



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

**Case Reference** : LON/00AH/LSC/2016/0235

**Property** : 269 Morland Road, CR0 6HE

**Applicant** : Ms Maria McKeever

**Representative** : Self representing

**Respondent** : Timegrove Limited

**Representative** : Mr Pollack, Clockwork Estates

**Type of Application** : Service Charges (Section 27A  
Landlord and Tenant Act 1985)

**Tribunal** : Mr M Martyński (Tribunal Judge)  
Mr L Jarero BSc FRICS  
Mr P Clabburn

**Date of hearing** : 19 September 2016

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**DECISION**

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## **Decision summary**

1. None of the Service Charges for the years 2010 to 2016 are currently payable by the Applicant – the Applicant’s application however only covered the years 2011 – 2016 so this decision is only enforceable regarding those years.
2. The Management Fee is reasonable.
3. The tribunal does not have sufficient evidence to find that the insurance premiums are unreasonable in amount.
4. The costs of roof works are reasonable.
5. An order is made preventing the Respondent from charging the costs of these proceedings to any Service Charge payable by the Applicant.
6. No order is made regarding the fees paid to the tribunal by the Applicant.

## **Background and the application**

7. 269 Morland Road (‘the Building’) is a terraced three-storey building. The Building contains a shop front at ground level and two residential flats on the upper floors. There is a further residential flat at the rear of the shop at ground level. That flat is accessed via the rear of the Building.
8. The Applicant is the long leasehold owner of the flat on the first floor. The Respondent holds the freehold interest in the Building. The Building is managed by Clockwork Management.
9. The Applicant’s lease is dated 22 November 1996 and as at this date, the Building simply consisted of a shop at ground floor level with two flats above. The terms of the lease reflect that arrangement. For example, when the lease deals with the proportion of Service Charges payable by the Applicant, the terms provide for a half-share of Service Charge payable when the shop is let and one-third when it is not. Since that time, a further flat has been created at ground floor level behind the shop. The terms of the Applicant’s lease therefore no longer reflect the actuality of the Building.
10. The Applicant’s application challenging Service Charges (years 2011-16) was received by the tribunal on 8 June 2016.
11. Directions were given on the application on 28 June 2016.

## Issues and Decisions

### *The lease terms and accounting*

12. Although it was not one of the issues mentioned in the directions given on 28 June 2016, in a schedule prepared by the Applicant (in accordance with the directions) and containing the Respondent's replies, the Applicant raised an issue as to the way in which accounts were handled by the Respondent. The Applicant's comments in the schedule were as follows:-

I have not received audited service charge accounts in the prescribed form as per the lease.

In the Schedule, the Respondent replied as follows:-

All the bills (with enclosures) provided, detail all costs and set out clearly the apportionments and payments received and balance owed. They are therefore sufficiently certified by the managing agents as required by the lease – clause 7(6)

13. The Applicant's lease contains various provisions regarding accounting and the demanding of Service Charges. At clause 1 of the lease the leaseholder is obliged to pay; *"by way of further or additional rent the annual maintenance charge as hereinafter provided"*. Clause 7 of the lease then goes on to deal with Service Charges in detail as follows:-

(1) In respect of the annual maintenance charge as hereinafter defined the Lessee shall pay to the Lessor without deduction by way of further and additional rent either:-

(a) Where the Shop Premises are let on a full repairing Lease one half of the annual maintenance charge in respect to the rest of the Building apart from the Shop premises; or

(b) Where the shop Premises are not so let on a full repairing Lease one third of the annual maintenance charge in respect of the whole of the Building PROVIDED THAT the cost of the cleaning lighting painting decorating and all other works of a non-structural nature to the common hallway shown coloured yellow on the plan shall always be shared equally between the two flats and the Lessee's contribution that be one half of such costs

(2) The annual maintenance charge shall be the total of all sums actually expended by the Lessor during the period hereinafter defined in connection with the management and maintenance of the Building....

(5) The amount of the Maintenance Charge shall be calculated annually and shall be in respect of the period from the first day of January in any year to the thirty first day of December in the same year or such other annual period as the Lessor may in its discretion from time to time determine as being that in which the accounts of the Lessor either generally or relating to the Building shall be made up and such period is hereinafter referred to as the "accounting year"

(6) Subject to the provisions of the Landlord and Tenant Acts 1985 and 1987 the amount of the Maintenance Charge in each accounting year shall be ascertained and certified by a Certificate (herein after called "the Certificate")

signed by the Lessor's managing agents acting as reasonable as experts and not as arbitrators annually and so soon after the end of the accounting year as may be practicable

(7) The Certificate a copy of which shall be supplied to the Lessee without charge on written request shall contain a summary of the expenses and outgoings incurred by the Lessor as aforesaid during the accounting year to which it relates with a summary of the relevant details and figures forming the basis of the Maintenance Charge and the Certificate shall be conclusive evidence for the purposes hereof of the matters which it purports to certify

(8) The lessee shall pay to the Lessor on the first day of January and the first day of June in each year such sum (hereinafter called "the Interim Payment") in advance and on account of the Maintenance Charge as the Lessor or its managing agents shall certify at their absolute discretion to be fair and reasonable.

(9) As soon as practicable after the signature of the Certificate the Lessor shall furnish to the Lessee an account of the Maintenance Charge payable by the Lessee for the year in question (credit being given for any Interim Payment made by the Lessee) and upon the furnishing of such account the amount of the Maintenance Charge as aforesaid shall be due and payable by the Lessee to the Lessor on demand and in the event of the Interim Payment paid by the Lessee for the year in question exceeding the amount of the Maintenance Charge the excess payment made by the Lessee shall at the discretion of the Lessor or its managing agents be refunded to the Lessee or carried forward as a credit against the Maintenance Charge payable in respect of the next accounting year

14. There has been no notification from the Respondent that the Service Charge year has been changed from that defined in the lease and being 1 January to 31 December.
15. No payments on account of Service Charge have been requested from the leaseholder.
16. So far as Service Charges are concerned therefore, the essential provisions in the lease are as follows.
  - (a) The accounting of the Service Charges is based on an *annual* period. That period is defined in the lease as the calendar year. Although the landlord can select some other *annual* period, we were not provided with any evidence that such other period had been selected by the landlord.
  - (b) The accounts for that annual period must be ascertained and certified by the managing agents. The leaseholder is entitled to a copy of that certification on demand.
  - (c) The account for the annual period (payable by the Leaseholder) must then be given to the leaseholder and upon that being done the maintenance charge becomes due and payable.
17. The managing agents for the Building demand Service Charges at various intervals. The demands shown to us were as follows: 26 August

2010; draft for 2011 undated; 24 April 2012; 29 January 2013; 27 March 2014; 5 May 2015 and 6 January 2016.

18. All these demands are in a similar form in that they list various items of expenditure (showing the leaseholder's share) and set out the total balance due from the leaseholder.
19. None of the demands actually cover a defined annual period.
20. Dealing with these demands year-on-year they break down as follows;

*2010*

21. The demand for this year is dated 26 August 2010. It demands an insurance premium which was (presumably) paid on 16 September 2009 and a management charge that (presumably) became due on 1 January 2010.
22. The demand in question therefore is not, as it should be in accordance with the lease, calculated for the period 1 January to 31 December. Further the demand is not '*an account of the Maintenance Charge payable by the lessee for the year in question*' [clause 7(9) of the lease]. We know this because, according to the documents and demands we have seen, another insurance premium is paid by the landlord in September of 2010. The annual maintenance charge payable by the tenant is "*the total of all sums actually expended by the Lessor during the period hereinafter defined*" (that being the calendar year) [clause 7(2) of the lease].
23. The tenant's obligation to pay the Service Charge is only triggered, in accordance with clause 7(9) of the lease by the landlord furnishing the tenant with an account of the maintenance charge payable by the tenant for the year in question. The year in question runs from 1 January to 31 December 2010. No such account has been supplied to the tenant and so the account is not payable by the Applicant.

*2011*

24. The landlord did not have a copy of the demand for this year and a sample was produced. We do not therefore know what date it was sent out but we can surmise that it was sent out during the Service Charge year 1 January – 31 December 2011. That account is in the same form as the 2010 account with the same two expenses which were presumably incurred on 16 September 2010 (insurance) and 1 January 2011 (management).
25. All the comments made above apply to this demand.

*2012*

26. This demand is dated 24 April 2012 and covers the same amounts as the previous demand for the same dates 16 September 2011 (insurance) and 1 January 2012 (management).
27. Again, all the comments made above apply to this demand.

*2013*

28. This demand is dated 29 January 2013 and covers the same amounts as the previous demand for the same dates 16 September 2012 (insurance) and 1 January 2013 (management) together with the cost of a downpipe repair on 17 August 2012.
29. Again, all the comments made above apply to this demand.

*2014*

30. This demand is dated 27 March 2014 and covers the same amounts as the previous demand for the same dates 16 September 2013 (insurance) and 1 January 2014 (management).
31. Again, all the comments made above apply to this demand.

*2015*

32. This demand is dated 5 May 2015 and covers the same amounts as the previous demand for the same dates 16 September 2014 (insurance) and 1 January 2015 (management) together with the cost of a roof repair on 25 April 2014.
33. Again, all the comments made above apply to this demand.

*2016*

34. This demand is dated 6 January 2016 and covers the same amounts as the previous demand for the same dates 16 September 2015 (insurance) and 1 January 2016 (management).
35. Again, all the comments made above apply to this demand.
36. The Applicant has been rightly confused by these demands made as they are, without regard to the terms of the lease.
37. The Applicant's complaints that she has; (a) not been provided with audited accounts in the prescribed form as per the lease and; (b) not received full accounts, and; (c) she has never been sent any certified accounts are not valid for the following reasons;
  - (a) The accounts do not need to be audited under the terms of the lease;
  - (b) The Applicant has been provided with an account of the maintenance charge payable by her pursuant to clause 7(9) of the lease

(c) The lease does not require certified accounts to be sent out – the Applicant’s entitlement is to a copy of the certificate of the managing agents upon request. We were not provided with any evidence that such a request had been made – even if it were and it was ignored, that would not, in our view, mean that the demand for Service Charges would not be payable by the Applicant.

*Insurance*

38. Under the terms of the Applicant’s lease, the Respondent is obliged to insure the Building for the full reinstatement value and against the usual comprehensive risks and such other risks as the Lessor thinks fit.

39. We were told by Mr Pollack from Clockwork Estates at the hearing that the Building is insured as part of a block policy. The block policy is issued for Europeak Ventures Limited. That company is associated with the Respondent Company. The Respondent Company only owns three properties. The policy issued to Europeak, we were told by Mr Pollack, covers over one hundred properties. Mr Pollack informed us that the insurance was arranged by a broker, Oyster Insurance, who surveyed the market each year.

40. The charge made to the Applicant (at 25% of the total cost) for insurance over the years is as follows:

2010: £218.51  
2011: £250.79  
2012: £338.60  
2013: £341.06  
2014: £374.64  
2015: £465.03  
2016: £444.12

41. Using the certificate of insurance for the Building for 2015, the Applicant obtained an alternative quote for insurance dated 23 June 2016 for the Building amounting to £549.09 (a 25% share of this would be therefore - £137.27).

42. Whilst the Respondent’s criticisms of this quote are valid (it does not include terrorism, the building value and property owner’s liability is significantly less, and some risks contained in the Respondent’s policy are not covered by the quote) we were troubled by the doubling in the premium in the period considered and by the fact that, without doubt, the Applicant could obtain insurance for the Building at a significantly lower cost (even if the quote obtained by the Applicant is increased to cover terrorism and for the other differences between the risks covered in her quote and the actual insurance for the Building).

43. However, the Respondent is entitled to insure under a block policy and in our experience, insurance for a particular building under a block policy is often more expensive than insurance obtained on a single

building. Further, whilst the insurance premiums appear expensive to us, they are not so high to enable us to conclude that they are unreasonable on just looking at the figures alone. A landlord is not obliged to obtain the cheapest insurance on the market.

44. We do not feel that we have sufficient evidence to conclude that the insurance premiums are unreasonable in amount. We would have wanted to see more than one alternative quote and we would have wanted to have the Respondent's broker's comments on those quotes and perhaps something to show us the basis on which the Respondent's insurance was calculated (i.e. the effect on the premium for covering landlord's loss of rent and to what extent the absence of a claims history for the Building has affected the premium).

#### *Management fee*

45. The management fee charged to the Applicant is £50 per year plus VAT. This is at the very lowest end of a reasonable scale of management charges typically charged in the Greater London area.
46. We accept that the agents have to do very little in relation to the Building and it appears that Mr Pollack has not been very sympathetic to the problem of the utility supply meters for the Applicant's flat being contained within the lower flat<sup>1</sup> (an issue which has caused the Applicant a number of problems) and it appears that the Respondent has failed to take any action to rectify a lease that no longer corresponds with the building. The agents do however administer the insurance, record the expenditure and make demands. We could see from the evidence presented to us and from Mr Pollack's evidence at the hearing that the agents have responded in the past to the Applicant's queries and her requests to pay Service Charges by instalments.
47. Clearly the managing agents carry out a basic service and accordingly the fee charged for that service is not unreasonable.

#### *Roof*

48. The Applicant complained about a roof repair carried out in April 2014. Her first issue was that there was no statutory consultation in respect of that repair. This complaint has no substance because the cost of the repair to the Applicant did not exceed the amount at which consultation is necessary.
49. The Applicant did not provide any evidence to indicate that the repair was not carried out to a reasonable standard or at an unreasonable cost.

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<sup>1</sup> However this is a matter probably best taken up with the utility suppliers rather than the managing agents



### *Solicitor's fees*

50. Solicitor's fees of £120 had been incurred by the Respondent but these had not been charged to the Applicant or the Service Charge as yet. It is not clear what these charges are for or whether they are to be charged to the Applicant directly or to the Service Charge or at all. We therefore do not have sufficient information to make any comment on them. If these costs are charged to the Applicant, she can make a further application to the tribunal.

### *Agreement*

51. The Applicant complained that the Respondent had not honoured an agreement between the parties relating to the costs of evicting the Applicant's tenant at her flat. This agreement was part of another alleged agreement for the Respondent to purchase the Applicant's leasehold interest.
52. The directions given by the tribunal stated that this matter was not considered to be within the tribunal's jurisdiction and we agree with that view. Accordingly we cannot deal with it.

### *The Applicant's share of the Service Charge*

53. The Respondent charges the Applicant a 25% share of the expenditure on the Building. This does not appear to be in accordance with the lease terms (as set out above). The effect of this is probably that the Applicant actually pays a smaller percentage of the Service Charge than is provided for in the lease.

### **Costs and fees**

54. The Applicant made an application for an order that we prevent the Respondent from charging its costs of these proceedings to the Service Charge and also made an application for an order that the Respondent refund to her the fees that she has paid to make this application.

### *Costs*

55. The Applicant has been successful in this application, although to a large extent in a technical sense only. The way in which the accounting is carried out is haphazard and not in accordance with the lease. The insurance premiums payable appear to be high and we might have found them to be unreasonable with better evidence from the Applicant. The way in which the Service Charge is apportioned is not in accordance with the lease (although this appears to be to the benefit of the Applicant).
56. In the circumstances therefore we consider that the Respondent should be prevented from adding its costs of the proceedings to the Service Charge. Whether, in any event, the terms of the lease allow the

Respondent to add its costs of these proceedings to the Service Charge is questionable. However we do not need to express any final view on that question.

57. Accordingly we make an order that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant.

*Fees*

58. We do not consider that it would not be right for us to make an order that the Respondent pay the Applicant's tribunal fees. Such an order forcing the Respondent to make a payment (rather than, as above, restricting the costs that they can charge to the Service Charge) would not be appropriate where the Applicant has been successful only on technical points.

**Name:** Mark Martyński,  
**Tribunal Judge**                      **Date:**      **14 October 2016**

**ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.