



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

**Case Reference** : **LON/00AH/LSC/2020/0007P**

**Property** : **Flats 1 and 2, 5 Dale Road, Purley,  
Surrey CR8 2ED**

**Applicants** : **June Munk (Flat 1) and Mark  
Buckfield (Flat 2)**

**Representative** : **Martin Guy**

**Respondent** : **Chancery Lane Investments Ltd**

**Representative** : **Moreland Estate Management**

**Type of Application** : **For the determination of the  
liability to pay a service charge**

**Tribunal Member** : **Judge P Korn**

**Date of Decision** : **23<sup>rd</sup> June 2020**

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**DECISION**

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**Description of hearing**

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was **P**. An oral hearing was not held because the Tribunal took the view that this preliminary issue could be determined on paper unless either party requested an oral hearing. Neither

party has requested an oral hearing. The documents to which I have been referred are in a series of electronic bundles, the contents of which I have noted. The decisions made are described at the end of this determination.

## **Introduction**

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) as to the payability of certain service charges. Jane Munk is the leaseholder of Flat 1 and Mark Buckfield is the leaseholder of Flat 2. The flats are two of three flats within a converted semi-detached house.
2. The Applicants’ main challenge is to the estimated service charge for the 2019/20 year. In addition, they are challenging a fire risk assessment charge dated 19<sup>th</sup> June 2019 of £288 per flat and three penalty charges per flat (£90.00 in total for each flat) for late payment of service charges.
3. The Applicants have also applied for cost orders under section 20C of the 1985 Act (“**Section 20C**”) and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“**Paragraph 5A**”) but they have not applied for the reimbursement of the application fee.
4. The relevant statutory provisions are set out in the Appendix to this decision. Ms Munk’s lease (“**the Lease**”) is dated 28<sup>th</sup> October 1988 and was originally made between Martin Guy (1) and June Munk (2). In the absence of any evidence to the contrary, my working assumption is that both leases are identical for all relevant purposes.
5. I note that, curiously, the Applicants’ representative appears to be Ms Munk’s (and perhaps Mr Buckfield’s) original landlord.

## **The Applicants’ case**

### Estimated service charge for 2019/20

6. The Applicants state that the budget of £1,510 per flat was just copied from the previous year. It was not calculated on the basis of any maintenance work that was needed, no unexpended surplus was taken into account and the managing agents refused to communicate with the Applicants about it.

### Penalty charges

7. A service charge demand was issued to each Applicant on 3<sup>rd</sup> June 2019. They questioned it on 17<sup>th</sup> June 2019 but the managing agents

ignored the questions and instead imposed an administrative charge on 2<sup>nd</sup> July 2019. The Applicants repeated their questions and the managing agents then imposed further administrative charges on 13<sup>th</sup> October 2019 and 12<sup>th</sup> January 2020. The Applicants state that their questions were carefully put together on each occasion but the managing agents did not even respond.

#### Fire risk assessment

8. A fire risk assessment was carried out on 19<sup>th</sup> June 2019 at a cost of £720.00, of which the Applicants were each charged £288.00. The inspection only took 2 minutes and no Section 20 consultation was carried out.

#### Miscellaneous

9. The Applicants have also raised a number of questions that they would like the Tribunal to address.

#### **The Respondent's case**

10. No submissions have been received from the Respondent.

#### **Tribunal's analysis and determination**

##### Estimated service charge for 2019/20

11. The Applicants' analysis has not been challenged by the Respondent. There is an email (supplied by the Applicants) which suggests that the Applicants' main point of contact at the managing agents was ill for an extended period, but this hardly explains the complete failure on the part of the Respondent and/or its managing agents to engage with these Tribunal proceedings or (save in an extremely cursory manner) to respond to the Applicants over a very long period.
12. The presumption, then, on the basis of the evidence before me, is that the Respondent and its managing agents did not make any serious attempt to consider in a proper manner what would be a reasonable budget for the 2019/20 year. The Respondent has had ample opportunity to comment on the Applicants' concerns but has failed to do so.
13. However, at the same time, the Applicants have been unable to come up with an alternative figure as to what would be a reasonable estimate for the current year. This is not meant as a criticism, in that the Applicants have much justification for arguing that they have been starved of

information by a firm of managing agents which has seemingly refused to engage with them.

14. Turning now to the wording of the Lease, under clause 3(i) the tenant covenants with the landlord to pay the annual sum of £100 “*as a contribution on account towards the expenditure incurred by the Landlord in carrying out [the maintenance] obligations*”. This maintenance charge is payable annually in advance. Under clause 3(iii), if the expenditure in any accounting period exceeds the aggregate amount payable on account plus any unexpended surplus and if a certificate as to the amount of the excess is provided to the tenant together with supporting audited accounts then the tenant can be required to pay the balance as long as the certificate does not contain any manifest error (and subject to any legislative protections in favour of the tenant).
15. Clause 3(e) of the Lease states that at any time after the first year of the Lease the landlord will have the right to increase the maintenance charge by a sum equal to the average of the excess contribution for the previous year. However, in clear breach of the Tribunal’s directions, the Respondent has not made any representations to support or to explain its position, and therefore I have no evidence before me that the Respondent has ever invoked the provisions of clause 3(e) of the Lease (either correctly or at all) so as to increase the maximum amount that it is able to collect ‘on account’ as an estimated service charge. I therefore have no evidence before me that the Respondent is entitled to charge more than £100 per year per flat by way of an ‘on account’ estimated service charge.
16. Therefore, in circumstances where (a) the Applicants have chased the Respondent for a response to its questions about the service charges over a very long period but have not received any meaningful response, (b) the Applicants have gone to significant trouble to comply with the Tribunal’s directions and (c) the Respondent has seemingly made no attempt to comply with the Tribunal’s directions or engage with the Applicants or with this entire process, I have no real choice but to make a decision on the basis of the information in front of me. Accordingly, whilst it is possible that the Respondent has correctly invoked clause 3(e) of the Lease there is no evidence that it has done so, and in these unusual circumstances the ‘on account’ estimated service charge for 2019/20 is limited to £100 per Applicant.
17. For the avoidance of doubt, this does not preclude the Respondent from certifying at the end of the financial year that the actual service charge costs are higher and requiring the Applicants to pay the balance, provided that it goes through the process envisaged by clause 3(iii) of the Lease. However, even if the Respondent does this it will still be open to the Applicants to apply to this Tribunal for a determination as to whether those actual costs were reasonably incurred.

### Penalty charges

18. It is unclear what provision of the Lease is being relied on by the Respondent in purporting to levy penalty charges for late payment of service charges. On the basis of the information before me, neither clause 2(21) nor any other provision of the Lease seems wide enough to cover this.
19. In any event, the evidence indicates that the Applicants raised perfectly reasonable questions regarding the amount of service charge and effectively received no response other than the imposition of these penalty charges. In the absence of a credible (or indeed any) explanation from the Respondent this appears to be a case of poor and aggressive management and none of the penalty charges is justified.
20. In conclusion, none of the penalty charges is payable.

### Fire risk assessment

21. The Applicant's evidence is that the total charge for the risk assessment was £720.00, that the Respondent had itself previously only budgeted for £150.00 and that the whole process only took 2 minutes.
22. I am sceptical as to whether the assessment really did only take 2 minutes, but it is plausible that the charge did not represent value for money. However, if the assessment was carried out on 19<sup>th</sup> June 2019 then the actual cost cannot be levied until after the end of the 2019/20 service charge year, if and when the Respondent goes through the certification process set out in clause 3(iii) of the Lease. Therefore, on the basis of the information before me, it is simply premature to be challenging this charge as it cannot yet lawfully have been levied on the Applicants as an actual charge and there is no evidence before me that it has actually been levied.
23. Therefore, as this charge cannot yet lawfully have been levied on the Applicants and in the absence of any evidence that it has been levied on them (lawfully or otherwise), there is nothing on which the Tribunal can make a determination.

### The Applicants' other questions

24. The Applicants have raised a number of other questions that they would like the Tribunal to answer. However, the Tribunal's jurisdiction is derived from statute and is limited, and it is therefore not appropriate for the Tribunal to give rulings on points which are of a more general nature or for it to provide the parties with legal advice, save in very limited circumstances. Therefore, whilst it is natural for leaseholders to seek guidance, it would not be proper for me to provide

general guidance in response to their questions. The Applicants may wish to consider whether to seek independent legal advice on these issues.

### **Decisions**

25. The 'on account' estimated service charge for 2019/20 is reduced to £100 per Applicant. As noted above, for the avoidance of doubt this does not mean that the actual service charge – to be calculated at the end of the service charge year – will itself be limited to this amount.
26. None of the penalty charges is payable.
27. On the basis of the information before me, the challenge to the cost of the fire risk assessment is premature and therefore no decision can be made at this stage.

### **Cost applications**

28. The Applicants have also made Section 20C and Paragraph 5A cost applications.
29. The relevant parts of Section 20C(1) read as follows:-

*“A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ... the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant ...”.*
30. The relevant parts of Paragraph 5A read as follows:-

*“A tenant of a dwelling in England may apply to the relevant ... tribunal for an order reducing or extinguishing the tenant’s liability to pay a particular administration charge in respect of litigation costs”.*
31. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Respondent in connection with these proceedings cannot be added to the service charge. A Paragraph 5A application is an application for an order that the whole or part of the costs incurred by the landlord in connection with these proceedings cannot be charged direct to the tenants as an administration charge under the Applicants’ respective leases.
32. In the present case, the Applicants have been largely successful and have also engaged with the Tribunal proceedings. Conversely, the Respondent has not engaged with these proceedings and has ignored

the Tribunal's directions. The Tribunal has a fair amount of discretion in relation to these cost applications and I am satisfied that it would be just and equitable to grant the Applicants' cost applications in full.

33. Accordingly, (a) the Tribunal orders that none of the costs incurred by the Respondent in connection with these proceedings can be added to the service charge payable by the Applicants and (b) the Tribunal makes an order extinguishing the Applicants' liability (if any) to pay towards the costs incurred by the Respondent in connection with these proceedings by way of an administration charge under the Applicants' respective leases.

**Name:** Judge P Korn

**Date:** 23<sup>rd</sup> June 2020

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

## **APPENDIX**

### **Appendix of relevant legislation**

#### **Landlord and Tenant Act 1985 (as amended)**

##### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

##### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

##### **Section 27A**

- (1) An application may be made to the appropriate 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 the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, 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 would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.