



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

**Case reference** : **CHI/43UD/LIS/2023/0003**

**Property** : **38 & 44 Millmead Terrace, 39 Bury Street, and garages at Condor Court, Guildford, GU2 4AU**

**Applicant** : **Condor Court (Management) Limited**

**Representative** : **None**

**Respondent** : **Freehold Properties 23 Limited**

**Representative** : **Stevensons Solicitors**

**Type of application** : **For the determination of the payability and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985**

**Tribunal member** : **Judge H. Lumby**

**Venue** : **Paper determination**

**Date of decision** : **14 June 2023**

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**DECISION**

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## **Decision of the tribunal**

**The amounts in respect of insurance premiums demanded by the Applicant in respect of the service charge years ending 31 March 2022, 2023 and 2024 are all payable in full by the Respondent.**

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Respondent in respect of the service charge years 2022 to 2024.
2. The Applicant seeks a determination in respect of the following items of expenditure:
  - (i) insurance premium contribution in the sum of £1,707.52 for the service charge year ending 31<sup>st</sup> March 2022; and
  - (ii) insurance premium contribution in the sum of £1,880.28 for the service charge year ending 31<sup>st</sup> March 2023.

The total amount in dispute amounts to £3,587.80.

3. The Applicant has provided a witness statement from Elaine Victoria McGee, a director of the Applicant, dated 23 March 2023. This contains an application to extend the determination sought to include the insurance premium for the service charge year ending 31 March 2024 in the sum of £1,857.87. As this follows the same principles as for the two previous years and has been covered by the Respondent in its Statement of Case, the tribunal has also considered this as well.
4. When the amounts for the service charge year ending 31 March 2024 are added, this means that the total amount in dispute is £5,445.60.

## **The background**

5. The property comprises four basement flats beneath a purpose built block of flats together with at least 16 basement garages and storage areas. It sits within a wider area comprising that block of flats together with surrounding grounds, all owned freehold by the Applicant and known as Condor Court.

6. There is reference in the documents provided to the demise being varied by a deed of variation dated 21 November 2000 to include an additional basement area but this deed has not been provided. However, it has been possible to identify the extent of the demise and location of the four flats created within it.
7. The Respondent is a long leaseholder, holding its interest pursuant to a lease dated 1 October 1989 for a term of 125 years from 25 December 1988. The freehold reversion to the lease is vested in the Applicant.
8. At the time of demise, the lease comprised a basement garage area beneath the block of flats together with garages and storage areas; part of this was subsequently converted into four flats, meaning the demise now includes these and sixteen garages. The flats are located at each end of the block with garages in between. Each of the flats and garages then are underlet or separately occupied.
9. The freeholder provides services to the wider estate and charges a proportion to the Respondent as tenant of the flats and garages pursuant to its lease by way of service charge. The tribunal has not been provided with details of the subordinate interests out of that lease but presumably an element of the service charge is able to be charged onward to the tenants or occupiers of the individual units.

### **The lease**

10. Clause 4 of the lease requires the tenant to pay:

“a fair and reasonable proportion of the expenditure incurred by the Lessor in carrying out its obligations pursuant to clause 6 hereof”
11. Clause 6(iii) of the lease contains the landlord’s insurance obligation as follows:

“unless the insurance shall be vitiated by any act or default of the Lessee to keep the Building including the Lessor’s fixtures and fittings and the furnishings of the common parts thereof (but not the contents of any flats therein) insured against loss or damage by fire lightning storm tempest flood escape of water explosion impact aircraft or anything dropped therefrom riot or civil commotion and such other reasonable risks and for such sum as the Lessor shall in its absolute discretion think fit including loss of two years’ rent and all architects’ surveyors’ and other fees necessary in connection with the performance of this covenant in some insurance office of repute...”

The Building is defined as being the main and ancillary buildings standing on the Lessor’s Property. This is referred to as Condor Court.
12. The dispute in this case relates to the charging by the Applicant to the Respondent of a proportion of the cost of insuring Condor Court, of which the Property forms part.

### **Tribunal determination**

13. This has been a determination on the papers. The documents that the tribunal was referred to are in a bundle of 132 pages, the contents of which the tribunal have noted. The bundle contained the application, the tribunal's directions in the case, the Applicant's statement of case and two witness statements together with the Respondent's statement of case. A copy of the lease together with demands for payments and information as to the insurance premiums demanded were all included as exhibits to witness statements.
14. The issues to be considered are whether the payments in respect of insurance premiums demanded in respect of the service charge years ending 31 March 2022, 2023 and 2023 are reasonable and payable, in accordance with section 27A of the 1985 Act. The Respondent has also raised an issue in relation to the jurisdiction of the tribunal which has also been considered.
15. Having considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **Jurisdiction**

16. As referred to previously, part of the demise has been converted into flats. It has agreed between the parties that the demise now includes four flats and at least 16 garages.
17. The Applicant has asserted that the demise is residential property comprising four flats and 16 garages and so the tribunal has jurisdiction to determine the payability and reasonableness of service charges pursuant to section 27A of the 1985 Act.
18. The Respondent accepts that the flats are dwellings. However, it contends that the flats represent only a small area under the lease. It argues that the tribunal does not jurisdiction to determine the service charge in respect of the garages and its jurisdiction is limited to the flats. This is on the basis that the relevant provisions of the 1985 Act are restricted to service charges in respect of a "dwelling". Dwelling is defined in section 38 of the 1985 Act as:

"a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it".

Its contention therefore is that because only part of the demise is a dwelling, the tribunal only has jurisdiction in relation to the part of the demise.

19. The tribunal's jurisdiction arises pursuant to section 27A of the 1985 Act, permitting applications to the appropriate tribunal for a determination whether a service charge is payable. For the purposes, the tribunal is the appropriate tribunal.
20. "Service charge" is defined in section 18 of the 1985 Act as:  
  
"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."
21. The issue is therefore whether the Respondent is a tenant of a dwelling. The Respondent accepts that the flats are dwellings.
22. The tribunal finds that each dwelling is capable of separate occupation distinct from the garages. This distinguishes the position from the case of *Buckley v Bowerbeck Properties Ltd [2009] 1 E.G.L.R. 43* where it was held that premises which had a residential and a commercial part but which could not be occupied separately could not be classed as a dwelling and so charges payable on the premises could not be service charges for the purposes of the section 27A of the 1985 Act.
23. There is no requirement for a tenant to be in occupation for it to be a dwelling – this was established in *Heron Maple House Ltd v Central Estates Ltd [2002] 1 E.G.L.R. 35*. Under section 18 of the 1985 Act, service charges were payable by the "tenant of a dwelling" and there was no further requirement for the tenant to be in actual occupation.
24. The fact that the dwellings form part of a wider demise does not oust the tribunal's jurisdiction in parts outside the dwellings or having different uses. This was considered by the Court of Appeal in *Oakfern Properties Ltd v Ruddy [2006] EWCA Civ 1389*, where it was held that the expression "tenant of a dwelling" as contained in s.18 had to be given the meaning that, on its face, it bore. It meant "tenant of a dwelling" and not "tenant of a dwelling and nothing else". It did not refer to any other property of which the party may also have been a tenant. Further, s.38 of the 1985 Act, which defined "dwelling", did not require that the tenant had to be in occupation of the dwelling, therefore it could include a tenant who had sublet.
25. Accordingly, the tribunal has jurisdiction to make a determination in relation to a lease which contains a dwelling, even though there are parts of the demise outside the dwellings and irrespective of whether the tenant is in occupation of any part of the demise.

26. The tribunal therefore finds the Respondent is therefore the tenant of a dwelling pursuant to a lease and that service charges are payable by it pursuant to that lease, irrespective of whether they relate to the part which is a dwelling or any other part. As a result, the tribunal has jurisdiction pursuant to section 27A of the 1985 Act to determine the service charge issues in this case in respect of the whole of the lease, not just the parts comprising a dwelling.

### **Payability and reasonableness**

27. The Respondent has not made payment of the insurance premiums for the service charge years ending 31 March 2022, 2023 and 2024. These sums have been properly demanded from the Respondent in accordance with statute and the lease, although the original invoices for 2022 and 2023 did refer to the premises as “garages”. The invoices have been reserved to reflect the Land Registry recorded address for the property. The Respondent has not challenged whether any demand was properly made.
28. The Applicant has provided evidence that the premiums were competitively tested in the market, with different insurance providers considered but only the current insurer willing to provide cover. A letter has been provided from the Applicant’s broker dated 12 May 2022 explaining the market testing carried out on each of the last three renewals. The Respondent has not challenged the level of the total premium or the market testing process.
29. The Applicant states that the Respondent’s proportion of the insurance premium is 18.74%, having been agreed historically between the previous managing agent and the Respondent’s predecessor in title pursuant to a surveyor’s calculation. This percentage has not been challenged by the Respondent.
30. In its statement of case, the Respondent has used both the premiums demanded and the proportion applied to the whole lease to make its own proposals in relation to the amounts it asserts the tribunal has jurisdiction to determine, emphasising its acceptance of these. Its only arguments in relation to the reasonableness and payability of the service charge relate to that issue of jurisdiction. As referred to above, that argument has been dismissed.
31. As a result, the tribunal determines that the amounts demanded as contributions towards insurance premiums for the service charge years ending 31 March 2022, 2023 and 2024 are reasonable for the purposes of section 19 of the 1985 Act and payable by the Respondent in full for the purposes of section 21A of the 1985 Act.

### **Applications under s.20C and paragraph 5A**

32. The Respondent has not made any applications for cost orders under section 20C of the 1985 Act and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Consequently, the tribunal has not considered these sections and makes no orders.

### **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.