



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

**Case Reference** : **MAN/00CA/LSC/2019/0106**

**Property** : **Flat 1, Park View, 10/12 Balliol Road, Bootle,  
L20 3AB**

**Applicant** : **William Becker and Sons Ltd.**

**Respondent** : **Paul Clappison**

**Type of  
Application** : **S.27A of The Landlord and Tenant Act 1985 –  
application for a determination of liability to  
pay and reasonableness of service charges**

**Tribunal Member** : **Judge P Forster  
Mr P Mountain**

**Date of  
Determination** : **29 June 2020**

**Date of Decision** : **10 July 2020**

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**DECISION**

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## Decision

1. The respondent is liable to pay the applicant the following amounts: £1,047.50 in respect of 2017/18, and £1,202.52 in respect of 2018/19. Payment was due within 21 days after receipt by the respondent of the accountant's certificate each year.

## Introduction

2. This an application under s.27A of the Landlord and Tenant Act 1985 ("the Act") to determine whether a service charge is payable and if it is, the reasonableness of the charges made. The application is in respect of the service charge years 2017/18 and 2018/19.
3. The applicant, William Becker and Sons Ltd., is the lessor of Flat 1, Park View, 10/12 Balliol Road, Bootle, L20 3AB ("the property"). The respondent, Paul Clappison, as lessee, holds the property under a lease dated 24 January 1992 ("the lease") for a term of 200 years from 1 October 1991.
4. The property is a ground floor, two bedroom flat in a purpose built block of six flats.
5. The tribunal issued directions on 22 January 2020. It considered that it was appropriate for the application to be determined on the papers without holding a hearing. If either of the parties wanted to attend a hearing, they were required to inform the tribunal in writing within 28 days. Neither party requested a hearing and therefore the case is decided on the papers alone. The respondent has not responded to the proceedings.

## The applicant's case

6. The applicant's case is set out in its statement of case. This is supported by copies of various documents.
7. The lease was made between the applicant as lessor and David Hillen as lessee. A license to assign the lease to the respondent was granted on 19 July 2003.
8. The applicant relies on clause 2(4)(i) of the lease which provides that service charges are payable to the lessor by the lessee. The service charges are all costs incurred as detailed in the Fourth Schedule. An initial deposit of £100.00 is held at the commencement of each financial year and following the preparation of the accounts a balancing charge is applied at the end of the year in accordance with clause 2(4)(ii).

9. In the early years of the lease the deposit of £100.00 was sufficient to meet the annual costs, but it is now inadequate. By agreement between the applicant and the leaseholders in the block, service charges are now set from an issued budget which is based on historical costs together with other known and anticipated expenditure for the next period. The budget is prepared in advance of the financial year. Each flat's proportion of the service charge is calculated as 1/6<sup>th</sup> of the whole, in accordance with clause 2(4)(i) of the lease. All leaseholders are issued with a service charge request in advance of the financial year and interim statements are provided quarterly. The budgeted service charges are either paid monthly on the 1<sup>st</sup> of each month or quarterly on 1<sup>st</sup> of October, January, April and July. The respondent has made monthly payments but these have been below the budgeted level set prior to the commencement of the relevant financial year.
10. The service charge accounts are prepared by the applicant's accountant at the end of each financial year and individual leaseholder certificates are issued confirming the balancing charge.
11. The respondent's financial statement for the year ending 30 September 2018 shows a balance brought forward from the previous year of £835.00. The budget service charge for that period was set at £5,904.00 and the respondent's share amounted to £984.00 to be paid at the rate of £82.00 per month. The respondent paid a total of £1,010.00 leaving a balance of £809.50.
12. The respondent's financial statement for the year ending 30 September 2019 shows a balance brought forward from the previous year of £825.50 (this is slightly more than shown on the 2018 statement). The budget service charge for that period was set at £6,616.00 and the respondent's share amounted to £1,102.67 to be paid at the rate of £92.00 per month. The respondent paid a total of £1,080.00 leaving a balance of £849.50.

#### The Law

13. The relevant law is set out in the annex to this decision.

#### The Decision

14. The application is to determine the service charges payable by the respondent for the years 2017/18 and 2018/19. The respondent has not challenged the sums claimed by the applicant. He has not responded to the proceedings.

15. The obvious purpose of the application is to enable the applicant to take forfeiture proceedings against the respondent for non-payment of the service charges. Under s.82 of The Housing Act 1996, a landlord is not able to forfeit the lease for non-payment unless the amount is agreed or admitted by the leaseholder or has been determined by a court or tribunal.
16. The applicant and respondent are parties to the lease. Under clause 2(4)(i) of the lease, the lessee covenants to contribute and pay one sixth of the total amount of the costs expenses and outgoings actually incurred by the lessor in respect of the works matters and things specified in the Fourth Schedule, referred to as “the service charge”.
17. Clause 2(4)(ii) sets out how and when the contribution to the service charge is to be paid. A deposit of £100.00 is to be held in a service account to the lessee’s credit. The lessor is at liberty from time to time to appropriate from the service account such sums as needed to satisfy the service charge. The lessor’s accountant is to provide the lessee with a certificate within forty two days from 1 October in each year certifying the service charge payable by the lessee in the respect of the previous year and the balance standing to the credit or debit of the lessee. The amount payable by the lessee, the “balancing charge”, is payable to the lessor within 21 days after receipt of the certificate.
18. Any agreement made between the applicant and the leaseholders, as described in the applicant’s statement of case, about when and how the service charge is payable, is outside the terms of the lease.
19. The process described in the statement of case for setting the annual amount of the service charge payable by the lessee differs from the provisions of the lease. Whereas the applicant sets the service charge by reference to an issued budget based on past expenditure and anticipated future costs, and payment is to be made in advance of the expenses being incurred, the lease provides for payment by the lessee in arrears.
20. The respondent has not raised any issues about the amounts claimed by the applicant. He has not disputed his liability to pay, the need to carry out the works, the standard of the works or the costs of the works.
21. The respondent has not challenged the form of the demand for payment of the service charges. The tribunal notes that under s.153 of The Commonhold and Leasehold Reform Act 2002, “a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges”. Any service charge demand must include information prescribed by legislation.

22. The tribunal is an expert tribunal with knowledge and experience of leasehold properties of this type and the range of service charges arising from the supply of services similar to those specified in the lease. The tribunal finds that the service charges claimed are payable and reasonable. In respect of 2017/18, the respondent is liable to pay the applicant the sum of £1,047.50, and in respect of 2018/19, the amount payable is £1,202.52. Under the terms of the lease, payment was due within 21 days of receipt by the respondent of the accountant's certificate.

**Dated: 29 June 2020**

**Judge P Forster**

### RIGHT OF APPEAL

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.

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.

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.

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.

### ANNEX

S.18 of the Act defines “service charges” and “relevant costs”:

- (1) In the following provisions of this Act “service charge” means 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.
- (2) The relevant costs are 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.
- (3) For this purpose—
- (a) “costs” includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

S.19 of the 1985 Act deals with limitation of service charges:

- (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.

S.27A of the 1985 Act deals with the liability to pay service charges:

- (1) An application may be made to a leasehold valuation 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,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

S.18 of the Act defines “service charges” and “relevant costs”:

- (1) In the following provisions of this Act “service charge” means 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.
- (2) The relevant costs are 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.
- (3) For this purpose—
  - (a) “costs” includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.