FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BK/LSC/2020/0147**
HMCTS code (paper, video, audio)	**:**	**V: CVP Video Remote**
Property	**:**	**Flat 62 William Court, 6 Hall Road, London NW8 9PB**
Applicant	**:**	**Avoncrest Investments Limited**
Representative	**:**	**Ms Cassandra Zanelli Solicitor, Property Management Legal Services Limited**
Respondent	**:**	**Mr Jagdish Lakhiani**
Representative	**:**	**In person**
Type of application	**:**	**Liability to pay service charges**
Tribunal members	**:**	**Judge N Hawkes** **Mr P Roberts DipArch RIBA**
Dates of remote hearing	**:**	**5 and 6 May 2021**
Date of decision	**:**	**9 June 2021**

DECISION

Covid-19 pandemic: VIDEO HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined at a remote hearing. The documents that we were referred to, the contents of which we have noted, are in a bundle of 1610 pages plus evidence

relating to porterage costs and colour photographs which were sent by email during the course of the hearing. The order made is described below.

Decision of the Tribunal

The service charge costs relating to the CCTV and entry phone system fall to be reduced by 15% but otherwise the actual and estimated service charges which form the subject matter of this application are reasonable and payable.

The application

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. A determination is sought in respect of the actual service charges for the years 2014/15 to 2018/19 inclusive, and in respect of the estimated service charges for the years 2019/20 and 2020/21.

2. The Respondent, Mr Jagdish Lakhiani, is the long lessee of Flat 62 at William Court, 6 Hall Road, London NW8 9PB ("William Court") and the Applicant is his landlord. The Tribunal was informed that William Court was built in 1938/9 as a residential development. There are currently 83 flats at William Court.

3. Directions were given on 18 August 2020 and on 20 October 2020, leading up to a final hearing which was initially listed to take place on 11 and 12 January 2021. On 11 January 2021, the hearing was adjourned due to technical difficulties experienced by the parties in serving and accessing the digital hearing bundles.

4. The application was relisted for hearing on 5 and 6 May 2021. The categories of service charge which remain in dispute are set out in a Scott Schedule and comprise service charge costs relating to the CCTV and entry phone system serving the Property, staff costs, and the charges in respect of general repairs and maintenance.

The hearing

5. A video hearing took place by CVP on 5 and 6 May 2020. The Applicant was represented by Ms Cassandra Zanelli, a solicitor, and the Respondent appeared in person.

6. Due to technical issues, the Respondent lost his video connection from time to time during the course of the hearing. When this occurred, the hearing was paused, the Respondent was asked to clarify what he had last heard, and any words which the Respondent may not have heard were repeated.

7. The Tribunal heard oral evidence of fact from:

   (i) Mr Darren Wootten, the Building Manager employed by the Applicant to manage William Court.

   (ii) Mr Wayne Rodrigues, a Senior Property Manager employed by Residential Facilities Management Limited who are the Applicant's managing agents.

8. The Tribunal also heard from the Respondent and considered a witness statement prepared by the Respondent which primarily performed the function of a Statement of Case.

9. The jurisdiction of the Tribunal in determining this application under section 27A of the 1985 Act is limited to considering the reasonableness and/or payability of the service charges referred to in the Applicant's application. The Respondent has raised additional matters in his witness statement and he questioned how these could be dealt with. It was explained that the Tribunal cannot advise the Respondent but he was informed that the Tribunal office holds a list of organisations which may be able to provide free, independent legal advice.

10. On 6 May 2021, the Tribunal made an order pursuant to rule 18(4) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, by consent, in the following terms:

    Save for the purposes of obtaining legal advice, the Respondent is prohibited from publishing, communicating, disclosing or copying or causing to be published, communicated or otherwise disclosed or copied all documentation adduced by the Applicant in the present proceedings relating to porterage, porters' salaries and all associated and ancillary porterage costs ("the Porterage Costs"). For the avoidance of doubt, such prohibition includes verbal and written disclosure of the Porterage Costs by the Respondent.

11. After this order was made, documents relating to the porterage costs were disclosed by the Applicant by email.

12. Due to the coronavirus pandemic, the Tribunal was unable to carry out an inspection of the Property. Accordingly, the Tribunal requested and received colour photographs of the Property.

The Tribunal's determinations

The law

13. The Tribunal asked Ms Zanelli to refer the Tribunal and the Respondent to the relevant clauses of the lease. The Respondent did not at the hearing challenge his liability under the terms of the lease to pay the disputed charges but rather he challenged their reasonableness and asserted that the sums claimed are excessive.

14. In the Scott Schedule, the Respondent challenged the payability of the cost of a resident porter under the terms of the lease. The Applicant relies upon paragraphs 6 and 9 of Part II to the Fourth Schedule of the Respondent's lease which provide (emphasis supplied):

"Expenses incurred by the Lessor to be re-imbursed by the Maintenance Contribution

....

*6. employment of full time or part time staff (**whether resident or not**) paying all outgoings taxes and other expenses incurred in relation thereto ...*

...

*9. repairing maintaining and decorating **any flat in the Building occupied by any resident staff** and to pay any rent rates taxes or other outgoings in respect thereof."*

15. As regards the reasonableness of the sums claimed, section 19 of the 1985 Act provides:

19.— Limitation of service charges: reasonableness.

(1) 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

16. In *Waaler v Hounslow LBC* [2017] EWCA Civ 45, the Court of Appeal said in the context of section 19(1)(a) of the 1985 Act that "reasonableness" has to be determined by reference to an objective standard. The landlord's decision-making process is a relevant factor but this must then be tested against the outcome of that decision. The fact that the cost of the relevant works is to be borne by the lessees is part of the context when deciding whether the costs have been reasonably incurred. Where a landlord has chosen a course of action which leads to a reasonable outcome, the costs of pursuing that course of action will have been reasonably incurred even if there was a cheaper outcome which would also have been reasonable.

17. Ms Zanelli referred the Tribunal to *Regent Management Limited v Jones* [2010] UKUT 369 (LC), *Forcelux v Sweetman* [2001] 2 EGLR 173, *Veena SA v Cheong* [2003] EGLR 175 and *Wandsworth LBC v Griffin* [2000] 2 EGLR 105 (LT) and we have considered these authorities.

18. We accept Ms Zanelli's submission that there is a two stage test:

    (i) Was the decision-making process reasonable?

    (ii) Is the sum to be charged reasonable in the light of market evidence?

19. We also accept that the Tribunal should not impose its own decision if the course chosen by the landlord leads to a reasonable outcome. The test to be applied in cases concerning reasonableness is whether the charge that was made was reasonable, not whether there are other possible ways of charging that might have been thought more reasonable.

20. The Respondent was given time to read the authorities and he was invited to make submissions on the law but he preferred not to make any legal submissions.

The CCTV and entry phone system

21. The total costs charged to the William Court service charge account for the CCTV and entry phone/door release system are £17,509 in 2014, £16,983 in 2015, £17,304 in 2016, £17,481 in 2017, £20,163 in 2018, £18,091 in 2019, and £18,633 in 2020. The Applicant has explained that the increase in 2018 is the result of the purchase of a fire alarm system to provide early heat detection via the camera system.

22. In oral evidence, Mr Rodriguez accepted (as we consider he was bound to do) that these costs are higher than the current market norm. He explained that this is because these sums are payable under a 20-year contract which was entered into in 2002, before the Applicant acquired its interest in William Court.

23. Mr Rodriguez stated that, although it would not be classed as a reasonable contract by today's standards, a contract of this type was standard in the industry in 2002. He gave evidence that that the Applicant has considered terminating the contact. However, the sum payable under the contract for early termination is five times the annual rent and the contract comes to an end in 2022 so the Applicant has decided to wait until the contract expires. We note that five times the 2020 rent would amount to approximately £100,000.

24. The Respondent disputed the reasonableness of these service charge costs and asserted that a similar system could have been purchased for far less than has been paid during the lifetime of the contract. He did not, however, produce any quotations demonstrating this. The Respondent questioned why the leaseholders had not been consulted before the contract was entered into in 2002 and was informed the contract was entered into prior to the statutory consultation requirements coming into force.

25. Mr Rodriguez has worked as a Property Manager for approaching 17 years but he was not employed in this field at the time when the CCTV and entry phone contract was entered into. Further, his statement that to enter into a 20-year contract on such onerous terms was the industry standard at that time is unsupported by any specific evidence. The Tribunal was not presented with any evidence showing that steps were taken to test the market in 2002 and or with evidence concerning the range of contracts which were being offered in 2002 by different providers.

26. Mr Rodriguez stated that, although he was not working in the industry when the contract was entered into, he was aware of the existence of such contracts until about 2014. He then clarified that from 2000 to 2010 rental contracts were beginning to be phased out but that similar contracts which had been entered into at an earlier date remained in existence 2014. He did not, however, give any evidence concerning the length, level of annual rent, or the sum payable on early termination in the case of any other contract for a CCTV and entry phone system. We

were asked by the Applicant to apply our knowledge and experience as an expert Tribunal.

27. If it was the market norm in 2002 to enter into 20-year contracts with a rent at around the level charged in the present case and with similarly onerous termination clauses, we would expect most blocks of this type with CCTV and entry phone systems to currently be subject to such a contract. In our general experience this is not the case.

28. However, we primarily place weight not on our own general knowledge and experience as an expert Tribunal but on the absence of any specific evidence concerning the alternative options which were available in the market in 2002 or concerning the decision-making process when the contract was entered into. Having considered the evidence presented at the hearing, we are not satisfied on the balance of probabilities that the decision to enter into the CCTV and entry phone system rental contract in 2002 was reasonable and we are not satisfied that the sum charged is reasonable.

29. It is not in dispute that the relevant costs are above the current market norm but there was very limited evidence before the Tribunal concerning the extent to which the costs of the CCTV and entry phone system fall outside the reasonable range of charges.

30. Mr Rodriguez stated that it would currently cost approximately £10,000 to purchase the CCTV system and at least £30,000 to purchase the entry phone system. In addition to this, there would be ongoing maintenance costs and the cost of replacing parts. Neither party was able to give evidence concerning how frequently a modern system would require replacement. Mr Rodriguez also stated that the annual rental charges may be 50% higher than the market norm. However, we do not think we can place much weight on this statement because he went on to say that this is no more than a guess because modern rental contracts of this type do not actually exist.

31. Doing our best on the extremely limited evidence available, and noting that the Respondent has not put forward any market evidence to justify a greater reduction, we find that the CCTV and entry phone system costs fall to be reduced by 15%. This is a very straightforward calculation which should not cause any difficulty. However, in the unlikely event that the final figures cannot be agreed, an application may be made to the Tribunal for a determination setting out the reason for the disagreement. Any such application must be made within 28 days of the date of this decision.

The staff costs

32. The Tribunal heard evidence that William Court has the benefit of a cleaner and a team of porters. The porters are on site 24 hours a day, 7 days a week. The staff are managed by Mr Wootten, the Building Manager, who resides in the block. We accept that the cost of a resident Building Manager is payable Under Part II to the Fourth Schedule of the lease and that the two bedroom flat which he currently occupies is an appropriate size to accommodate Mr Wootten, his wife and his daughter.

33. The weekend shift work is undertaken by the porters who usually work Monday to Friday, on a rota basis. Mr Rodriguez explained that it is difficult to find further permanent members of staff to work the weekend shifts because people prefer not to work solely at the weekend. The weekend shift work has been described by the Applicant as "overtime" when in fact it falls within the standard 7 day a week working pattern.

34. Mr Rodriguez gave evidence that there are seven shift patterns and each person is entitled to 20 days of paid holiday so that there are 140 days throughout year to be covered plus 8 statutory bank holidays. There are also absences due to sickness and periods of unpaid leave and sometimes there is "overtime" in the sense that additional working hours over and above the regular shift patterns are required. Mr Wootten gave evidence that he sometimes works outside his contracted hours when emergencies occur which the duty porters are unable to deal with, for example, concerning boiler leaks or the loss of heating and hot water. If the permanent members of staff are unavailable to work overtime, agency staff are employed to cover holidays and other absences.

35. Mr Rodriguez gave evidence that William Court is a luxury block of flats situated in a prestigious location and Ms Zanelli placed reliance upon the nature and location of William Court as justifying a 24 hour a day, 7 day a week porter service. She also pointed out that the Respondent does not seek to argue that the 24 hour a day, 7 day a week service should be reduced or that it is of a poor standard but rather he contends that the costs are too high and are not "value for money".

36. The Respondent was complimentary about the standard of service provided by Mr Wootten but contended that his salary is too high. The Respondent referred the Tribunal to a job advertisement for a resident porter but we accept Ms Zanelli's submission that the job specification for a resident porter is not comparable to Mr Wootten's role. By contrast with a resident porter, Mr Wootten is a Building Manager with 23 years' experience and with responsibility for managing a team of staff as well as for the instruction, oversight and management of contractors.

37. The Respondent has not produced like for like market evidence which demonstrates that the staff costs, which the Applicant contends are reasonable, fall outside a reasonable range having regard to the level of service provided. We accept the evidence of Mr Rodriquez and Mr Wootten concerning the various shift patterns, the agency cover, and their explanation for the number of hours worked. In all the circumstances, we are not satisfied on the evidence before us that the staff costs fall outside the reasonable range of charges.

General repairs and maintenance

38. The Applicant has disclosed numerous invoices which it relies upon as evidencing the cost of general repairs and maintenance. The Respondent challenged the reasonableness of the gardening costs but his challenge was in general terms. He did not provide any comparative evidence demonstrating that the gardening charges fall outside the reasonable range and we are not satisfied on the evidence before us that these costs are unreasonable.

Conclusion

39. We find that the charges in respect of the CCTV and entry phone system fall to be reduced by 15% but that the other service charge costs which form the subject matter of this application are reasonable and payable.

Name: Judge N Hawkes **Date:** 9 June 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).