

12451



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

Case Reference : **LON/00BK/LSC/2017/0246**

Property : **153 Chiltern Court, Baker Street,
London NW1 5SZ**

Applicant : **Chiltern Court (Baker Street)
Residents Limited**

Representative : **Pemberton Greenish LLP**

Respondent : **Ms Sonia Raja**

Representative : **None**

Type of Application : **Section 27A Landlord and Tenant
Act 1985 – determination of service
charges payable**

Tribunal Members : **Judge John Hewitt
Mrs Evelyn Flint FRICS**

**Date and venue of
Determination** : **31 October 2017
10 Alfred Place, London WC1E 7LR**

Date of Decision : **31 October 2017**

DECISION

The issue before tribunal and its decision

1. The issue before the tribunal is whether the following Interim Charges on account of the Service Charge were and are payable by the respondent to the applicant:

Date	Amount	
24.06.2015	£2,278.58	(now paid)
29.09.2015	£2,278.58	(now paid)
25.12.2015	£2,278.58	(now paid)
25.03.2016	£2,278.58	(now paid)
24.06.2016	£2,005.77	(balance)
29.09.2016	£2,391.45	
25.12.2016	£2,391.45	
25.03.2017	£2,391.45	
24.06.2017	£2,494.43	
29.09.2017	£2,494.43	

2. The decision of the tribunal is that each of those sums were payable by the respondent to the applicant on the date specified
3. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the file provided to us by the applicant's solicitors for use at the determination.

Procedural background

4. On 25 September 1987, the applicant was registered at Land Registry as proprietor of a headlease of premises known as Chiltern Court, Baker Street. The title number is NGL599459 [134].
5. By a lease dated 14 September 1987 flat 153 Chiltern Court was demised by the applicant to Mrs Evelyn Maud Pell for a term of 125 years from 24 June 1987 [16]. The remainder of the term granted by that lease is now vested in the respondent.
6. The lease imposes an obligation on the landlord to insure the building and to carry out repairs and maintenance and to provide services. The lease imposes an obligation on the tenant to contribute to the costs incurred by the applicant.
7. The service charge regime is set out in the Fifth Schedule to the lease [39]. For present purposes, it can be summarised as follows. The accounting period is 25 June to 24 June following. An Interim Charge is payable in such amount as the landlord or its managing agents shall specify at their discretion to be a fair and reasonable interim payment.

The Interim Charge is payable by four equal payments in advance on the usual quarter days. In case of default the same is recoverable from the tenant as rent in arrear.

8. By an application dated 16 June 2017 made pursuant to section 27A of the Act, the applicant sought a determination that a number of payments of Interim Charge were payable by the respondent to the applicant. Since that time the applicant says that two further payments of Interim Charge have fallen due for payment and the applicant seeks a determination in respect of them.
9. Directions were given on 30 June 2017 [44]. The parties were notified that the tribunal proposed to determine the application on the papers and without an oral hearing during week commencing 30 October 2107, unless either party requested an oral hearing, in which case the hearing would take place on 30 October 2017. The tribunal has not received any request for an oral hearing.
10. Pursuant to directions the applicant's solicitors have provided a file of material documents in support of the application. It appears from that file that the respondent has not engaged in the proceedings and has not served a statement of case contending that the sums in issue are not reasonable or are not due and payable.

Reasons

11. We have gone through the materials provided by the applicant in support of the application, including a witness statement [180] made by Sarah Lamprell of Residential Management Group Ltd, the applicant's managing agents.
12. We are satisfied that the lease sets out the service charge regime summarised above. We find that that the Interim Charge is based on a service charge budget which has been broadly static for several years and that in years prior to 2014/15 the respondent voluntarily paid the Interim Charge, albeit that arrears arose from time to time and were then cleared.
13. On the evidence before us we are satisfied that the Interim Charge for the years 2015/16, 2016/17 and 2017/18 is reasonable in amount, that that amount is payable by four equal instalments on the usual quarter days and thus the amounts specified in paragraph 1 above were payable by the respondent to the applicant on the dates specified.
14. In the application form the applicant sought a determination that the sums in issue were payable "*without deduction or set-off*". We decline to make a determination in those terms. We note that clause 3(1) of the lease [18] provides the ground rent is payable "... *without any deduction*". There is no express mention of exclusion of the equitable right of set-off. Further that sub-clause does not refer to or concern payments of Interim Charge. The obligation to make payment of the Interim Charge is set out in paragraph 3 of the Fifth Schedule to the

lease [39] and there is no reference at all to expressions such 'without deduction' or 'without any set-off'.

Judge John Hewitt
31 October 2017