



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

**Case Reference** : **CHI/21UG/LIS/2019/0014**

**Property** : **27 Rotherfield Avenue, Bexhill on  
Sea, East Sussex TN40 1SY**

**Applicant** : **Rachel Claire Waterton**

**Representative** : **Mr Jonathan Wragg, Counsel,  
instructed by PDC Law**

**Respondents** : **Trevor Ralph Lewarne & Joy Elsie  
Lewarne**

**Representative** : **-**

**Type of Application** : **Determination of service and  
administration charges**

**Tribunal Members** : **Judge E Morrison  
Mr N I Robinson FRICS  
Miss J Dalal**

**Date and venue of  
Hearing** : **11 June 2019 at Bexhill Town Hall**

**Date of decision** : **14 June 2019**

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**DECISION**

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## **The application**

1. In September 2018 the Applicant landlord issued proceedings in the county court under Claim No. E94YX567 against the Respondent tenants claiming arrears of service charges in the sum of £8005.26, administration charges of £363.25, court fees and costs.
2. In an undated Defence the Respondents dispute liability.
3. By an order of the county court dated 30 January 2019 the claim was transferred to the Tribunal.
4. On 28 February 2019 a tribunal judge gave directions. These explained that although claims for court fees and costs are not within the Tribunal's jurisdiction, judges of the First-tier Tribunal are designated as county court judges by the County Courts Act 1984 as amended by the Crime and Courts Act 2013, and so a Tribunal judge would determine those issues. All Tribunal members would determine the service and administration charges.
5. This document records the Tribunal's determination of the matters within its jurisdiction. A separate written order of the county court, recording the decisions of the tribunal judge on the county court issues, also given orally at the end of the hearing, will be issued.

## **Summary of decision**

6. The service charges of £7085.00 and £586.77 claimed by the Applicant are payable by the Respondents. The service charge of £333.49 claimed by the Applicant will be payable once the service charge expenditure for the period 6 April 2017 – 31 December 2017 has been certified and supplied to the Respondents along with a statement of account, as required by the Lease.
7. The administration charges claimed in the sum of £363.25 are not payable by the Respondents.

## **The lease**

8. The original lease was granted on 2 December 1987 for a term of 99 years. On 15 May 2006 a new lease was entered into for a term expiring on 1 December 2176 at a peppercorn rent. Under the new lease all the other covenants of the original lease continue in effect. The relevant provisions in the lease may be summarised as follows:
  - (a) The tenant is liable to pay one half of the costs incurred by the landlord in complying with the covenants set out in clause 3 (the service charge);
  - (b) Under clause 3 the landlord is required to maintain and repair the structure of the building housing 25 and 27 Rotherfield

- Avenue, decorate the exterior at least once every 10 years, and keep the building insured. Managing agents may be employed;
- (c) The third schedule sets out the service charge machinery. On account payments in a fair and reasonable amount may be demanded on a rent day (which is 1 January);
  - (d) At the end of each financial year, which commences 6 April but may be varied by the landlord, the landlord must supply the tenant with a service charge certificate containing a summary of the landlord's costs.
  - (e) The landlord must also furnish the tenant with an account showing all sums paid and any balance payable. Any sum owed by the tenant must then be paid, or if the tenant has overpaid a credit must be given.

### **The inspection**

- 9. The Tribunal inspected the subject property immediately before the hearing, accompanied by the Applicant's father Mr Stead, and the Respondents. It is a substantial Edwardian two storey detached house which has been converted into two flats with the Respondents on the ground floor and the Applicant on the first floor. Externally, the walls are brick and part rendered in a painted pebbledash finish under an interlocking concrete tiled roof. All windows noted were in UPVC but the front door to the ground floor flat remains painted timber, as do the fascias and soffits. Guttering, waste pipes and downpipes are a mixture of plastic and cast iron.
- 10. The external decorative condition was generally poor and in need of attention. From a ground level inspection, the fascias and soffits looked particularly poor and certain sections of cast iron pipework appeared to be defective. Flaunching to the rear chimney stack appeared suspect and the rear gutters appeared blocked with moss.
- 11. The Tribunal was invited to enter the ground floor flat and attention was drawn to staining on the kitchen ceiling although this issue did not form part of the matters under consideration.

### **Representation and evidence at the hearing**

- 12. The Applicant was represented by Mr Wragg of Counsel. The Respondents were in person, and Mrs LeWarne spoke for both of them. She was assisted to some extent by her daughter and son-in-law.
- 13. The Applicant had, in accordance with the directions, provided a detailed statement of case with accompanying documents. There were also witness statements from the Applicant and her father, both of whom attended the hearing but did not give any formal oral evidence.
- 14. The Respondents had also provided a statement of case, a short witness statement from Mrs LeWarne, and some further documents, many of

which related to earlier court and tribunal proceedings regarding the service charges.

### **The law and jurisdiction**

15. The Tribunal has power under section 27A of the 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.
16. 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.
17. Under paragraph 2 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 an administration charge is payable only to the extent it is reasonable. An application may be made to the tribunal under paragraph 5 of Schedule 11 to determine if the charge is payable.

### **Background**

18. The Respondents have held the leasehold interest in 27 Rotherfield Avenue since March 2001. There were proceedings before the Leasehold Valuation Tribunal in 2004/5 brought by the previous landlord, arising out of the Respondents’ failure to pay insurance premium and a claim for costs. The Applicant acquired her flat and the freehold interest in August 2010. In 2014 she applied to the Tribunal for a determination of the service charges for the years ending April 2013 and 2014, all of which were found to be payable. There followed two money claims in the county court arising from non-payment.

### **The Applicant’s case**

19. As set out in the county court Particulars of Claim, the Tribunal was asked to consider three separate service charges totalling £8005.26, and administration charges totalling £363.25.
  - (i) The sum of £586.77, being the service charge claimed for year ending 5 April 2017.
20. There was no evidence of any on account (interim) demand for this year, but the Applicant relied on a certified statement of expenditure dated 21 May 2017, sent to the Respondents on 2 June 2017 together with a demand for payment. The costs consisted solely of 50% of the insurance premium and 50% of the managing agents’ fees, which included an additional modest fee for issuing section 20 notices. The

Tribunal queried whether the managing agents were entitled to make an extra charge for this service. A telephone enquiry was made during a short adjournment and the Tribunal was told that there was such an entitlement.

- (ii) The sum of **£333.49**, being half the annual insurance premium for the period July 2017 – 2018.
21. Again there was no evidence of any on account demand covering this expense. The Applicant relied on a demand dated 15 February 2018, which included this sum as well as an on account demand for major works costs (see below). In October 2017 the managing agents had written to the Respondents advising that “this financial year will end on 31<sup>st</sup> December 2017 and each subsequent financial year will run from 1<sup>st</sup> January to 31<sup>st</sup> December”.
22. There was no certified statement of account for the period 6 April 2017 - 31 December 2017. Mr Wragg suggested that a certified budget for 2018 (which included the insurance premium incurred in July 2017) was sufficient for this purpose.
- (iii) The sum of **£7085.00**, being one half of the estimated cost of proposed external decoration and repair works
23. The sum was demanded on 17 February 2018, following a section 20 consultation. The sum is based on the estimate of the contractor put forward by the Respondents and who provided the lowest tender. It was included in the 2018 budget certified by the managing agents.
- (iv) The administration charges of **£363.25**, described as a “claim fee” of £113.25 and “PDC instruction fee of £250.00.
24. The Applicant did not wish to pursue the sum of £113.25 as there was no evidence as to what this related. With respect to the sum of £250.00 the Tribunal was told it was a fee for instructions to the debt collection agency, who subsequently wrote to the Respondents. However it was accepted that no formal demand for payment of this sum had been made at any time.

### **The Respondents’ case**

25. At the hearing Mrs LeWarne put forward no clear reasons as to why the service charges should not, and had not, been paid. In her witness statement she said her reason for not making payment was that she did not believe that Ms Waterton would pay her share.
26. With respect to the 2016-17 service charge, Mrs LeWarne said she had not paid because she had told the managing agents she would not respond to letters and demands as there were no receipts or bills. There was no documentary corroboration of this.

27. With respect to the insurance premium, she said she had offered, over the telephone, to pay this but that payment had been refused unless she paid everything that was owed.
28. With respect to the proposed major works costs, she mentioned that she had understood from an oral remark made to her by the Leasehold Valuation Tribunal in 2005 that it was the freeholders' responsibility to carry out repairs. It was clear that Mrs LeWarne considered that the works were overdue and should be carried out. She made no objection to the reasonableness of the sum demanded.
29. Much of the written statement of case focussed on previous proceedings and matters which were not relevant to the current application. It also mentioned the need for the lease to be complied with, without clearly specifying any alleged failure in this regard.

## **Discussion and determination**

### The service charges

30. Looking at the copy demands and accounts in the bundle, it is clear that there has been some confusion on the part of the managing agents as to the service charge machinery. The lease is not helpful as it provides that on account demands should be made on 1 January, but until recently varied the service charge year ran from 6 April. Furthermore, in county court Claim No. C2QZ8Z80, Deputy District Judge Chambers gave a judgment on 10 April 2017 in which he concluded that a certified statement of expenditure was a condition precedent to the payability of an on account demand in respect of costs not yet incurred. We respectfully disagree. Under the Third Schedule of the lease it is clear that the requirement for certification applies only at the end of each service charge year when the costs and expenses of that year are ascertainable.
31. There is no challenge to the reasonableness of the sums demanded, or as to whether they are costs of a type recoverable through the service charge. The only real question for the Tribunal is whether there has been sufficient compliance with the service charge machinery in the lease.
32. With respect to the sum of £586.77, the demand was made shortly after the conclusion of the service charge year on 5 April 2017, and was preceded by a certified statement of expenditure in accordance with the lease. The Tribunal determines that this sum is payable.
33. With respect to the sum of £333.49, the sum was demanded in February 2018, after the conclusion of service charge period (6 April – 31 December 2017) in which it was incurred. However there has been no certified statement of expenditure for this period. Paragraphs (c) and (h) to the Third Schedule of the lease make it clear that it is only

upon the supplying of the certified statement of expenditure and the furnishing of a statement of account showing the sum payable by the lessee that an obligation to pay arises. The Tribunal does not accept Mr Wragg's submission that the (unnecessarily) certified 2018 budget suffices for these purposes; the insurance cost already incurred in 2017 cannot properly be characterised as a budget item of expenditure for 2018. Accordingly the sum of £333.49 will be payable only when these steps have been taken. Section 20B of the Act does not restrict recovery because the Respondents were notified in writing that payment would be required, and this was done within 18 months of the cost being incurred.

34. With respect to the sum of £7085.00, this sum has been demanded on account, in advance of the costs being incurred. Paragraph (g) of the Third Schedule permits the landlord to demand "with every payment of rent reserved hereunder" a fair and reasonable interim payment in advance and on account of the service charge. The rent day is 1 January (although the rent is now a peppercorn). The demand for £7085.00 is dated 17 February 2018, which is not a rent day. However the time for complying with the service charge machinery is not 'of the essence' under the lease. This means it does not matter that the demand was served later than it should have been. The Tribunal determines that this sum is payable.
35. It may assist for the future if we set out the service charge machinery that should be followed in accordance with the lease.
- On 1 January in each year, or as soon as possible thereafter, the landlord may demand payment of a reasonable sum in advance towards the estimated costs for that year
  - This demand does not have to be certified
  - At soon as practicable after 31 December in each year a statement of expenditure certified by the landlord (or on her behalf by her agent), or by her accountants, must be supplied to the tenant, along with a statement of account showing all payments made and any balance payable/any overpayment.

#### The administration charges

36. There being no evidence that the administration charges have been formally demanded, the Tribunal determines that they are not payable. We have not therefore had to consider whether the charges were of a type recoverable under the lease.

#### **Concluding remarks**

37. The Respondents are very elderly and have disabilities. It became clear that Mrs LeWarne deals with the paperwork but she is sight-impaired and has trouble reading documents with normal size print. It was agreed that in future the Applicant will instruct the managing agents to

send all communications to the Respondents in large print (we suggest a minimum of Times New Roman 18 font) and will send an extra copy to the Respondents' daughter.

38. A copy of this decision is being sent to the Respondents in large print, with a further copy to their daughter.

Dated: 14 June 2019

**Judge E Morrison**

#### 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.