



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT at
Hastings, sitting at Havant Justice
Centre, Elmleigh Road, Havant,
PO9 2AL**

Tribunal reference : **CHI/43UD/LIS/2022/0002/**

Court claim number : **G34YY277**

Property : **30 Lindfield Gardens, Guildford,
GU1 1TS**

Applicant/Claimant : **Lindfield Court (No2) Guildford
Residents Association Limited**

Representative : **PDC Law**

Respondent/Defendant : **Yolanta Grinberga**

Representative :

Tribunal members : **Judge Tildesley OBE**

In the county court : **Judge Tildesley OBE**

Date of Hearing : **14 February 2022 at Havant Justice
Centre (Parties joined by CVP)**

Date of Decision : **14 February 2022 (Orally)
18 March 2022 (Written reasons)**

DECISION

Summary of the decisions made by the FTT

1. The Respondent is not liable to pay the sum of £3,543.25 in respect of on account service charges demanded on 23 September 2019, 4 October 2019, 19 November 2019 and 10 March 2020.
2. The Tribunal determines that the costs for the major works to the balconies and the service charge for the year ended 28 September 2020 were reasonably incurred and that the Respondent is liable to pay them subject to the issue of a new demand which makes allowance for any payments made by the Respondent.
3. The Respondent is not liable to pay the administration charges totalling of £706.00 and demanded on 28 February 2020, 6 March 2020 and 21 April 2020.

Summary of the decisions made by the County Court

4. The Court confirms the Decision of the Tribunal and dismisses the Claim
5. No order for costs
6. This decision will act as both the reasons for the Tribunal decision and the reasoned judgment of the County Court.

Reasons

Background

7. The Applicant seeks, and following a transfer from the County Court the Tribunal is required to make a determination of service charge in the sum of £3,543.25 under section 27A of the Landlord and Tenant Act 1985 and administration charges of £706 under schedule 11 of the Commonhold and Leasehold Reform Act 2002. These are matters within the jurisdiction of the Tribunal.
8. The original proceedings were issued in the County Court under Claim No. G34YY277 and were transferred to the Tribunal by District Judge McCulloch by order dated 28 July 2021. The file was received by the Tribunal on 29 December 2021.
9. The Applicant also claimed contractual costs and court fees. These are matters within the jurisdiction of the Court.
10. On 13 January 2022 the Tribunal directed a hearing on 14 February 2022 at Havant Justice Centre.
11. The Applicant attended the hearing by means of the Cloud Video Platform. Mr Shaheed Jussab of Counsel appeared for the Applicant.

Ms Lauren Pfeiffer, of the Managing Agent was also in attendance to give evidence in respect of her witness statement [61-68]. The Respondent appeared in person. The Applicant supplied a document bundle. Pages in the bundle are referred to in the decision in [].

The Property and the Lease

12. Linfield Gardens is a purpose built block of flats comprising 24 units. The block is arranged over three floors and has an “L” shape configuration with communal gardens front and rear. The property was constructed in 1965 of brick cavity walls with a pitched roof of concrete tiles.
13. The Applicant is registered with Title absolute of the freehold known as 24 to 47 Lindfield Gardens, Guildford under title number SY350386. The Respondent is registered with the Title absolute of the leasehold for the subject Property under title number SY337423.
14. The Respondent holds a lease dated 21 June 1965 for a term of 1000 years from 25 December 1964 on payment of ground rent in the sum of £20 per annum. The lease is made between Chalford Property Co Limited of the one part and Eric Massey of the other part.
15. By Clause 1 of the lease the building is defined as “..which block of flats with the lands adjacent thereto and the roads paths gardens courtyards balconies and passages thereof is hereinafter referred to as “the Building”, and is more particularly delineated on the Plan 2 annexed and edged with a red line.
16. By Clause 2(14) of the Lease the Tenant covenants to pay to the Landlord one twenty-fourth part of all monies expended by the Landlord in complying with the covenants on the part of the Landlord contained in the sub-clauses of Clause 3 (i) and Clause 3 (ii) of these presents within twenty-eight days of the demand therefor by the Landlord at such intervals as the Landlord shall consider expedient and such part if not so paid shall be forthwith recoverable by action and shall carry interest at a rate equal to one per centum per annum above the Bank Rate from time to time until payment. Any demand served on the Tenant by the Landlord pursuant to the provisions of this subclause shall be conclusive as to the sum due to the Landlord.
17. By Clause 3(i) of the Lease, the Landlord hereby covenants with the Tenant (but so that so far as the said Chalford Property Co. Limited is concerned this covenant shall only be enforceable against that Company whilst that Company is the Landlord under the terms of this lease)

(A) To maintain in good and substantial repair and condition the main structure and the roof (hereinafter defined) of the block of flats of which the demised premises form part and the foundations thereof.

(B) To maintain the courtyards roads paths halls passages balconies and gardens of the Building and all sewers drains watercourses pipes wires and cables thereunder or thereon in good order and condition.

(C) To keep the halls passages stairs balconies and landings in the block of flats of which the demised premises form part clean and properly lighted (in so far as the same are used jointly) and the gutters sewers drains watercourses pipes wires and cables therein in good order and condition.

(D) To keep the gardens and courtyards of the Building tidy and in good order and to insure and keep insured the main structure and the roof of the Building as hereinafter defined.

(E) To paint varnish oil or distemper all wood and iron work of the exterior of the block of flats of which the demised premises form part and all other parts thereof which are usually painted varnished oiled or distempered with two coats of good oil paint varnish oil or distemper whenever the Landlord considers it necessary so to do.

(F) To pay and discharge all existing and future rates taxes assessments and outgoings whether parliamentary parochial local or of any other description whatsoever (if any) which now are or may at any time hereafter during the said term be assessed charged or imposed upon or payable in respect of any part of the Building used by the Tenant in common with the tenants of other flats in the Building.

(G) To maintain television aerials and the necessary cables thereto for the benefit of the demised premises.

18. By Clause 3 (ii) of the lease The Landlord shall (a) be entitled to employ such persons as shall be reasonably necessary for the due performance of the covenants contained in sub-clause (1) of this clause and (b) to employ such secretarial and professional assistance as may be necessary for the proper running of Lindfield Court (No. 2) (Guildford) Residents Association Limited.

19. By Clause 3 (iii) of the lease The main structure of the Building shall mean all the foundations exterior walls joists and all interior walls porches halls stairways landings floors and ceilings of the Building which are not the responsibility of any tenant or tenants under the covenants contained in any Lease of a flat in the Building and the roof of the Building shall mean the water tanks pipes timbers tiles slates and all roofing material including chimney stacks and chimney pots."

Consideration

Service Charges

The Facts and Arguments

20. The Applicant claimed the following service charges:

Description	Period	Sum
Major Works Repairs & Decorations. Invoice 23 September 2019.	23 September 2019	£2,536.30
Service Charge. Invoice 4 October 2019.	29 September 2019 - 24 December 2019	£335.65
Service Charge. Invoice 19 November 2019.	25 December 2019 – 24 March 2020	£335.65
Service Charge. Invoice 10 March 2019.	25 March 2020 – 23 2020	£335.65
	Total	£3,543.25

21. The Applicant operated an accounting year of the 29 September to 28 September for service charges.
22. The sums claimed were payments on account for the costs of the major works, and for the costs of the services for the year ended 28 September 2020
23. The sum demanded for the major works was £3,171.14 which was on 23 September 2019 together with a demand for the quarterly reserve fund of £36.46.
24. The Respondent had made two payments of £299.19 towards the quarterly service charges but the payments had been originally deducted from the sum claimed for the major works. The Tribunal understands that the Respondent's service charge statement for has

been subsequently adjusted to reflect the correct allocation of the payments made.

25. The Respondent's dispute was with the proposed costs for the major works and the contribution to the reserve fund. The Respondent argued that these costs were not authorised by the lease, and that there was no transparency on the Applicant's part in connection with the service charge expenditure. The Respondent in her witness statement gave additional examples to substantiate her general submission about the lack of transparency including the replacement of a wooden door with a new uPVC door on the bid shed at a cost of £732. This item of expenditure was recorded under "General Repairs" in the service charge accounts for the year ended 28 September 2020.
26. The Tribunal deals first with the Major works and makes the following findings of fact:
 - a) On 30 July 2018 the Applicant issued a Notice of Intention to carry out works to the balconies on the first and second floors involving repairs to the concrete of the balconies. The reason for the works was that the concrete on the upper floor balconies was spooling and beginning to flake off which affected the structure of the building and posed a health and safety risk. The repairs were confined to the first and second floor balconies.
 - b) On 14 August 2019 the Applicant issued a Notice of Statement and Estimates. The Applicant indicated that it intended to appoint Quill Construction as the contractor to carry out the works. The contract sum was £58,231.43. The Applicant stated that some of the costs of the proposed works would be funded by the reserves with the balance paid for by an additional service charge which was estimated at £3,171.14 per leaseholder.
 - c) On 9 October 2020 the Applicant advised the leaseholders that it had received no observations on the Statement of Estimates and in consequence had entered into a contract with Quill Construction to carry out the balcony works.
 - d) The Applicant demanded the sum of £3,171.14 from the Respondent as her contribution towards the costs of the major works. The demand was dated 23 September 2019 and required payment within 14 days.
 - e) The works did not go ahead as planned. Instead the works were started at the end of May 2021 and were signed off on 27 September 2021.

27. The Respondent contended that she was not liable to pay a contribution towards the estimated costs of the major works because the repair of the balconies did not fall within the landlord's repairing covenant. The Respondent argued that the plan of the demise attached to the lease included the balcony and that there was no mention of the word "balcony" in the definition of the "Main Structure" in Clause 3(iii) of the lease.
28. The Applicant disagreed with the Respondent's construction of the lease. The Applicant asserted that the lease clearly stated that the balconies formed part of the "Building" which was the landlord's responsibility to maintain. In this regard the Applicant relied on Clause 1 of the lease which defined Building as "...which block of flats with the lands adjacent thereto and the roads paths gardens courtyards balconies and passages thereof is hereinafter referred to "the Building" and Clause 3(i)(b) which specifically set out the landlord's responsibilities to maintain the balconies as part of the Building.
29. The Respondent also objected to the service charge including a contribution to reserves on the ground there was no authority under the lease for the Applicant to establish a reserve. At the hearing the Applicant acknowledged that there was no authority under the lease for a reserve fund. The Tribunal understands that the Managing Agent brought this to the attention of the Applicant's board of directors which decided at an AGM to remove the reserve fund from the service charge accounts because it was in a healthy balance but to establish instead a contingency fund.

The Decision on Service Charges

30. The Tribunal agrees with the Applicant's construction of the lease that the landlord is responsible for the maintenance of the balconies. The fact that the balconies were not communal and used only by the owner of the respective Flat does not detract from the clear wording of the lease that the balconies formed part of the Building which came under the landlord's repairing covenant.
31. The Tribunal, however, identified at the hearing that the Applicant was not entitled under the lease to demand payments on account. The Tribunal pointed out that Clause 2(14) of the Lease only required the Tenant to pay to the Landlord one twenty-fourth part of all monies **expended** by the Landlord in complying with its covenants. The Applicant accepted the Tribunal's interpretation of the lease, and that the Respondent had no liability under the lease to make payments on account.
32. Counsel argued that the Tribunal was not entitled to have regard to this point because it had not been specifically pleaded by the Respondent. The Tribunal disagreed with Counsel. The Tribunal considered that the

Applicant had relied on clause 2(14) to establish the Respondent's liability to pay the disputed service charges. In the Tribunal's view the Applicant is obliged to prove its case on the balance of probabilities and liability is central to the Applicant's case. The Tribunal added that the Respondent was a litigant in person and had raised generally the issue of liability as part of her case. Further at this stage in the proceedings the Tribunal was exercising its jurisdiction to answer the question posed, and is not bound by strict pleadings. Finally the Applicant's reliance on procedure when it knows that the substantive issue of liability has no basis is not consistent with the overriding objective of dealing with cases fairly and justly.

33. Counsel then took instructions and requested an adjournment for the Applicant to argue estoppel by convention. The Tribunal refused the request and gave as its reasons that (1) the Applicant should have made the application much earlier in the proceedings particularly as it should have known that it had no authority to demand payments on account (2) The Tribunal was not convinced that an argument on estoppel by convention had a reasonable prospect of success, and (3) An adjournment would have resulted in unnecessary costs. The Tribunal also indicated that as the costs had now been incurred for the balcony works and the service charges for the year ended 28 September 2020 the Tribunal would determine the reasonableness of those costs which would ameliorate the Applicant's position moving forward.
34. The Tribunal records the Applicant's admission that there is no authority under the lease to set up a reserve fund.
35. The Tribunal decides that the Respondent is not liable to pay the sum of £3,543.25 in respect of on account service charges demanded on 23 September 2019, 4 October 2019, 19 November 2019 and 10 March 2020.

Reasonableness of Service Charges

36. The Tribunal observed that the costs had been incurred on the major works, and on the service charges for the year ended 28 September 2020 for which service charge accounts had been produced.
37. The Tribunal finds that (1) the major works had been subject to a competitive tendering exercise (2) that the Applicant had carried out a consultation exercise on the major works which had complied with section 20 of the 1985 Act, and (3) the Applicant had raised no objections to the major works on the issues of reasonableness of the costs incurred and the standard of the works.
38. The Applicant objected to one item of expenditure in connection with the service charges for the year ended 28 September 2020, which related to the replacement of a wooden door with a new uPVC door on the bid shed at a cost of £732. The Applicant argued that the door could have been replaced by a wooden one at a much lower cost of £250. The

Tribunal decided that it was not unreasonable for the landlord to replace the door with a new uPVC one and the costs of so doing were in the bounds of reasonableness.

39. The Tribunal determined that the costs for the major works to the balconies and the service charge for the year ended 28 September 2020 were reasonably incurred and that the Respondent is liable to pay them subject to the issue of a new demand which makes allowance for any payments made by the Respondent.

Administration Charges

40. The Applicant claimed the following administration charges

Description	Date of Invoice	Sum
Management Fee	28 February 2020	£96.00
Instruction Fee	6 March 2020	£300.00
Debt Collection Fee	6 March 2020	£250.00
Claim Fee	7 April 2020	£60.00
	Total	£706.00

41. The Applicant maintain that these fees were payable because they were incurred as a result of the Respondent's withholding of service charges.
42. The Tribunal decides that the Respondent was not liable to pay the administration charges because
- a) The Applicant is not entitled under the lease to recover its administrative or legal costs in connection with the collection of service charge arrears. Under Clause 2.14 the Applicant is restricted to charging interest at the rate of One per cent above the Bank rate when a Tenant falls in arrears of service charge.
 - b) The Respondent was not liable to pay the service charges on which the Applicant incurred costs in seeking their recovery.

43. Counsel applied for the Respondent to pay the Applicant's costs under rule 13 of the Tribunal Procedure Rules 2013 on the grounds that the Respondent had acted unreasonably in that she had not pleaded specifically that she not liable to pay on account service charges . The Tribunal decided that the Application was without merit. The Respondent had not acted unreasonably for the reasons given in [33] above.

County Court

44. The Court confirmed the Tribunal's decision and dismissed the Claim.
45. The Court made no order for costs.

Rights of appeal

Appeals in respect of decisions made by the Tribunal

A written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case. The application must be made as an attachment to an email addressed to rpsouthern@justice.gov.uk.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

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.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court

An application for permission to appeal may be made to an appeal judge in the County Court since No application was made to the Judge at the hearing.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal.

Further information can be found at the County Court offices (not the tribunal offices) or on-line.

You may wish to advise the Court to stay the Application pending a determination of the permission to appeal against the Tribunal decision

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court and in respect the decisions made by the FTT

You must follow **both** routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues by proceeding directly to the County Court.