



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

**Case Reference** : **CHI/00HY/LIS/2020/0018**

**Property** : **17 Maristow Street, Westbury, Wilts  
BA13 3DN**

**Applicant** : **City Freeholds Limited**

**Representative** : **Awdry, Bailey & Douglas Solicitors**

**Respondent** : **Doreen Elizabeth Ruth Hallett**

**Representative** : **-**

**Type of Application** : **Determination of service charges and  
administration charges**

**Tribunal Member** : **Judge E Morrison**

**Date of decision** : **28 September 2020 (on the papers)**

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**DECISION**

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## **The application**

1. By an application dated 5 March 2020 the Applicant landlord applied for a determination of the Respondent tenant's liability to pay certain service charges and administration charges.

## **Procedural background**

2. Upon receipt of the application the Tribunal issued Directions dated 23 March 2020 which provided for each side to prepare written statements of case in the usual way, and for the application to be determined on the papers without an oral hearing if neither party objected. There being no objection, the Tribunal therefore proceeded to make its determination solely on the basis of the documents in the bundle provided by the Applicant. The Respondent has not provided any form of statement of case or otherwise engaged with the proceedings other than sending the Tribunal, on 3 August 2020, a copy of an email sent to the Applicant in July 2019.
3. Upon considering the bundle, the Tribunal was concerned that an important issue, namely the possible impact of clause 6.8 of the lease headed "Limit on Service Charge" (see below), had not been addressed by the parties. Further directions were issued, giving the parties an opportunity to make submissions on this point. The Applicant's solicitors provided a letter, the contents of which have been considered. There was no response from the Respondent.
4. The Tribunal has also seen a previous Tribunal decision relating to 17A Maristow Street, the other flat in the building, dated 16 January 2017 (Case No. CHI/00HY/LIS/2016/0031).
5. There has been no inspection of the property but the Tribunal is aware from the description in the previous decision that 17 Maristow Street is a ground floor flat, 17A being the upper flat in the building.

## **The law and jurisdiction**

6. The Tribunal has power under section 27A of the Landlord and Tenant Act 1985 ("the Act") to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when a service charge is payable.
7. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. When service charges are payable in advance, no more than a reasonable amount is payable.

8. Section 20 of the Act and regulations thereunder provide that where costs of more than £250.00 per tenant have been incurred on qualifying works, the relevant contributions of tenants will be limited to that sum unless the consultation requirements have been either complied with or dispensed with by the determination of a Tribunal. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI2003/1987.
9. Under paragraph 5 of Schedule 11 to the Commonhold and Leasehold reform Act 2002 the Tribunal can be asked to decide if an administration charge is payable. Under paragraph 2 such a charge is only payable to the extent that it is in a reasonable amount. An administration charge is defined in paragraph 1 and includes amounts payable by a tenant under a lease in connection with a breach of covenant or failure to make payments when due.

### **The lease**

10. The lease for 17 Maristow Street is dated 17 September 2007 and is for a term of 125 years from 1 January 2007. The relevant provisions can be summarised as follows:
  - (a) The tenant is liable to pay the “Service Charge”, being “ an appropriate and fair proportion” of the costs incurred by the landlord, as set out Part II of the Sixth Schedule, in carrying out its obligations as set out in clause 6 and Part I of the Sixth Schedule.
  - (b) The landlord’s obligations include a covenant to keep the main structure and exterior of the building (which comprises two flats), including the roof, in good repair and condition.
  - (c) The tenant may be required to pay advance sums on account of the service charge on the usual quarter days, being for such sums as the Landlord’s surveyor shall specify as a fair and reasonable estimate of the likely service charge for that year (clause 6.4.1). If the actual service charge in any financial year exceeds the advance payments the excess will be payable by the tenant to the landlord on demand.
  - (d) Under clause 6.4.3 the landlord may also require payment of expenditure not yet incurred within 14 days of demand if that expenditure will not be met by the on account payments.
  - (e) Clause 6.8.1 is headed “Limit on Service Charge”. Until 1 January 2008 the service charge payable “shall be the Initial Service Charge” set at £650.00 per annum, and from that date, and annually thereafter, the service charge is to be reviewed, rising in line with the increase in the RPI, the reviewed sum

being the amount then payable by the tenant. Further, clause 6.8.7 provides:

*The Initial Service Charge increased yearly as provided for in clause 6.8.4 shall be reviewed by the Landlord every five years calculated from 1<sup>st</sup> January 2007 and may be adjusted by the Landlord (acting reasonably) in accordance with the criteria for adjustments in the definitions of “Service Charge” in clause 1 of this Lease or to take account of increased unusual, unanticipated, or exceptional items of Expenditure. Any such adjustments shall be notified to the Tenant in writing by the Landlord. Any dispute under this clause shall be referred to a surveyor as provided for in clause 6.8.6*

- (f) Under Part II of Schedule 6 the landlord may include within the service charge costs:
- The “proper and reasonable fees” of the Landlord for any of the services (including management) which it provides itself
  - The costs of the collection of rents and service charge and the enforcement of covenants in the lease.
- (g) Under paragraph 14.3 of Schedule 4 the tenant must pay all proper costs incurred in respect of or incidental to action taken by the Landlord to remedy a breach of covenant.
- (h) Interest is payable on sums remaining unpaid 7 days after they become due at the rate of 4% over Lloyds TSB Bank plc’s base rate.

### **The issues**

11. Whether clause 6.8 of the lease operates to limit the amount of service charge payable by the tenant.
12. In service charge year 2018 the Applicant seeks a determination that the Respondent owes service charges of £29.96.
13. In service charge year 2019 the Applicant seeks a determination that the Respondent should pay a demand for £5935.20 in respect of anticipated roof repair costs.
14. The Applicant also seeks a determination that three invoices for administration charges in 2019 totalling £91.93 are payable.

### **The effect of clause 6.8 of the lease**

15. Clause 6.8 of the lease is extremely unusual. Although headed “Limit on Service Charge” it actually mandates a fixed level of service charge

which the tenant must pay each year, variable only in line with the RPI or by a formal review in accordance with clause 6.8.7. It is simply impossible to reconcile this provision with the other provisions in the lease which deal with the amount of the service charge and the machinery for payment. It is difficult to avoid the suspicion that the insertion of clause 6.8 was the result of a misunderstanding and/or a mistake. However, it is in the lease and therefore cannot simply be ignored.

16. The Applicant has submitted that clause 6.8 applies only to place a limit on the amounts that can be demanded quarterly on account, but does not limit monies that may be demanded under clause 6.4.3 to meet expenditure not covered by on account payments.
17. The Tribunal cannot read into clause 6.8 anything to suggest that it should be interpreted as suggested by the Applicant. However, there is a more fundamental objection to the operation of this clause. Section 27A(6) of the Act provides:

*An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void insofar 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).*

Section 27A(1) and (3) cover applications to determine the payability of service charges, the amount of which may vary according to the relevant costs (see section 18). Aside from clause 6.8 this lease clearly provides for a variable service charge, and the usual service charge machinery required to collect a variable service charge. The Tribunal concludes that, by attempting to superimpose a fixed amount for the service charge payable each year, clause 6.8 is seeking to oust the jurisdiction of the Tribunal under section 27A(1) and(3) and is therefore void. Accordingly clause 6.8 does not operate to affect the amount of service charges payable by the Respondent.

### **Service charge year 2018**

18. The Respondent purchased her flat on 31 August 2018. On 29 March 2019 the sum of £42.09 was demanded from her as an “end of year adjustment” covering the period 31 August - 24 December 2018. The Applicant states that “a credit note was issued in respect of the 2019 service charges which has now reduced the outstanding balance to £29.96”.
19. In response to an email dated 8 April 2019 from a Mr Alan Partner on behalf of the Respondent disputing the charge and requesting full breakdown of “all payments charged”, the Respondent enclosed service charge accounts for year ended 24 December 2018 together with a brief narrative explaining the various heads of expenditure.

20. The Respondent has not made any formal challenge to the expenditure set out in these accounts, which totals £1530.00 against income of £1263.00<sup>1</sup>.
22. The Tribunal has been given no information about any earlier demands or payments made by the Respondent or her predecessor in respect of the service charge for this year. Therefore the Tribunal cannot be satisfied that £29.96 is the amount remaining due. On the evidence provided the only determination the Tribunal can make in respect of this year is that the total service charge for the building (excluding insurance<sup>2</sup>) is £1530.00 of which 17 Maristow Street's share (in accordance with the practice of sharing costs equally between the two flats) is £765.00. How much of this remains payable will depend on what has already been paid.

### **Service charge year 2019**

23. The statement of case provided by the Applicant explains that in October 2018 it was decided that the roof needed to be replaced. It goes on to give full details, with supporting documentation, of the consultation carried out under section 20 of the Act. The Respondent did not participate in the consultation, save that on 12 July 2019 (the day after the date on the Stage 2 Notice of Estimates), Mr Partner wrote to the Applicant and stated "My client will arrange for the roof to be inspected and any works to be undertaken will be done by her in conjunction with the tenant above". After the contractor was chosen, with work scheduled to commence in September 2019, the Respondent was sent a demand for £5935.20 on 28 August 2019. This has not been paid.
24. Under the lease it is the landlord, not the tenant, who is responsible for maintaining the roof. Clause 6.4.3 permits the landlord to demand payment of anticipated costs at any time if these costs will not be covered by any on account payments. The Tribunal has been given no information about whether the Respondent was asked to make any on account payments for year ending 24 December 2019, or if she was, whether they might cover the roof works. The Tribunal makes its determination on the assumption that no other monies have been demanded that might cover this expenditure.
25. There is no evidence that the costs demanded are in an unreasonable amount. They are in line with the estimate provided by the contractor. The section 20 consultation procedure has been followed. The Tribunal

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<sup>1</sup> The largest item in the accounts is "Directors remuneration" of £640.00. As there has been no challenge to this item the Tribunal cannot consider it in any detail, but the Tribunal notes that in the earlier proceedings this was explained as being a fee for management carried out by the Applicant. If it is not for management, the Respondent may wish to question the payability of this head of expenditure in future years.

<sup>2</sup> Insurance has not been included in the service charge account

therefore determines that the sum demanded became payable by the Respondent on 11 September 2019, 14 days after the demand.

### **Administration charges**

26. The original application referred to administration charges totalling £91.93. The bundle includes four invoices issued by the Applicant dated 15 May 2019, 25 June 2019, 15 August 2019 and 28 August 2019 each noting an “Admin fee” of £30.00 and a charge of a few pence described as interest on overdue invoices at 8% APR, mostly said to arise on the end of year service charge for 2018 in the sum of £42.09. The first, second and fourth of these invoices add up to the sum of £91.93.
27. There are two letters from the Applicant to the Respondent dated 25 June 2019 and 17 July 2019 referring to/enclosing some of these invoices, and requesting payment. The second letter is in response to Mr Partner’s email of 12 July 2019 and covers a number of other points addressing his various queries.
28. Although the Respondent is required under paragraph 14.3 of Schedule 4 of the lease to pay all proper costs incurred in respect of or incidental to action taken by the Landlord to remedy a breach of covenant, the Tribunal is not satisfied that these are reasonable charges. There is no explanation of what the Admin fee of £30.00 is for, so the only possible inference is that it arises in each case simply from sending out an invoice seeking to recover a few pence of interest. Such expenditure is not in a reasonable amount because it is not reasonably incurred. Furthermore the interest has not been calculated correctly as 8% is almost twice the rate provided for by the lease.
29. Additionally, administration charges are not payable unless the demand has been accompanied by the prescribed summary of the rights and obligations (see paragraph 4 of Schedule 11 to the 2002 Act). The summary sent out with these invoices (see bundle pages 91-92) is the prescribed summary relating to service – not administration-charges.
30. Accordingly the Tribunal does not find that any of these administration charges are payable.

### **Interest and costs**

31. Finally, the Applicant also seeks a declaration that the Respondent should pay interest on overdue invoices and pay “the costs of pursuing the breach of lease”. Interest arising under the lease may be demanded as an administration charge. There has been no valid formal demand made in respect of interest on any of the invoices and therefore the Tribunal does not find that any interest is due at this time. Similarly there has been no valid demand in respect of costs upon which the Tribunal is able to make a determination.

## Appeals

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.