FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/45UB/LIS/2018/0054
Property	**:**	37, Buckingham Road, Shoreham-by-Sea West Sussex BN43 5UA
Applicants	**:**	Mr J Williams and Mr P Meredith
Representative	**:**	Mr N Dobbs, Managing Agent
Respondents	**:**	Ms L Whitnall and Mrs M Bean
Representative	**:**	
Type of Application	**:**	Service charges
Tribunal Member(s)	**:**	Judge D. Agnew Mr BHR Simms FRICS
Date of Decision	**:**	25th June 2019

DETERMINATION

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Background

1. On 1st October 2018 the Applicants applied to the tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the payability and reasonableness of service charges rendered in respect of the Respondent's property situate at and known as 37 Buckingham Road, Shoreham-By-Sea, East Sussex BN43 5UA ("the Property"). The service charge years in question are ended 24 December 2016, 2017, 2018 and 2019. The charges for 2016 arein respect of the final accounts whereas the charges for 2017, 2018 and 2019 are on-account charges.

2. Following a Case management hearing by telephone on 11th December 2018, Directions were issued which provided for statements of case to be served and the case came before the tribunal for hearing on 21st May 2019.

Inspection

3. The Tribunal inspected the property immediately prior to the hearing on 21st May 2019 in the presence of one of the Applicants (Ms Whitnall) and the Respondents and their Managing Agent Mr J Dobbs of Parsons Son and Basley.

4. The Property comprises a first and second floor maisonette in a semi-detached Victorian house which also contains a lower ground floor flat and another flat on the ground floor. The building is constructed of rendered brick under a tiled roof. At the rear of the building there is a first floor extension to the Property and this features to a large extent in this case. The extension, which is heated by a radiator houses a central heating boiler and is a timber framed construction on top of a single skin masonry base supported by steel beams. It contains wooden framed single glazed windows and a corrugated plastic roof. The paintwork on the window frames is peeling and extensively worn away both internally and externally revealing bare and rotten wood. Leading from the conservatory and back door to the garden is a flight of concrete steps with rendered cheeks. The rendering is loose and has lost key.

Commented [PS1]: Perspex is a trade name and a more generic description is appropriate

5. The Tribunal noted that the paintwork to the front door of the building showed signs of cracking and bubbling. The decoration to the external render appeared to be satisfactory as was the general condition of the exterior of the building.

6. The Tribunal was shown the concrete floor to the lower ground flat and could see that this had been relatively recently laid and, from the small area that was exposed to view, seemed to be in good condition.

The application

7. For 2016 the Applicant seeks a determination that the following charges have been reasonably incurred and are reasonable in amount:

   a) Installation of damp proof membrane £2749.50

b) Vat on the contractor (Luke & Luke) invoice for major works £3814.70

c) Installation of concrete floor £12,867.18 (including vat).

8. For 2017 the only items challenged by the Respondents were:-

a) Buildings insurance costs £887.54

b) An accountant's fee of £120

9. For 2018 the only item of expenditure challenged by the Respondents was the buildings insurance cost of £940.73

10. A budget had also been prepared for 2018 which had included a figure of £14,000 for the repair of the conservatory. The Respondents objected to this in their statement of case. In fact, this has not been included in the on-account demand. However, at the hearing Mr Dobbs explained that it was the intention to issue a separate demand for the cost of this work at a later stage during the year which the lease entitles the landlord to do. The actual cost will be less than originally thought would be the case as the specification has been reduced. The Respondents agree the current specification. Taking monies already in reserves into account it is likely that the additional amount that will be demanded to cover the cost of this work will be £3705.27 of which the Respondents' share is 50% (£1852.64). Although no demand has yet been made with regard to the conservatory works the Applicant has applied for the Tribunal to make a determination under section 27A(3) of the Act to the effect that if a charge were to be made for that work in the anticipated amount of £15133.50 to include fees, that this would be a reasonable charge. As the Tribunal has before it the necessary evidence and submissions of both parties to deal with this, and as it will obviate the need for a further application being made once the demand is made, the Tribunal has proceeded to make a determination under the aforesaid section 27(A)(3) in respect of the prospective costs of repair to the conservatory.

11. The items which form the budget for the on-account charge 2019 and which were disputed by the Respondents were:-

a) The buildings insurance provision of £1,000

b) Maintenance and repairs provision of £1,000

c) Fire and health and safety Risk Assessment of £300.

12.

The Applicants' case

13. The Applicants' case with regard to the disputed items is as follows.

2016

14. With regard to the three disputed items in this year, the Applicants say that they were excluded from recovering them as there was an accrual in 2015. , For various reasons, the previous Tribunal that heard the case in 2017 was not satisfied that the evidence before it supported the fact that the works claimed for had been done, or that the costs had been properly incurred. The invoice which included the three items in question was not delivered until a date in 2016. On receiving an application for permission to appeal the 2017 decision that Tribunal made clear that the Applicants could rely on the further evidence they were producing for the permission to appeal application when the final account for 2016 was being considered. The further evidence was now to be considered in the 2016 accounts. That further evidence comprised a proper copy of the receipted Luke & Luke invoice showing a vat number, a copy of a guarantee issued by Bensleys for the damp proof course completed in October 2015, a Final Certificate issued by BBS Building Control for "renovation of basement flat to alleviate damp problems….", a draft valuation by Luke & Luke of works carried out and photographs showing excavation of the basement flat floor and the new slab. Further, the Tribunal had on the Inspection had the opportunity of seeing the new concrete floor to the lower ground floor.

2017

15. Mr Dobbs explained that each year their brokers go out to the market to place a block insurance for those properties under Parsons Son and Basley's management. The Respondents had not disputed the insurance costs for 2015 in the sum of £806.17 and the previous Tribunal had determined that this was a reasonable amount. The increase in cost to £887.54 was a relatively modest increase.

16. With regard to the accountant's fee of £120, this came about as a result of a meeting that the Respondents requested in order to discuss the re-casting of the 2015 year end accounts following the previous tribunal's determination and other matters. Mr Dobbs had secured a reduction in the accountant's fees on a time basis and he considered it only reasonable for the Respondents to have to pay this.

2018

17. The Applicant's case for the buildings insurance cost of £940 was the same as for 2018.

2019

18. The estimate of £1,000 for the buildings insurance costs was based on the previous years' costs with a reasonable uplift for inflation. The fire risk assessment (£300) management fees and accountancy fees were based on previous years' costs. A previous Tribunal had approved £1,000 as a reasonable provision for maintenance and repairs.

The Respondents' case

2016

The Respondents considered that they should not be required to paythe three disputed items. Their case was that these sums had been included on an accrual basis in the 2015 accounts, the previous tribunal had decided that they were not payable and therefore that was an end to the matter. They could not come back to have another bite of the cherry. They say the work was undertaken in 2015 so the cost "cannot " be included in the 2016 service charge. The Respondents still asserted that the Applicants had not proved that all the work included in the Luke & Luke invoice had been carried out or that it was done in accordance with the specification.

19. The Respondents also sought to challenge the standard of the works being included in the 2016 account. First, they considered that some of the external decorating work for which £1,921.50 had been charged was sub-standard. They did not specify in what way the said works were unsatisfactory although the poor finish to the front door was pointed out to the Tribunal at the inspection. They also claimed that the driveway resurfacing was unsatisfactory. The previous tribunal had reduced this charge to £1,000 on account of the fact that the specification of work actually carried out was less than originally intended. However, the Respondents sought a further reduction due to the quality of the work. Unfortunately, this was not pointed out to the Tribunal on the Inspection. The Applicants denied that there was anything wrong with the standard of the driveway surface.

2017 and 2018

20. The Respondents' challenge to the buildings insurance costs was simply based on the fact that the cost had risen significantly since they purchased the flat when it was £203.17 when the total premium for that year was £609.50. They now object to paying 50% (instead of 33.3% and the full cost is more than double what it was in 2013. They did not produce any comparable quotations from other insurers for the Tribunal to consider.

2019

21. The Respondents challenge the figure of £300 for a Fire and Health and Safety Risk Assessment. They say they have been requesting one for some time but what is the point in doing this now that most of the works have been carried out? They disagree that £1000 is a reasonable figure for maintenance and repairs on the basis that they cannot see what further works might be required. They make the same points with regard to the buildings insurance as for previous years. In their statement of Case the Respondents set out at length their objection to the budgeted figure of £14,000 for the cost of the renovation of the conservatory. They said that the original estimate of cost in 2014 was

approximately £2,000 and due to the delay in putting the work in hand, the structure will have deteriorated. They did not produce any evidence, however, as to how much the cost might have increased due to the landlord's delay. As they now accept the compromise specification for the scope of the works, produced by Mr David Smith MRICS, it is not clear to the Tribunal as to whether the Respondents maintain their objection to having to bear a proportion of the estimated cost of £15,133.50 or whether their objection is now restricted to the additional cost of scaffolding over and above what it would have cost had the works been carried out at the same time as the other major works in 2015. That additional cost is £800. The Tribunal will proceed to decide the matter taking into account all the Respondent's' arguments.

The law

22. By section 19 of the Act:-

" Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is payable, and, after the relevant costs have been incurred, any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise."

.By Section 27A of the 1985 Act it is provided that:-
(1) An application may be made to a Leasehold Valuation 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,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.
(2) Subsection (1) applies whether or not any payment has been made.
(3) An application may also be made to a Leasehold Valuation Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvement, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, 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.

The lease

23. The Respondents' lease makes the usual provisions for recovery by the landlord of expenditure on maintaining the Property and for the levying of service charges on account of expenditure. There was no dispute in this case that the costs were not recoverable as service charges under the lease. By clause 3.2.3 the landlord may demand further sums if the estimated sums are not sufficient to cover the expenditure. Clause 5.6.3

of the lease requires the landlord to carry forward excess sums paid or due to a reserve fund or provide a reserve fund for subsequent years.

The Tribunal's determination

24. The Tribunal is satisfied from the documents that have now been produced and from its Inspection of the building that the three items of cost that the Applicant seeks to be recovered as part of the 2016 service charge have been reasonably incurred, that the costs are reasonable in amount and that, as far as it can tell, the work has been carried out to a reasonable standard. The Tribunal also accepts that they may be added to the expenditure incurred in 2016. They were excluded from the 2015 service charge for the reasons set out in the previous Tribunal's decision of 2017 but it is clear to this Tribunal from the content of the earlier Tribunal's decision to refuse permission to appeal the 2017 decision that the previous Tribunal did not intend to preclude the Applicants from recovering the cost if they were included in the 2016 charge. This Tribunal accepts that matters have been complicated by the fact that certain costs were treated as accruals in the determination of the 2015 accounts and other costs have been treated as being on the basis of receipt of invoice. However, stepping back from that complication it must be right that a landlord should be able to recover the reasonable costs it has legitimately incurred in repairing or maintaining a lessee's property provided that the lease entitles him to do so. In this case, the lease does entitle the landlord to recover those costs. The landlord has sufficiently proved to this Tribunal's satisfaction that those costs were reasonably incurred, that they have been paid and that they should therefore be paid for. The previous Tribunal intended the landlord to be able to prove these matters when the 2016 charge was subsequently included in the 2016 accounts and that is what this Tribunal has done.

25. Although the Tribunal did notice that the paintwork on the front door to the building is beginning to deteriorate, it is now three years or more since the work was done and the Tribunal does not consider that its condition now is an indication that it was not carried out to a reasonable standard. The tribunal does not therefore reduce the cost of this item.

26. Unfortunately, the condition of the driveway surface was not pointed out to the Tribunal on the Inspection. However, the cost of this was reduced by the previous Tribunal to £1,000 meaning that the Respondents' contribution was only £500. There may be some defects in the surface but they were not apparent to the Tribunal when it approached the building at the start of the Inspection. The Tribunal cannot confirm the Respondents' view as to the condition of the driveway and therefore does not reduce the amount determined by the previous Tribunal as being a reasonable cost.

27. With regard to 2017, the Tribunal was asked to determine the reasonableness of on account charges as the end of year accounts had

not been issued. There are only two items in issue. The first is the level of buildings insurance. The Respondents produced no comparable quotations and so the Tribunal is unable to determine that the amount charged on account is unreasonable, particularly in light of the fact that this charge is as determined reasonable by the previous Tribunal for 2016 with a modest percentage increase for inflation. The Tribunal bears in mind trhat these are estimated on-account figures and may be adjusted when the exact figures are known. Further, it is trite law that the landlord is not obliged to find the cheapest insurance cover, provided that it is within a reasonable range of such costs. The Tribunal therefore finds that the buildings insurance element of the on-account service charges for 2017 and 2018 is reasonable. The Tribunal does not know why the Respondents were seemingly charged only one-third of the premium when they first bought the flat but their contribution in accordance with the lease is 50% and the lease prevails.

28. The other disputed charge for 2017 is an accountant's charge of £120 for a meeting he had with the managing agents and the Respondents to discuss, amonst other things, the 2016 certified accounts. As a result of that meeting the accountant seemingly accepted that the accounts should be amended. That being the case, the Tribunal finds that it would be unreasonable in those circumstances for that cost to be borne by the Respondents. The figure of £120 should therefore be removed from the on-account charge for 2017.

29. With regard to the on-account charge for 2019 the Tribunal finds that it is reasonable for the Applicant to include the cost of £300 for a Fire and Health and Safety Risk Assessment to be included in the charge. It is a statutory requirement to have such an assessment carried out. The fact that it has not been done in recent years when, arguably, it should have been is of no moment. It is right that it is done now and £300 appears to the Tribunal to be a reasonable amount.

30. The Tribunal finds that a provision of £1,000 for general maintenance and repairs is not unreasonable. Once the work to the conservatory has been carried out it may well be that there is not much more that will need attention. What is not spent in 2019 will go towards the 2020 sarvice charge liability, so any underspend is not lost and it may be that it would be reasonable to reduce this elemant in 2020 in the light of expenditure on this item in 2019. Accordingly, the Tribunal finds that the on-account demand for 2019 that has already been made is reasonable and payable.

31. The Tribunal now turns to deal with the conservatory work that is imminent and for which the managing agents intend to serve a supplementary on-account demand to cover the cost. This demand will presumably be based on the full estimated cost of £15,133.50 with a credit from reserves leaving a balance of £1,852.64 to pay of which the Respondents' share is £926.32. The Tribunal has considered the

specification for the works to the conservatory and considers that the above estimated cost is reasonable to be included in an on-account demand.

32. The Tribunal has considered the Respondents' submissions that the cost would have been less had the works been carried out earlier but there is no real evidence that this would be the case.

33. In all the circumstances the Tribunal does not find that the Respondentrs should not be liable to pay their full share of the cost of the conservatory works. The total estimated cost is £15,133.50 of which the Respondentrs' share is 50% and after a contribution from reserves brings the amount for the Respondents left to pay of £1852.54. A demand has not yet been rendederd but if it is rendendered in that sum the tribunal finds that it would be reasonable.

Conclusion

34. The Tribunal determines that the Respondent's share of the cost of the three items in dispute in the 2016 accounts namely the damp proof course (£2,749.50), vat (£3,814.70) and concrete floor (£12,867.18) are payable by the Respondents as part of the 2016 service charge. Further the Respondents are liable to pay the on-account service charges as demanded for 2017, 2018 and 2019 in the sums of £1023.77, £1545 and £1760 respectively less the sum of £60 (being one half of the accountant's fee in the demand for 2017). Additionally the estimated cost for the conservatory works are due to be charged separately in 2019.

Costs

35. Both parties said that they would wish to consider whether to make an application for costs once the outcome of this case was known. Generally, the Tribunal's proceedings are cost free unless it can be established that a party has acted unreasonably in connection with the proceedings, in which case an application may be made under Rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. Additionally, the Respondents may wish to consider making an application under section 20C of the Landlord and Tenant Act 1985 that the costs of the landlord in connection with the proceedings should not be regarded as reasonable costs to be included in any future service charge and/or an application under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 with regard to limiting or extinguishing landlord's contractual costs. Any application with regard to costs should be made in writing to the Tribunal within 28 days of this decision being sent to the parties.

Judge D. Agnew (Chairman)

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