FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at Plymouth sitting at Havant Justice Centre

Tribunal reference	**:**	CHI/00HG/LSC/2023/0017
Court claim number	**:**	H5QZ2Y4G
Property	**:**	Flat B, 54 Albert Road, Stoke, Plymouth PL2 1AE
Applicants/Claimants	**:**	54 Albert Road RTM Company Limited
Representative	**:**	Ms Collingbourne and Ms Barker
Respondent/Defendant	**:**	Plymouth Land Limited
Representative	**:**	------
Tribunal members	**:**	Judge J Dobson Ms. C Barton MRICS Mr. L Packer
County Court Judge	**:**	Judge J Dobson
Date of hearing	**:**	20th March 2023
Date of decision	**:**	10th May 2023

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be the date this decision is sent to you.

Summary of the decision made by the Tribunal

1. **All of the service charges claimed are payable by the Respondent and reasonable.**

Summary of the decision made by the Court

2. **The Respondent is liable to the Applicant in the sum of £5284.19 plus interest of £690.20, total £5974.39.**

3. **The Respondent shall also pay the court fee of £455.00.**

Background

4. The Applicant is Right to Manage company in respect of 54 Albert Road, Stoke, Plymouth PL2 1AE ("the Building"), which is a 5- storey building converted and divided into 3 flats. The Respondent is the lessee of Flat B in the Building ("the Property") pursuant to a lease dated 14th October 1988 ("the Lease"). There are 2 directors of the Applicant company, Natalie Collingbourne and Maggie Barker.

5. No information has been provided as to the current freeholder of the Building, who/ which has played no part in these proceedings.

6. In July 2019, the Applicant issued a money claim [3-4] in the County Court intended to be against the Respondent lessee for unpaid service charges for the 2021 service charge year, interest and costs. The Respondent sent in an undated letter to the Court, which the Court treated as the defence to the claim.

7. The proceedings were transferred to the Tribunal by Deputy District Judge Berrett by order dated 17th May 2022 [7]. Unfortunately, there was considerable delay before the papers were received by the Tribunal from the Court, on 30th January 2023.

8. An application had also been made by the Applicant to amend the name of the Respondent to Plymouth Land Limited ("Limited" having been missed off the name on the Claim Form) and to serve an amended claim. That application was granted by Judge Whitney, conditional upon the Applicant serving a copy of the application and the amended claim on the Defendant by 5pm on 14th February 2023 and confirming compliance to the Tribunal by the same date.

9. Directions were otherwise given for steps to prepare the case for final hearing listed remotely by video on Monday 20th March 2023 starting at 2pm with a time estimate of half a day.

10. The Respondent was also required, although not specifically within the Directions given, to send a copy of its Defence to the Tribunal and the Applicant by 5pm on 14th February 2023. The Respondent did not do so. However, that requirement appears to have reflected the fact that the letter which had treated by the Court as a Defence had not been identified by the Tribunal as being the

Defence, perhaps understandably given its form as a letter. That letter was from the correct Respondent (as opposed to the originally named party). Strictly, the Respondent was not required to provide a Defence at any earlier stage and only on becoming a named party in consequence of the Order allowing the amendment.

11. A hearing bundle (described as Bundle 1) was provided for the hearing on behalf of the Applicant, comprising 138 pages of documents. A separate bundle was provided of photographs (described as Bundle 2) comprising a further 19 pages.

12. Whilst the Court and Tribunal make it clear that they have read the bundles in full, the Court and Tribunal do not refer to various of the documents in detail in this Decision, it being unnecessary to do so. Where the Court and/ or Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that they have been ignored or left out of account. Insofar as reference is made to specific pages from the main bundle that is done by numbers in square brackets [ ], as occurs in the preceding paragraphs where appropriate, and with reference to PDF bundle page- numbering. Insofar as reference is made to specific pages from the photograph bundle that is done by numbers in square brackets preceded by a "P" [P].

13. This Decision seeks to focus on the key issues and does not cover every last factual detail. The omission to therefore refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not every matter requires any finding to be made for the purpose of deciding the relevant issues in the case. Findings have not been made about any matters irrelevant to any of the determinations required. Findings of fact are made on the balance of probabilities.

14. There was no inspection, but the Applicant provided several photographs [P3 onwards] of the exterior of the Building from different angles, principally of the poor condition of the Property apparently prior to works, and the Court and Tribunal were content that they possessed sufficient information in respect of the Property to reach the required determinations in this case.

The Lease and construction of leases

15. The Lease of the Property [10 onwards] is provided in the bundle, together with a copy of the lease of Flat C [28 onwards] on the basis that the copy of the Lease as provided by the Land Registry is a poor copy- it does miss off parts of pages. It is said on behalf of the Applicant that the leases are in the same terms (save extent of contributions to expenses) and nothing apparent to the Court or Tribunal indicated that to be incorrect. The parties in this case are not the original contracting parties to the Lease.

16. As no specific point has been raised by the Respondent, it is not necessary to copy the specific wording of clauses of the Lease in full. The Building is also described in the Lease as the "Property", which is want to cause confusion given the definitions used in this Decision. A summary will suffice in respect of most aspects.

17. A term of 99 years is granted, together with rights to pass over land provided for and to park a vehicle, on payment of rent and other contributions. Pursuant to clause 5, the Applicant must attend to insurance (ii) and to repair, maintenance and decoration of the services and what is essentially the structure and exterior of the Building (iii).

18. By the Fifth Schedule, the lessee of the Property agreed to pay as follows:

> "One Fifths of all costs and expenses incurred by the Lessor for the purpose of complying with or in connection with fulfillment of its obligations under Sub-clause (ii) and(iii)of Clause 5 of the Lease."

19. There is no relevant contractual legal costs provision.

20. The Lease is some way less than entirely satisfactory. Reference is often made in decisions of this nature as to what is described as the 'service charge mechanism', by is meant such matters as the process for demands being made, the timing of demands, the financial basis for such demands and the timing of the lessee's payments.

21. There is no such discernible such mechanism in the Lease. It is consequently wholly unclear how the costs and expenses incurred by the Applicant are to be precisely identified and evidenced, over what period of time, if any, any calculation of expenses and service charges should take place, when demands should be made and when any sums demanded are to be paid.

22. It is also uncertain (as discussed below in respect of specific items) whether the matters for which the Applicant can incur expenditure recoverable from the Respondent or the other lessees can be said to include all of the expenditure likely to be required and which would usually be provided for in a lease of a similar nature.

23. Leases are to be construed applying the basic principles of construction of such leases, and where the construction of a lease is no different from the construction of another contractual document, as set out by the Supreme Court in *Arnold v Britton* [2015] UKSC 36 in the judgment of Lord Neuberger (paragraph 15):

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

24. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise (paragraph 17):

> "the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g. in Chartbrook [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision."

The Hearing

25. As indicated above, the Applicant was represented by its Directors. The Respondent did not attend and was not represented.

26. The hearing was relatively short in the absence of the Respondent, although the Court and Tribunal raised the matters set out in the letter treated as the Defence and sought other clarification where considered appropriate.

27. The Defence sought copies of the invoices on which the Applicant relied, as had a letter dated 14th September 2021 [126] in immediate response to the service charge demand (see below).

28. The Applicant's position as expressed was that there had been contact problems with the Respondent, which had never been satisfied and with clarification provided where there had been contact. It was said that the Respondent had only ever engaged by email and had not responded at all about the Tribunal process.

29. It was also stated that the Respondent rents out the Property. Reference was additionally made to service charges for 2018 to 2020 having been unpaid until previous Court proceedings were issued. However, there was no other specific evidence as to that and it had no direct relevance to these proceedings.

The Tribunal Matters

The Tribunal's jurisdiction

30. The Tribunal has power to decide about all aspects of liability to pay service and administration charges in relation to residential properties and can interpret the lease where necessary to resolve disputes or uncertainties. For the avoidance of doubt, the Tribunal has no jurisdiction in respect of solely commercial premises.

31. Service charge is in section 18 of the Landlord and Tenant Act 1985 defined as an amount:

> "(1) (a) which is payable, directly or indirectly, for services, repairs, maintenance[, improvements] or insurance or the landlord's costs of management and
> (2) the whole or part of which varies or may vary according to the relevant costs."

32. Section 27A provides that the Tribunal can decide by whom, to whom, how much, when and how a service charge is payable. Section 19 provides that a service charge is only payable insofar as it is reasonably incurred and the services or works to which it relates are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges. The amount payable is limited to the sum reasonable.

33. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. When service charges are payable in advance, no more than a reasonable amount is payable.

34. The Tribunal may take into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: "Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account."

Are the Service Charges payable and reasonable?

35. The first and most obvious task is to discern the effect of the clauses in the Lease, given that the service charge mechanism which would be expected is notably missing.

36. There is no provision for estimates of anticipated expenditure and demands for service charges on account of such expenditure as would normally be expected. The Fifth Schedule only provides for payment of expenses "incurred", which must necessarily mean that the sums the Applicant has paid or is liable to pay- see further below. That may be somewhat unsatisfactory given the nature of the Applicant and potential lack of other income or assets but there is no other way in which the Tribunal considers the provision can properly be construed.

37. In principle, the Lease provides that as soon as the Applicant incurs the expenditure, the Respondent is liable to make the one- fifths contribution, applying each time an element of expenditure is "incurred". However, common sense dictates that the Applicant must inform the Respondent that the expenditure has been "incurred" and the contribution sought, in the absence of which the Respondent could not know that it was liable to pay and arrange to make any required payment.

38. In the absence of any provision as to when the Respondent must pay its contribution, the Tribunal determines that the time is a reasonable time from being notified in writing of the expenditure and the sum payable by it. Adopting the usual sort of approach to the length of a reasonable time and in the absence of any information to the contrary, the Tribunal determines that time to be 28 days from the demand made by the Applicant.

39. In the event, 28 days is also the period given on the service charge demand issued

[84].

40. The Applicant's statement of case [45 onwards] explains that Plymouth City Council issued a schedule of required and recommended works to the exterior of the Building [52 onwards] and an Improvement Notice and schedule of works to the roof [72 onwards], following which the Applicant undertook a process of consultation as required by section 20 of the Landlord and Tenant Act. It is said that the contractor which provided the lowest estimate of the three [64 onwards and 78 onwards] obtained was appointed to undertake the works.

41. The 2021 service charge demand is described as having been sent to the Respondent on 31st August 2021. The demand, the required summary of tenant's rights and obligations and other documents are attached to the statement of case. The demand sets out the expenditure and the contribution required. A series of invoices in respect of the expenditure listed is also provided in the bundle [90 onwards].

42. The demand includes charges for a Companies House fee of £13.00, the reason for which is unclear but where the Respondent's contribution is £2.60, and that sum is so minor as to not merit discussion. It also includes £137.60 for an item described as "Improvement Notice" where it is not apparent exactly what that means and how it falls within clause 5 of the Lease. It may relate to services or work to the Building itself but that is not obvious. However, the Respondent has raised no specific issue with the item rendering it necessary for the Applicant to have provided further detail. Insofar as any issue may potentially arise as to whether a fire alarm inspection is covered by the unusually limited wording of the Lease, the same point applies, although additionally the Respondent specifically accepted that element (and indeed the Companies House element) by correspondence apparently sent in early 2022 [132] from one A Wilkes on behalf of Respondent.

43. It merits recording for the avoidance of doubt that the letter apparently sent to the Applicant in early 2022 is the letter sent to the Court and treated as the Defence.

44. It is also less than completely clear that all of the sums listed in the demand had been "incurred" and that no sums were requested on account of and to facilitate expenditure. The invoice or similar dates for all of the expenditure items pre-date the service charge demand and it is certainly arguable that "incurred" should be construed as requiring the expense to be payable and does not require actual payment. It may be that the contrary could be argued and one payment of £7008.25 is indicated on the Applicant's bank statements to have been made on 30th November 2021 [14].

45. However, in the absence of assertion to the contrary by the Respondent, the Tribunal treats the sums for works as having been incurred prior to the demand by the Applicant having instructed work to be undertaken received invoices which it was liable to pay. In respect of services, utilities, the services appear to have already been provided at the time of invoicing.

46. As indicated above, the correspondence from the Respondent had simply sought copies of the quotes and invoices, which were provided by the Applicant by letter

4th October 2021 [127], although the Respondent subsequently denied receipt [129]. Whilst the bundle includes other letters from the Applicant stating that evidence of costs expended was provided, the Respondent still sought confirmation of estimates for section 20 works and proof of payments by letter dated 8th April 2022 [135] as well as evidence of permission for the works from the freeholder, to which the Applicant again responded. That response of the Applicant did not address the specific question of freeholder permission but neither does the Respondent appear to have pursued that point or otherwise suggested that the Applicant was not entitled to undertake works in the course of managing the Building.

47. The Tribunal finds all of the service charges to be payable. As there is no challenge to the amount of the service charges, the Tribunal determines those to be reasonable.

48. There were no matters raised as to costs or fees to be determined by the Tribunal.

The County Court matters

49. The County Court issues have been considered by Judge Dobson alone, having regard to the findings and determinations of the Tribunal in respect of the Residential Lease service charges. The answer in respect of this aspect of the claim is simple.

50. The Tribunal having found the service charges to be payable and reasonable, and there being no evidence of the sum claimed having been paid, the Court finds the Respondent liable to the Applicant for the sum claimed.

51. The Applicant sought payment of interest on the sums owed at the rate of 8%. The Applicant asserted there to be no contractual rate and the Court did not identify any. Whilst commonly the Court will allow a lower rate, as the rate of 8% was claimed in the Claim Form and was not disputed in the letter comprising the Defence or otherwise by the Respondent, the Court allowed interest at the claimed rate.

52. More particularly, the Applicant claimed £1.16 of interest per day from 6th September 2021 onward. That amounts to £690.20 for the 595 days to date.

Costs and fees

53. The Applicant did not seek any legal costs of advice or representation in relation to the proceedings and only sought the recovery of the court fee paid on issue of the claim, in the sum of £455.00.

54. The Applicant had been successful, no other factors had been advanced which made any other approach which could be taken by the Court to the fee appropriate and as the fee was in the prescribed sum and could be no other, the Court determined it appropriate to order the fee payable by the Respondent.

55. The relevant Court Order in consequence of the above determinations provides for dates of payment of the sums payable for the claim and the court costs.

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

1. A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case.

2. The date that the judgment is sent to the parties is the hand-down date.

3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

4. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties;

5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the xx office within 21 days after the date the refusal of permission decision is sent to the parties.

7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.