



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

Case Reference : **CHI/29UL/F77/2019/0064**

Property : **Flat 25 Sir John Moore Court, Sandgate
High Street, Folkestone, Kent CT20 3RP**

Landlord : **Orbit**

Representative : **None**

Tenants : **Mr J & Mrs J Holder**

Representative : **None**

Type of Application : **Decision in relation to Rent Act 1977**

Tribunal Members : **R T Athow FRICS MIRPM (Chairman)
P A Gammon MBE BA (Lay Member)**

**Date of Inspection and
Hearing** : **8th January 2020**

Date of Decision : **8th January 2020**

Reasons for the decision

Background

1. On 16th August 2019 the landlord made an application to register the rent of the property at £428.96 per month inclusive of £128.21 per month for services.
2. The rent currently being charged was indicated to be £330.69 per month.
3. On 30th September 2019 the Rent Officer registered a Fair Rent of £339.36 per calendar month inclusive of £46.09 per month for services with effect from 15th November 2019. This being a shared ownership property the Gross Rent was noted as £372.97 per calendar month (25% ownership). It is not noted whether this is a variable or non-variable service charge.
4. The landlord objected and the matter was referred to the First Tier Tribunal, Property Chamber.
5. The Tribunal made standard directions on 12th November 2019 requiring the landlord to send to the tenant and to the tribunal a written statement as to their assessment of the rent and for the tenant to respond.
6. The Tribunal received a copy of the landlord's statement which indicated that the rent to be charged from 1 December 2019 would be £326.19.
7. In the submission it was stated "We have appealed against the registered rent because the registered service charge is significantly lower than the amount we applied for."
8. In support of their objection the landlord provided the Tribunal (it had also previously supplied the same to the Rent Office with the original application) with a Budget Statement for 2019/20 with the following amounts shown as the tenants' contribution.

Estate Budgets

Fire Alarms, Fire Equipment and Emergency Lighting	£ 27.48	
Grounds maintenance	£194.16	
Waste Removal	£ 5.25	£226.89

Block Budgets

Door Entry Systems	£ 34.43	
Fire alarms, Fire Equipment, Emergency Lighting	£163.63	
Renewals	£ 31.87	£229.93

Core Budgets

Cleaning	£ 70.20	
Electricity	£ 24.69	
TV Aerial	£ 76.92	£171.81
Sub Total Estate, block, Core		£628.63

Property Specific Budgets

Building Insurance	£ 68.16	
Management fee	£176.04	
Repairs	£105.06	
Sinking Funds	£539.48	<u>£909.86</u>
Annual Service Charge		£1,538.49
Monthly Service Charge		<u>£ 128.21</u>

9. A copy of the 2017/8 year-end statement was also enclosed.
10. The tenants requested a Hearing which took place after the inspection on 8th January 2020.
11. The tenants provided a copy of the lease. It is a typical modern lease with a variable service charge at Clause 7. The method of calculating the Specified Rent is at the fourth Schedule.

THE HEARING

12. No representative for the landlord was present at the start of the hearing and so it was adjourned whilst the Tribunal contacted Orbit to see if anyone would be attending to represent them. The reply was that they had never attended a Hearing in any previous applications and would not be doing so today.
13. As a consequence, the Tribunal continued with the hearing.
14. Mrs Holder, representing herself and her husband, stated that they had asked for a hearing as it was unclear as to how the rent had been calculated, and all they were seeking was clarification from the landlord.
15. The Tribunal had received certain papers from the Rent Office when the matter was referred over, but it was not clear from these papers how the Rent Office had reached its decision. The Tribunal sought clarification from the Rent Officer who provided the information as follows.

Equivalent Fair Rent	£515.00 pcm
Deduct:	
Service charge – see below	<u>£ 59.63</u>
Rolling total	£455.37
Deduct	
Adjust for fully repairing lease	<u>£ 82.40</u>
	£372.97
Deduct	
Management, audit, insurance fees & ground rent	<u>£ 0.00</u>
Gross Rent	£372.97
Adjust tenants' equity share	
25% Equity	<u>£ 93.24</u>
Specified Rent	£279.73
Add back	
Adjustments (Service Charge)	<u>£ 59.63</u>
Fair Rent	£339.36

16. There was no breakdown of the sum of £59.63 above which has been deducted for Service charge (less any audit, insurance and management of the shared ownership lease, BUT NOT management of any services), but from the Orbit budget the Tribunal concludes this is made up of £14.67 Management Fee and £44.96 Sinking Fund.

17. There was no breakdown or reasoning as to why the Rent Office recorded under paragraph (e) of the Registration “Noted amount attributable to services £46.09 per Cal month”.
18. In both the 2017 and 2019 registrations neither made reference as to whether the service charge was of the variable or non-variable type.
19. It seems, from the foregoing, unlikely the Rent Office was provided with a copy of the lease, whereas the Tribunal was provided with one by Mr & Mrs Holder.
20. Having read this, it enables the Tribunal to determine the service charge arrangements are reasonable and, as such, the rent must be registered as variable. This impacts the Maximum Fair Rent calculation because the starting point for the calculation is the fixed rent which is inclusive of service Charge whereas the variable ones are not and must be added to the resulting calculated rent. (See 30 Park Crescent Mews, West London W1G 7ER [2014] UKUT 402 (LC))

The law

21. When determining a fair rent the Tribunal, in accordance with the Rent Act 1977, section 70, must have regard to all the circumstances including the age, location and state of repair of the property. It must also disregard the effect of (a) any relevant tenant's improvements and (b) the effect of any disrepair or other defect attributable to the tenant or any predecessor in title under the regulated tenancy, on the rental value of the property. Section 72A requires the Rent Officer to note their opinion of the amount of rent (if any) attributable to the provision of services to the tenant “to assist authorities to give effect to the housing benefit scheme”.

Decision

22. In this instance it is clear that the Rent Officer has allowed the Management Fee and Reserve Funds whereas the charges for Insurance and other services have been excluded.
23. The Tribunal does not agree with this approach. The parties respective obligations with regard to services are clearly set out in the lease and, unless successfully challenged by an application under section 27A of the Landlord and Tenant Act 1985 will remain as demanded. Before considering the effect this has on the Fair Rent, this Tribunal has had to decide what the Open Market Rental value is for this flat.
24. No evidence of rent levels was given by either party. The Rent Office bundle included a list of over 200 2-bedroomed flats in the CT20 postcode area. The list did not give any addresses. The rent levels ranged from £450 – 1,300 per month. Consequently, this was not of any assistance to the Tribunal.
25. This Tribunal chairman has over 50 years extensive experience of rental and blocks of flats management in the Folkestone and Hythe District including Sandgate, and consequently the Tribunal has relied on this knowledge when assessing the current market rental value when let on assured shorthold tenancies.

26. Using this experience, the Tribunal decides the market rent to be £600.00 per month exclusive. However, this would be for a modern purpose built flat in good condition and location.
27. In this instance the block has not been well maintained. The Tribunal noted at the inspection that the exterior has not been maintained to a reasonable standard, with the main entrance door being broken, communal grounds neglected and the whole site poorly maintained. The Tribunal decides this will reduce the Market Rental Value by 10%.
28. The Tribunal computes the rental value as follows.

Market Rent				£ 600.00
less				
Repair Liability		10%	£ 60.00	
				£ 540.00
less				
Services Charge			£ 128.21	
GROSS RENT				£ 411.79
Less				
Equity Share	Gross Rent	25%	£ 102.95	
SPECIFIED RENT				£ 308.84
Add back adjustments			£ 128.21	
FAIR RENT				£ 437.05

29. As the Specified Rent is below the rent calculated in accordance with the Maximum Fair Rent Order, details of which are shown on the rear of the Decision Notice, **we determine that the lower sum of £378.50 per calendar month inclusive of £128.21 per calendar month for variable services is registered** as the fair rent with effect from today's date.
30. It should be noted that the Tribunal has not considered the service charge budget other than the items included in this decision because such matters are only able to be dealt with by an application under S27A of the Landlord & Tenant Act 1985.

R T Athow
8th January 2020

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. 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.
2. 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.
3. 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.