



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

**Case References** : **BIR/37UE/LIS/2019/0023  
BIR/37UE/LIS/2019/0024**

**Properties** : **1 &2 Kenilworth Court, Porchester Road,  
Nottingham, NG3 3GP**

**Applicants** : **Mr. B.S. Mehat (1)  
Mehat Properties Limited (2)**

**Applicants’  
Representative** : **None**

**Respondent** : **Ground Rent Trading Limited**

**Respondent’s  
Representative** : **Mr Paul Simon In-house Counsel**

**Applications** : **(1) Application for a determination of  
liability to pay and reasonableness of  
service charges pursuant to ss 19 & 27A(3)  
Landlord and Tenant Act 1985 (the Act)**

**(2) Application for an order limiting the  
Respondent’s costs in the proceedings  
under s20C of the Act and under paragraph  
5 Schedule 11 Commonhold and Leasehold  
Reform Act 2002 (CLRA 2002) reducing or  
extinguishing the tenant’s liability to pay an  
administration charge in respect of  
litigation costs**

**Date of Inspection  
And Hearing** : **11 December 2019**

**Tribunal** : **Tribunal Judge P. J. Ellis  
Tribunal Member Mrs K. Bentley**

**Date of Decision** : **17 December 2019**

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**DECISION**

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### ***The Tribunal decides:***

- 1. No service charges are payable by the Applicants to the Respondents for the years 2014 to 2019***
- 2. All sums paid by the Applicants to the Respondent as service charges shall be repaid within 28 days of this Decision***
- 3. The administration charges incurred by the Respondent being alleged arrears letter charges in the sum of £210.00 in the case of the First Applicant and £60.00 in the case of the Second Applicant are not payable by either of the Applicants***
- 4. The costs incurred or to be incurred by the Landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable the Applicants***
- 5. The Respondent shall pay the sum of £100.00 to the First Applicant within 28 days of this Decision.***
- 6. The Respondent shall pay the sum of £100.00 to the Second Applicant within 28 days of this Decision***

### **Introduction**

1. These are two cases related to two properties in an apartment block known as Kendall Court, Porchester Road, Nottingham. The relevant apartments are 1 and 2 Kendall Court. They are owned by the Applicants as assignees of 999 year leases from 26 August 1964. The Applicant is Mr Bahrat Singh Mehat in respect of 1 Kendall Court and Mehat Properties Limited in respect of 2 Kendall Court. The address of both Applicants is 30 Beeston Fields Drive, Beeston Nottingham.
2. The applications are the same for both matters namely whether or not service charges are reasonable and payable and also for orders determining that administration charges incurred in connection with claims for payment of ground rents are reasonable and payable.
3. The Respondent, the freehold proprietor, is Ground Rent Trading Limited of 5 Sentinel Square London. It is represented by its in-house counsel Mr Paul Simon.

4. Both Applications were issued on 20 June 2019. The Tribunal gave Directions for determination of the matter on 24 June 2019 including an order consolidating the two applications. The Respondent failed to comply with the Directions and by order of the Tribunal on 8 August 2019 it was barred from taking further part in the proceedings. However, after receiving representations the Tribunal lifted the bar on 10 September 2019 and gave further Directions with which the Respondent complied.

### **The Facts giving rise to the applications**

5. The matter was heard without an inspection on 11 December 2019. The Applicants described the properties in the application form as purpose built two bedroom flats in a block of flats. The Applicants state they have always maintained the outside of the property of the flats all the surrounding trees and bushes and entrance pavement.
6. The relevant service charges relate to years 2014 -2019. The sum claimed in each year is £550.00. According to the Tenant Ledger supplied by the Respondent as an exhibit to the statement of 27 September 2019 by Mr Simon, the Second Applicant has not made any payment in respect of those claims since 30 November 2015 when the sum of £552.50 was paid being service charges and ground rent of £2.50. The First Applicant made the same payment on 30 November 2015 and a further payment of £562.50 on 19 February 2016 being the service charge claim for 2016 and an “Arrears letter charge” of £12.50.
7. According to the ledger the First Applicant’s account was in balance with nothing due or owing on 24 March 2017. Since that date the Respondent has made claims for service charges of £550.00 per annum for each of years 2017, 2018 and 2019. In that period the First Applicant has made six payments each of £2.50 for ground rent.
8. In addition the ledger reveals the Respondent has debited seven items of £30.00 charge as “Arrears letter charge”.
9. Accordingly the Respondent’s ledger shows that the First Applicant is indebted to the Respondent for the sum of £1872.50.

10. As far as the Second Applicant is concerned the ledger shows the account was in balance on 28 September 2017. Only one claim for service charges was made thereafter being the claim for the current year 2019 in the sum of £550.00. The claim was made on 1 January 2019 and an “Arrears letter charge” of £30.00 was raised on 16 January 2019. A further “Arrears letter charge” was added to the account on 2 July 2019. All claims for payment of ground rent were met. Accordingly the only sum allegedly outstanding from the Second Applicant is £610.00
11. The Applicants by the witness statement Mr Mehat on behalf of himself and the second Applicant asserted that the reason for refusing to pay the charges that the Respondent had not supplied any services. In response Mr Simon on behalf of the Respondent in his witness statement agreed that no services were rendered and conceded that the Respondent was willing to reverse the charges on both accounts. The Tribunal took the intention to reverse the service charge statement to mean the charges would be credited so that nothing is due from the Applicants to the Respondent for services.
12. Mr. Simon also stated the Respondent is willing to transfer to the Applicants the funds which he stated were held on trust in respect of service charges for 2015 and 2016 in the case of the First Applicant and for 2015 in the case of the Second Applicant.
13. The only issue for determination by the Tribunal is the matter of the costs of the letters of claim. Although Mr Simon conceded that no service charges were due he submitted the Arrears letter charges were reasonable and payable as an administration charge because the Applicants did not pay ground rent until chasing reminders were sent.
14. By paragraph 5 of Schedule 11 Commonhold and Leasehold Reform Act 2002  
*(1)An application may be made to the appropriate tribunal for a determination whether an administration 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,*
  - (d)the date at or by which it is payable, and*
  - (e)the manner in which it is payable.*

*(2)Sub-paragraph (1) applies whether or not any payment has been made.*

### **The Decision**

15. The Tribunal is not satisfied that the administration charges are reasonable. The Respondent issued Arrears letter charges in respect of both service charges and arrears. As the service charge invoices were inappropriate it is not possible to separate an arrears charge for ground rent. In any event the sum claimed is disproportionate for such modest ground rent liabilities.
16. Accordingly the Tribunal determines that administration charges are not payable by the Applicants.

### **Applicants' costs**

17. In this case the Tribunal offered the parties mediation as a means of resolving the dispute. The Respondent did not reply to the offer. Moreover, the Respondent delayed its compliance with the Directions of the Tribunal giving rise to a barring order which was then lifted but after the Tribunal had had to consider the Respondent's request.
18. Having regard to the Respondent's decision to reverse service charges the only sums in dispute were very modest. The Tribunal considers the matter would have been readily resolved with a short mediation meeting.
19. Rule 13(1) of the Tribunal Procedure (First-tier) Tribunal(Property Chamber) Rules 2013 the Tribunal may make an order in respect of costs only

(b)if a person has acted unreasonably in bringing, defending or conducting proceedings in

(ii) a residential property case

By rule 13(2) the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party.... And

by rule 13(3) the Tribunal may make an order under this rule ...on own initiative

20. It is now well settled that “...silence in the face of an invitation to participate in ADR is, as a general rule, of itself unreasonable, regardless whether an outright refusal, or a refusal to engage in the type of ADR requested, or to do so at the time requested, might have been justified by the identification of reasonable grounds.” (PGF II SA V OMFS Company 1 Limited [2013] EWCA Civ 1288)

21. The Respondent not only failed initially to respond to the Tribunal’s directions it then failed to respond to the invitation to attend a mediation meeting. Having made its determination on the substance of the dispute, this Tribunal is satisfied the Respondent was unreasonable in the conduct of the proceedings. Accordingly the Tribunal orders that the Respondent pays to each of the Applicants the sum of £100.00 within 28 days in reimbursement of the application fees.

### **Appeal**

22. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal on a matter of law to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).

**Tribunal Judge P J Ellis. Chair**