FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/29UL/LSC/2021/0067
Property	**:**	Flat 4, 5 Wellington Terrace, The Esplanade, Sandgate, Folkestone CT20 3DY
Applicant	**:**	David Cown
Representative	**:**	Daniel Cown
Respondent	**:**	Napoleon Management (Sandgate) Limited
Representative	**:**	Gregory Playfoot
Type of Application	**:**	Determination of service charges: section 27A Landlord and Tenant Act 1985 ("the Act")
Tribunal Member(s)	**:**	Judge Tildesley OBE
Date of Decision	**:**	31 December 2021 Determined on the papers

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DECISION

Summary of Decision

The Tribunal determines that the Applicant is not liable to pay the service charges in the sum of £5,128.58 demanded on 18 March 2021. The Tribunal considers it just and equitable to make an Order under section 20C of the 1985 Act preventing the landlord from recovering the costs of these proceedings through the service charge.

If the Applicant wishes to make an application for unreasonable costs under rule 13 of the Tribunal Procedure Rules 2013, he must make an application in writing to the Tribunal within 28 days of the date of this decision. If an application is made the Respondent would have 14 days in which to respond. The Tribunal would then make its determination on the papers.

Background

1. The Applicant disputes the service charge demands for the years 2017, 2018, 2019, 2020 and 2021 to the total value of £5,443.58, including any future service charge demands. The Applicant also disputes the accounting records, the purported maintenance costs incurred and the validity of the current, previous year's and potential future insurance.

2. The Applicant also seeks orders limiting recovery of the Respondent's costs in the proceedings under Section 20C of the Act and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

3. The Respondent company was formed on collective enfranchisement by the lessees of Flats 1,2,3 and 5 in 2017.

4. The property is a converted mid-terrace five storey Victorian style house located on the seafront. It comprises five flats under separate leases numbered 1 to 5. The Applicant is the lessee owner of Flat 4.

5. On 10 September 2021 the Tribunal directed a case management hearing (CMH) which was held by telephone on 4 October 2021. Mr Daniel Cown attended as representative of his father, the Applicant. Mr Gregory Playfoot, one of three directors, appeared for the Respondent.

6. At the CMH the Tribunal offered the parties the opportunity to mediate their dispute. The Tribunal also fixed directions in the event of an unsuccessful mediation. The Tribunal directed the case to be determined on the papers without an oral hearing. The Tribunal also required the parties to exchange statements of case, and for the Applicant to prepare a hearing bundle by 20 December 2021.

7. On 1 November 2021 the Tribunal organised a mediation session which was not successful.

8. On 8 November 2021 Mr Playfoot emailed the Tribunal enquiring about the protocol for not contesting the service charges. The Tribunal advised Mr Playfoot to comply with the directions issued at the CMH. On 16 November 2021 Mr Playfoot informed the Tribunal that the Respondent would provide its response by 6 December 2021. On 7 December 2021 the Applicant applied to the Tribunal to submit the hearing bundle early because the Respondent had not provided its statement of case by the due date. On 8 December 2021 Mr Playfoot contended that the Respondent had been given the impression by the Tribunal that the date for its statement of case had been extended until 20 December 2021. Mr Playfoot, however, indicated that the Respondent would be able to supply its statement of case by the 10 December 2021. The Tribunal did not accept Mr Playfoot's assertion about the extension of the date to 20 December 2021 but decided to give the Respondent until 10 December 2021 to submit its statement of case.

9. On 10 December 2021 Boys & Maughan, solicitors, advised that the Respondent was prepared to accept on a commercial basis only and without any admission of liability, that no service charges were due from the Applicant for the periods of 2017-2020 inclusive. The solicitors explained that the Respondent had taken this course of action so that it might concentrate its resources on the proceedings against the owners of Flat 5 to reinstate the roof that was unlawfully removed.

10. The Applicant supplied the hearing bundle and responded to the letter of Boys & Maughan which the Tribunal has summarised as follows:

> "The respondent's legal representative has confirmed they no longer wish to contest the service charge for 2017-2020, however my statement of case contained additional points such as future service charges, validity of insurance and accounting issues which have not been addressed.
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> Bringing this matter to the tribunal was not taken lightly and was a last resort not just for service charge but for the breach of the lease and their legal duties and obligations. Over the last 5 years, both my letting agent and I have tried to negotiate with the respondent on an informal basis and offering our help, but their response was always hostile refusing any assistance or guidance with just the threat of legal action against me. The Respondents have twice rejected our offer to negotiate, once through their Barrister and second with the Tribunal; only changing their mind at the CMH. I have incurred legal costs in bringing this to the tribunal paying for independent advice from a barrister and solicitor whilst trying to keep costs as low as possible by doing most ourselves, and I feel very frustrated as I see no reason why the Respondent could not have confirmed their position sooner, which would have saved time and resources.
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> I do not accept their decision is based on "putting all their resources to pursue a legal battle against the Freeholder of flat 5". It has now been 23 months and the Respondent has not provided one piece of evidence as proof that legal action has commenced. The Respondents have

> confirmed they don't have the funds to reinstate the roof, ignoring that they have a legal obligation to reinstate the roof and are clearly relying on their expensive and as yet un-started legal case against flat 5 to fund its reinstatement. I have been very patient during this time, allowing them to pursue its case against Flat 5, even offering my help, and we are no further on than 2 years ago. There is clearly no sense of urgency and in my opinion it is just stalling tactics where the only is action is forced upon them such as the issued Section 77 notice by the council for the asbestos.
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> Meanwhile, the property not only has no roof, the whole top floor has been destroyed to the point where my apartment ceiling is now the roof. Apart from Flat 5, my apartment is the only one affected causing around £50,000 of damage and continued loss of rent. When it rains heavily, my tenant has to collect the rain water in buckets, most recently having to stay awake for 48 hours constantly emptying the buckets during the storm. She has also had to contend with maggots and flies and has not complained once. I have now been advised that the boiler has been condemned due to the flue being damaged by the demolition work from Flat 5 which caused several parts of my ceiling to fall in. Although it's my tenant decision to live at the property, as she doesn't want my apartment to be destroyed, she has prevented the total destruction of my apartment which in turn has prevented the Respondent's apartments from being damaged, yet the respondents have not once offered to help or compensate her for the troubles she endures because it is not directly affecting their apartments they are clearly not interested. Instead they're putting their resources, money and time in getting planning permission approved to redesign and rebuild the bin area at the property to make it more aesthetically pleasing to look at. This is not only unjust but quiet simply unfair so you can appreciate my frustration in all this".

11. On 20 December 2021 Boys & Maughan, solicitors replied to the Applicant's letter as follows:

> "We would politely highlight that the matters that the Tribunal has jurisdiction to hear have been conceded by our clients without admission of liability on a commercial basis as we have previously communicated. The other matters complained of by the Applicant cannot proceed before the Tribunal as the Tribunal is unlikely to have jurisdiction to hear them as it presently stands.
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> Can the judge dealing with this matter provide direction on this case as we presently do not know whether any hearing is going ahead or, if it is going ahead, on what basis".

Consideration

12. The Tribunal has before it an Application to determine service charges, which the Tribunal has directed to be determined on the papers. The Applicant has complied with the Tribunal's directions and provided a hearing bundle. The Tribunal has evidence on which to make a determination.

13. The Respondent has chosen not to contest the Applicant's evidence. The Tribunal does not recognise the Respondent's concession as an admission. It is, therefore, necessary for the Tribunal to justify its determination on the evidence presented, which can be dealt with summarily in view of the Respondent's decision not to contest the evidence.

14. The Tribunal's jurisdiction under section 27A of the 1985 Act is limited to deciding whether a service charge is payable and if it is, the Tribunal can determine the amount of the service charge, by whom and to whom the service charge is payable and the date and manner which it is payable.

15. The evidence shows that only one demand was issued for service charges which was on 18 March 2021 in the sum of £5,128.58 [72]. The demand listed various expenses incurred by the Respondent between the dates of 16 September 2017 to 13 January 2021.

16. The Tribunal finds the following:

    a) The demand did not comply with the requirements of section 47 of the Landlord and Tenant Act 1987 in that it failed to state the name and address of the landlord.

    b) The demand did not comply with the terms of the lease. The lease provides for the lessee to pay a service charge of 1/5th of actual costs as certified by the landlord's accountant incurred in the year in question. The Respondent supplied no notices or statements of costs certified by an accountant. The lease also provides for an amount of £150 payable in advance by two instalments on the 24 June and 29 December each year. No demand has been issued for the £150 payable in advance.

    c) The demand included costs which had been incurred prior to 17 September 2019. In the absence of evidence to the contrary those costs were not recoverable because of the 18 month rule under section 20B of the 1985 Act.

    d) The demand included ground rent which was not recoverable as a service charge.

    e) The decision notice for the CMH on 4 October 2021 recorded that Mr Playfoot for the Respondent "did not deny that the lease had not been complied with" in connection with the demand for service charges.

17. Having regard to its findings above, the Tribunal determines that the Applicant is not liable to pay the service charges in the sum of £5,128.58 demanded on 18 March 2021. The Tribunal considers it just and equitable to make an Order under section 20C of the 1985 Act

preventing the landlord from recovering the costs of these proceedings through the service charge.

18. The Applicant in his statement of case raised other issues in connection with the demand including that the majority of the purported charges related to items of expenditure which were not recoverable as service charges under the lease. In view of the Tribunal's determination it is not proportionate for the Tribunal to make findings on each item of expenditure.

19. The Applicant also asked the Tribunal to decide on other matters which were (1) future service charges; (2) validity of insurance and (3) accounting issues. The Tribunal has no jurisdiction to determine future service charges unless they have been crystallised. Likewise the Tribunal can only consider the validity of insurance and accounting issues if it related to a specific demand for service charges. The Tribunal has decided it is not proportionate to deal with such issues in view of its findings in [16] above.

20. The Applicant has made a separate application for the Appointment of Manager under section 24 of the Landlord and Tenant Act 1987. The Tribunal will now issue directions to progress the Application.

21. If the Applicant wishes to make an application for unreasonable costs under rule 13 of the Tribunal Procedure Rules 2013, he must make an application in writing to the Tribunal within 28 days of the date of this decision. If an application is made the Respondent would have 14 days in which to respond. The Tribunal would then make its determination on the papers.

22. In respect of an application for unreasonable costs the Tribunal draws the parties' attention to the decision of the Upper Tribunal in *Willow Court Management Company Limited v Mrs Ratna Alexander* [2016] UKUT 0290 (LC)**.** The Tribunal advises the Applicant that any application for costs must relate to these proceedings and cannot include claims for loss of rent.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making application by email to rpsouthern@justice.gov.uk.

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.