



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

Case Reference : CHI/21UD/LIS/2018/0045

Property : Flat 6, 93 Marina, St Leonards on Sea, East Sussex  
TN38 0BL

Applicant : 93 Marina (St Leonards on Sea) Limited  
(the Landlord)

Representative : Arko Property Management Limited

Respondent : Mr Gulraj Singh Bassi (the Tenant)

Representative : ---

Types of Application: (1) Section 27A Landlord and Tenant Act 1985  
– service charge determination  
(2) Schedule 11 Commonhold and Leasehold Reform Act 2002 – administration charge determination

Tribunal Member : Judge P.J. Barber

Date of Decision: 13<sup>th</sup> February 2019

---

**DECISION**

---

© CROWN COPYRIGHT 2019

## **Decision**

- (1) The Tribunal determines that only the following amounts, of those sums referred to in the applications, and claimed by way of service charges and/or administration fees, are reasonable and payable:-

Major Works contribution (Invoice dated 21/2/2017) £8,572.52

Interest (Invoice dated 8/6/2017) £5.25

Reserve fund contribution (Invoice dated 1/9/2017) £290.00

Service charges (Invoice dated 1/9/2017) £1,001.23

Interest (invoice dated 9/2/2018) £295.19

- (2) The Tribunal makes no order for costs pursuant to Rule 13.

## **Reasons**

### **INTRODUCTION**

1. Two applications have been received by the Tribunal respectively for determination of service charges and administration charges liability; the applications are both dated 14<sup>th</sup> August 2018. Directions dated 3<sup>rd</sup> October 2018 were issued in respect of both matters, the Tribunal being of the view that they should conveniently and justly be heard together. The directions included an offer by the Tribunal to the parties, for the matter to be resolved by mediation; however, the offer was not taken up and consequently the parties were directed to comply with directions regarding provision by them, and relating to exchange, of documents and statements of case. The tenant was required by 14<sup>th</sup> November 2018, to serve a statement on the landlord setting out the items in dispute; the landlord was required by 5<sup>th</sup> December 2018 to serve copies of invoices relating to the matters disputed by the tenant, and a statement in support of the claim, and the tenant then had until 19<sup>th</sup> December 2018, to send any brief reply to the landlord. The directions further provided for the applications to be determined on the basis of written representations, without an oral hearing unless a party objected; no objection was received within the time limit as stated in the directions.
2. The Applicant has provided a bundle of documents including a statement of case, a copy of the lease, copies of the applications and the directions, service charge accounts and various other documents. The Applicant indicated in its statement of case dated 3<sup>rd</sup> January 2019, that the Respondent tenant had not to that date raised any dispute regarding the service charges and that no Respondent statement had been provided.
3. The Property is a top floor flat, demised pursuant to a Lease dated 6<sup>th</sup> November 2000 made between Flathold Limited (1) Gulraj Singh Bassi (2) (“the Lease”) for a term of 125 years from 25<sup>th</sup> March 1992.
4. In broad terms, the Applicant seeks a determination of certain service charge and/or administration charge items in the years 2017 and 2018, and also including costs relating to major works in 2017.

## **THE LAW**

8. Section 27A(1) Landlord and Tenant Act 1985 provides that:-

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is as to –*
- (a) The person by whom it is payable,*
  - (b) The person to whom it is payable,*
  - (c) The amount which is payable, the date at or by which it is payable, and*
  - (d) The manner in which it is payable.*

Schedule 11 Part 1 Paragraph 1(1) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) provides that:-

- 1(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –*
- (a) For or in connection with the grant of approvals under his lease, or application for such approvals,*
  - (b) For or in connection with the provision of information or documents by or on behalf of the landlord or a person who is a party to his lease otherwise than as landlord or tenant,*
  - (c) In respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or*
  - (d) In connection with a breach (or alleged breach) of a covenant or condition in his lease.*

## **WRITTEN REPRESENTATIONS**

10. The bundle included the Applicant`s statement of case dated 3<sup>rd</sup> January 2019, which in broad terms indicated that the members of the freeholder company include the majority of lessees, but not the Respondent, and that Arko Property Management Limited (“Arko”) have managed the building since 2015, when it was in a poor state of repair. The statement refers to major works envisaged in 2016; copies of a letter dated 12<sup>th</sup> April 2016 sent to the Respondent by Arko, together with an initial Section 20 consultation notice were appended. The works envisaged related to external redecoration, repairs to front and rear elevations and roof, parapet and gutter repairs. The bundle also included a copy of a second stage Section 20 notice dated 31<sup>st</sup> October 2016.
11. The Applicant`s statement indicated that funds were demanded for the external major works in February 2017 by reference to clause 3(d) of the Lease and that the Respondent had refused to pay any service charges since June 2017, resulting in the application to the Tribunal being made.
12. The amounts referred to in the applications, and in respect of which determination is sought, are as follows:-

2017

Major Works costs £8,572.52

2018

Interest £5.25

Reserve Fund £290.00

Service Charge £1,001.23

Service Charge Internal £112.67

Administration Charge £36.00

Administration Charge £180.00

Interest £295.19

The application also referred to a claim by the Application for its costs in relation to this application, and the statement of case provided a breakdown of the total sum of £736.72 being claimed under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Regulations 2013.

13. The Applicant`s statement of case made reference to various terms and clauses in the Lease, which it was submitted provided the basis for the sums being claimed. The statement further referred to the obligation upon the freeholder at clauses 5(b), (c) and (d) of the Lease, to repair and maintain the building and also referring to a basic maintenance charge of £100.00 payable annually by the lessee each 29<sup>th</sup> September, with a provision at clause 3(d) entitling the freeholder to review and demand further interim payments at any time in each accounting period. The statement referred to the Respondent tenant`s liability for 14.5% of maintenance and insurance costs, and 16.66% for common parts maintenance items. The statement referred to the Respondent having failed to comply with directions, by not serving a statement setting out any disputed items, and the Applicant said that in consequence it had not included in the bundle, copies of receipts or invoices, since no dispute had been raised by the Respondent.

**CONSIDERATION**

14. The Tribunal, have taken into account all the case papers in the bundle and the fact that the Respondent has made no statement in the matter, nor raised any challenge to the various claims made.
15. In regard to the service charges, the bundle included at Pages 54-74, copies of various invoices, each of which appeared to have appended, a summary of tenants` rights and obligations, including an invoice for the £8,572.52 major works costs in 2017, and an invoice for £1,001.23 relating to 2017/18 service charges, £290.00 for the reserve fund, and £112.67 for "Service Charge Internal". Page 60 included an invoice dated 8<sup>th</sup> June 2017, for £5.25 being "Arko interest on arrears", and at Page 67 an invoice dated 25<sup>th</sup> January 2018 for £36.00 being "Arko Arrears Admin Fees". A further invoice at Page 70, dated 9<sup>th</sup> February 2018 was for £180.00 "Arko Legal Admin Fees" and £295.19 for "Interest charge on arrears". Service charge accounts for the years ending 30<sup>th</sup> September 2017 and 30<sup>th</sup> September 2018 were included at Pages 75-88 of the bundle; such accounts appear to have been prepared by professional accountants.

16. The sum of £8,572.52 in respect of major works, appears to have been the subject of a Section 20 consultation process; whilst clause 3(b) of the Lease refers to a basic maintenance charge of £100 annually towards service charge items, as referred to at clause 5(b) to (d) of the Lease, there is nevertheless provision at clause 3(d) - *“that the Lessor shall be entitled to reasonably review in every year of the term hereby granted the amount of the basic maintenance charge payable by the lessee and shall also be entitled if immediately anticipated expenditure at any time will exceed the amount currently held in the service charge fund to require the Lessee to make a further interim payment... during the service charge year on account of service charge.”* Accordingly, on the face of the evidence provided, and in the absence of any challenge by the Respondent, the Tribunal determines that the sum of £8,572.52 demanded on an on-account basis, for major works is reasonable, although the tenant would remain entitled to challenge actual costs once they are known.
17. Similarly, on the face of it and according to the evidence provided, the service charges appear to have been properly demanded; consequently, and in the absence of any challenge being made by the Respondent as to the service charges claimed, the Tribunal determines that the sum of £1,001.23 for service charges in 2018 is reasonable and payable. In regard to the reserve fund item of £290.00, the Tribunal notes clause 5 to the Fourth Schedule of the Lease, which provides that the costs to which the lessee is to contribute include *“Such sums as the Lessor shall consider reasonable by way of reserve towards expenditure of an infrequent nature.”*; accordingly, the Tribunal determines that the sum of £290.00 for the reserve fund is reasonable and payable.
18. In regard to the item claimed as £112.67 for “Service Charge Internal” by the invoice dated 1<sup>st</sup> September 2016 (Page 54), it is unclear what is being referred to; it appears to be separate from the Service charge item of £1,001.32 for the year ended 30<sup>th</sup> September 2018, but no specific explanation has been included to identify or justify this item. Accordingly, the Tribunal is unable to verify and/or conclude on the evidence provided, that the item is reasonable and/or payable.
19. In regard to the remaining items claimed, the Tribunal determines as follows:-

£5.25 Arko Interest on arrears

The invoice for this item appears at Page 60 of the bundle and is dated 8<sup>th</sup> June 2017; in its statement, the Applicant submitted that until February 2017, the Respondent had paid all his then arrears following recovery action, but that he had refused to pay any service charges since June 2017. It is not entirely clear as to the period to which this claim for interest relates, although the major works demand had been issued in February 2017 and was evidently unpaid by June 2017. Clause 4(vi) of the Lease is a tenant covenant *“To pay interest at 3% above Barclays Bank plc base rate on any monies payable by the Lessee under the terms hereof which shall not be paid within 14 days of the due date for payment.”* Accordingly, on the face of the evidence provided and in the absence of challenge, this item is allowed as payable.

£36.00 Arko Arrears Admin Fees

The invoice for this item appears at Page 67 of the bundle and is dated 25<sup>th</sup> January 2018; however, the description in the invoice is very brief, although clearly this is not an interest charge. No specific reference has been made by the Applicant to any

provision in the Lease allowing for such admin fees; however there is at clause 3(2)(a)(c) an obligation: “*To pay all costs charges and expenses (including solicitors` costs and surveyors` fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the court or incurred in the collection of rent or service contributions in arrears under the terms hereof*”. Nevertheless, this item and the relevant invoice, are unclear and not fully explained; in the absence of further clarity on this item, the Tribunal is unable to verify and/or conclude on the evidence provided, that the item is reasonable and/or payable.

#### £180.00 Arko Legal Admin Fees

The invoice for this item appears at Page 70 of the bundle and is dated 9<sup>th</sup> February 2018; again, the description is vague and unclear; possibly it relates to Arko`s fee for liaising with solicitors in relation to action against the Respondent in respect of arrears. However, for similar reasons in regard to the item above for £36.00, the Tribunal is unable to verify and/or conclude that this item is reasonable and/or payable.

#### £295.19 Interest Charge on Arrears

The invoice for this item also appears at Page 70 of the bundle and is dated 9<sup>th</sup> February 2018; as in the case of the item above, for £5.25 in respect of interest, the specific period to which this sum relates is unclear. However, the Applicant`s statement of case indicates that the Respondent has refused to pay any service charges since June 2017, and by February 2018 it appears that both the major works contribution of £8,572.52 invoiced in February 2017, and the service charge item of £1,001.23 and reserve fund contribution of £290.00, both invoiced in September 2017, had been outstanding for some time. In the absence of challenge and on such evidence as has been provided, the Tribunal determines that this sum is reasonable and payable.

20. In regard to the Applicant`s claim for costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, in a sum of 736.72, the Tribunal has discretion to make an order if a person has acted unreasonably in bringing, defending or conducting proceedings, although it may not make an order against a person, without first giving that person an opportunity to make representations. It is not entirely clear whether or not full details of the Applicant`s claim for costs in a sum of £736.72 were included by the Applicant in the bundle supplied to the Respondent. However, the decision in *Willow Court Management Company -v- Alexander [2016] UKUT* provides for a three-stage test to be applied when considering an application for an award of costs under Rule 13; firstly it should be considered whether by an objective standard, the person against whom costs are claimed has acted unreasonably, secondly whether an order ought to be made, and thirdly as to what that order should be. In this case, it appears that the Respondent has failed to engage at all; consequently, and in the absence of further persuasive justification, the Respondent may hardly be considered to have acted unreasonably in defending the proceedings, where he has simply not defended them at all. Accordingly, the Tribunal makes no order under Rule 13.

21. We made our decisions accordingly.

Judge P J Barber

A member of the Tribunal  
appointed by the Lord Chancellor

## 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.