FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/29UL/LSC/2022/0100**
Property	**:**	**17, The Durlocks Folkstone Kent CT 19 6AH**
Applicants	**:**	**Stephanie Hazleton**
Representative	**:**	**In person**
Respondent	**:**	**Southern Housing Group**
Representative	**:**	**Meghan Reed**
Type of Application	**:**	**s27A Landlord and Tenant Act 1985**
Tribunal	**:**	**Judge F J Silverman MA LLM** **Ms C Barton MRICS** **Ms T Wong**
Date of paper consideration	**:**	**14 February 2023**
Date of Decision	**:**	**17 February 2023**

DECISION

The Tribunal determines that the service charges demanded from the Applicant amounting to the sum of £5,241.02 are reasonable in amount and are payable in full by her.

This case was determined on the papers both parties having consented or not objected to this method of consideration. The documents to which the Tribunal was referred are contained in an electronic bundle the contents of which are referred to below. The orders made in these proceedings are described above.

REASONS

1 The Applicant is the long leaseholder of the property known as 17 The Durlocks Folkstone Kent CT19 6AH (the property) which the Tribunal understands to be a three bedroomed maisonette in a small block of five similar properties. The Respondent is the current landlord of the property.

2 Having taken an assignment from the former leaseholder on 14 September 2020, the Applicant is the current assignee/tenant under a 125 year lease dated 13 November 1991 and made between The Phillip Sassoon Model Housing Society (Folkstone) Ltd as landlord and I S Boxer and T Boxer as tenants. In common with other tenants the Applicant has an obligation under the lease to pay a proportion of the maintenance and upkeep of the structure and common parts of the complex.

3 The Applicant is challenging service charge demands served on her in respect of major works carried out in 2022 on the grounds that the Respondent had not correctly served her with notices under s20 Landlord and Tenant Act 1985 as a consequence of which she contends that her total liability is limited to £250.

4 Her application to the Tribunal was made on 19 August 2022 and Directions were issued by the Tribunal on 28 November 2022.

5 The Tribunal received and read the electronic bundle of documents filed by the parties in accordance with the Tribunal's Directions which included both parties' statements of case referred to below.

6 The paper consideration took place on 14 February 2023.

7 In accordance with current Practice Directions the Tribunal did not make a physical inspection of the property but was able to obtain an overview of its exterior and location via GPS software.

8 The Applicant accepted that she had a liability to pay service charges under the lease (clause 3(14)). She challenged the proportion of the charges apportioned to her saying that she had been asked to pay 25% of the total bill (£6,349.72) but should only have been charged 20% because the works were carried out on five properties and not four, as suggested by the invoices. The Respondent accepted that the Applicant had been

overcharged and reduced her liability to a 20% share amounting to £5,241.02.

9 Apart from commenting that the contractors' overheads appeared to be excessive (a remark not supported by any evidence) the Applicant did not make any challenge to the quality or quantity for the works carried out to the block.

10 The sole issue before the Tribunal is therefore whether or not the Respondent complied with the statutory consultation procedures under s20 Landlord and Tenant Act 1985.

11 The Applicant's principal argument is that she was not the tenant in 2017 when the Respondent served the s20 notices on her predecessor and so cannot be liable for the cost of repairs because the notices were not served on her personally. She appears to accept that notices were served on her predecessor in title and has not challenged the form or content of those notices.

12 She also accepts that a stage 3 notice was served on her after the date when she became the tenant/owner of the property and has not challenged the contents or form of that notice other than saying it is invalid because she had not been served with the stage 1 and 2 notices. These were served on her predecessor in 2017.

13 The Applicant's argument is misconceived and runs contrary to two fundamental principles of English land law. First, that in general, the covenants in a lease run with the landlord/tenant for the time being. This means that both the benefit and the liability attached to any covenants (promises) given by the original landlord/tenant remain binding on the tenant's successors in title (assignees) while they are the 'owner' of the lease. In the present case the promise given by the Applicant's predecessor (and by his predecessors too) was to pay a stated portion of the cost of repairs etc to the property and that liability passed automatically to the Applicant when she became the owner.

14 The second fundamental principle of land law: 'caveat emptor' (let the buyer beware) also applies to other consumer purchase contracts but in the context of land law it places the responsibility on the buyer to make sufficient enquiries to find out exactly what they are buying and what problems or defects (if any) exist with the property. The buyer will be bound by those problems or defects irrespective of actual knowledge. It is therefore imperative that the buyer or their representative undertakes rigorous enquiries before committing themselves to buy the property .

15 In the present case it appears that the Applicant's representative did carry out the type of enquiries which are usual in leasehold assignment transactions and received answers to pre-contract enquiries completed by the seller in person and signed by him. The answers supplied did not mention or disclose the existence of the s20 notices.

16 Since the notices were served by the Respondent on the then tenant in 2017 they should have been disclosed and copies provided during the sale process in 2020. The fact that this did not happen does not affect the general principle that the Applicant became liable under the repairing covenants from the time when she became owner of the property. She may have a remedy against her seller in non-disclosure or misrepresentation but those would be matters for the county court and are not within the jurisdiction of the Tribunal.

17 Further, although the leasehold pack provided by the Respondent as part of the seller's pre-contract documentation mentioned the possibility of cyclical works being carried out in 2022 there was no mention of a s20 notice already having been served and the only direct question on the form which relates to s20 was marked by them as 'not applicable' which could suggest to a potential buyer that no s20 process has been initiated. The form also contained a disclaimer clause purporting to exempt the Respondent from liability for erroneous replies. The validity of that clause is not a matter within the jurisdiction of this Tribunal.

18 Taken together with the seller's negative response the two documents could have given a potential buyer the misleading impression that no major works process had been commenced at the time of the Applicant's purchase. While that issue could be the subject of proceedings in the county court it does not affect the basic principles outlined above (and belatedly explained by the Respondent's letter to the Applicant on page 92) that she became and remains liable for the reasonable cost of the repairs.

19 For the reasons stated above, the Tribunal finds that the service of stage 1 and 2 notices on the Applicant's predecessor, a process which the Applicant accepts did happen and which she has not challenged, was good service on her even though she may not have had actual knowledge of it at the time of her purchase. The service of the stage 3 notice on the Applicant is not disputed by her and completes the validity of the s20 process.

20 The Applicant had queried the s20 process with the Respondent whose responses were evasive and unhelpful. They had several opportunities to send copies of the s20 notices to the Applicant (see page 68) and to explain the process to her but seemed reluctant to do so and had even miscalculated the sum due until the error was brought to their attention by the Applicant. The Respondent also appears to have failed to observe s22 of the Landlord and Tenant Act 1985 by refusing the Applicant's requests to inspect documents. These issues however, do not alter the basic premise that the s20 procedure was followed and the Applicant has a liability to pay.

21 No application was made under s20C of the Act or para 5 Sched 11 Commonhold and Leasehold Reform Act 2002.

22 Having read and considered the documents and evidence supplied, the Tribunal finds that the Respondent's s20 procedure was carried out in accordance with the statutory requirements and in the absence of any challenge by the Applicant to the extent quality or cost of the works done the Tribunal finds the charges for the major works in the agreed amended sum of £5,241.02 to be reasonable in amount and payable in full by the Applicant.

23 **The Law**

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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
   (a) complied with in relation to the works or agreement, or
   (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) 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 a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, 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 or any other person or persons specified in the application.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

21B Notice to accompany demands for service charges

(1)A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2)The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3)A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4)Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5)Regulations under subsection (2) may make different provision for different purposes.

(6)Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

S22 Landlord and Tenant Act 1985

22 Request to inspect supporting accounts &c.
(1)This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2)The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a)for inspecting the accounts, receipts and other documents supporting the summary, and

(b)for taking copies or extracts from them.

(3)A request under this section is duly served on the landlord if it is served on—

(a)an agent of the landlord named as such in the rent book or similar document, or

(b)the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4)The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5)The landlord shall—

(a)where such facilities are for the inspection of any documents, make them so available free of charge;

(b)where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6)The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Section 47 Landlord and Tenant Act 1987

(1)Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a)the name and address of the landlord, and

(b)if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2)Where—

(a)a tenant of any such premises is given such a demand, but

(b)it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1or an administration charge] ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (as the case may be) administration charges] from the tenant.

(4)In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2)The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3)An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4)If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5)Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

Judge F J Silverman as Chairman
Date 17 February 2023

Note:

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 written 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.