



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

**Case Reference** : CHI/29UL/LIS/2018/0019

**Property** : Flat 4, 9-11 Douglas Avenue, Hythe, Kent  
CT21 5JT

**Applicant** : Laura Leslie

**Representative** :

**Respondent** : Douglas Estates Construction Limited

**Representative** : Mr. J. Alexander of Alexander Fleming  
(managing agents)

**Type of Application** : Liability to pay service charges

**Tribunal Member(s)** : Judge D. R. Whitney  
Mr. K. Ridgeway MRICS

**Date of Hearing and  
Venue** : 14<sup>th</sup> December 2018

**Date of Determination** :

---

DETERMINATION

---

## **BACKGROUND**

1. The Applicant issued application seeking a determination of service charges for the years 2011/2012 to 2017/2018 inclusive.
2. The Applicant is the owner of the leasehold interest in Flat 4, 9-11 Douglas Avenue, Hythe, Kent CT21 5JT (“the Flat”). The Respondent was believed to be the freeholder of 9-11 Douglas Avenue, Hythe, Kent CT21 5JT (“the Property”) and was represented by their managing agent Mr J. Alexander of Alexander Fleming.
3. Directions had been given dated 4<sup>th</sup> July 2018 which were complied with. The Applicant had supplied a bundle of documents. References in [] within this decision are to pages in the hearing bundle.

## **INSPECTION**

4. The tribunal inspected the premises immediately prior to the hearing.
5. The Property was a red brick, pitched roof building which originally would have been two mid terrace houses which at some point in the past had been converted into a single development of 7 flats. To the front there was a paved parking area. The front elevation generally appeared to be in reasonable repair although it was noticed some of the external decoration was peeling and in need of renewal.
6. Internally the tribunal was shown the communal hallway. This was clean and tidy and served by lighting on timer switches with emergency lighting present. There was some cracking to the walls which was observed.
7. Miss Leslie indicated she did not wish the tribunal to view her flat internally.
8. To the rear of the property there was a small car parking area sufficient for two cars. This is flanked by close boarded fenced area. It was possible to see the rear elevation which was rendered. It was clear that there had been various cracks to the rear which had been treated with a product which was black in contrast to the white render. Whilst the same was unsightly in other respects the rear appeared in reasonable order.

## **HEARING**

9. The below sets out a record of the salient parts of the evidence given by each party. It is not a record of every point said or made at the hearing.
10. At the conclusion of the inspection the parties had been asked by the tribunal whether either or both of them had any Land Registry entries confirming the ownership of the Property. Mr Alexander had supplied

Land Registry entries dated 26 October 2017 for 9 Douglas Avenue which stated the freehold owner was Jeremy James Brockhurst, Yvonne June Brockhurst, Andrew Charles Chivers and Carolyn Ann Chivers. Mr Fleming confirmed that he understood the freehold ownership of Number 11 Douglas Avenue was the same. He explained he understood the company named as Respondent was the freeholder and that this was a company whose director was Mr Brockhurst.

11. Mr Alexander confirmed that at the date of the hearing the building had about £18,000 in reserves. It was intended that such reserves would be used over the next 12 month period to pay for major external redecorations and repairs and fire safety works which were required. Mr Alexander agreed such works were overdue but that he and the Respondent had wished to build up the reserves so they had money to cover such works without the need for issuing large demands.
12. Miss Leslie accepted the lease did allow recovery of all the items claimed and took no issue over the lease terms save that any interim charge was fixed within the lease at £200 per annum.
13. The tribunal reminded all parties that its role was to determine the liability of the Applicant to pay any monies demanded of her and also as to the reasonableness of the sums which the Respondent was looking to recover. It was not for it to undertake some sort of forensic accounting exercise as to how money should be applied particularly in calculating the amounts of any reserves.
14. Miss Leslie agreed the principal issues for the tribunal to look at related to:
  - Insurance;
  - Repairs;
  - Management fee
15. Within the schedule certain other smaller items had been raised.
16. Miss Leslie explained it had taken her a long time to get information out of Mr Alexander, she explained how she her solicitor had to be involved for her to obtain an appointment to view invoices and receipts for the service charges and discrepancies still existed.
17. As a result Miss Leslie believed the management fee claimed by Mr Alexander was unreasonable. She took the view that the building was meant to “self manage” although she had no evidence concerning this. She stated that the agents were far from clear and transparent in providing information and very little work had actually been undertaken.
18. In her opinion even if there was a manager for a building of its size and type a much lower fee should be charged. Whilst she had no formal

quote Miss Leslie stated she had been told by Fell Reynolds that they believed they could manage the building for a fee of £700-900 per annum.

19. Miss Leslie took issue with the fact works were undertaken without consultation with leaseholders. Further that whilst the managing agent stated major works were to be undertaken to date little had been done. Overall, she believed their fee and the service charge generally was too high for a property in the area.
20. Turning to insurance her position was that the charge was too high. She was concerned that not all invoices for the years had been provided and whilst certain invoices no proof policies were in place was provided. She did not have any alternative quotes.
21. In respect of repair costs Miss Leslie said the invoices disclosed did not equate to the sums claimed within the bundle. She said that for the years 12/13, 14/15 and 15/16 the total expenditure disclosed amounted to £4107. All the work undertaken was small in nature and she disputed works had been carried out.
22. Miss Leslie queried why accounts had not been audited. The accounts were certified but this was based upon information provided by the managing agent.
23. Miss Leslie also stated that in her opinion the electric charges were too high given the limited electric used simply for lighting and door entry phone system.
24. In summary Miss Leslie stated she had painted her own balcony railings to the front elevation, she believed her neighbour had done likewise. Her rear bedroom was very cold. She felt she had no choice but to come to the tribunal given the difficulties she had experienced in obtaining information including the landlord's name and address. She was happy to pay a fair fee and thanked the tribunal for being patient in hearing her evidence.
25. Mr Alexander explained that he had always believed the Respondent company was the landlord. He accepted it appeared that may not be the case but he took instructions from Mr Brockhurst. He did not believe that the Applicant was prejudiced by this.
26. The tribunal referred Mr Alexander to the case of Beitov Properties Limited v. Martin [2012] UKUT 133 (LC). The tribunal reminded Mr Alexander that Miss Leslie had clearly in her application and statements placed the issue of the demands in dispute. It was agreed that the tribunal would adjourn to allow Mr Alexander an opportunity to take instructions to clarify the ownership of the freehold and to consider the case referred to above. The tribunal adjourned for lunch at 12.45.

27. The hearing resumed at 1.55pm. Mr Alexander explained that he had not spoken to his client as he was overseas. He candidly conceded having considered the case referred to in paragraph 25 above that the demands should have contained the landlord's actual name and address. He did understand that in fact there may have been a recent transfer of the freehold title into the Respondent companies name. The address given for the landlord was his firms address which he accepted, whoever was the landlord, was not their actual address. Mr Alexander explained that all demands did contain the summaries of rights and obligations as this was printed on the reverse and certain of the copies within the bundle had the summary. See for example [240 & 241].
28. Mr Alexander explained he believed that they had managed well. He managed over 60 blocks in the area. When they took over matters were not as clear as they could be. He stated Miss Leslie has routinely been in arrears and it was always made clear she could attend his office by appointment. She had in fact done so with her solicitor.
29. He accepts works need to be addressed but in consultation with his client they had decided that it was best to increase the reserves to fund the works first rather than issue large demands for major works.
30. The tribunal then went on to look at insurance. At this point Mr Alexander explained he had only received a copy of the bundle a week prior to the hearing. He was not sure whether it included all documents he had supplied as he had not read the same fully. The tribunal adjourned to allow Mr Alexander to review the bundle before proceeding making clear it would expect him to take the tribunal through the relevant invoices to substantiate the sums claimed. The tribunal adjourned at 2.25pm.
31. The tribunal re-convened at 2.50pm. Mr Alexander confirmed he was satisfied that it appeared all documents he had disclosed were included.
32. The tribunal reminded Mr Alexander that in the schedule prepared by Miss Leslie she challenged the insurance for the years 11/12, 12/13 and 14/15. Within the bundle was evidence relating to the year 13/14, 14/15 and 16/17. He explained that suspected the earlier years had been mislaid in the changes of agents but submitted the building had always been insured.
33. Mr Alexander explained his firm uses various brokers. The broker would be asked to obtain a quote each year and sometimes he would ask more than one broker for quotes to test the results obtained. He confirmed his firm arranged the insurance and upon questioning by the tribunal openly confirmed he received commissions typically in the order of 10-12% of the premium.
34. Turning to other receipts he highlighted that all accounts had been certified by accounts who would have had access to all receipts in

providing such certification. Further all invoices were available when the Applicant and her solicitor visited his office to inspect the same.

35. He believed the accounts issued would add up to the totals within the accounts. The tribunal briefly looked at 2012 which appeared to add up to the amount within the accounts. However for the year 2016 the accounts did not appear to match the invoices disclosed. It was agreed the tribunal would need to review the invoices for each year in making its determination.
36. Mr Alexander explained in the past he personally had undertaken the fire risk assessments and charged an additional fee for the same. It was now his practice to outsource this to specialist contractors and had in fact arranged this for the building as he suspected further fire safety works may be required which would then be encompassed in the major works he was looking to undertake in the forthcoming year.
37. As to his management fees he did not believe there was a written contract as such. He would have sent a letter of engagement which would have been accepted by his client. His fees were £200 plus vat per unit per annum. In the year ending December 2013 and December 2014 he had not made any charge for managing the building as he accepted little had been done as a gesture of goodwill to all.
38. When questioned about the figure contained within the budget for 2018 [160] which appeared to indicate his fee would be £300 plus vat per unit per annum he stated this was an error. His fee was still £200 plus vat per unit per annum.
39. Mr Alexander accepted none of the accounts should refer to ground rent. He was aware this needed to be separately demanded and was not a service charge item.
40. He explained that a section 20 notice had been served in the past [221-223] but this had not been proceeded with. He is aiming to do the works next year and believes the reserves will be sufficient but will conduct a fresh Section 20 consultation.
41. All other repairs undertaken were significantly below the threshold for consultation.
42. The electric supply was metered. He stated that readings would be taken bi-annually and the costs were simply passed on
43. In his opinion the service charges were reasonable. He had tried to ensure the level claimed remained consistent throughout and had allowed reserves to be built up.
44. In respect of the costs of the tribunal Mr Alexander said he would be looking to charge his time for attendance at the hearing. He had not wanted matters to reach this stage but was keen for there to be an end

to the situation. He believed that he had tried to accommodate Miss Leslie offering instalments arrangements which had not been adhered to.

45. Miss Leslie believed she had no choice but to apply to the tribunal. She also did not wish to be here but felt she had no option to do so.

## **DETERMINATION**

46. In reaching its determination the tribunal had regard to all of the documents contained within the hearing bundle and the oral evidence of Miss Leslie and Mr Alexander. Further the tribunal had inspected the building which in the tribunals determination had been managed and maintained although the need for major works was apparent. The need for major works was accepted by all.
47. The tribunal determines that for each of the years in dispute being the years 2011 to 2018 both actual and interim charges no valid demands have been issued. None of the monies claimed are currently due and payable.
48. The tribunal so determines as it is unclear as to who the landlord of the building actually is. Doing the best it can it would appear that the landlord is in fact Messrs Brockhurst, Brockhurst, Chivers and Chivers. It was suggested by Mr Alexander that in fact the title may have been recently transferred into the Respondent company. Even if this was the case at the date of the various demands the incorrect landlord's name would have been included.
49. Further in any event it was conceded that the address of the landlord was not included on the demands. Following the decision in Beitov Properties Limited v. Martin the demands would be invalid for this reason.
50. The tribunal advises the parties it may be that the landlord may be able to still serve valid demands to correct any errors. Each party should take its own advice. Until valid demands are issued none of the sums claimed within the years disputed are payable.
51. The tribunal went on to look at the reasonableness of the sums claimed.
52. The tribunal records that Miss Leslie did not seek to challenge any of the sums claimed within the accounts for the year ending December 2011 and so the tribunal records that all such sums are reasonable.
53. In respect of the insurance premiums for each of the years the tribunal considered all of the evidence. It notes no alternative quotes were provided and using its expertise the amounts claimed appeared reasonable. Whilst it was unfortunate that the bundle did not contain receipts or invoices for all years on balance the tribunal accepts the

evidence of Mr Alexander that in all of the years the building was insured. Miss Leslie had challenged the insurance cost for three of the years for which an invoice was only present for one of the years. The Respondent had supplied invoices for two other years and gave evidence as to why earlier invoices were not available.

54. The tribunal determined on the evidence before it that the insurance claimed for each of the years was reasonable.
55. In respect of the agent's management fee the tribunal was satisfied that a charge of £200 plus vat per unit per annum was a reasonable charge. The tribunal finds that the management charge claimed in each of the years within the accounts contained in the bundle is reasonable.
56. In respect of the budget charge for the year ending December 2018 the tribunal substitutes the sum of £1680 as being reasonable. The tribunal does so given Mr Alexander accepted that this was what his fee would be for this year.
57. Turning now to the repair costs the tribunal has reviewed the invoices contained within the bundle. It was clear from the Applicants schedule and statement that these were in dispute. The tribunal is satisfied that minor repairs have been undertaken and that the costs of those invoices within the bundle are reasonable. The tribunal has considered the invoices and determines for each of the actual years the following sums are reasonable:

Year	Amount claimed	Amount allowed
2012	£1046	£1046
2013	£255	£255
2014	£449	£449
2015	£243	£243
2016	£1046	£865.59

58. The tribunal notes that no invoices have been supplied for the year ending December 2017. At the date of the application only the budgeted figures were available. By the date of the hearing the accounts dated October 2018 had been provided. In this year a sum of £115 was sought for repairs. Having considered the evidence generally, including the tribunals inspection whilst there are no invoices we determine this sum is reasonable.
59. In respect of other items, the tribunal determines the sums claimed are reasonable. In particular the tribunal is satisfied that there is an electricity supply and the charges made to the service charge are simply those amounts charged by the electricity provider. The accounts have been certified by chartered accountants and the fees charged appear to be reasonable in this tribunals determination.



60. For the year ending December 2018 we have a budget for an interim charge [160]. The Applicant queried whether a charge of more than £200 could be levied. Having considered the lease [18-41] the reference to £200 is set out in relation to the interim charge in clause (1)(c) of the Fifth Schedule however this goes on to provide that the interim charge can be a sum as determined by the managing agent. The tribunal is satisfied that the mechanism under the lease allows an interim charge of more than £200 provided the sum claimed is reasonable. Save for the reduction in the management fee the tribunal is satisfied that the sum budgeted is reasonable. The managing agent had included sums towards repairs and reserves but as explained in evidence it is the intention to undertake major works utilising the reserves. This tribunal accepts it was appropriate to build up reserves to prevent larger bills being presented to leaseholders. This is a matter for the managing agent to determine using their professional skill and judgement.
61. It will now be for the Respondent to make any necessary adjustments to the accounts prior to issuing valid demands if it is so advised.
62. The Applicant had requested the tribunal to make orders under Section 20C of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold reform Act 2002. The effect of such orders would be to prevent the landlord from recovering any costs incurred as a service charge item from Miss Leslie or any administration charges from her.
63. Having considered matters whilst in the main the agents costs have been determined as reasonable it was apparent from the evidence that the Applicant had struggled to obtain information. Further the issue of the identity of the landlord and their address had been specifically raised by Miss Leslie. Mr Alexander himself candidly admitted he was not sure who actually owned the freehold of the Property and had no evidence of the same beyond the land registry entries supplied which included names of individuals and not the company referred to on the purported demands.
64. In this tribunals determination that was a basic fact. As a result the tribunal exercises its discretion having considered all matters to make an order pursuant to Section 20C that none of the costs of this application may be recovered as a service charge item.
65. Further the tribunal also makes a determination that no administration fees may be charged against Miss Leslie. This includes any charges added to her account for supposed arrears. The reason for this being that the tribunal has determined that none of such sums are currently due and payable and so she cannot have been in breach of the terms of her lease. As a result it would be inequitable in this tribunal's determination to allow the Respondent or its managing agent to recover any administration fees.

66. Finally the tribunal reiterates as it did at the end of the hearing that the parties need to try and work together. Both parties are urged to put behind them this dispute and what has taken place in the past and look to the future. Both believe works are required to the Property. Funds are in place and so such works can and should be undertaken for the benefit of all.

Judge D.R. Whitney