



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

Case Reference : **CHI/21UD/LIS/2015/0036**

Property : **70 Marina, St Leonards on Sea, East
Sussex TN38 0BJ**

Applicants : **Trudy Howson
Sabina Kamali
John Oram by his attorney Hazel
Dobson**

Representative : **Trudy Howson (for all Applicants)**

Respondents : **Franadoll Developments Limited
Colin Edgeley
Callen Burton**

Representative : **Mrs T Francis of FPE Management**

Type of Application : **Determination of service charges;
Section 27A Landlord and Tenant Act
1985**

Tribunal Members : **Judge E Morrison
Mr B H R Simms FRICS**

**Date and venue of
Hearing** : **Bexhill Town Hall on 2 December
2015**

Date of decision : **4 December 2015**

DECISION

The Application

1. The application dated 24 June 2015 seeks a determination under section 27A of the Landlord and Tenant Act 1985 (“the Act”) of the lessees’ liability to pay service charges for service charge years 2014/15 and 2015/16. The Respondents, together with the Third Applicant, Mr Oram, own the freehold of the Property.
2. The Tribunal also had before it an application under section 20C of the Act that the Respondents’ costs of these proceedings should not be recoverable through future service charges.

Summary of Decision

3. The service charges recoverable by the Respondent, of which one-sixth are payable by each Applicant, are

Year	£
2014/15 – based on actual expenditure	8729.00
2015/16 – on account only	6216.00

The Lease

4. The Tribunal had before it a copy of the lease for Flat B at 70 Marina and was told that leases for the other 5 long leasehold flats were in similar form. The lease is dated 24 November 1987 and grants a term of 99 years from 13 March 1987.
5. The relevant provisions in the lease may be summarised as follows:
 - (a) The lessee is to pay a service charge which is 1/6th of the expenses incurred by the lessor in performing the lessor’s covenants in such sum as the lessor has certified to be a likely or estimated contribution for the current year, such payments to be made by quarterly payments in advance on the usual quarter days
 - (b) The lessor’s covenants include the maintenance and repair of the main structure and common parts, and to keep proper and sufficient accounts relating to the service charge which are to be certified by a chartered accountant.
6. There is no specific provision in the lease as to payment of any excess service charge if the actual expenditure exceeds the amount demanded on account, or as to refund or carrying forward of any

surplus paid by a lessee on account if the actual expenditure is less than the estimate. There is no provision for a Reserve or sinking fund.

The Inspection

7. The Tribunal inspected the property immediately before the hearing, accompanied by Ms Howson and Mrs T Francis from FPE Management. 70 Marina is an inner-terrace, sea-front building probably late Victorian/ early Edwardian, and more recently converted to flats. The front elevation is cement rendered with several rust stains to the colour-washed walls. The top flat is located within the roof area with dormer windows. The building is probably of brick or brick & flint under a central pitched, tile-covered roof with flat roof areas behind a substantial parapet and to the rear addition. The rear of the building could not be inspected.
8. The flats are arranged on lower ground and 5 upper floors with one flat on each floor identified as 'A' to 'F' with 'A' for the lower ground and 'F' for the top floor flat. The accommodation is approached up a few steps to common halls, staircases and landings to Flats 'B' to 'F' with Flat 'A' approached directly from the pavement via steps and an area. Internally we inspected the common parts which are in poor decorative order and the floor coverings to the halls and stairs are missing or in deplorable condition. Some damage to electrical fittings was noted.

Representation and Evidence at the Hearing

9. Ms Howson, the lessee of Flat 70B, was the only Applicant in attendance. She informed the Tribunal that she was representing all Applicants. She had made various unsigned and undated written submissions, and provided copies of documentation on which she relied. The Respondents were represented by Mrs Tracey Francis, from the managing agents FPE Management. They had also provided unsigned and undated statements, with supporting documentation. Ms Howson and Mrs Francis both made oral submissions at the hearing.

The Law and Jurisdiction

10. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret 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.
11. 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. Where a service charge is payable before the costs are incurred, the amount demanded must be reasonable.

12. Under section 20C of the Act a tenant may apply for an order that all or any of the costs incurred by a landlord in connection with proceedings before a tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Service charge year 2014/15

13. The thrust of Ms Howson's submissions centred around the demand for a payment on account made on 13 March 2014 for the 2014/15 service charge year which commenced on 12 March. She was concerned that the breakdown of anticipated expenditure listed in the demand appeared to include excessive or inappropriate provision. In particular she queried why the budgeted sums included £1440 for a flat roof repair that had been carried out and charged for in the previous year, £400 for cleaning when the actual cost was £244 in the previous year, and £600 for a electrical test which cost circa £150 + VAT. She felt that the lessees had been asked to pay excessive amounts and queried what had become of the surplus paid.
14. When Ms Howson was referred to the end of year accounts detailing actual service charge expenditure in 2014/15 she denied that these accounts had been sent to the lessees. She had not understood that these accounts, rather than the on account demand, set out the final charges for the year. The accounts made it clear that there had been no double-charge for the 2013 roof repair, that cleaning costs were £289 and that there was no electrical test that cost £600. Once these figures were pointed out to Ms Howson, she accepted that the actual charges were reasonable.
15. Mrs Francis asserted that the end of year accounts had been prepared promptly and copies sent to all lessees along with an individual statement for each lessee and a copy of the buildings insurance schedule. Unfortunately she had not included in the bundle, or brought to the hearing, any documentation to corroborate that these documents had in fact been sent out.
16. Discussion and determination: Following a review of the accounts Ms Howson effectively withdrew any objection to the charges, and the service charges for 2014/15 are therefore determined in the sum shown in the accounts, namely £8729, and each lessee is liable to pay one-sixth of this sum.
17. The Tribunal's view is that Ms Howson's misunderstanding about the costs was compounded, if not caused, by the inaccurate budget forming the basis of the on account demand. This budget does not appear to have been prepared with appropriate care or skill. The Tribunal also notes that it was not certified as required by clause 1 (page 4) of the lease, although this point was not taken by the Applicants. Furthermore, although the lease does not in terms require that end of

year service charge accounts are sent to the lessees, but provides only that they are made available for inspection, good practice and the RICS Residential Management Code requires that this should be done. The managing agents should keep records to corroborate compliance with the Code.

Service charge year 2015/16

18. This is the current year and therefore no end of year accounts are available, and the determination can only relate to the on account demand which must, in accordance with section 19 of the Act, be for a reasonable amount. Ms Howson initially objected to the budgeted amounts for 3 heads of expenditure, cleaning, electrical repairs, and general repairs. However she then accepted that her objection was limited to the latter item, budgeted at £1500. She said that the actual cost of general repairs in 2014/15 was only £798, and that the service charges in nearby similar properties at 69 and 73 Marina were lower, yet they were in better condition.
19. Mrs Francis submitted that £1500 was a reasonable estimate and that anticipated repairs to the guttering and roof, outside the scope of planned major works, had been taken into account.
20. Discussion and Determination: The Tribunal accepts that £1500 is a reasonable budget figure for general repairs. The inspection revealed a host of items that might well require work in the current year. The service charges for other properties are irrelevant. Accordingly the on account demand (payable by quarterly instalments) for the current year is approved in the sum of £6216, which is the total budget figure of £6439 less the categories of expenditure which it is accepted are not recoverable through the service charge. Each lessee is liable to contribute one-sixth of this sum.
21. As for 2014-15 the budget was not certified as required by the lease but the Applicants took no point about this.
22. This determination only addresses the reasonableness of the on account demand. It does not prevent any lessee from challenging the actual costs incurred as set out in the 2015/16 service charge accounts once they are prepared following the year end.

Major works

23. The application had initially raised some issues in relation to planned major works, including whether the statutory consultation under section 20 of the Act had been properly carried out. By the hearing the Applicants had reached agreement with the Respondents regarding these works and their cost and therefore there was no need for the Tribunal to make a determination. The Tribunal was told that demands to cover these major works had been issued separately to each lessee. Surprisingly, Mrs Francis was unable to confirm when this was. If it

was prior to the current service charge year, there is no reference to the demands or any amounts received, in the service charge accounts for 2014/15, which would be an error. If the demands were issued during the current year, it raises the question of why the budget for 2015/16 makes no mention of major works expenditure. There is no provision in the lease for demands to be raised other than for amounts covered in the annual budget. Furthermore, as already mentioned, the lease does not allow for a reserve or sinking fund. The Respondents and their managing agents should ensure they comply with the lease in all respects and if they do so the likelihood of further service charge disputes will obviously be reduced.

Section 20C Application

24. Ms Howson had made an application for an order under section 20C. However as Mrs Francis conceded there was no provision in the lease whereby the Respondent's costs of these proceedings could be recovered through the service charge, the application was redundant and no decision was required.

Dated: 4 December 2015

Judge E Morrison (Chairman)

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.