

12044



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

**Case References** : **LON/00AW/LSC/2016/0298**

**Property** : **Flat 7, 50 Hans Place, SW1X 0LA**

**Applicant** : **50 Hans Place Residents Limited**

**Respondent** : **Ms Sara Al-Amoudi**

**Representatives** : **Ashfords Solicitors LLP (Applicant)**

**Type of Application** : **Service Charges [section 27A  
Landlord and Tenant Act 1985]**

**Tribunal** : **Mr M Martyński (Tribunal Judge)  
Mr M Cartwright**

**Date of Decision** : **14 December 2016**

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**DECISION**

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## **DECISION SUMMARY**

1. If costs are incurred for the redecoration and repair of the exterior of 50 Hans Place SW1X in the total sum of £78,468.00 pursuant to a Schedule of Costs dated 27 January 2016 with a 38.97% share attributable to the Respondent, that cost would be payable by her if properly demanded within the terms of the lease.
2. The Respondent must pay to the Applicant the sum of £100.00 within 14 days of the date of this decision in respect of the fee paid by the Applicant to the tribunal in making this application.

## **BACKGROUND**

3. The Applicant is the management company for the building at 50 Hans Place ('the Building') which is a large terraced property converted into seven flats.
4. The Respondent holds the long leasehold interest in Flat 7 of the Building. The Respondent's lease is dated 4 March 2008 and is between 50 Hans Place Freehold Limited (as Landlord), 50 Hans Place Residents Limited (as management company) and Ian Paton. The lease is for a term of 999 years from 1 January 2008.
5. In 2015 the Applicant decided to undertake works of external repair and decoration and went through a consultation process as follows:-

22.10.15	Notice to leaseholders advising of the intention to carry out; "The external repair and decoration to all elevations, including the cleaning down of the front façade and ancillary works."
27.01.16	Three quotes for the works are obtained and sent out to leaseholders
17.03.16	Leaseholders are notified that a contractor has been appointed from the quotes submitted and a response is given to one objection received from a leaseholder. The Respondent's share of the total costs amounts to £30,578.98.
6. On 9 August 2016 an application was received by the tribunal from the Applicant seeking a declaration as to the reasonableness of the costs of the proposed works.
7. Directions were given on the application at an oral hearing on 6 September 2016. The application was set down for a final hearing to take place on 8 December 2016.
8. The Respondent did not comply with any of the directions and by notice dated 9 November 2016 the Respondent was debarred from taking any part in the proceedings. The hearing set for 8 December 2016 was

cancelled and the case was set down to be decided on the papers alone without an oral hearing in the week commencing 12 December 2016.

#### **THE EVIDENCE AND THE APPLICANT'S LEASE**

9. We have decided this application on the basis of the papers submitted by the Applicant and on the tribunal's own case file.
10. We have had regard to the Applicant's Statement of Case dated 5 October 2016 and to the witness statement of Jeremy Davies (a Director of the Applicant Company) dated 4 October 2016.
11. In his witness statement, Mr Davies states that on 4 October 2016, the Applicant's solicitors sent a demand to the Respondent for the sum of £30,602.91 which included the sum of £30,578.98 for the proposed works described above. A copy of that demand, dated 4 October 2016, was exhibited to his witness statement.
12. The Respondent's lease sets out the Service Charge mechanism in the Fifth Schedule. That Schedule provides that the 'Accounting Date' is 31 October in each year. The 'Accounting Period' runs from 1 November to 31 October in the following year. The Schedule goes on to provide that the Management Company must prepare an estimate for each Accounting Period, that estimate is to be served on the leaseholder within 14 days showing the interim charge payable by the leaseholder. The interim charge for each Accounting Period is to be paid by the leaseholder in two equal instalments on the 'Payment Days' – those being defined in the lease as 25 March and 29 September in each year.
13. Clause 4.4 of the Fifth Schedule to the Applicant's lease then provides as follows:-

If at any time during and Accounting Period it appears to the Management Company that (whether due to he need arising to incur a cost which was not included in the Estimate or for another other reason whatsoever) the Interim Charge payable by the Tenant shall be insufficient to meet the Service Costs for that Accounting Period the Landlord shall be entitle to serve on the Tenant a demand for a Supplemental Interim Charge of such amount as the Management Company may reasonably specify accompanied by a written explanation of the reason for it and the Tenant shall pay the amount demanded within 14 days of service of the demand.

#### **DECISION**

14. We assume that the demand dated 4 October 2016 is a demand as per clause 4.4 of the Fifth Schedule to the Applicant's lease as it appears to be a demand for a 'supplemental interim charge'.
15. If our assumption is correct, then there is no evidence that the demand was 'accompanied by a written explanation of the reason for it'. That written explanation appears to be a condition precedent to the leaseholder's liability to pay the demand. We are therefore unable to conclude, on the evidence before us, that the sum of £30,578.98 is 'payable' by the Respondent at the present time.

16. We do however conclude that, if costs are incurred for the redecoration and repair of the exterior of 50 Hans Place SW1X in the total sum of £78,468.00 pursuant to a Schedule of Costs dated 27 January 2016 with a 38.97% share attributable to the Respondent, that cost would be payable by her if properly demanded within the terms of the lease. We reach this conclusion on the basis that the Applicant appears to have carried out a valid consultation process in respect of the proposed work and that it has obtained three estimates for the work. The Respondent has made no case that the proposed works are unreasonable in extent or price.

## **COSTS**

17. In its Statement of Case, the Applicant asked that; ‘the Respondent be ordered to pay its costs of this Application, pursuant to the terms of the Lease...’.
18. This tribunal is, in the main, a ‘no-costs’ jurisdiction. No application has been made for wasted costs or costs incurred as a result of unreasonable behaviour pursuant to Rule 13 of the tribunal’s rules. For costs to be payable under the terms of the lease, the Applicant would first of all have to demand these costs from the Applicant and could then make an application to the tribunal to make a decision on those costs as Administration Charges. As far as we are aware the Applicant has not done this.
19. We therefore take Applicant’s request to be a request that the tribunal makes an order that the Respondent pays to the Applicant the fee that the Applicant has paid to the tribunal in order to commence these proceedings. Given that we have made a determination broadly favourable to the Applicant and that the Respondent has played no part in these proceedings, we do make an order that the Respondent pays to the Applicant the sum of £100.00, that being the fee paid by the Applicant to the tribunal. Payment must be made within 14 days of the date of this decision.

**Mark Martyński, Tribunal Judge**  
**14 December 2016**