



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

**Case Reference** : CHI/43UF/LSC/2015/0059

**Property** : Tepestede Court, Hazel Way, Chipstead,  
Surrey CR5 3PJ

**Applicants** : Colm Brennan: Flat 1  
Liam Brennan: Flat 2  
Hayley Newman: Flat 3  
Suzanne Fletcher: Flat 4

**Respondent** : Southern Land Securities Limited

**Representative** : Hamilton King Management Limited

**Appearances** : Mr Liam Brennan  
Mr Colm Brennan  
Ms A Geser of counsel, for the Respondent

**Type of Application** : Liability to pay service charges and/or  
administration charges.

**Tribunal Member** : Mr D Banfield FRICS  
Judge R Wilson

**Date and venue of  
hearing** : 10 February 2016; The Law Courts Redhill

**Date of Decision** : 12 February 2016

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DECISION

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**The Tribunal determines that the estimated budget for 2015/16 is payable in full.**

**The Tribunal an Order under S.20C Landlord and Tenant Act 1985 that all or any of the costs incurred, or to be incurred, by the landlord in connection with the proceedings 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.**

## **Background**

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 (the Act) as to whether estimated service charges are payable for the year 2015/2016.
2. The Applicant also seeks an Order under S.20C of the Act preventing the Respondent from placing the cost of these proceedings on the service charge account.
3. A telephone case management hearing was held on 20 October 2015 with participation from Mr Liam Brennan speaking on behalf of all four Applicants. There was no appearance on the part of the Respondent.
4. Following the case management hearing Directions were made setting out a timetable for the exchange of documents leading to a target date for hearing the matter in the week commencing 18 January 2016
5. Due to the failure of the Respondent to serve their statement of case in time Further Directions were made on 18 November 2015 indicating that unless the statement of case was served by 3 December 2015 the Respondent may be barred from taking further part in the proceedings.
6. In the event matters proceeded satisfactorily and a hearing bundle was received by the Tribunal on 25 January 2016.
7. Although the application appeared to challenge every item of the budget the Applicant's statement of case had narrowed the issues to challenges to:

- Insurance £1,195
- Repairs £785
- Management charges £806

## **Hearing**

8. Numbers in square brackets refer to page numbers of the bundle.

9. Ms Geser explained that she had expected Mr C Fisk from Southern Land to attend as a witness but that she had now been advised that he was ill.
10. Following a query by the Tribunal Mr L Brennan confirmed that the inclusion in the bundle of invoices from the previous year did not imply that he wished the Tribunal to extend its determination to 2014/2015.
11. Mr L Brennan helpfully said that the Applicants had received an explanation of their charges from the managing agents and this was no longer challenged. The remaining matters were therefore Insurance and Repairs.

### **Insurance**

12. Mr L Brennan said that the budget of £1,195 was excessive and that he had provided Hamilton King with alternative quotes the cheapest of which was £858 [96] but he had been ignored. He no longer challenged terrorism insurance.
13. Ms Geser referred to the letter dated 25 June from Mr L Brennan referring to the quote of £858 [21] and Hamilton Kings reply of 30 June 2015 [22] stating "the Freeholder would consider any like for like quote as long as you can provide it in writing with a full list of perils" No further details of quotes had been received and Hamilton King only had the brief details already supplied to them [96].
14. Ms Geser said that the landlord was entitled to choose an insurer on grounds of quality of service as well as cost and that the difference in premiums was not sufficient to render the budgeted amount unreasonable.

### **Repairs**

15. Mr L Brennan said that the previous year's expenditure had been for gutter clearance and electrical scheduling. He said the gutter clearance costs were excessive and in any event would not be required annually particularly as the service charge year is largely passed. If the electrical tests are required annually he would accept their cost but otherwise nothing should be allowed. If unexpected repairs were incurred they would either be covered by insurance or could be recovered from the lessees at the time.
16. Mr C Brennan in emphasising the excessive cost of gutter clearance said that it had only taken a couple of hours and no chemicals had been used. He also said that the window cleaners who did work for the lessees direct also cleared the gutters at minimal cost.
17. Ms Geser said that it was "inconceivable" that there would be no repairs required during the year and that the budgeted amount was perfectly

reasonable being based on the previous year's expenditure. She accepted that clause 5. (b) of the lease permitted the Lessor to seek additional funds should there be an insufficient amount in reserves to meet expenditure.

18. On a question from the Tribunal Mr L Brennan said that he had received accounts duly certified and as far as he was aware there was nothing held by way of reserves.

## Decision

19. The matter before the Tribunal is whether the sums budgeted for expenditure on Insurance and Repairs for 2015/16 are reasonable.
20. Clause 5 (a) of the lease refers to *the amount of the estimate shall be based (but with suitable modifications in respect of any costs reasonably to be foreseen) upon the amounts expended by the Lessor in the course of the year preceding that for which provision is to be made.*
21. The insurance budget is almost the same as the preceding year and the Repairs budget a hundred or so more. Both sums can therefore be fairly said to comply with the terms of Clause 5(a) subject always to the reference to "suitable modifications"
22. The Applicants ask us to accept that insurance can be had for £340 less than that budgeted. Yet on the same page detailing the quotes they received [96] of the three quotes one is at the £858.29 whereas the other two are £1,485 and £1,524 odd respectively.
- 23. The Tribunal are not satisfied on the evidence before it that the budget of £1,195.00 for insurance is unreasonable and is therefore allowed in full.**
24. Turning now to Repairs the Tribunal agrees with Ms Geser's contention that it is inconceivable that no expenditure will be required. The Lessors task prior to the beginning of each service charge year is to anticipate what works may arise over the next year and how much that is likely to cost. The Lessor has made a judgement on the basis of past expenditure as required by the lease and based on this process sets the budget.
25. We have heard that there are no reserves to call upon so what does the Managing Agent do when faced with unexpected work that has to be paid for? Mr L Brennan says it will be recoverable under insurance or that the lessees can be billed. Even where liable, insurers are notoriously slow to meet claims and in any event there will be excesses to meet. The Tribunal does not accept that a building can be managed on this basis. The managing agent must have the ability to meet costs as they arise and that is exactly what estimated future expenditure is designed to achieve.

26. The Tribunal accepts that the previous year's expenditure is only the starting point for arriving at a suitable estimate and can be modified in the light of circumstances. If the preceding year had included expenditure on a major item such as redecoration the Tribunal would have been minded to accept that less would be needed for the following year. This is not the case here and as such **the budget of £785.00 is allowed in full.**
27. **The Tribunal emphasises that its decision relates solely to the estimated service charges and that the Applicant is not precluded from challenging the actual costs when they become available.**

#### S.20.C

28. The Applicants say that if they had received answers to their various queries there would have been no need for them to make an application to the Tribunal.
29. Ms Geser in opposing the application says that "costs should follow the event" and unless the Tribunal reduce the amounts claimed an order should not be made.
30. S.20C Landlord and Tenant Act 1985 gives the Tribunal jurisdiction to *make such order on the application as it considers just and equitable in the circumstances.*
31. The Tribunal is however reluctant to deprive a Lessor of the ability to recover the costs they have expended in meeting a challenge from a lessee and therefore considers the circumstances carefully.
32. In this case the Respondent failed to appear at the Case Management Hearing at which, given the Applicants' willingness to narrow the issues, it may well have been possible to either settle the matter as a whole or at least to dispense with the need for a hearing.
33. Whilst the parties are at liberty to incur the costs of whatever advisers they wish it was clear from the bundle that the only issue was the reasonableness of three amounts in the budget and that the Applicants did not challenge the Respondent's right to recover service charges under the terms of the lease [50].
34. The Tribunal therefore makes the Order that all or any of the costs incurred, or to be incurred, by the landlord in connection with the proceedings 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.

## **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 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