FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at Thanet sitting at Havant Justice Centre, Elmleigh Rd, Havant PO9 2AL

Case no. 249MC107

Case reference	:	**CHI/00LC/LSC/2022/0046**
Property	:	**88 Cuxton Road, Rochester, Kent ME2 2JA**
Applicant	:	**Mr Gavin Paul Clark**
Representative	:	
Respondent	:	**Mr Russell Chalk**
Representative	:	
Type of application	:	**Transferred Proceedings from County Court in relation to service charges**
Tribunal member and County Court	:	**Judge D Whitney**
Date of hearing an decision	:	**8th June 2022**

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be the date of this decision which was orally given at the hearing.

Summary of the decision made by the Tribunal

1. None of the service charges claimed are presently payable by the Respondent.

Summary of the decision made by the Court

2. The claim is dismissed.
3. No Order as to costs.

Procedural background

4. In November 2021 the Applicant lessor issued a money claims in the county court against the Respondent lessee for unpaid service charges, interest and costs.

5. On 8th November 2021 the Respondent filed a Defence disputing liability for the service charges. The Respondent indicated he had paid the amount he accepted was due prior to issue of proceedings and disputed the balance was payable. The case was transferred to this Tribunal by order of District Judge Whitfield dated 26th April 2022.

6. The Tribunal issued directions on 10th May 2022. The claim was allocated to the small claims track and the directions highlighted that the issues for determination included whether or not a proper consultation had been undertaken by the Applicant. The matter was listed for a hearing.

7. References in [ ] are to pages within the bundle submitted by Mr Clark.

The Property and the background to the dispute

8. There was no inspection, but the Applicant provided some photos and the Tribunal viewed the exterior on the internet. The Property appears to be a mid-terrace house built in the late 1800s of typical brick construction. At some point the Property has been converted into two flats. I am satisfied that no inspection in person was required.

9. The lease and variation of the Respondents flat was included within the bundle submitted by the Applicant. The lease is dated 24th November 1999 and was varied by a deed of variation dated 11th September 2005.

10. It appears the Applicant arranged for certain works to be undertaken to soffits, guttering and a roof of the bay window to the ground floor flat (this being a flat owned by the Applicant). The works were undertaken at a total price of £2750. The Applicant requested payment of one half being £1375. The Respondent has

paid the sum of £700 which he considers represents his share. The Respondent contends the works were undertaken by a family friend and connected contractor. He also suggests that he should not have to pay towards the costs of repairing the bay window roof. Further no additional quotes were obtained. The Respondent denies that he owes the sum of £675 or should pay any interest or costs.

The Tribunal's jurisdiction

11. Under section 27A of the Landlord and Tenant Act 1985 ("the Act") the Tribunal may determine 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.

12. 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.

The hearing

13. The hearing took place remotely by video. Both parties were in attendance. Mr Chalk was represented by his father and Mr Chalke by his partner Ms Derby.

14. At the outset of the hearing the Tribunal identified the issues. These were:

- Had the sums been validly demanded?
- Were the amounts claimed in compliance with the lease?
- Had a proper consultation been undertaken?

15. Mr Chalke indicated he had sent an email yesterday to the Tribunal. The Tribunal had received the same but could not open any of the attachments. The Tribunal determined it would proceed on the papers before it being the Applicants bundle only given the email sent was not in accordance with the directions which required Mr Chalke to file and serve any documents by 31st May 2022.

16. Mr Chalk relied upon the bundle submitted by his son. In particular he referred to the lease [3-16] and deed of variation [17-19]. He referred to the letter from his son's solicitors Messrs. Sheridan and Stretton [20 & 21] which set out the service charge mechanism. He suggested Mr Chalke was required to pay one half of all costs of repair and maintenance to the building. He suggested that the bay window formed part of the structure of the building and so costs of repairs to the roof of the same were recoverable.

17. He explained in the past relations between the parties had been cordial and works had been undertaken by agreement with Mr Chalke paying one half of the costs. Mr Clark gave an example of this happening even since this dispute.

18. Mr Clark relied upon letter dated 22nd September 2021 from the Applicant to the Respondent. This gave the Applicants home address and stated the amount he was seeking in total. Mr Clark accepted no Summary of Rights and Obligations was sent with this letter.

19. On questioning by the Tribunal Mr Clark confirmed his son had not served any notices pursuant to section 20 of the Landlord and Tenant Act 1985. He explained in the past matters had been dealt with by agreement. The Applicant had obtained a verbal quote for about £5000 prior to receiving the quote from London and Kent Roofing Contractors. Both had been supplied to Mr Chalke. Mr Clark stated that there was no connection with London and Kent Roofing Contractors beyond the fact he had personally used them after they were recommended to him. He suggested their quote was reasonable. He suggested Mr Chalke had been given an opportunity to obtain his own quotes.

20. Ms Derby suggested that Mr Chalke had been awaiting three estimates. He would have been happy to pay if he had a breakdown of the works and saw estimates so he could agree the cheapest. He had obtained his own quote and paid half that amount being £700 being the amount he felt was fair. Ms Derby stated that she and Mr Chalke expected to have a proper discussion about the works prior to them being agreed and then undertaken. This did not take place.

21. Both parties were afforded opportunity to present their respective cases.

Determination

22. It was plain to me that there are other issues between these parties. I did stop both from addressing me as to the same as my role is simply to determine the service charges claimed. Hopefully if this matter is resolved Mr Chalke can sell his flat and the parties will be able to move on. I orally gave my determination and indicated written reasons would follow.

23. I am satisfied that all of the works claimed being the roof, soffits and works to the roof of the bay window are in principle works which the Applicant can undertake and look to recover the cost of. I am satisfied that the bay window forms part of the structure of the Building under the terms of the lease and deed of variation. The Building is defined within the lease as the whole of 88 Cuxton Road. The roof and bay window are part of the structure of that building. The deed of variation [18] inserts a new clause 3(4) which entitles the Applicant to maintain repair and renew the structure of the Building subject to a contribution of one half of the costs from the Respondent.

24. I find that the demand issued is not a valid demand. Whilst I am satisfied that monies may be demanded in advance the Applicant accepts that he did not send with this a copy of the prescribed Summary of Rights and Obligations required under Section 153 of the Commonhold and Leasehold Reform Act 2002. As a result I find the demand is not valid.

25. I did also consider whether the amount claimed is reasonable and subject to a valid demand may be payable. I note Mr Chalke admits and has paid a sum of £700. This is the amount he considers reasonable. It is the balance which remains in dispute.

26. Mr Clark candidly admitted he had not complied with Section 20 of the Landlord and Tenant Act 1985. He suggests in the past this had not been necessary as the parties

had agreed matters. In this instance this did not happen. The Applicant includes within his bundle a letter from Mr Chalke [23] dated 22nd September 2021 in which Mr Chalke raises the fact he requires additional quotes amongst other matters. I am satisfied that no statutory consultation has taken place. Further I am satisfied that Mr Chalke did not agree matters could proceed and so a consultation should be undertaken. As a result the amount which Mr Clark may recover is limited but I find that Mr Chalke in paying £700 has agreed that this is a reasonable amount.

27. I find that the sum of £675 claimed by Mr Clark is not payable or reasonable in amount as a service charge.

The county court issues

28. Mr Clark accepted the determination of the Tribunal meant that his son was not entitled to the sum claimed. He invited the court to however order that Mr Clark should pay the costs incurred being the court fees of £300.

29. Mr Chalk resisted such application.

30. I dismissed the claim on the basis the Tribunal found that no monies were due and owing by Mr Chalke.

31. Whilst I have a discretion in respect of the awarding of costs the general rule is that where a party is unsuccessful they will not recover their costs. I am satisfied that the general rule should apply and that Mr Clark should not recover his costs and so I make no order as to costs.

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same

time as the application for permission to appeal.

Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

1. A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case.

2. The date that the judgment is sent to the parties is the hand-down date.

3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

4. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties;

5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the xx office within 21 days after the date the refusal of permission decision is sent to the parties.

7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.