FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/00HN/LIS/2019/0055
Property:	64 Evelyn Road, Bournemouth, Dorset, BH9 1SZ
Applicant:	Valley West Limited
Representative:	Napier Management Services Limited
Respondents:	Mrs S Moody Mr R M Gibbons
Representative:	None
Type of Application:	Section 27A of the Landlord and Tenant Act 1985 (Liability to pay service charges) Landlords application for the determination of reasonableness of service charges for the year 2019/20.
Tribunal Member:	Judge A Cresswell (Chairman)
Date and venue of Hearing:	22 October 2019 On the Papers

DECISION

The Application

1. This case arises out of the Applicant landlord's application, made on 6 August 2019, for the determination of liability to pay service charges for the year 2019 to 2020. The Applicant asks the Tribunal to decide whether planned major works are the responsibility of the Applicant and are reasonable in sum and payable in accordance with the lease.

Summary Decision

2. The Tribunal has determined that the Applicant landlord has demonstrated that the charges in question are the responsibility of the landlord, would be reasonably incurred in accordance with the lease and, providing the work is of a reasonable standard, that they are reasonable in amount and would be payable by the Respondents once incurred.

Directions

3. Directions were issued on 15 August 2019. Those directions provided for the matter to be heard on the basis of written representations only, without an oral hearing, under the provisions of Rule 31 of the Tribunal Procedure Rules 2013.
4. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
5. This Decision is made in the light of the documentation submitted in response to those directions.

The Law

6. The relevant law is set out in sections 18, 19, 20 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
7. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
8. The relevant law is set out in the below Annex.

Ownership and Management

9. The Tribunal is told that the Applicant, Valley West Limited, is the Managing Agent for the Landlord, which is shown on the works specification to be Tyrrel Investments Inc. The Applicant is represented, in turn in these proceedings, by Napier Management Services Limited.

The Lease

10. The property is said to be a detached 2-storey building with a pitched tiled roof comprising 2 flats without any common parts. The lease provided to the Tribunal relates to the ground floor flat, is dated 13 April 1987, and was made between Eric Brown as lessor and Samantha Jane Toomey as lessee. The Tribunal understood this lease to be representative of both leases at the property, save as detailed below.

11. The construction of a lease is a matter of law and imposes no evidential burden on either party: (**(1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill** [2012] UKUT 373 (LC)).

12. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:
Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

> 15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions. In this connection, see Prenn at pp 1384-1386 and Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, Bank of Credit and Commerce International SA (in liquidation) v Ali [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in Rainy Sky, per Lord Clarke at paras 21-30.

13. The lease requires the tenants to pay a Service Charge (Clause 3.2).

14. The Fifth Schedule describes that charge as *All costs and expenses whatsoever incurred by the Landlord in and about the discharge of the obligations on the part of the Landlord under this Lease or any Act and all costs charges and expenses reasonably and properly incurred or paid by the Landlord by virtue or in connection with any act matter or thing arising under or by virtue of this Lease or any Act if occasioned by any Act or omission of the Tenant.*

15. The landlord covenants as follows (Clause 6.2): *The Landlord will redecorate in a*

proper and workmanlike manner the exterior of the building at least once in every five years and will from time to time and at all times during the said term well and substantially repair and renew (if necessary) the foundations roof roof timbers main walls chimney stacks eaves gutters and down pipes fences walls and other drains sewers wires cables and pipes (not used exclusively for the Demised Premises) forming part of the building of which notice of disrepair has been given to the Landlord by the tenant or the tenant for the time being of any part of the building.

The Applicant's Case

16. The Applicant has asked the Tribunal to decide whether planned major works are the responsibility of the Applicant and are reasonable in sum and payable in accordance with the lease.

17. The Applicant has undertaken a Section 20 consultation process in respect of the planned works. The Respondents did not take an active part in the Section 20 process. The Applicant has decided to accept the lower of 2 tenders studied in detail.

The Respondents' Case

18. The Respondents have not responded in any way to the application or Directions and have not, therefore, disagreed with any of the background put forward by the Applicant or sought to resist the application.

Consideration and Determination

19. The Tribunal finds it clear from examination of the papers that the issues here are of construction of the lease and the reasonableness of planned expenditure. A tenant can only be required to pay a Service Charge if required to do so by the terms of the lease. Generally a lease details who owns what part of a building and the responsibilities of landlord and tenant for repair and decoration.

20. In **Hallisey v Petmoor Developments Limited** (2000) WLR) Mr J Patten highlighted *"the need to construe particular terms in a lease in the context of the lease as a whole and in the light of the relevant surrounding circumstances*." The Tribunal finds that its assessment of the meaning of this lease is *"what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean."*

21. The First Schedule Part One defines the Demised Premises. The ground floor flat includes "*the main internal and external structural parts of the Demised Premises forming part of the building*". The Tribunal has not seen the lease for the first floor flat and assumes that it differs from the lease for the ground floor flat only by reason of not including the above reference because of the insertion also of "*(ground floor flat only)*" in the First Schedule Part One.

22. "Structure" and "exterior" generally include windows (**Ball v Plummer** [1879] 2 T.L.R. 877 CA; **Boswell v Crucible Steel Co** [1925] 1 K.B. 119 CA). In **Irvine v Moran** (1992) 24 H.L.R. 1 QB, the court held that windows, window frames, sashes, cords and essential furniture of windows formed part of the structure and, if not

structure, that the windows are, at least on their outer face, plainly part of the exterior.

23. The building is defined in the First Schedule Part Two. "*ALL THAT building and property situate and known as 64 Evelyn Road Moordown Bournemouth Dorset as the same is for the purpose of identification only more particularly delineated on the plan annexed hereto and thereon edged blue*".

24. The lease (Fifth Schedule) allows the landlord to recover by Service Charge demand relevant costs incurred. Relevant costs include for 5-year external redecoration and repairs to the exterior of the building and boundary wall where notice of disrepair has been given to it by a tenant (Clause 6.2). Clause 6.2 makes no distinction between the constituent parts of the exterior in respect of the 5-year redecoration, so that the windows of the ground floor flat fall to be redecorated by the landlord. Indeed, Clause 5.6.1.2 allows for entry by the landlord "*To execute any works on construction repair decoration or of any other nature within the Building and to carry out repairs decorations or other work which the Landlord must or may carry out under the provisions of this Lease upon or to the Demised Premises*". Those windows are not, however, included within the repair and renew part of the covenant. It is noted that the scheme of works planned by the Applicant landlord does not include repair or renewal of the windows, only decorative measures.

25. There being no submissions by the tenants, it has not been suggested that the planned works do not fall within the relevant costs. There being no submission or evidence to the contrary, the Tribunal finds that the works proposed are relevant costs which, when the works are completed in a reasonable manner, will fall to be demanded by the Applicant landlord by way of Service Charge in accordance with the terms of the lease.

26. There being no submissions to argue that the Section 20 process was not followed correctly, the Tribunal has, for that reason, not set about its own fine analysis of the procedure followed.

27. The Applicant proposes to accept the lower of the 2 quotations examined after the initial tendering exercise; that being a quotation in the sum of £2,950 plus VAT. The Tribunal notes that this quotation is less than half of the other quotation. Also, there is nothing on the face of the documents before the Tribunal to suggest that such a charge would be unreasonable for the works detailed in the specification and schedule of work forming part of the bundle of papers submitted. That being the case, the Tribunal finds that the cost will be reasonable and can be claimed by Service Charge demand from the tenants in accordance with the terms of the lease, providing that the works are completed in a reasonable manner.

A Cresswell (Judge)

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.

ANNEX

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

18 Meaning of "service charge" and "relevant costs"

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

19 Limitation of service charges: reasonableness

(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.

27A Liability to pay service charges: jurisdiction

(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.

(2) Subsection (1) applies whether or not any payment has been made.

(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.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a postdispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration
agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).
(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Section 20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a
leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the
works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the
regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants
being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the
amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the
amount of the relevant contribution of the tenant, or each of the tenants, whose relevant

contribution would otherwise exceed the amount prescribed by, or determined accordance
with, the regulations is limited to the amount so prescribed or determined.