



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

**Case Reference** : CHI/00MW/LIS/2021/0050

**Property** : Flat 4, 46 Fitzroy Street, Sandown, Isle of Wight PO36 8HW

**Applicant** : Paul Novell

**Representative** : Edward Younghusband

**Respondent** : Edmund Nilsen

**Representative** :

**Type of Application** : Liability to pay and reasonableness of service charges- s27A Landlord and Tenant Act 1985

**Tribunal Member(s)** : D Banfield FRICS (Chairman)  
Judge Whitney

**Date of Decision** : 16 January 2023

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**DECISION**

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The Tribunal determines that the following sums are both reasonable and payable;

• 25/3/14 to 7/3/19	£3,374.67
• 27/6/19	£232.71
• 2/7/19	£907.67
• 5/3/20	£667.67
• 13/8/20	£312.00
• 25/2/21	£100.00
• 3/3/21	£687.71
• <u>7/10/21 credit</u>	<u>(£90.00)</u>
• <u>Total</u>	<u>£6,192.43</u>

### **Background**

1. The Applicant lessor sought a determination of the payability and reasonableness under the terms of the lease of service charges for 2020 and 2021 and also for the period 2013 to 2019 inclusive. The total of the service charges involved was said to be £16,880.10. The application detailed the service charges in 2020 and 2021 and also makes reference to previous proceedings before the Tribunal and involving the same parties in 2019.
2. Directions were first made on 10 December 2021 but due to apparent issues with receipt of documents and illness of the Respondent's father who initially represented him, further directions have been made.
3. The question of service charges had previously been determined by the Tribunal and in a decision dated 23 October 2019 Judge Barber determined that a total of £3,374.67 was payable once properly demanded. Judge Barber further determined that Mr Nilsen was liable for one quarter of service charge expenditure and that legal costs could not be recovered by way of service charge.
4. The application forms two parts;
  - a) a determination that the amounts determined by Judge Barber in his unappealed decision have been properly demanded and therefore payable
  - b) a determination that the following demands are payable
    - 27/6/19 £232.71
    - 2/7/19 £907.67
    - 5/3/20 £667.67
    - 13/8/20 £312
    - 25/2/21 £100
    - 3/3/21 £687.71

5. The Respondent instructed Biscoes to act for him and a Statement of Case was submitted as directed to which the Applicant made a response on 6 December 2022. Biscoes subsequently ceased to act for the Respondent.
6. The Tribunal made further directions on 23 December 2022 indicating that an oral hearing was required and identifying two unanswered questions that the parties would need to address at the hearing;
  - Whether the sums determined by Judge Barber are open to challenge
  - The relationship between the sum of £16,880.10 referred to in paragraph 1 above and Judge Barber's determination that a total of £3,374.67 was payable for service charge years 2014 to 2019

## **The Law**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 27A**

(1) An application may be made to the appropriate 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.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

- (a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **The Hearing and the Evidence**

7. The hearing took place at Havant Justice Centre on Monday 16 January 2023 starting at 10.00am and was attended by Mr Edward Younghusband for the Applicant and the Respondent, Mr Edmund Nilsen who joined by video.
8. I explained that the Tribunal had before it the Hearing bundle, the Respondent's Statement of case and the Applicant's reply, references to which would be shown as [\*].
9. Referring to the Statement dated 8/2/2022 [35] Mr Younghusband explained that it erroneously contained an amount for the legal costs that Judge Barber had determined were not payable.
10. Mr Younghusband confirmed that the sum claimed was £3,374.67 being the total of Judge Barber's determination plus the amounts shown in paragraph 4b above.
11. Mr Younghusband said that following Judge Barber's decision he had sent compliant demands [6,11,16,21,26,31] with a covering letter dated 25 January 2020 by email to Mr Nilsen's then representative and by post and registered post to Mr Nilsen. He commented that the ground rent demands sent in the same way were always paid whereas the service charges were not. Mr Younghusband had not included copies of the Registered post receipts in the bundle.
12. Mr Younghusband then explained the demands made subsequent to Judge Barber's decision;
  - 27/6/19 £232.71 [36]; This was a fire wall between Nos 46 and the adjoining property at 48.
  - 2/7/19 £907.67 [37]; This was for works undertaken by Rentokil in respect of bird proofing and had followed a Section 20 consultation of Notice of Intention dated 11/1/2019 and a Notice of Estimates on 26/2/2019.
  - 5/3/20 £667.67 [38]; This included Insurance, Management fee, Health & Safety, Accountants' fee and communal electricity for 2020/21.

- 13/8/20 £312 [41]; Includes a replacement loft hatch and works to the roof.
  - 25/2/21 £100.00 [42] Insurance excesses
  - 3/3/21 £687.71 [44] Insurance, Management, H&S report and Smoke detector testing.
  - 7/10/21 [46] A refund of £90 for H&S report not carried out due to Covid
13. Copies of an H&S report dated 17/12/19 and a Fire Equipment certificate were also provided [61 & 109]
  14. Mr Younghusband clarified that the charges for “Ground Rent; Accountants Fees” were in respect of the cost of the year end accounts and that all demands and S.20 Notices had been sent by email, post and registered post although no responses had been received.
  15. Mr Nilsen said that Recorded delivery letters would have to be signed for and he had not done so. He said that the first time he had seen the demands was when he received the hearing bundle. He does however receive the Ground Rent demands.
  16. He has had his own insurance costing about £16 per month for building and contents since 2015 as that provided by the landlord was inadequate as it had failed to cover the cost of pigeon prevention and failed guttering due to the lack of maintenance. In contrast, his gutters will be paid for by his insurers. He also carried out his own maintenance.
  17. Mr Nilsen said that the work had been carried out although the pigeon control was ineffective as they had returned, and guttering had taken 3 years to fix. Little maintenance was carried out by the Applicant as demonstrated by the Lessee of Flat 2 decorating the front elevation in an attempt to improve the look of the property for sale and the Lessee repairing a disconnected waste pipe from Flat 3.
  18. In answer to Judge Whitney’s question on a claim for set-off Mr Nilsen said that the costs he incurred were paint from B&Q and payments by direct debit for insurance.

## **Decision**

19. Mr Nilsen accepted that when properly demanded he would be liable to pay the sum of £3,374.67 as determined by Judge Barber. Whilst denying that he had received the demands sent out with covering letters on 25/1/2020 he accepted that they were included in the hearing bundle. We find on balance of probabilities on the evidence given that the demands were sent by Mr Younghusband on behalf of the Respondent and copies, including summaries of rights and obligations are within the bundle. As such the Tribunal is satisfied that they have been properly demanded and are therefore payable.

20. Mr Nilsen continues to challenge the insurance maintained by the Landlord despite Judge Barber's determination that the cover was adequate and the costs recoverable. Whilst not bound by Judge Barber's determination, this Tribunal agrees that the cost of insurance is recoverable.
21. Despite criticism of the effectiveness of the Rentokil works on bird protection there was no suggestion that these and indeed any other works had not been carried out, only his liability to pay for them. Mr Nilsen admitted works had been undertaken.
22. With regard to management fees, Judge Barber determined that they were payable and, clearly from the works that have been carried as referred to above, required organising along with managing the service charge and other duties. The fees charged are not excessive and are allowed.
23. Although Mr Nilsen says that, like all other demands, he did not receive the demands from 27/6/19 onwards he has acknowledged that they were included in the hearing bundle.
24. In summary therefore the Tribunal determines that the following sums are both reasonable and payable;

• 25/3/14 to 7/3/19	£3,374.67
• 27/6/19	£232.71
• 2/7/19	£907.67
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### **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 by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) 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.