



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

**Case Reference** : **LON/00AT/LSC/2014/0228**

**Property** : **Flat, 4 18 Maswell Park Road,  
Hounslow TW3 2DW**

**Applicant** : **Mr Zvi Benenviste**

**Representative** : **Circle Residential Management  
Limited**

**Respondent** : **Mr Nilesh Ruparelia**

**Representative** : **None**

**Type of Application** : **Section 27A(3) Landlord and  
Tenant Act 1985 – determination of  
service charges payable**

**Tribunal Members** : **Judge John Hewitt  
Mr Neil Martindale FRICS**

**Date and venue of  
Determination** : **6 August 2014  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **7 August 2014**

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**DECISION**

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## **Decisions of the Tribunal**

1. The Tribunal determines that:
  - 1.1 The budget for the period ended 24 December 2014 in the total sum of £7,621 was not reasonable in amount;
  - 1.2 A budget for that period in the sum of £4,934 would be reasonable in amount;
  - 1.3 The amount of the a reasonable sum to be paid by the respondent to the applicant in advance and pursuant to clause 2(5)(f) of the lease shall not exceed £1,233.50, payable by way of four instalments not exceeding £308.38 each;
  - 1.4 The said sums not exceeding £308.38 each shall be payable by the respondent to the applicant's managing agents, Circle Residential Management Limited, upon a compliant demand for those sums being given to the respondent, with the fourth instalment being payable not earlier than 29 September 2014;
  - 1.5 There be no order as to costs payable pursuant to Rule 13; and
  - 1.6 There be no order that the respondent reimburse the applicant with the amount of any fees paid to the tribunal in connection with these proceedings.
  
2. The reasons for our decisions are set out below.

**NB** Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing.

## **Procedural background**

3. The tribunal received an application from the applicant pursuant to section 27A(3) of the Landlord and Tenant Act 1985. It is dated 15 April 2014 [149]. The applicant sought a declaration that the respondent was obliged to make an interim advance payment in the sum of £1,905.25 based on a budget in the total sum of £7,621.00. Originally the applicant also sought an order for costs pursuant to Rule 13 but that application was later withdrawn. The applicant also sought an order for reimbursement of fees but did not file any submissions to support such an application, and may also have withdrawn that application.
  
4. On 22 May 2014 directions were given [163]. The directions sought written representations from the parties and the parties were notified of the intention of the tribunal to determine the application on the papers to be filed and served pursuant to the directions and without an oral hearing pursuant to Rule 31.
  
5. The tribunal has not received a request from either party for an oral hearing.
  
6. On 14 July 2014 the tribunal received a bundle of documents from the applicant, page numbered [1-169].
  
7. The members of the tribunal met on 6 August 2014 to determine the matters raised in the application.

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### The property

8. The property is stated to be a flat within a three storey purpose built block of 4 self-contained flats constructed circa 1960.

### The lease

9. The lease of the property is dated 10 December 1980 [13]. The lease granted a term of 99 years from 24 June 1975 at a ground rent of £30 pa rising to £150 pa during the term.
10. On 25 March 1999 the respondent and Dawn Ruparella were registered at Land Registry as the proprietors of the lease [10].
11. Covenants on the part of the tenant are set out in clause 2 [14]. Material for present purposes is clause 2(5) which is the following terms:

*“(5) To pay by way of further yearly rent a due proportion (to be determined conclusively by the Landlord’s Surveyor) of the costs and expenses incurred by the Landlord in:*

- (a) [keeping the structure in repair and properly decorated]*
- (b) [insuring the building]*
- (c) [decorating, cleaning and lighting the forecourt and common parts]*
- (d) [landscape works]*
- (e) [such other acts or matters as may be in the landlord’s discretion]*
- (f) Otherwise complying with the covenants on the part of the Landlord herein mentioned and contained or as may from time to time be implied SUCH PROPORTION to be paid on demand and in default to be recoverable by the Landlord as rent in arrear PROVIDED ALWAYS that the Landlord may from time to time demand (and the Tenant will thereupon pay to the Landlord) such as the Landlord may reasonably require in advance on account of such proportion of the said costs fees and expenses hereby covenanted to be paid by the Tenant”*

12. No evidence was supplied as to the amount of the due proportion payable by the respondent as determined by the applicant’s surveyor but we infer it was 25% because that is the proportion ascribed to the respondent – see the document at [34]. Paragraph 9 of the applicant’s statement of case states that the landlord has ascribed 25%, but the lease specifies it is to be determined not by the landlord but by the landlord’s surveyor. The respondent has not filed a statement of case contesting that proportion.
13. The service charge regime is crude and makes no express provision for the preparation of an annual budget, for payments on account to be made on specified days, for year-end accounts certifying the actual expenditure and the balancing debits/credits as the case may be.

14. The service charge is described as a 'yearly rent'. The lease obliges the tenant to pay sums on account 'that the Landlord may from time to time demand'. The landlord appears to have adopted the annual period 25 December to 24 December and has accounted on that basis. Paragraph 10 of the applicant's statement of case states that in the absence of express dates for the payment on the advance sums the applicant has adopted the practice of demanding them on the usual quarter days and that, in the past, the tenants have paid on that basis. The respondent has not filed a statement of case contesting that arrangement. A demand for the four quarterly advance payments addressed to the respondent is at [69]. It will be noted that the applicant required instalments to be paid on 25 December 2013, and 25 March, 24 June and 29 September 2014.

### The law

15. Section 19 of the 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. We are concerned with section 19(2) and the limitation on the sum payable in advance is: "no greater amount than is reasonable is so payable".
17. We accept the applicant's submissions that the test is to be applied at the time when the budget is set and based on the information available to the landlord at that time and the landlord's proposed strategy for the forthcoming year.
18. We also accept that whilst we have to consider the overall budget it is necessary to have some regard to the constituent items that make up the overall budget.
19. We consider the correct approach is look at historic costs and make appropriate adjustments as may be necessary to reflect inflation or known cost increases or changes to VAT rates and then to consider any proposed changes to the delivery of the services which may have an impact on cost and finally to consider the landlord's proposed strategy for the coming year, particular works or projects which are to be undertaken and the costs implications of them.

## **The budget for 2014**

20. In addition to the budget for 2014 we were provided with certified accounts for each of the years 2009, 2010, 2011 and 2012. We were not provided with the budget for 2013 or given any indication of the actual expenditure for 2013.
21. We have summarised the information provided on Appendix 1 to this decision. In respect of some items we find that the sums inserted in the budget were greater than was reasonable, largely because there was little or no evidence upon which we could rely with confidence presented to us.
22. We have concluded that a budget in excess of £3,506 for 2014 would be greater than is reasonable. The final column of Appendix 1 shows how we have arrived at this figure. We comment on some specific items we have adjusted as follows:
23. **Insurance**  
Historically this cost was below £700 per year. There was no evidence before us to support a substantial increase of just under 50% to £1,000. We find that no greater sum than £750 is reasonable for the budget. Evidently the insurance would have been paid in January 2014. We have not been told how much that was. The papers include at [75] a notification dated 16 April 2013 that a three yearly market test would be undertaken. The outcome of that is a report dated 6 June 2013 [78] and to remain with Aviva but gives no clues as to the amounts of premium. There is no information or evidence provided by the applicant as to the information available to the applicant on 11 November 2013 when the budget was set as to amount of premium likely to be payable in January 2014 when the policy is due for renewal. As the applicant accepts in paragraph 3.5 of its statement of case, we are not concerned at this stage with what the actual cost turns out to be or the reasonableness of the actual cost.
24. **Electricity**  
Evidently there is modest lighting to the internal common parts and two light fittings on the exterior of the building. The utility bills have historically been not more than £116, and usually below £100. We can see no evidence to support the budget figure of £1,576.
25. We have seen in the papers that in May 2013 the applicant gave a stage 1 consultation notice in respect of proposed electrical maintenance works [81]. At [88] is a stage 2 notice which states that the estimates received were in the sums of £1,050 and £861.60. At [97] is a notice stating the intention of the landlord to instruct a contractor to undertake the work. There is nothing in the file to indicate that the works were not carried out in 2013 or that the landlord proposed to defer the project to 2014. In any event if electrical works were to be undertaken the appropriate budget heading would be General repairs and maintenance and not Electricity.

26. We have therefore adjusted this budget item to reflect a reasonable sum for the cost of electricity.
27. **Legal and professional fees**  
Historically the accounts provide an expense heading of Legal and professional fees. That heading is not employed on the budget but a heading of Surveyor's fees and expenses. Surveyors are professionals and we assume that the budget item of £300 was intended to fall under this head.
28. No information or evidence has been provided to support the budget figure. We find that no greater sum than £nil is reasonable.
29. **Health and Safety**  
We accept that from time to time, but not every year it is advisable to have health and safety inspections carried out. We do not know what inspections were made in 2013 or what costs if any were incurred in that service charge year.
30. Doing the best we can with the limited information provided [33] it would appear that the sum of £911 is made up as £216 for a Re-inspection (CMR) and £695 for proposed works. We do not know what the proposed works refer to and there is no evidence before us of an intention on the part of the applicant to carry out those works. Even if works are planned to be carried the cost would fall within the expense head of Repairs and maintenance. It is asserted that the works were carried in 2014 and the invoice dated 27.05.14 is at [58]. That may or may not be right but this item of works properly falls under the budget heading of Repairs and maintenance.
31. We have therefore adjusted this item to £250 on that basis that no greater amount would be reasonable for Health and safety expenditure.
32. **Accountancy**  
We have not adjusted this item because it is modest in amount and lower than the historic cost. However the parties may wish to consider whether it is reasonable to incur such a cost at all. The lease does not require annual accounts, let alone accounts certified or audited by accountants. There is no statutory obligation for accounts to be signed off by an accountant. The service charge expenditure here is modest and straightforward. A competent managing agent must keep accurate accounts and will easily be able to produce a year end statement.
33. **Cleaning**  
It appears that historically cleaning has rarely been undertaken. No information has been provided as to what cost, if any, was incurred in 2013. There appears to have been a step change at some stage during 2013 and a cleaner engaged to carry out a clean twice per month at a cost of £60 + VAT per visit. Some invoices have been included to support that arrangement.

34. Accordingly we are minded to accept the amount of £1,728 as being reasonable for the purposes of the budget. In doing so, we make plain that we do not determine that that arrangement or the estimated cost is reasonably incurred or is reasonable in amount. These matters are open to challenge by the lessees later when the 2014 accounts have been issued to them. They be the subject of an application pursuant to section 27A by either party.
35. **Fees and costs**  
Rule 13(1) provides that a tribunal may make an order for cost if, but only if, a person has acted unreasonably in bringing, defending or conducting proceedings.  
Rule 13(2) provides that a tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party.
36. The application form [158] included a request by the applicant for the tribunal to decide: "*A determination on costs and reimbursement of fees under Rule 13.*"
37. In paragraph 18 of the applicant's subsequent statement of case [7] it was stated: "*We do not wish to make a costs application under Rule 13 at this moment of time.*" We have therefore determined that there be no orders as to costs or reimbursement of fees.

Judge John Hewitt  
7 August 2014



Expense	Actual 2009	Actual 2010	Actual 2011	Actual 2012	2013 Budget 2014		
					No information	Applicant	Tribunal
General repairs and maintenance	£ 18.00	£ 1,451.00	£ 742.00	£ 1,337.00		£ 1,200.00	£ 1,200.00
Graden maintenance	£ 213.00	£ 235.00	£ 24.00	£ 300.00		£ -	£ -
Insurance	£ 633.00	£ 657.00	£ 659.00	£ 691.00		£ 1,000.00	£ 750.00
Electricity	£ 78.00	£ 82.00	£ 116.00	£ 63.00		£ 1,576.00	£ 100.00
Managing agents fees	£ 673.00	£ 917.00	£ 972.00	£ 1,200.00		£ 720.00	£ 720.00
Legal and professional fees	£ -	£ 150.00	£ 72.00	£ 167.00		£ 300.00	£ -
Health & Safety	£ -	£ 464.00	£ -	£ -		£ 911.00	£ 250.00
Asbestos survey	£ -	£ 605.00	£ -	£ -		£ -	£ -
Accountancy	£ 420.00	£ 420.00	£ 375.00	£ 375.00		£ 186.00	£ 186.00
Cleaning	£ -	£ -	£ 360.00	£ -		£ 1,728.00	£ 1,728.00
Interest receivable	£ -	-£ 25.00	-£ 26.00	-£ 31.00		£ -	£ -
Other income	£ -	£ -	£ -	-£ 239.00		£ -	£ -
<b>Totals</b>	<b>£ 2,035.00</b>	<b>£ 4,956.00</b>	<b>£ 3,294.00</b>	<b>£ 3,863.00</b>		<b>£ 7,621.00</b>	<b>£ 4,934.00</b>