



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

**Corrected under Rule 50 and re-issued  
10 May 2023**

**Case Reference** : **CHI/21UD/LSC/2022/0129**

**Property** : **Flats at Southview Court, Old London  
Road Hastings East Sussex TN35 5BN**

**Applicant** : **William Copp and Others as listed on  
the Application**

**Representative** : **Mr G Okines of Arko Property  
Management Ltd**

**Respondent** : **SE Estates and Agency Management  
Ltd**

**Representative** : **Did not appear and was not  
represented**

**Type of  
Application** : **S27A and s20C Landlord and Tenant  
Act 1985**

**Tribunal Members** : **Judge F J Silverman MA LLM  
Mr M J F Donaldson FRICS MCI Arb  
MAE  
Ms T Wong**

**Date and venue of  
Hearing** : **Havant  
21 April 2023**

**Date of Decision** : **~~02~~ 10 May 2023**

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## DECISION AND ORDER

**1 The Tribunal determines that the amount payable by the Applicant tenants in respect of the service charge years 2020, and 2021 and 2022 is zero (£000).**

**2 The Respondent has not provided any evidence to demonstrate that the demands for service, and where relevant, administration charges have been properly demanded under s20B and s21 Landlord and Tenant Act 1985. Further, it has failed to respond to the tenants' requests for information and has failed to provide any evidence whatsoever to show that the sums demanded were actually expended or were reasonable in relation such services as may have been provided.**

**3 The Tribunal makes an unlimited order under s20 Landlord and Tenant Act 1985 in favour of Mr and Mrs W Copp, Mr D Dixon, Mr A Floyd, Mr & Mrs N Pelaou, Ms B Wilder, Mr A Lawson, Mr K Tilman, Mrs R Lee, Mr A Rout, Mr D Haden, Ms E Harman, Mr G Benton, Ms I Franklin, Ms J Icceton, Mr N Rudkin, Ms P Hall, and Mr & Mrs P Hollingbee.**

**4 The Tribunal orders the Respondent within 28 days of the date of this decision to repay to the Applicants jointly and severally the sum of £300 representing their application fees (£100) and hearing fee (£200).**

**5 The Respondent's request for an order for costs under Rule 13 is refused.**

## **REASONS**

- 1 The Applicants are the tenants and long leaseholders of various flats at Southview Court Old London Road Hastings East Sussex TN35 5BN (the property) of which the Respondent is the landlord and reversioner.
- 2 On 17 November 2022 the Applicant tenants filed an application under s27A and s20C Landlord and Tenant Act 1985 relating to service charges for the service charge years 2020 and 2021 and under Sched 11 Commonhold and Leasehold Reform Act 2002 relating to administration charges which they alleged were incorrectly levied on them by the Respondent management company.
- 3 Directions were issued by the Tribunal on 27 January 2023, 17 February 2023, 02 March 2023 and 09 March 2023, the latter containing an order barring the Respondent from taking any further part in these proceedings.
- 4 The Tribunal received and read over 600 pages of electronic documentation, including the Applicants' statements of case, schedules and witness statements which are referred to below. No documentation or response has been received from the Respondent.
- 6 The hearing took place at Havant where the Applicants were represented by Mr G Okines. The Respondent did not appear and was not represented having been barred by order of the Tribunal.
- 7 In accordance with current Practice Directions the proceedings were recorded and the Tribunal did not make a physical inspection of the property but were able to obtain an overview of its exterior and location via GPS software and from photographs supplied by the Applicants and included in the hearing bundle.

- 8 The Tribunal understands that Southview Court comprises 39 two bedroom flats spread across three blocks situated on a busy road on the outskirts of Hastings. The property is in a hilly location and its site includes a garden area roadway and garages. Some of the garages are used by the Applicants. The site also contains a number of houses which the Tribunal understands formed part of the original development of the estate, some of which are still leasehold, and which it is assumed would therefore contribute to the maintenance of the common parts of the estate (garden and grounds).
- 9 The Respondent is a management company specifically set up to deal with this property and the surrounding estate as described above. Mr P Etherton is the sole Director of the Respondent company and he is also the sole registered proprietor of the head lease of the estate (including the property) which he acquired in 2016. Prior to his acquisition Mr Etherton had worked as a handyman for Stace & Co who were then the managing agents and continued to act as such for a short time after Mr Etherton's acquisition. In 2017 Mr Etherton took over the maintenance of the estate himself without the assistance of professional managing agents and set up the Respondent company to act nominally as managing agents but continued to carry out most of the work, including gardening, himself through his unincorporated sole proprietor business called Clive Vale Property (Maintenance).
- 10 From the time that Mr Etherton took effective control of the estate the Applicants have had concerns not only about the standard of work being carried out and, they say, the deteriorating state of the estate, but also to the manner in which they have been charged for the works. They say that the proportions charged to them are inconsistent and not in compliance with the lease terms. They are concerned that the amounts charged to them do not equate with the amounts spent, that charges are made at the wrong intervals according to the lease. The Respondent's persistent failure to provide information or documentation to support the claimed expenditure makes it impossible to reconcile the figures.
- 11 These concerns formed part of the (then) Applicants' case in an application to the Tribunal in 2020 (CHI/21UD/LSC/2020/0061 V:CVPREMOTE, page 127) where the Tribunal held that the Respondent had failed to comply with the service charge requirements of the Landlord and Tenant Act 1985 and accompanying legislation and was ordered to repay £90,589.74 jointly and severally to the

tenants. Most of the Applicants in the previous case are also Applicants in the present application and have been joined by other tenants.

- 12 The Applicants' statement of case in the present application was signed by their representative on their behalf and was confirmed by Mr Copp on behalf of all the Applicants as being correct.
- 13 The Tribunal was advised by the Applicant that its previous Order requiring the Respondent to repay service and administration charges to the Applicants remains unsatisfied and that the situation in relation to both the maintenance of the estate and the administration of the service charge regime has deteriorated from its previous parlous state. Routine maintenance, such as cleaning of common parts, which previously was haphazard has now ceased entirely. Further, the Tribunal's remarks in the previous case about the unsatisfactory nature of the Respondent's service charge notices and demands appear to have been ignored.
- 14 Mr Okines reported that since the Tribunal's previous decision Right to Manage orders had been acquired in relation to two of the blocks of flats and an application relating to the third block was pending. It was however difficult for the appointed Manager to deal effectively with the property until the situation relating to prior years' service charges had been clarified. Numerous requests had been made to the Respondent to produce accounts and to disclose invoices but had achieved nothing.
- 15 The Respondent's statement (page 185 et seq) refers both to the previous Tribunal decision on service charges and to the various right to manage applications relating to this property but does not address at all any of the issues raised in the present application which relates to service and administration charges. The Respondent does however ask the Tribunal to make an award of costs in its favour under rule 13 of the Tribunal Rules of Procedure. That application is unsupported by any evidence or submissions in the absence of which it cannot succeed and is therefore refused.
- 16 Turning now to the service charge issues. There is no evidence that any of the invoices issued to the tenants relate to any validated services which have been carried out at the property. For example, page 80 shows a service charge demand for £318.40 addressed to Mr & Mrs Copp for the 'quarter June 2022'. There is no indication of what services the charge might relate to and the fact that exactly the same figure is demanded, again without any explanation, in both December 2022 (page 85) and September 2021 (page 86) suggests that the figure has been plucked from the air rather than worked out as a specific

proportion of genuine expenses. The invoice for March 2021 (page 87) varies the figure demanded by £0.10, and the percentage charge is there stated to be 2.23% of the total sum whereas other invoices for the same flat cite 2.27%. Additionally, an invoice for £120 was sent in December 2022 which purported to relate to an annual fee for an entry phone system which fee should normally form part of the service charge expenses rather than be the subject of a separate bill.

- 17 Similar erratic and unexplained discrepancies appear throughout the Respondent's paperwork and despite requests from the tenants no documents (estimates, receipts, etc) have ever been produced by the Respondent to explain or support the sums demanded. In some cases there has been an attempt to comply with landlord and tenant legislation eg by attaching a notice of tenants' rights (page 88), in others there has been a blatant disregard of the law (no landlord's name on the demand – page 122, and using an increase in service charge to avoid serving a s20 notice, page 154).
- 18 The lease provides for service charge to be demanded quarterly in arrears (clause 28 page 51) ie to recoup what has been spent. The Respondent should therefore be in a position to justify the expenditure by producing invoices and receipts but none have ever been provided. The requirement in the lease for payment in arrears adds weight to the Applicants' suggestion that the sums included in the Respondent's demands have been invented rather than calculated since it is unrealistic to expect every quarter's total to be identical in amount. This would make more sense if the charges were demanded in advance with a reconciliation at the end of the accounting period, but there is no evidence of that being the case here.
- 19 The demands give the landlord's address (incorrectly) as an estate office which in reality is a maintenance cupboard at the property and some demands incorrectly include ground rent as part of the service charge demand (page 107).
- 20 Unaudited accounts for the year 2021 at page 195 appear to show that the account is in deficit. This again is unexplained by the Respondent.
- 21 In summary, the tenants appear to have no means of knowing what has been spent by the Respondent in relation to service charges and have no means of checking whether they have been charged either the correct amount or in the correct proportions according to their leases. They do not even know whether the property has been insured or with whom. This is in addition to a situation where maintenance of the common parts and grounds is at best sporadic and at worst, not carried

out at all. Photographs (page 203 et seq) show badly overgrown hedgerows and piles of rubbish in the grounds which the Tribunal was informed belongs to the landlord who appears to use the premises as a personal storage facility.

- 22 The Applicants asked the Tribunal to make an order under s20C Landlord and Tenant Act 1985 restricting the Respondent from recovering litigation costs through the service charge. The Tribunal determines that it will make such an order in favour of the Applicants as named above and for an unlimited amount. None of the Respondent's demands have been substantiated or justified. Mr Etherton's reluctance to provide information to the Applicants whether requested by them or ordered by the Tribunal has both complicated this case and extended the time needed to deal with it. The Tribunal also orders the Respondent to repay to the Applicants jointly and severally the sum of £300 representing the cost of their application and hearing fees.

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 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.

## **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.

## **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 or 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 or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or (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.

### **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.

Judge F J Silverman as Chairman

**Date ~~02~~ 10 May 2023**

**Corrected under Rule 50 and re-issued 10 May 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](mailto: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.

## **SCHEDULE OF APPLICANTS**

**Mr and Mrs W Copp,**  
**Mr D Dixon,**  
**Mr A Floyd,**  
**Mr & Mrs N Pelaou,**  
**Ms B Wilder,**  
**Mr A Lawson,**  
**Mr K Tilman,**  
**Mrs R Lee,**  
**Mr A Rout,**  
**Mr D Haden,**  
**Ms E Harman,**  
**Mr G Benton,**  
**Ms I Franklin,**  
**Ms J Icton,**  
**Mr N Rudkin,**  
**Ms P Hall,**  
**Mr & Mrs P Hollingbee.**