FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HN/LSC/2021/0012
Property	**:**	57 Maxwell Road, Bournemouth, Dorset BH9 1DQ
Applicant	**:**	Mr and Mrs Justin Allan
Representative	**:**	---
Respondent	**:**	Ms L Sutton
Representative	**:**	Reeves James Solicitors
Type of Application	**:**	Determination of service charges – Section 27A Landlord and Tenant Act 1985
Tribunal Member(s)	**:**	Judge D R Whitney Miss C Barton MRICS
Date of Hearing	**:**	1st September 2021
Date of Determination	**:**	9th September 2021

DIRECTIONS

Background

1. The Applicant seeks determination of service charges in the sum of £14,301 relating to a replacement roof and other external works carried out during 2020 and service charges up to and including March 2021. All monies have been paid on account by the Applicant. The issue to be determined is the reasonableness of such costs and whether or not the Applicant has any right of set off.

2. Directions were originally issued on 26th March 2021. Subsequently various further directions were issued culminating in a telephone case management hearing on 23rd June 2021.

3. Directions were issued and they have been substantially complied with. References in [] are to the bundle produced by the Applicant.

HEARING

4. The hearing took place remotely by video. Neither party objected. We record in this determination the most salient points raised at the hearing and the same is not a verbatim record of what took place.

5. The Tribunal did not inspect but relied upon various photographs contained within the bundle. The panel also confirmed to the parties that they had viewed the Property online.

6. The Tribunal confirmed it had read the bundle and the reports and attachments of Gordon Colbourne MRICS ACABE contained within a separate bundle.

7. The hearing was attended by Mrs Dulcie Allan and Mrs Sharon Stevens for the Applicant. Mr Cuff of Reeves James Solicitors represented the Respondent, Mrs Sutton, who was in attendance. Mrs Sutton's daughter was also with her.

8. The Tribunal reminded the parties of its jurisdiction to determine the Applicant's liability to pay and the reasonableness of service charges.

9. Mrs Allan presented the case for the Applicants. She explained having now received accounts she believed there was a sum of approximately £3,000 due and owing to her and her husband which as yet had not been repaid. She explained that in respect of the main part of the costs of the major works she did not look to challenge the reasonableness of the charge itself. It was her case that she and her husband were entitled to set off certain of the monies given what she said was the landlords breach of covenant of the lease and the information given to them when they purchased the flat. She principally relied upon the reports of Mr Colbourne and suggested that her share of the cost of the major works should

be limited to £4,320. Essentially this was the amount she said she and her husband could reasonably have expected to pay during their period of ownership.

10. Mrs Allan accepted the premium sought for the insurance was reasonable. Her complaint was that the accounts [44-46] appeared to suggest she had not paid all that was owed. This was disputed.

11. Mrs Allan did not believe she should contribute towards the cost of the report of Mr Spier [239-243] at a total cost of £250. Mrs Allan stated she had obtained subsequently her own surveyor's report which was far more comprehensive.

12. Mrs Allan objected to the payment of solicitor's fees for undertaking the section 20 consultation [96, 97 and 105]. In her view Mrs Sutton should pay for her own costs of taking advice and conducting her own affairs.

13. Mrs Allan objected to paying the costs of re-decorating the internal parts of Mrs Sutton's flat damaged by the new roof works. In her opinion the costs are excessive and she would suggest the cost should not exceed £200.

14. Turning to the new roof, Mrs Allan suggested that due to poor overall management of the Property by Mrs Sutton and her prior knowledge of problems with the roof, she and her husband should not have to pay 50% of the costs of renewal.

15. Mrs Allan relied upon information given during her purchase of the Property. In particular emails from Mrs Sutton to her conveyancer [183 and 185] and the statement by Mrs Sutton in early July 2016 that the roof had been "…overhauled and repaired….". Mrs Allan pointed out her RICS Home Buyers Report [135-168] highlighted that the roof may need replacement. She had sent a contractor to look but then Mrs Sutton had sent an email indicating repairs had been undertaken. She and her husband were satisfied with this although they knew the Property may need some expenditure on gutters and soffits as they had observed these issues themselves.

16. Mrs Allan suggested Mrs Sutton had known for a long time that the roof required replacement. In her submission she should have told the Allans when they purchased and referred to this when completing the LPE1 form [175-182]. Mrs Sutton had simply stated "Needs to pay share of Building Ins, & half of any building maintenance as and when required."

17. Mrs Allan suggested that Mrs Sutton first approached her and her husband about roof works required about 7 months after they had completed their purchase in May 2017. She said she would leave it until the following year. Mrs Sutton returned in or about July 2018. Subsequently solicitors were involved by both parties and a

section 20 consultation was undertaken culminating in the work taking place in January 2020. Mrs Allan said there had been a substantial delay in having the works undertaken from when Mrs Sutton first indicated the roof required replacement.

18. Upon questioning by the Tribunal Mrs Allan accepted the lease did not mention reserve funds. She relied upon clauses 3(b) and (c) [35 & 36].

19. Mrs Allan confirmed she relied upon her statement of case [126-133] which the Tribunal confirmed it had read.

20. Mr Cuff then asked questions on behalf of Mrs Sutton.

21. Mrs Allan confirmed that whilst the contractor was asked to comment on all "red" items in the Home Buyers Report he only reported back on issues relating to the chimney [170].

22. She confirmed the Home Buyers Report was not sent to Mrs Sutton.

23. Mrs Allan was then asked questions by the Tribunal.

24. Mrs Allan confirmed she did not query the description of works and estimate from the contractor despite it only relating to chimney repairs and not other items raised. She explained that her and her husband were first time buyers and relied upon the advice of their conveyancer. She confirmed they did not discuss the findings of the RICS Home Buyers Report with the estate agent through whom they were purchasing.

25. Mrs Allan believed that South Coast Pointing, the contractor she approached, carried out roof works as well as pointing and brickwork.

26. She indicated they negotiated a small allowance on the purchase price of £500 in view of the works identified by the contractor.

27. She accepted she was told there were no reserve funds. The flat was not intended to be her forever home and only envisaged living there for a couple of years and given the replies to enquiries did not expect any major costs. She confirmed she only saw the LPE1 when she and her husband requested a copy of their conveyancing file after they had purchased.

28. In closing Mrs Allan suggested she had to come to the Tribunal to obtain accounts and invoices for the works undertaken. She explained they had borrowed monies to pay the approximately £15,000 requested on account in November 2019. They had no idea why any undisputed balance has not been repaid.

29. The Tribunal confirmed with Mrs Allan she had said everything she wanted in support of her case.

30. Mr Cuff presented the case for Mrs Sutton. He relied upon her statement of case [228-236] which the Tribunal confirmed it had read.

31. Mr Cuff explained in respect of the insurance premium the issue seemed to be that the Allan's did not believe they should contribute towards legal expense cover. The amount he accepted was de minimis but in his submission such cover was reasonable for Mrs Sutton to take out.

32. Turning to the report of Mr Speirs, the report acknowledges it is limited in scope but it identified that a replacement of the roof was required with repair not being appropriate. The cost of the report was modest.

33. Mr Cuff submitted the legal fees are reasonable. Matters had become conflated over the section 20 and other issues. Mrs Sutton believed seeking £450 from the total costs billed by her previous solicitors for undertaking the consultation was reasonable. It was an estimate of the time spent on that issue. In his submission Mrs Sutton was entitled to instruct a professional and recover the reasonable costs of the same.

34. Mr Cuff explained that in the original quote a provisional sum was allowed for the internal works to Mrs Sutton's flat. In fact the final account was lower than this sum. In his submission it was reasonable for the cost of such works, which the contractor had explained in a letter [285], to be recovered.

35. Mr Cuff suggested that it was admitted that Mr and Mrs Allan had only seen the LPE1 after completion of their purchase. They had negotiated over the chimney a reduction in price. In his submission the Allans could show no prejudice as a result of any perceived delay. Mrs Sutton had been undertaking repairs to the roof 100 year old roof as and when required but a point was reached whereby it required replacement, and she arranged for that to take place.

36. Whilst Mrs Sutton had not given a witness statement she confirmed she was happy to answer any questions asked of her by Mrs Allan.

37. Mrs Sutton explained that she was aware the roof may require replacement when she first purchased the property but that it would have a few years left in it.

38. She explained in the winter of 2017 a couple of slates came off the roof. She asked a roofer to replace them as she had done previously, and he advised that she should replace the roof. It was

at this point she first spoke to Mrs Allan. Mrs Sutton stated Mr and Mrs Allan did not wish to replace the roof at that time due to a lack of funds so she left matters.

39. Following the birth of their second child she did approach the Allans again in Summer 2018. After this she instructed solicitors who began the Section 20 consultation. Mrs Sutton candidly admitted not being aware of the need for a section 20 consultation until raised by Mr and Mrs Allan but she did not believe that during her ownership any works exceeding £500 had been undertaken prior to these major works.

40. The Tribunal then asked various questions.

41. Mrs Sutton confirmed she purchased in 2006. For the first couple of years no problems occurred but thereafter every year or so typically the roof had to have modest repairs undertaken. This was what took place immediately prior to the Applicants' purchase. A roofer had attended replaced various tiles and ensured all was secure. This was what she had meant when she said the roof had been repaired and overhauled.

42. She confirmed there were Velux windows in the front and rear slopes of the roof. They were present when she purchased. She had paid for the costs in relation to the Velux windows although she had been advised she could include these costs within the service charges. She had not done so as an attempt to demonstrate to the Applicants she was being reasonable.

43. Mr Cuff summed up the case. He stated the lease did not provide for a reserve fund. Even if this may be said to be desirable the replies to the LPE1 enquiries had confirmed works were undertaken and paid for as and when required. All costs were split 50:50.

44. The Tribunal asked Mrs Allan if she had anything to add? She confirmed she relied upon her statement of case. She stated once again she could not understand why the unspent balance of monies had not been returned.

45. The Tribunal asked Mr Cuff his client's position with regard to the section 20C application made by the Applicants.

46. Mr Cuff stated it was not believed that the costs of this Tribunal could be recovered but his client wished to reserve her position and may re-visit recovery.

47. Mrs Allan stated the case was not bought with any malice. Essentially she wanted the accounts and the invoices which had not been provided until the application was made.

48. Both parties were asked to confirm that they had made all the points they wished to the Tribunal and they confirmed they had done so.

Determination

49. The Tribunal thanks both Mrs Allan and Mr Cuff for their measured and considered submissions. Plainly it was an emotive hearing for both parties.

50. We have considered carefully the lease [28-39]. The lease allows the Respondent freeholder to recover 50% of the costs she spends undertaking repairs to the Property which includes expressly the roof. Clause 2(j) entitles a payment on account to be levied. Clauses 3 (a) to (d) set out the items which the Respondent is entitled to recover the costs of. In our determination all of the heads of expenditure we were asked to adjudicate upon are costs which fall within such covenants. The Applicant did not suggest otherwise.

51. We turn now to the particular items. We comment only on those raised within the Scott Schedule [40-42] and for the sake of completeness confirm all additional costs for the years 1st April 2018 until 31st March 2021 as set out in the statements of account [44-46, 53-55 & 117-119] are reasonable.

52. Firstly the insurance. Neither party particularly challenges the reasonableness of the premium save that the Applicants contends they should not have to pay towards the cost of legal expense cover.

53. In our judgment the inclusion of legal expense cover at a modest expense is a reasonable risk which the Respondent is entitled to recover. In our judgment the insurance premium claimed is reasonable and payable.

54. The next item is the cost of the report of Mr Spiers. We have had sight of the report and have read and considered the same [239-243]. In this Tribunal's determination it was reasonable given the matters being raised by the Applicants for the Respondent to instruct a surveyor to inspect and report on the roof. Mr Spiers did so and determined that the roof required replacement. The Applicant raises no particular complaint as to his findings, only that they subsequently obtained their own report. His fee of £250 was in our judgment modest and we are satisfied that the same is reasonable.

55. We look next at the costs of BPL solicitors for conducting the section 20 consultation. We have various invoices which far exceed the sum which the Respondent looks to recover. It is unfortunate that the invoices do not properly break down what work was spent

on which item and therefore enable us to forensically assess the costs. We do however have copies of the notices and the correspondence at that time.

56. We are satisfied that such work was properly incurred by the Respondent in complying with her repairing covenants. In principle we are satisfied such costs are recoverable being costs associated with her complying with her repairing obligations. The amount the Respondent seeks to recover is reasonable in our judgment on the basis of the evidence within the bundle and heard orally.

57. We note the specification for roof works included a contingency sum for works of repair to the internal parts of Mrs Sutton's flat. We note Mr and Mrs Allan did object to this in replying to the section 20 consultation. We have the explanation of the contractor as to what work was undertaken. We are satisfied that it is likely some damage would have been caused to the internal parts of the upper flat when total replacement of the roof was undertaken. In our judgment it is reasonable for the costs of such repairs to be borne by the service charge and so apportioned equally between the parties being works associated with the Respondent complying with her covenants of repair as freeholder. Mrs Allan suggests a cost of £200 would be reasonable for re-decoration but we accept the works go beyond that and in our judgment on the evidence we find the cost of such works to be reasonable.

58. This then leaves the costs of the roof and associated works themselves. Mrs Allan does not challenge the cost of the works themselves. We note they were subject to a section 20 consultation and in our judgment the cost is reasonable. Mrs Allan does not challenge the quality of the works and we are satisfied that in principle the sum claimed is recoverable.

59. The Applicants contend they are entitled to a set off. In short the grounds being that Mrs Sutton is in breach of the lease in that she did not have the roof repaired sooner when she knew or ought to have known it was in poor repair. The Applicants suggest Mrs Sutton should have had reserve funds so that the Applicants would not have to shoulder the full burden of the cost. The Applicants suggest Mrs Sutton did not provide full information when they purchased. Finally they suggest that her delay in completing the works has added to the costs.

60. We considered whether or not the Respondent is entitled to establish a reserve fund. In our opinion the wording of the lease is not sufficiently clear to allow the establishment of a reserve fund. In our judgment unless the lease specifically allows the establishment of the same then the Respondent cannot require the leaseholders to contribute towards the same.

61. Even if we are wrong in our interpretation of the lease we are satisfied there is no obligation upon the Respondent to have a reserve fund. The Applicants appear to accept this point. Certainly they were aware when they purchased that the property did not have the benefit of a reserve fund. We are satisfied no criticism may be laid at the feet of Mrs Sutton for having not done so. It may be said to be desirable but the Applicants knew or ought to have known that no fund existed.

62. We are satisfied that the Tribunal is entitled to set off amounts by way of damages from service charges.

63. We are not satisfied that the Applicants have identified any losses for which they are entitled to off set sums.

64. When they purchased, they have candidly admitted the advice they received was "less than diligent". The Applicants had not seen the LPE1 form until after their purchase had completed. Mrs Sutton made clear within this that her approach to the management was on an "as and when basis". Further their Home Buyers Report highlighted the roof as an urgent item for further investigation prior to completion of purchase and suggested replacement might be necessary. Despite these comments Mr and Mrs Allan did not obtain a report specifically regarding the roof, only works to the chimney stack from a contractor who had that particular area of expertise. Neither did they follow up when Mrs Sutton reported certain repairs had been undertaken. In her words it was an overhaul of the roof. No further enquiries were raised as to what works were undertaken.

65. In our opinion a prudent purchaser would have raised further enquiries and employed a roofer to inspect the roof. Also the Allan's conveyancer should have advised that given there was no reserve fund as and when works were required they would be billed for 50% of the costs of the same as and when required.

66. We are not satisfied that the Applicants have established that the Respondent was in breach of her repairing covenants in respect of the roof. As Mrs Sutton said within the LPE1 enquiries as and when she identified works were required, she had these undertaken. Roofers had undertaken modest repairs over her period of ownership. It is always a balance as to when repairs are no longer appropriate and replacement required. It was Mrs Sutton's flat that was most significantly at risk and she tried to repair the roof for as long as was reasonably practicable. In this Tribunal's judgment this was a reasonable approach. Some may have replaced the roofer sooner, some later. However, everyone seems to accept that replacement of the roof was a reasonable way for the Respondent to proceed when she opted for this. We do not find that the Respondent was in breach of her repairing obligations in respect of the roof.

67. We note that within the report of Mr Colbourne is a suggestion that the open market value of the flat was diminished due to the disrepair. We have already found that in our judgment Mrs Sutton did not mislead the Allans. However even if we were wrong on that we would not have accepted there was any reduction in the value of the Property. Mr Colbourne's report contains little explanation as to how the reduction in value is reached beyond that a professional colleague undertook this assessment. We prefer the evidence within the Home Buyers Report which was contemporaneous with the purchase and valued the flat at the price paid. This report flagged the issue with the roof and other issues and yet still determined the open market valuation was the price paid by the Applicants subject to the outcome of investigations identified by the surveyor.

68. Having carefully considered all of the evidence presented we are not satisfied that the Applicants are entitled to recover any amount to be off set against their service charge liability.

69. This then leaves the various costs applications made by the Applicant.

70. We note that all such determinations as to reimbursement of Tribunal fees, orders pursuant to section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 are at the Tribunal's discretion.

71. Mr Cuff indicated he did not believe his client could recover her legal costs, but his client's position is reserved. We make no finding as to whether or not any costs may be recoverable. We remind the parties such costs are only recoverable if the lease expressly allows the same.

72. We note Mrs Allan explained that part of her motivation for bringing the application was to obtain copy accounts, invoices and the like which support the fact she and her husband have a credit which should have been refunded.

73. Certainly we agree that the overpayment should have been refunded. It was, and is, for Mrs Sutton to instruct her now former solicitors to attend to this without delay. We see no good reason as to why this has not been attended to, certainly as to the undisputed figures. It is the one area in which Mrs Sutton's actions may be criticised.

74. The above being said we have determined that all of the costs are reasonable and costs properly recoverable by way of service charge payments. The circumstances are unfortunate. The Applicants as first-time buyers purchased a flat which within a short period

thereafter required major works. We do not know what advice the Allans received, but we have determined that there is no right of set off against the Respondent.

75. Taking all matters into account we exercise our discretion and decline to make any orders as to costs in this case.

RIGHTS OF 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 by email to rpsouthern@justice.gov.uk 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.