parts. The Order places a burden on landlords to satisfy themselves as to a properties fire safety and as such it is reasonable for a report to be obtained.
28. Whilst I am determining a budget figure the Respondent has disclosed the cost and content of the report. From this I am prepared to allow the full cost of £300 but would comment that given the limited responsibilities of the respondent and the issues referred to in the report I would not expect such expenditure to be incurred in future years.

Window and drainage cleaning

29. The Respondent is responsible under the lease for cleaning the exterior of the windows and maintaining the drains. As such it is reasonable for sums to be allowed when preparing the budget. The sums of £180 and £150 are therefore allowed in full.

Repair Fund

30. When including a budgeted sum for anticipated repairs some idea as to the likely needs should be provided. In this case, given the limited repairing obligations of the Respondent, the presence of a new roof and in the absence of any information as to how the sum has been determined I consider that £750 is excessive and reduce it to £250.00
31. The total service charge budget for 2019/20 is determined to be;

a. Management fees	£571.20
b. Insurance	£1,000.00
c. Fire Safety Report	£300.00
d. Window cleaning	£180.00
e. Drainage Cleaning	£150.00
f. Repair fund	<u>£250.00</u>
Total	<u>£2,451.20</u>

Applicants' share at 50% £1,225.60

32. In summary therefore, the Tribunal determines that the following sums are payable as service charges;

• 2018/19	£550.96
• 2019/20	<u>£1,225.60</u>
• Total	<u>£1,776.56</u>

Section 20C application

33. Neither party has addressed the application to make an order under section 20C of the Landlord and Tenant Act 1985. Should the applicants wish to pursue their application they must send to the Tribunal and to the Respondent submissions as to their grounds by 19 February 2020.

34. Any reply by the Respondent should be sent to the Applicant with a copy to the Tribunal by 4 March 2020.

35. The tribunal will make its determination by 18 March 2020.

D Banfield FRICS
5 February 2020

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.