FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/40UD/LIS/2018/0053**
Property	**:**	**1B North Street, Martock, Somerset TA12 6DH**
Applicant	**:**	**Charlotte C Clark**
Applicant's Lawyers	**:**	**Solicitors: Amicus Law (SW) LLP Counsel: Philip Smith**
Respondent	**:**	**Franklin James Ingram**
Type of Application	**:**	**Determination of liability to pay and reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	**:**	**Judge Professor David Clarke Jan Reichel MRICS**
Dated	**:**	**27 March 2019**

DETERMINATION AND STATEMENT OF REASONS

DETERMINATION

The Tribunal determines that the Respondent is liable to pay the total sum of £5,673.30 by way of service charge due for the years 2012-2017, this being the total of insurance, management charges and repairs to the roof for the six years in question; and further determines that, within that total, the sum of £125.00 for emergency roof repairs and for Land Registration fees of £4.50 were reasonably incurred; and further determines that the charge for the roof overhaul incurred in 2017 and amounting to £3,886.20 is reasonable and properly incurred.

In respect of the Applicant's claim for costs, and in view of the fact that the Respondent did not appear and was not represented, the Tribunal adjourns the case on the question of costs. The Respondent shall, within a period of 28 days from receipt of a copy of this determination, together with a copy of the summary of the Applicant's costs presented to the Tribunal at the hearing, submit to the Tribunal his comments on the application for costs and his reasons why the Tribunal should not make an order for costs in this case. The Tribunal will then proceed to determine the issue of costs without a further hearing.

STATEMENT OF REASONS

The Application

1. This is an application ("the Application") made 30 August 2018 under s27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination in respect of service charges payable in respect of the flat at 1B North Street, Martock, Somerset. The Applicant, Charlotte C Clark, is the freeholder of the building known as 1 North Street, ("the Building") which is divided into three units, a ground floor commercial premises, currently an Estate Agent's office (let on a business lease), a first floor flat (1A North Street, let on a long lease on terms similar to 1B North Street) and a small ground floor flat (1B North Street). The Respondent is the long leaseholder of 1B North Street under a Lease ("the Lease") dated 14 March 1990 for a term of 199 years from 1 January 1988 at a ground rent of £50 per annum; with a service charge reserved as rent payable in addition. He purchased the Lease on 30 March 2006. The Respondent does not reside at the property; he is resident in France and the property is sub-let by him.

2. The Respondent has never paid rent or service charge, as periodically demanded under the terms of the Lease, since 2006. Until 2017, the freeholder was Carol Ann Kendall and the property was managed by Richard Kemp, a Solicitor. The Tribunal was not told why no attempt was made to enforce the payments due until 2017 but the Tribunal notes that, until 2017, the amounts due by way of rent and service charge from the Respondent were relatively modest, which may have been a factor.

3. The Application asked the Tribunal to consider service charges for the past years 2006-2011 and asked for determination of the service charge payable for the six years 2012-2017. By way of Directions dated 16 October 2018, it was noted that the Tribunal had no jurisdiction in relation to the issue of not having paid the ground rent. It was also directed that, since the service charge was reserved as rent and that the limitation period for recovery of rent was six years, the Tribunal, in exercise of its case management powers, would not be concerned with the service charge position in relation to any years prior to 2012. This determination is therefore limited in respect of the service charge to the years 2012-2017. These Directions also invited the parties to accept the Tribunal's offer of mediation. This was accepted by the Applicant but no response was made by the Respondent.

4. A case management hearing was held on 13 November 2018. Both parties participated by means of a conference call. Further directions were then made for the Applicant to set out her statement of case, provide all relevant documentation and witness statements and for preparation of the bundle of documents. These directions have been scrupulously followed by the Applicant and, in particular, the bundle of documents has been excellently prepared. The Respondent, however, did not file a statement of case in accordance with the Directions nor did he communicate with the Tribunal in any way, though he was clearly aware of these proceedings. He did not appear at the hearing nor send a representative.

5. The Tribunal inspected the property prior to the hearing, which was conducted on behalf of the Applicant by Philip Smith, of Counsel. Also present were the Applicant, the previous freeholder, Caryl Kendall and her agent, Richard Kemp, all of whom had provided witness statements to the Tribunal.

Case for the Applicant

6. The case was presented by Philip Smith who helpfully provided the Tribunal with a skeleton argument. His case was straightforward. The Lease provides for a service charge, defined as one quarter part of the costs, expenses, outgoings and matters mentioned in the Fourth Schedule. That Schedule provides that the service charge is to be one quarter of the total expenditure incurred by the Landlord in respect of each calendar year. The relevant provisions, summarising the essential provisions as nothing turns on the detailed wording, include:

(i) Insuring the property;
(ii) Maintaining and keeping in substantial repair the main structure of the Building;
(iii) The fees and disbursements paid to any management agents appointed by the Landlord;
(iv) The fees and disbursements paid to any solicitor, accountant or professional person in relation to certification of the accounts or collection of payments due; and
(v) All other expenses incurred by the Landlord in and about the proper and convenient management and running of the Building.

7. It was the case of the Applicant that the service charges for the six years 2012-2017 contain just three essential elements and all are within the service charge provisions in the lease and were reasonably incurred. The leaseholder of flat 1A and the commercial business tenant had each paid the service charge issues to them without challenge or response. The Tribunal deals with each of these elements in turn.

Insurance

8. Mr Smith took the Tribunal through the comprehensive evidence in the bundle relating to insurance, which the landlord, by virtue of clause 5 of the Lease, has an obligation to undertake. In summary, he pointed out that insurance was arranged through a reputable broker; that it had been approved by Mr Kemp and by the freeholder, Ms Kendall; and that the Respondent had never raised any objections to the insurance cover arranged. He submitted that it was at the time the best price that could be obtained. There had been a significant increase in 2015 when there had been a general increase in premiums as tax was levied from that year.

9. The premiums charged to the Respondent, at 25% of the total premium, were as follows:

2012: £114.71
2013: £118.59
2014: £125.77
2015: £181.13
2016: £186.90
2017: £161.00

10. There was no evidence on the issue of insurance from the Respondent and certainly none on which the Tribunal could possibly hold that the amount of premiums incurred and charged to the Respondent were unreasonable; on the contrary, using its expertise, the Tribunal considered that the insurance premiums were reasonable.

11. The Tribunal therefore determines that insurance premium element within the service charge for the six years are payable in full by the Respondent.

Management Charges

12. The bundle of documents contained a copy of the management charge for each year, between 2102 and 2017 inclusive, of Richard Kemp, solicitor. He was engaged by Ms Kendall both as an agent to manage the Building and as the solicitor to audit and prepare the accounts. His charges are set out in detail in terms of time, telephone calls, correspondence details and copying of documents and amount claimed to be payable by the Respondent is as follows (in each case, 25% of the total charge):

2012: £55.50
2013: £105.00
2014: £120.00 plus a Land Registry fee of £4.50
2015: £84.00
2016: £270.00
2017: £135.00

The Land Registry fee was explained as a bankruptcy search against the Respondent given his failure to pay anything by way of rent or service charge.

13. Once again, there was no evidence presented to the Tribunal on the issue of the management charges from the Respondent and certainly no objection has ever been made by him. Consequently, there was again no evidence presented on which the Tribunal could possibly hold that the amount of work undertaken by Mr Kemp was unreasonable. Indeed, the Tribunal considered that the amount of work undertaken was what would be expected when managing a property of this type, and that the charges for the work done were eminently reasonable. The Tribunal determines that the management charges element within the service charge for the six years are payable in full by the Respondent.

Emergency Roof Repairs in 2014

14. There are two charges for repairs to the roof of the Building, one of £125 to the Respondent in 2014 for his 25% contribution towards emergency repairs costing £500 in total after ingress of water; and in 2017 for a complete overhaul of the roof, the total cost being £15,544.80 (inclusive of VAT) resulting in a demand in the 2017 service charge of one quarter of that cost amounting to £3,886.20.

15. In 2014, a Mr. Prew was engaged to make emergency repairs to the roof following inclement stormy weather during the winter. An invoice was included in the bundle. Those emergency repairs, which did not result in any tenant having a relevant contribution of more than £250, were not qualifying works for the purpose of section 20 of the 1985 Act and consultation with the Respondent was not required.

16. The Tribunal is satisfied that the work was necessarily undertaken and that the charge for the works was eminently reasonable; indeed, the Tribunal would not have been surprised if such emergency work had resulted in a larger charge.

Roof Overhaul in 2017

17. Following the need for emergency repairs, a roof survey was undertaken by Kay and Company, Property Services. This was in relation to a potential insurance claim in respect of the ingress of water. The findings indicated that no insurance claim was appropriate but did recommend re-roofing of the Building to prevent a recurrence of problems and prior to internal remedial works to the Flat 1A North Street. In particular, it indicated that the roof required felting. The Tribunal had the opportunity to inspect the roof from the public highway and could see that the work also involved the replacement of some of the roof slates.

18. Given the amount of work required, a letter was sent to the Respondent by Mr Kemp (and to the other leaseholder) dated 1 June 2016 and complying with section 20 of the 1985 Act and in accordance with the Service Charges (Consultation Requirements) (England) Regulations 2003. This described the proposed works and set out the reasons for the work, including the fact that the last overhaul had been 34 years previously and that there had been a recent ingress of rainwater. The survey report from Kay and Co was enclosed. Section 20 was explained to the Respondent and two quotations for the work, from Abelson Roofing and from Rowsell Roofing, were sent with the letter. The letter

invited observations and invited the Respondent to propose a person from who the landlord should obtain an estimate for the works. The Tribunal is satisfied that all the statutory and regulatory requirements for a notice were met.

19. The only response from the Respondent within the time limit was an oral response indicating that he would arrange for inspection by his own surveyor. No such inspection was ever done.

20. The only written response at all from the Respondent was an e mail exchange with Caryl Kendall between 14 September 2016 and 11 October 2016 which the Applicant, quite properly, included in her bundle of documents. The thread of the Respondent's argument is not easy to follow but the main points made are:

(i) Lack of maintenance was a major factor in the roof failure;
(ii) If the roof had been properly maintained, the insurance claim would have succeeded;
(iii) The onus was on 'the management company' to foot the bill;
(iv) An allegation of Mr Kemp's unfitness to manage was made;
(v) It was claimed that Rowsell's quotation was excessive and that they would add extras;
(vi) A proper survey would include the interior and the work could be done more cheaply.

In the opinion of the Tribunal, the Respondent's e mail indicates a misunderstanding of the position and particularly the importance of the provisions in the Lease. It suggests that he had received only one quotation, when there were two sent to him; and he does not appreciate that the internal work needed to the upper flat following the roof leak would be a matter for the leaseholder of flat 1A, perhaps under their insurance.

21. Notwithstanding the Respondent's failure to respond to the notice within the time limit, Ms Kendall and Mr Kemp made every effort to accommodate the Respondent – which given that he had never paid a penny in rent or service charge for over 10 years is much to their credit. An oral request by the Respondent to obtain a third quotation for the work was, according to the evidence presented to the Tribunal, followed up but despite every effort, the person concerned did not respond with a submission. As a result, the work had, therefore, to be delayed into 2017 and though Ms Kendall was minded to accept the slightly cheaper quotation of Ableson Roofing (at £12,300 plus VAT) it transpired that the delay meant Ableson had taken on other work and could not undertake the job within a reasonable time frame. So the quotation of Rowsell Roofing was accepted, originally at £12,770 plus vat. However, the delay had resulted in an increase in materials cost and the revised tender was for £12,954 plus VAT.

22. The Respondent was kept fully informed of developments by letters, but no response was received from him. The work was satisfactorily completed at the tendered price in July 2017. Similarly, no response was received when requests for payment sent to the Respondent.

23. The Tribunal is satisfied that the works to the roof were properly carried out by the Landlord under the obligation to repair contained in the Lease; that the cost is properly

included in the service charge; that the Respondent was properly consulted about the proposed works as required by the 1985 Act; that the costs were reasonably incurred and done to a reasonable standard.

24. The full amount of the service charges claimed for the six years 2012-2017 inclusive and including the roof works totalling £5,673.30 is payable by the Respondent to the Applicant. The determination of the Tribunal is set out at the commencement of this statement of reasons.

Costs

25. At the conclusion of the hearing. Mr Smith made an application for costs, submitting to the Tribunal a Schedule of costs amounting to £5,910.48, including VAT.

26. Under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 13, the Tribunal may make an order for costs only if a person has acted unreasonably in bringing, defending or conducting proceedings (rule 13(1)(b)(ii)). Mr Smith made an application under this section.

27. The grounds of the application were as follows:
(i) The Respondent has never paid anything.
(ii) The Respondent does not respond to letters form the landlord or engage meaningfully on any issue.
(ii) The Respondent, though aware of the proceedings, did not attend or give reasons for his non-appearance. He did not respond to the Tribunal's offer of mediation even though the Applicant was prepared to mediate.
(iv) The Respondent has never given any reasons for his non-payment of rent of service charge nor put forward any reason at all that would justify such non-payment.

28. Mr Smith stressed that, when putting his case for a costs order, the Respondent had chosen not to act and decided not to respond. He had not put forward any suggestion of financial difficulties. In not making a case, he was acting 'quintessentially unreasonably'. This was not a case where there was a genuine grievance and a party wanted to have a day in the court to air that grievance. The Applicant had had no alternative, if she was to take action to recover the sums due, to take these proceedings.

29. Rule 13(6) does not permit the Tribunal to make an order for costs against the person paying without giving that person the opportunity to make representations.

30. In respect of the Applicant's claim for costs, and in view of the fact that the Respondent did not appear and was not represented, the Tribunal adjourns the case on the question of costs. The Respondent shall, within a period of 28 days (from the date that the Respondent would have received in normal course of post a copy of this determination sent to him by the Tribunal, together with a copy of the summary of the Applicant's costs presented to the Tribunal at the hearing) submit to the Tribunal his comments on the application for costs and his reasons why the Tribunal should not make an order for costs in this case. Unless good reason is given for there to be a further hearing in this matter, the Tribunal will then proceed to determine the issue of costs without a further hearing.

Right of Appeal

31. 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.

32. 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.

33. 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.

34. 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 that the party who is making the application for permission to appeal is seeking.

Judge Professor David Clarke
8 April 2019