

10676



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

Case Reference : **CHI/10MS/LIS/2014/0058**

Property : **15 Banister Grange, Banister Rd,
Southampton, SO15 2JN**

Applicant : **Mr Thomas Jenkins**

Representative : **None**

Respondent : **Brighton Land Ltd**

Representatives : **Paris Smith LLP
F & S Property Management**

Type of Application : **Liability to pay service charges**

Tribunal Members : **A J Mellery-Pratt, FRICS
J Mills**

Date of Inspection : **10th February 2015**

Hearing : **None**

Date of Decision : **18th February 2015**

DECISION

Preliminary

- 1.0 By an application dated 30th, September 2014, the Applicant applied to the Tribunal for a determination of liability to pay service charges for the years 2007, 2009, 2010, 2011, 2012 and 2013 in respect of certain costs for fire safety and health and safety assessments and works. A determination was also requested in respect of service charges yet to be determined for 2014.
- 1.1 The Applicant also made an application under section 20 C of the Landlord and Tenant Act 1985, requesting an order that the Respondent's costs in connection with the Tribunal proceedings should not be treated as relevant costs in determining the amount of any service charge payable by the Applicant
- 1.2 The Tribunal issued directions dated 22 October, 2014, and listed the items which it understood to be in dispute and setting out a timetable for the provision of information by the parties. It also provided that the matter would be determined without a hearing, unless one was requested by either of the parties. No request was received.
- 1.3 Subsequently a date was set for the Tribunal to inspect the property on 10 February, 2015

Documents

- 2.0 The Applicant provided the Tribunal with a bundle of documents divided into 9 sections with section 6 further divided by un-numbered dividers, this section being the respondent's statement of case and documentation

Inspection

- 3.0 The Tribunal inspected the property at 10.00 hrs on 10th February 2015, in the presence of Mr Jenkins. Neither the Respondent nor its representatives attended.
- 3.1 The building appears to have been constructed sometime in the 1930s and comprises 18 flats on 3 floors, there being 3 entrance halls and staircases, each serving 6 of the flats. The building appears to be of brick construction, mostly rendered externally and with a flat roof. There is an extensive tarmac area at the front of the building for residents' parking.
- 3.2 Internally, the Tribunal noted in each entrance a fire alarm control panel in the ground floor entrance hall, with a fire alarm call point nearby. There

was a notice providing details of the procedure to be followed in the event of a fire on the noticeboard opposite the control panel and the inspection log was also noted wedged behind the noticeboard.

- 3.3. On each floor, there was a smoke detector and 2 emergency lights.
- 3.4. On the ground floor, hung on suitable brackets on the wall, were 2 fire extinguishers, one being a CO2 extinguisher, the other being a foam extinguisher.
- 3.5. At the 2nd floor level, where the landing surrounds the stairwell to give access to a small balcony, the Tribunal noted that the height of the staircase enclosure had been increased by approximately 8 inches.
- 3.6. The Tribunal confirmed that each entrance hall and staircase had been similarly treated with individual fire alarm systems.
- 3.7. Whilst the Tribunal did not inspect individual front doors to the flats, it appeared from an external inspection that these had not been modernised to improve their fire rating.

The Law

- 4.0. The relevant legislation is contained in the Landlord and Tenant Act 1985:-

18 (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 to which the service charge is payable or in an earlier or later period.

19 (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.

20CLimitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration 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 or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

27A (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.

27A (3) An application may also be made to a leasehold valuation 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.

The Lease

5.0. The lease of flat 15 is dated 29th of August 1974 and is for a term of 125 years from 29th September 1971.

5.1. The relevant clauses are:-

2. (5) (a). At all times during the term, to pay and contribute a 1/18 proportion of all monies expended by the lessor in respect of the following, namely:-

(i) exterior repairs and decorations to the whole or any part of the building.

(ii). The maintenance, repair and renewal of the roofs, foundations of the whole or any part of the building.

(iii). The maintenance, repair and renewal of all or any of the present and future fences walls access roadways foot paths entrance passageways greenwards exterior sewers drains gutters party walls party structures and appurtenances.

(iv)

(v)

(vi) any other expenditure by the lessor in respect of the whole or any part of the building and premises whether, in accordance with clause 2 (5) (a) or otherwise

The Applicant's/Tenant's case

6.0. The Applicant sets out his case in his letter dated 12th of November 2014 to F & S Property Management, and there are 2 main points.

6.1. **Fire safety assessment and subsequent works.** The objection to the costs incurred in the various years, is based upon the wording of the legislation which advises that residential property is excluded. As Banister Grange is a residential block of flats, the Applicant asserts that the legislation should not apply and all costs, from the initial risk report, the

fire safety works, and the subsequent reports should all be excluded from the service charge.

- 6.2. Health and safety risk assessment and **stair banister modification**. In a similar vein, the Applicant asserts that the legislation under which this work was carried out relates to commercial premises only, and therefore is not applicable to Banister Grange. The cost of this work should therefore be removed from the service charge.
- 6.3. The Applicant requests that an order be granted under section 20 C to prevent the Respondent from including any costs associated with these proceedings from being included within the service charge

The Respondent/Landlord's case

- 7.0. The Respondent's case is set out within the witness statement of Mr Michael Roberts, a partner in F & S Property Management, which is appointed by the Respondent to manage Banister Grange.
- 7.1. **Fire safety assessment and works**. Mr Roberts acknowledges that the Regulatory Reform (Fire Safety) Order 2005 does not include domestic premises, but points out that the definition is given as 'a private dwelling or other appurtenances of such premises, which is not used in common by the occupant of more than one such dwelling'. He therefore accepts that within the Applicant's flat is not covered by the legislation, but confirms that the common parts of the building – the hall, stairs and landings – are covered by the legislation.
- 7.2. As managing agents, F & S Property Management come within the definition of 'responsible person' in the 2005 Order and therefore is under a duty to carry out a fire risk assessment. This assessment was carried out by Fire Safety 2000 Ltd, in July 2007 and a copy of their report is towards the end of section 8 of the bundle.
- 7.3. Following the report, the recommendations were implemented after consultation with the lessees.
- 7.4. **Health and safety risk assessment and stair banister modification**. In 2011 Edwards and White were instructed to provide an updated fire risk assessment, together with a health and safety risk assessment report. The major finding within the health and safety report was a potential danger because the walls surrounding the staircase opening at 2nd floor level are below the minimum height required. As a result instructions were given to raise the height of the walls to an acceptable level. This work was carried out in all 3 stairways.
- 7.5. Mr Roberts concluded by asserting that it was either a requirement or it was reasonable for the inspections to have been commissioned and it was

also reasonable to comply with the requirements noted. Thus the cost of the reports, the works carried out, and the subsequent maintenance of the equipment were all reasonably incurred and carried out at reasonable cost.

- 7.6. In considering this application regard should be had to the lack of detailed information provided by the Applicant and the duty that the Respondent and his managing agents were under to comply with legislation and codes of practice.

Consideration

- 8.0. The Tribunal considered all the points raised by the parties, and found that:-

8.1. The Regulatory Reform (Fire Safety) Order 2005, which came into force in October 2006 imposed a duty on the 'responsible person' to undertake 'general fire precautions' in premises to which the order applied

8.2. Domestic premises were specifically excluded from the scope of the order. However, 'domestic premises' covers only the flats themselves. The common parts of any block of flats are therefore included within the scope of the Order.

8.3. A managing agent in its capacity as being responsible for the maintenance and repair of the building of a block of flats, and its common parts, is considered to be the 'responsible person' and will therefore be under a duty to comply with the legislation.

8.4. The Tribunal therefore considers that the commissioning of a fire risk assessment in 2007 was essential and therefore reasonable.

8.5. The use of a specialist firm to carry out this assessment was a prudent way forward and the cost of the 2007 assessment is therefore considered reasonably incurred and reasonable in its cost.

8.6. The publishing in 2011 of the guidance booklet 'Fire Safety in Purpose-built blocks of flats' was a step forward in clarifying a uniform approach to the question of fire safety, which, up until then, had been left to the interpretation of the chief fire officer for each area.

8.7. The introduction to the 2011 guidance states:-

The Regulatory Reform (Fire Safety) Order 2005 (the FSO) came into force in October 2006. It brought the common parts of blocks of flats within the scope of mainstream fire safety legislation for the first time.

Guidance on the FSO and its requirements has been issued in a series of guides. Blocks of flats are included, among many other

types of residential premises, in the HM Government guide 'Fire safety risk assessment: sleeping accommodation' published by the Department for Communities and Local Government (DCLG). However, application of the FSO to blocks of flats has proved problematic: it has led to widely varying outcomes. In some buildings, significant work to upgrade fire safety standards within the common parts has been undertaken to satisfy this legislation. In others, none has been considered necessary. There has also been confusion over the scope of this legislation: how it relates to those who live in the flats, and, indeed, to what extent, if any, this legislation can require improvements beyond the flat entrance door. These are just two of the questions that tax those seeking to apply and enforce it.

- 8.8. Thus, from 2007 until 2012, there was a mixed response to the Order, depending upon the part of the country in which the property was situated and the advice being received from the local chief fire officer.
- 8.9. As a result, following the fire risk assessment in 2007, it was entirely appropriate for the recommendations to be included in that assessment and similarly appropriate for the managing agents to implement those recommendations. The Tribunal therefore finds that the implementation of the recommendations of the fire risk assessment by the installation of fire alarm systems and the provision of fire extinguishers was work that was reasonably incurred and, having consulted with lessees, the cost must be considered reasonable.
- 8.10. Following the 2011 guidance, it might well now be possible to remove the fire alarm systems and the fire extinguishers, subject to confirmation from a further fire risk assessment. However, the Tribunal is aware that such removal might lead to additional works becoming necessary, such as the upgrading of individual flat front doors, as well as re-decoration work to make good where ducting and fittings have been removed. It may well be cheaper in the long-run, and certainly no less safe, to maintain the systems that have now been installed
- 8.11. The health and safety legislation originates from The Health and Safety at Work etc Act 1974 and clause 3 of that Act states:-

3 General duties of employers and self-employed to persons other than their employees.

(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

(2) It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.

Both the courts and the Health and Safety Executive have confirmed that the wording above does apply to the owners/managers of common parts of blocks of flats. See: www.hse.gov.uk/risk/casestudies/flats.htm

- 8.12. As a result, a freeholder and a managing agent is under a duty of care to staff, occupants of the building, and anybody working within the common parts of the building. It is therefore entirely appropriate, when the fire risk assessment was being reviewed in 2011, for this to be combined with a health and safety risk assessment. The firm employed hold themselves out to be experts on both these matters.
- 8.13. The Tribunal therefore considers that the commissioning of a health and safety risk assessment in 2011, combined with a fire risk assessment, was work that was reasonably incurred and the Tribunal considers that the cost was reasonable.
- 8.14. The health and safety assessment identified the potential danger of the walls surrounding the staircase openings as these were lower than the recommended height. Work was therefore commissioned to raise the height of these walls and the Tribunal considers that this work was reasonably incurred
- 8.15. The Applicant has requested an order under section 20 C of the Landlord and Tenant Act 1985, the effect of which would be that the landlord's costs associated with these proceedings should not be considered as relevant costs and therefore not able to be included within the service charge.
- 8.16. The Applicant has also requested reimbursement of the application/hearing fees that he has incurred

- 8.17. The Tribunal finds that the points raised by the Applicant have been without merit and that the Landlord has been put to considerable costs as a result.
- 8.18. The parties have not addressed the question of whether the lease allows the landlord to apply such charges and therefore the Tribunal has not considered this point. However the Tribunal declines to make the Order that has been requested and also declines to order the reimbursement of the Applicant's application/hearing fees.

The determination

- 9.0. The Tribunal determines the following items of expenditure and the associated management fees of the managing agents have been reasonably incurred and at reasonable cost.

9.1	Year	Expense	Amount
	2007	Fire Safety Report	£188.00
	2009	Fire Safety Works	£7349.16
	2010	Fire Safety Works	£637.35
	2011	Fire Risk/Health & Safety Assessment	£263.08
	2012	Fire equipment maintenance & repairs	£306.00
	2012	Fire Risk/Health & Safety Assessment	£420.00
	2013	Fire equipment maintenance & repairs	£426.60
	2013	Health & Safety works	£885.00

- 9.2. In connection with the year ending 28th of September 2014, the Tribunal determines that it would be reasonable for the Respondent to incur costs in connection with the maintenance and repair of the fire equipment.
- 9.3. The Tribunal has not been advised as to whether any further risk assessments will be included within the costs for 2014, but having established that the legislation applies to the common parts of Banister Grange, if advice is received that further assessments are necessary, the Tribunal determines that it would be reasonable to commission such assessments.
- 9.4. The Tribunal declines to make an order under section 20 C of the Landlord and Tenant Act 1985.
- 9.5. The Tribunal declines to make an order to reimburse the application/hearing fees of the Applicant.

Appeals

- 10.0. 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.
- 10.1. 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.
- 10.2. 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.
- 10.3. 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.

Signed

AJ Mellery-Pratt. FRICS. Chairman

A member of the Tribunal
appointed by the Lord Chancellor