



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

Case reference : **CHI/21UG/LIS/2021/0006**

HMCTS code (paper, video, audio) : **P: PAPERREMOTE**

Property : **37 Park Road, Bexhill on Sea, East Sussex, TN39 3HX**

Applicant : **Deborah Ms Dowell as Executor for the Estate of Mr Peter Stanion deceased (freeholder)**

Representative : **In person**

Respondent : **Ryan Laity (Tenant – Basement Flat)**

Representative : **In person**

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal member : **Tribunal Judge I Mohabir**

Date of decision : **14 June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has not objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing on paper.

Decisions of the Tribunal

- (1) The Tribunal determines that the sums of £3,432 and £1,242.85 is payable by the Respondent in respect of the service charges for the years 2020 and 2021 respectively. These sums are payable within 28 days of this decision being issued to the Respondent.
- (2) The Tribunal makes the determinations as set out under the various headings in this decision.
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge because no such application was made.
- (4) The Tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this decision being issued to him, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

Background

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 2020 and 2021 respectively.
2. The property, which is the subject matter of this application, is the lower ground floor flat (known as Flat 37A) ("the flat") in a converted house comprised of 4 flats in total.
3. The Respondent holds a long lease of the flat dated 14 February 1992 granted by the deceased freeholder, Peter Derek Stanion to Kenneth Albert Walker and Norma Winifred Walker for a term of 999 years from 1 June 1990 ("the lease"). The Respondent is the current lessee.
4. The Applicant is the Executor of the estate of Mr Stanion who was the freeholder.

Lease Terms

5. By clause 3.2 of the lease, the lessee covenants to pay the service charge by reference to the Fourth Schedule. The Schedule provides, *inter alia*, that the annual service charge contribution is to be paid in respect of the expenditure incurred by the lessor ending on 31 December in each year at a contractual rate of 1/7th of the overall expenditure. Payment on account is to be made by the lessee on 1 January in respect of each year.
6. The annual service charge expenditure estimated or incurred by the lessor for each year includes the cost of repairing, maintaining and redecorating the exterior of the building pursuant to clause 4.3 in the lease.
7. No challenge has been made by the Respondent that the service charge costs that are the subject matter of this application are not within the ambit of clause 4.3 or that he is contractually obliged to pay a 1/7th contribution towards them.

Service Charge Costs

8. The service charge costs claimed by the Applicant can be summarised as follows.

2020

9. Annual Service Charge for 2020 - £600. Demanded on 8 September 2020, as amended on 6 November 2020. This represented the Respondent's 1/7th contribution for the estimated cost of buildings insurance (£1,700), the actual cost of management fees (£1,000) and the estimated cost of repairs and renewals (£1,500).

Garage repairs - £1,803.43 (total cost £12,624). Demanded on 11 September 2020.

Canopy repairs - £492.00 (total cost £3,444). Demanded on 22 September 2020.

Emergency canopy works - £536.57 (total cost £3,756). Demanded on 1 December 2020.

10. The Applicant undertook a separate section 20 statutory consultation process in respect of the garage repairs, the canopy repairs and the emergency canopy works. The Tribunal was told, and it accepts, that the consultation for the garage repairs and canopy repairs were completed by 9 and 21 September 2020 respectively.

11. The Applicant states that a Notice of Intention dated 23 October 2020 and a Notice of Estimates dated 25 November 2020 was served on the Respondent. As the demand relating to these costs was served on the Respondent on 1 December 2020, the Tribunal therefore inferred that consultation had also been completed by this date.

2021

12. Annual Service Charge for 2021 - £650. Demanded on 5 February 2021. This represented the Respondent's 1/7th contribution for the estimated cost of buildings insurance (£2,025), the actual cost of management fees (£1,000) and the estimated cost of repairs and renewals (£1,525).

Exterior redecoration works - £2,142.85 (estimated total cost £15,000).

Downpipe repairs/replacement - £200 (estimated total cost £1,400).

West canopy work - £142.85 (estimated total cost £1,000).

13. As a result of the Respondent's non-payment of the service charges the Applicant made this application to the Tribunal dated 8 February 2021.
14. On 17 February 2021, the Tribunal issued Directions. The issues identified are:
 - (a) Reasonableness of service charges demanded.
 - (b) Whether section 20 consultation requirements are met.
 - (c) The proportion payable by the Respondent.
15. The Respondent has not filed or served any evidence as directed by the Tribunal and has not engaged at all in these proceedings.

Decision

16. The Tribunal's determination took place on 14 June 2021 and was based solely on the evidence filed by the Applicant. There was no oral hearing and the Tribunal did not inspect the property.
17. The only evidence of the Respondent's position regarding the service charges claimed was in his email correspondence with the Applicant's managing agent on 22 September 2020 in which he simply made a general assertion that they were excessive without explaining why. He also made reference to the cost of the major works being met from

monies held in a sinking fund. He also stated that he was not working and was subject to the threat of redundancy.

18. In the absence of any evidence from the Respondent, the Tribunal made the following findings:

(a) In relation to both 2020 and 2021, the Respondent's contractual liability under his lease is, in principle, to pay 1/7th of the total of the service charge expenditure claimed by the Applicant for both years.

(b) In relation to 2020, the Tribunal found that the annual service charge costs of £600 were reasonable.

(c) As to the cost of the major works in 2020 relating to garage and canopy repairs and the emergency canopy works, it found that the Applicant had validly carried out statutory consultation under section 20 of the Act. It also found the cost of the major works to be reasonable on the basis that the Applicant had adopted the lowest estimate for the works.

(c) In relation to 2021, the Tribunal found that the annual service charge costs of £600 were reasonable.

(d) The Tribunal found that the estimated cost of the downpipe repairs/replacement in the sum of £200 (estimated total cost £1,400 and the West canopy work in the sum of £142.85 (estimated total cost £1,000) do not fall within the meaning of "qualifying works" within the meaning of paragraph 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations") because they require a service charge contribution from the Respondent of less than £250 and, therefore, there is no requirement on the Applicant to carry out statutory consultation for this proposed work. In the absence of any evidence from the Respondent to the contrary, the Tribunal found the estimated cost of the proposed work to be reasonable.

(e) As to the cost of the major works in 2021 relating to the exterior redecoration works in the sum of £2,142.85 (estimated total cost £15,000), the Tribunal found that these works are qualifying works within the meaning of paragraph 6 of the Regulations. Therefore, the Applicant is required to carry out statutory consultation with the lessees. The only evidence of this before the Tribunal was a Notice of Intention served by the Applicant dated 31 March 2021. No Notice of Estimates had been provided and there was no evidence that the consultation process had been completed in relation to these works. It follows, that the

Tribunal could not be satisfied that consultation had validly taken place and, as a matter of law, the Applicant is only entitled to recover a maximum contribution of £250 from each lessee regarding these works, being £1,000 in total. However, in the event that the Applicant had provided evidence that valid consultation had taken place or has in fact completed this consultation since the application was made, then the Tribunal would have found the estimated cost to be reasonable in the absence of any evidence from the Respondent to the contrary.

- (f) That there is no sinking fund from which the Respondent's service charge liability for the service charge costs allowed can be met.

Name: Tribunal Judge I Mohabir **Date:** 14 June 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).