



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

**Case reference** : **CHI/00ML/LIS/2023/0004**

**Property** : **Flat 2 Girton House 193 Kingsway Hove  
East Sussex BN3 4FB**

**Applicant** : **Maxiwood Limited**

**Representative** : **Coole Bevis LLP**

**Respondent** : **Michael Charles McFadden**

**Representative** : **None**

**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 members** : **Judge H. Lumby  
Mrs A. Clist MRICS**

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

**Date of decision** : **30 May 2023**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The tribunal determines that the amount of £271.32 balancing charge for the service year ended 15 August 2021 is reasonable and payable 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 ending 15 August 2021, 2022 and 2023.
2. The Applicant sought determination on the following charges:
  - (i) Balancing charge for the service charge year ended 15<sup>th</sup> August 2021- £271.32
  - (ii) Interim charge for the service charge year ended 15<sup>th</sup> August 2022- £1,919.99
  - (iii) Interim charge for the service charge year ended 15<sup>th</sup> August 2022- £1,919.99

The total amount in dispute was stated to be £4,111.30.

3. By directions issued by the tribunal on 6<sup>th</sup> March 2023, the issues to be determined were identified as:
  - (i) Are the sums demanded payable, reasonable and how are the amounts made up?
  - (ii) Have demands been issued in accordance with statute and in accordance with the lease?
  - (iii) Whether the Respondent seeks to make an application under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 preventing the Applicant from recovering the costs of the proceedings through either the service charge or as an administration charge.

## **The background**

4. The property is a one bedroom flat in a purpose built block of flats.
5. The Respondent is a long leaseholder, holding his interest pursuant to a lease dated 19<sup>th</sup> April 2084 for a term of 125 years from 25 December 1982. The freehold reversion to the lease is vested in the Applicant.

## **The lease**

6. The lease provides at clause 7(1) that the tenant is to pay on 16<sup>th</sup> August in advance:

“the sum of £85 or such amount as the Lessor or its managing agents shall in the reasonable exercise of their discretion specify on account of the moneys expended or to be expended or anticipated to be expended by the Lessor in maintaining and managing the Building”

The annual expenditure is to be certified by a certificate as soon after the period to which the certificate relates as may be practicable. Clause 7(4) deals with any surplus or deficit to the on account payment made pursuant to clause 7(1), providing:

“Within fourteen days of receipt of the Certificate the Lessee shall pay to the Lessor 4/75ths of the deficiency (if any) shown in the Certificate but in the event of the Certificate showing a surplus such surplus shall at the discretion of the Lessor or its managing agents either be repaid to the Lessee or allowed to the Lessee against his next following contribution on account or carried forward as a reserve fund and used to make good any deficiency arising in subsequent years”

The recoverable costs in maintaining and managing the building include the costs incurred by the lessor in insuring in accordance with its obligations.

## **Tribunal determination**

7. This has been a determination on the papers. The documents that the tribunal was referred to are in a bundle of 90 pages, the contents of which the tribunal have noted. The bundle contained the application, the tribunal's directions in the case, a copy of the lease, a statement from the Respondent, the Applicant's statement of case, a letter of claim from the Applicant, a witness statement of Harpreet Singh of the Applicant, costs/interest orders in previous cases, the Applicant's statement of costs dated 17 April 2023 and an interest calculation.
8. Prior to consideration by the tribunal, the Respondent made payments in full of the sums demanded in respect of the service charge years ended 15<sup>th</sup> August 2022 and 2023 (both in the sum of £1,9191.99). These two items have therefore not been considered by the tribunal.
9. Although the Applicant has provided interest calculations with the bundle, the tribunal has not been asked to consider these and in any event does not have jurisdiction in relation to interest payments, being a matter for the County Court. These have therefore not been considered. The Applicant has also referred in the bundle to the recovery of legal costs pursuant to the lease; again, the tribunal has not been asked to consider these and in any event does not have jurisdiction in relation to this, also being a matter for

the County Court. This therefore has also not been considered by the tribunal.

10. Accordingly, the only matter to be determined is the payability and reasonableness of the balancing charge for the service charge year ended 15<sup>th</sup> August 2021 in the sum of £271.32.
11. Having considered all of the documents provided, the tribunal has made determinations on the various outstanding issues as follows.

### **2021 balancing charge**

12. The Respondent has not explained why he has not paid the balancing charge for the service year ended 15 August 2021 and indeed whether he disputes it. In his statement to the tribunal dated 10 March 2023, the only issue appears to be as to whether cheques have been cashed. That is not a matter for the tribunal to determine, it is simply looking at whether the £271.32 balancing charge is payable and reasonable.
13. Harpreet Singh is the director of block management at Harper Stone Properties Limited who manage the building in which the Property is located on behalf of the Applicant. He provides with his witness statement the demand for the balancing charge for the service year ended 15 August 2021 together with the account for that year.
14. The items listed in the account for the service charge ended 15 August 2021 all appear to be recoverable pursuant to the lease. The Respondent has not disputed any specific items, whether on the grounds of payability or reasonableness nor the amount claimed, advancing any case as to why the items are not payable. The tribunal therefore finds that the £271.32 balancing charge for the service year ended 15 August 2021 is reasonable and payable by the Respondent.
15. There is no argument or other indication that the demand for payment was not made in accordance with statute and the lease and there is no suggestion from the Respondent that it has not been correctly served. The tribunal finds that it has been correctly served in accordance with statute and the lease.

### **The tribunal's decision**

16. The tribunal determines that the amount of £271.32 balancing charge for the service year ended 15 August 2021 is reasonable and payable by the Respondent.

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

17. The Respondent has not made any applications for cost orders.

18. Orders could have been sought under section 20C of the Landlord and Tenant Act 1985 and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. In the absence of applications, the tribunal has not considered these sections and makes no orders pursuant to them.

### **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.