



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

Case Reference : **CHI/43UD/LIS/2019/0079**

Property : **172B Epsom Road, Guildford, Surrey
GU1 2RR**

Applicant : **Paul Michael Salmon and Elaine
Frances Salmon**

Representative : **Mr David Harvey, HES Estate
Management Limited**

Respondent : **Marcus Risbridger**

Representative : **-**

Type of Application : **Determination of service and
administration charges (transferred
from county court)**

Tribunal Member : **Judge E Morrison**

Date of decision : **2 July 2020**

DECISION

© CROWN COPYRIGHT

The application and procedural background

1. On 22 July 2019 the Applicant lessor issued proceedings in the county court against the Respondent lessee claiming arrears of service charges, administration charges and ground rent in the principal sum of £4647.25, together with interest and contractual costs. The Respondent submitted a form of Defence and the Applicant filed a Reply.
2. By an order of the county court dated 4 November 2019 the claim was transferred to the Tribunal for determination, with those issues falling outside the Tribunal's jurisdiction to be determined by a tribunal judge sitting as a judge of the county court.
3. On 28 February 2020, following an unsuccessful mediation and a case management hearing conducted by telephone, a tribunal judge gave directions. For the purpose of the county court aspects the claim was allocated to the small claims track. Directions were given for each party to state its case in preparation for an oral hearing. The Respondent was directed to make any applications relating to costs under section 20C of the Landlord and Tenant Act 1985 or Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 by 27 March 2020. He did not do so. However, the directions also provided that representations on costs applications would be dealt with at the end of the hearing.
4. On 12 May 2020, citing the Pilot Practice Direction issued on 19 March 2020 due to the Covid-19 Pandemic, further directions were issued, providing that the application was likely to be suitable for determination on the papers and would be so determined unless a party objected by 26 May 2020. No objection was made.
5. The applicant was directed to send the Tribunal an indexed electronic bundle. What was actually received was a partially indexed set of numerous documents relied on by the applicant, many of which were (unhelpfully) in reverse chronological order, and various unindexed documents submitted by the respondent. The Applicant did not supply any copies of the county court pleadings or the Tribunal's directions. The judge has however taken steps to ensure she has seen and considered all of these and that all of the respondent's documents have been provided.
6. Further to the guidance given recently in *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC) the judge has considered, with all the papers before her, whether the matter remains suitable for a paper determination. She has concluded that so far as the tribunal aspects of the case are concerned (determination of service and administration charges) it is so suitable (save with respect to any costs issues - see below at para. 49), because there are no complicated questions of fact and credibility is not in issue. With respect to the county court issues, an oral hearing will be required.

7. Therefore this decision deals only with the determination of the service and administration charges put in issue by the county court claim. It does not decide how much of those charges remain unpaid, or address the claims for ground rent, interest or contractual costs.

Summary of decision

8. The total service charges recoverable from the Respondent for each year are:

Year	£
Up to 31.8.13	Nil
2013/14	265.74
2014/15	709.02
2015/16	514.15
2016/17	5483.02
2017/18	654.02
2018/19 (on account only)	£783.36

9. The administration charges recoverable by the Respondent are **Nil**.

The lease and the service charge machinery in practice

10. The lease of the Property is dated 22 August 1986 and is for a term of 99 years from that date, at a ground rent of (during the relevant period) £60.00 per annum. The relevant provisions in the lease may be summarised as follows:
- (a) The lessee must pay as additional rent a proportion of the amount which the lessor expends on the Building, which is defined as containing one ground floor shop and one first floor flat. The proportion is to be based on the proportion that the rateable value of the flat bears to the total rateable value of the flat and the shop.
 - (b) The lessee must also pay such sums “as may reasonably be required on account of anticipated expenditure”.
 - (c) All such sums shall from time to time be assessed and certified by the lessor’s surveyor and thereafter such sums shall be paid by the lessee within 28 days of being demanded in writing, credit being given for any sums paid in excess of that required
 - (d) The lessor’s obligations are set out at clause 4 and include the maintenance and repair of such parts of the Building as are not demised, and insuring the Building. Under clause 2 the lessor may recover the fees of the lessor’s surveyor or agent in connection with the carrying out of repair and maintenance and fees for collection of the rents, and also expenditure “in

providing such services facilities and amenities or in carrying out works or otherwise incurring expenditure as the Landlord shall in the Landlord's reasonable discretion deem necessary for the general benefit of the Building and its tenants providing one month's notice in writing thereof shall have been given by the Landlord".

11. The lease does not mandate any particular accounting period but it is clear from all the documentary evidence that in practice service charge years run from 1 September – 31 August. Since the current managing agents were appointed in September 2013 the usual practice has been to prepare a budget, exclusive of insurance, and then to require the respondent to make a payment on account based on that budget. A separate demand has been served in respect of the insurance premium. At the end of each year service charge accounts have been prepared.
12. All demands in evidence, save in respect of insurance where the exact amount due is demanded, are on account and based on estimated costs.
13. There is no evidence that credit has been given to the respondent when actual costs in any particular year have turned out to be lower than the sum demanded on account. This is a matter which will be investigated further in the county court aspect of the claim, when the judge will decide how much the respondent actually owes to the applicant.
14. Although the lease describes the building as comprising one flat and one shop, Mr Taylor, the applicant's managing agent, describes the property as a late Victorian conversion containing two retail units and three self-contained flats. This discrepancy is not explained. The service charge proportion which the Respondent has been asked to pay is 21.29% of the relevant costs, described as being based on the floor area of the flat in relation to the total floor area of the five units. The Respondent has not disputed this apportionment, which appears to have been applied for many years.

The Property

15. The Tribunal has not inspected the Property described in the previous paragraph. Mr Taylor states that it should be relatively easy to manage as it has no communal gardens or shared hallways to maintain, so service charge activity is limited to maintenance of the building fabric, and insurance, together with managing agents' and accountants fees. The Respondent has provided a number of photographs. These are undated but several appear to show some internal disrepair. The exterior photographs show a single building with two shops on the ground floor.

The law and jurisdiction

16. The Tribunal has power under section 27A of 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.
17. 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.
18. Under section 21B of the Act a demand for payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The wording of the summary is prescribed. A tenant may withhold payment of a service charge if the summary is not provided.
19. An “administration charge” is defined in paragraph 1 of the Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). Under paragraph 2 of Schedule 11 a variable administration charge is payable only to the extent it is reasonable. Paragraphs 5 and 6 of Schedule 11 confer jurisdiction on the Tribunal to determine whether an administration charge is payable and if it is, by whom and to who, when, how much, and how it should be paid.
20. Any demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges. A tenant may withhold payment of a service charge if the summary is not provided.

The issues

21. The Particulars of Claim filed in the county court allege that the Respondent has failed to pay the service charges demanded on account for the six years 2014/15 – 2018/19 inclusive. It is also alleged that £760.05 service charge arrears are owed from the period prior to September 2013 when the previous managing agents were in place. The Respondent objects to paying these charges. Thus a determination is required for each of these periods.
22. It is also alleged that the Respondent has failed to pay administration charges levied in 2013 totalling £204.00.
23. Before considering each specific charge, some general points about each party’s submissions and evidence should be noted.

24. The Applicant's evidence consists of a witness statement from Mr Taylor, which exhibits a significant number of documents, including demands, service charge accounts, supporting invoices, section 20 consultation documentation, and correspondence with the Respondent. It does not include an ongoing statement of account showing all payments/credits and demands/debits with the Respondent. Nor are all of the original on account demands in evidence (although there are later applications for payment referring to the monies as outstanding). However there are letters at the beginning of each year starting September 2014, referring to an enclosed demand and the same letters refer to the statutory summary of leaseholders' rights which "can be found by following the link in the email with your application for payment". The Respondent has not suggested that statute-compliant service charge demands were not received from the current managing agents, and the Tribunal is therefore satisfied on the evidence before it that, in relation to the service charges claimed as from September 2014, they have all been validly demanded. However there is no evidence that the claimed administration charges have been validly demanded (see below).
25. The Respondent's evidence is found in a number of letters sent to the court and then to the Tribunal. The main "Defence" document is a letter dated 19 September 2019, originally filed with the court and then re-sent to the Tribunal as his statement of case. Insofar as it deals with issues for the Tribunal, as opposed to the county court issues, he makes some general points which appear to apply to all service charge years. He complains that the managing agents have not supplied any services or maintenance and he wants all service charges held returned. This does not include the insurance costs because in a letter dated 19 July 2019 he specifically states that these have never been in dispute. He also contends that that there is no legal basis for the administration charges.
26. He complains that the quotes obtained by the agents in 2014 for the roofing works were too high, and that if the agents had originally instructed the company he wanted to do the work the cost would have been less than the actual cost charged by that company several years later.
27. The same points are repeated in a number of letters from the Respondent (and sometimes co-signed by other lessees) to the agents during 2016-2019. There are documents indicating that the Respondent has sought advice from the CAB and he says he has spent "many days" speaking to the Leasehold Advisory Service.
28. Significantly, what the Respondent does not do is specifically challenge the payability under the lease of the accountancy or general management fees. Indeed, he does not refer to the lease at all. Rather he believes that, under the law, service charges are only ever payable for actual physical works planned for or carried out on the building.

Nor does he raise any issue as to whether the service charge accounts have been certified as required by the lease.

29. Only one set of major works has been carried out since 2013. The documentary evidence shows that the Respondent always wanted TEK4 Roofing to be instructed to carry out roof and other associate repairs. In 2013-14 the managing agents carried out a full consultation under section 20 of the Act with respect to these works. A detailed specification was prepared and went out to tender. It does not appear that the Respondent requested, in response to the Notice of Proposals that TEK4Roofing should be invited to tender. Subsequently Mr King, the surveyor at the managing agents said “we were unable to find any company history about them...TEK4 Roofing do not appear to be NFRC members which led to concerns about guarantees”. Three tenders were received from NFRC registered members. It was proposed to instruct the cheapest contractor to carry out the works, the estimate being for £30,130.00 + VAT. A service charge demand was issued to cover this cost plus professional fees but the Respondent refused to pay. The Respondent said the cost was too high. Following discussions, in August 2015 it was agreed that TEK4Roofing should be instructed to carry out roofing and guttering work, ARM Construction should be instructed to do pointing and rendering, and the Respondent should carry out the associated decorating. Mr Harvey described the works as being reduced in scale to make the costs more affordable. A further section 20 consultation was carried out and the Respondent was required to pay his proportion of the estimated cost of £23,270.00 (to replace the earlier demand).
30. The work was carried out in early 2017 and a further sum of £425.80 was then demanded as the respondent’s proportion of an estimated additional cost of £2000.00 due to additional repairs found to be necessary to the fascias and brickwork.

Service charges for years up to 31 August 2013

31. The Applicant says that £760.05 is owed in service charges for service charge year 2012/13. However, a statement from the previous managing agents Bray Estates dated 17 September 2013 (page 6 of Applicant’s exhibit E2-A5) makes it clear that this sum is made up of an alleged on account demand for £425.80 made on 3 September 2010 and an alleged on account demand for £334.25 made on 24 June 2013.
32. In a letter of 25 January 2019 the Respondent disputes these charges and says he has never received a full breakdown of charges from Bray Estates although he has asked for one, and he criticises their service.
33. There are service charge accounts for 2010/11 which note that expenditure of £1521.55 was incurred against income of £2496.51. However there is no evidence that the sum of £425.80 was ever demanded.

34. With regard to the second sum of £334.25 there is a handwritten income and expenditure account for the period 2012/13 which notes monies outstanding from the Respondent and some copy invoices for insurance and management fees, but again there is no evidence of any valid demand having been served on the Respondent during that period.
35. An application for payment sent by the new agents on 16 October 2013 notes the sum of £760.05 as outstanding, but this is not a demand as such and there is no evidence that section 21B of the Act was complied with. Based on this evidence the Applicant has not established a prima facie case that monies are due from the Respondent and **the Tribunal determines that no sums are recoverable for this period.**

Service charge year 2013/14

36. The end of year service charge accounts note expenditure of £2440.00 on insurance, general repairs, accountancy, management fees and sundry expenses. However, the demands in evidence for this period refer only to insurance, claimed administration charges and the Bray Estates arrears. None of the later demands refer to any service charge arrears for this period. The insurance element of the service charge is not disputed. **The Tribunal therefore determines the service charge recoverable from the Respondent in the sum of £265.74** being his proportion of the insurance costs. It appears that this sum has already been paid by the Respondent.

Service charge year 2014/15

37. The sums demanded on account were £415.16 for general service charges, £293.86 for insurance, and £9873.34 for the major works (this demand was later cancelled). The end of year accounts show total expenditure of £4443.00 covering insurance, accountancy and management fees, surveyor fees for dealing with the Section 20 consultation and preparing a schedule of works, and an old management fee from Bray Estates for £540.00.
38. As previously mentioned the Respondent has never questioned the payability of management fees under the terms of the lease. Nor has he challenged the level of fees by suggesting they are excessive compared with market rates. Although there are no common parts the managing agents deal with the insurance, general repairs, keeping of financial records, preparation of budget and demands, and collection of rents. They instruct independent accountants to prepare the annual accounts, which is in accordance with good practice. The amount charged by the managing agents for the building (£750.00 + VAT in this year, rising to £1200.00 + VAT over the whole period) is not obviously outside a reasonable range – although £1200.00 + VAT is probably at the very top end of the range - and all the fees are

allowed. The Respondent's contention that the law only allows service charges to be paid for actual physical works planned for or carried out on the building is incorrect.

39. The accountancy fees are modest (in all years) and are allowed.
40. The sum of £1481.50 inc. VAT has been charged for the chartered surveyor's fee of dealing with all aspects of the section 20 consultation including preparing a detailed schedule of works. The underlying documentation showing the work carried out is in evidence. The Respondent's objection appears to be that the estimates obtained were too costly and were not proceeded with. However, there is no evidence to suggest that the chartered surveyor's services were not done to a proper standard, and the fact that later a compromise was reached to use cheaper contractors for a reduced scope of work does not mean this cost was not reasonably incurred. The cost is allowed.
41. The charge of £540.00 for Bray Estates management fees is supported by an invoice dated 30 September 2013. It appears to cover fees mistakenly missed off Bray's accounts for 2012/13. This cost is not mentioned in the budget forming the basis of the 2014/15 on account demand, it is not an expense incurred in 2014/15, and in any event there is no evidence that these fees have ever been demanded of the Respondent. The cost is therefore disallowed.
42. The 2014/15 expenditure is accordingly reduced by £540.00 to £3903.00, of which the Respondent's proportion is £830.94. However only £709.02 is covered by on account demands, and there is no evidence that the balance has ever been demanded. The Tribunal therefore **determines that the amount recoverable is a total of £709.02**, including the insurance element which appears to have been paid.

Service charge year 2015/16

43. The sums demanded on account were £419.41 for general service charges, £262.49 for insurance, and £4954.18 for the major works. The end of year accounts show total expenditure of £2415.00 covering only insurance, accountancy and management fees, the major works not having yet been carried out. This expenditure is allowed for the reasons previously stated, and **the amount recoverable from the Respondent is £514.15**, including insurance which appears to have been paid. As the demands exceed this sum, a credit adjustment of £167.75 will be required to the sum said by the Applicant to be outstanding.

Service charge year 2016/17

44. The sums demanded on account were £436.45 for general service charges, £277.96 for insurance, and later in the year £425.80 on account of the major works, which by then were being carried out. The end of year accounts show total expenditure of £25,754.00

covering insurance, accountancy and management fees plus major works of £22,055.00. The contractors' invoices total £22,055.00 and the Respondent was the person who pushed for these contractors to do the work. His submission that the costs would have been lower if TEK4 Roofing had been instructed years earlier is not supported by any evidence and in any event does not affect the reasonableness of the costs when they were actually incurred. The other service charge costs are allowed for the reasons previously stated. The management fees include an extra £750.00 + VAT for managing the major works, a reasonable sum. This means that **the amount recoverable from the Respondent is £5483.02**, including insurance. Again the demands (including that for major works in the previous year) exceed this sum, so a credit adjustment of £611.37 will be required to the sum said by the Applicant to be outstanding.

Service charge year 2017/18

45. The sums demanded on account were £487.54 for general service charges and £296.22 for insurance. The end of year accounts show total expenditure of £3072.00 covering only insurance, accountancy and management fees. These are allowed for the reasons previously stated. **The amount recoverable from the Respondent is £654.02**, including insurance. Again the demands exceed this sum, so a credit adjustment of £129.74 will be required to the sum said by the Applicant to be outstanding.

Service charge year 2018/19

46. The sums demanded on account were £493.93 for general service charges and £310.73 for insurance. There are no formal end of year accounts in evidence. The amount demanded on account is based on a budget which covers contingencies, gutter cleaning, accountancy and management fees. The Respondent has complained that although gutter cleaning regularly appears as a budget item, it is never actually done. Without some evidence that gutter cleaning is planned, the Tribunal cannot approve this as a reasonable budget item. The other budget items appear reasonable and are allowed. **The amount recoverable from the Respondent on account is therefore £783.36**. The end of year accounts should be produced without further delay so that actual costs are confirmed and any applicable debit/credit adjustment made.

The administration charges

47. These charges are first mentioned in an application for payment dated 18 June 2014 and are described as:

Copy Lease Fee: £24.00

Administration fee: £120.00

Late payment fee: £20.00

The Applicant's evidence contains no further explanation. It is not stated under what provision in the lease any of these charges might be payable, and there is no evidence of any valid demand accompanied by the required summary of rights and obligations. **The Tribunal is not satisfied that any of these charges are recoverable from the Respondent.**

48. The Applicant also claims solicitors costs. However there is no evidence these have ever been demanded as an administration charge and are therefore not a matter for the Tribunal.

Costs applications

49. The Respondent has not made any applications for orders limiting recovery of the Respondent's costs of the Tribunal aspects of the proceedings under Section 20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. However the Tribunal is concerned that the Directions dated 28 February 2020 were somewhat unclear in this regard (see paragraph 3 above). As there will now be an oral hearing to deal with the county court aspects of this claim, the Respondent is given permission to make any such applications orally to the tribunal judge at the start of that hearing.

Other matters

50. The lease of this property provides that credit is to be given for service charges paid by the lessee in excess of actual expenditure and there is no provision in the lease for a sinking or reserve fund. However, the accounts state that surpluses are carried forward. It is not known what the leases of the other four units provide, but in future if the Respondent is required to pay more on account than turns out to be actually expended in any particular year, he is entitled to a credit to be set against future demands.
51. The level of management fees has been commented on at paragraph 38. If the Respondent wishes to challenge the level of fees in future years he will need to obtain evidence (such as quotes from other agents) that, for the work actually being carried out, the fees are higher than reasonable.

Appeal

52. Requests for permission to appeal must normally be made within 28 days of the written decision being sent out to the parties. However, because the matter will not be finally concluded until the county court aspects of the claim are dealt with, the time for filing any request is extended until 28 days after the date on which the court's final order is sent to the parties, and the notes below are to be read accordingly.

Dated: 2 July 2020

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.