



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

Case Reference : CHI/00MR/LIS/2023/0010

Property : 16 Waverley Road, Southsea, Hampshire,
PO5 2PW

Applicant : AEL Properties (Southern) Limited

Representative : Peter Dack FRICS

Respondent : The Lessees

Mr Marcus Cooper
Ms Hailey Chamberlain
Dr Mel Harper & Mr Harper
Mrs & Mr Ganeva

Representative :

Type of Application : S27A Landlord and Tenant Act 1985

Tribunal Member(s) : D Banfield FRICS, Regional Surveyor

Date of Decision : 5 February 2024

DECISION

The Tribunal determines that the sum of £101,921.40 has or will be properly incurred and is recoverable from the lessees through the service charge.

Background

1. The Applicant seeks a determination that the costs of certain works carried out to the Property in particular to the flank wall and parapet in the sum of £105,469 are payable by the Respondents as part of the service charge if so whether reasonably incurred.
2. The Tribunal made Directions on 23 November 2023 setting out a timetable for the parties to exchange their cases and for the Applicant to prepare a hearing bundle.
3. The Respondent leaseholders were required to send to the Applicant by 12 December 2023 a statement of case to which the Applicant was to respond by 5 January 2024.
4. On 23 November 2023, the Lessee of Flat 3 emailed the Tribunal indicating that they were already paying for the work and questioning why the Tribunal was involved.
5. On 12 December 2023, the lessee of Flat 2 emailed the Tribunal “I believe that the facts stated in this witness statement are true. I am happy for the tribunal to be dealt with on the paper alone and not without a hearing. I will provide extra evidence regarding prices, stress and everything else in due course.”
6. Despite the reference to a witness statement, it was not attached and despite the Tribunal’s enquiry nothing further was received.
7. Also on 12 December 2023 the lessee of Flat 1 emailed the Tribunal with his preferred email address and on 19 January 2024 copied the Tribunal with an email acknowledging receipt of documents from the Applicant which referred to a revised final cost as being £103,041.40.
8. Nothing has been heard from the Lessee of Flat 4.
9. In summary therefore the Tribunal has not received an objection from any of the Lessees and will therefore determine the application on the Applicant’s bundle in accordance with rule 31 of the Tribunal Procedure Rules 2013. References to page numbers in the bundle will be indicated as [*]

The Lease

10. A sample lease has been provided [22] and the clauses relevant to the dispute are;

Clause 4 (a) The Lessee hereby covenants with the Lessor and the Management Company to contribute and pay a one equal forth part of the costs expenses outgoings and matters mentioned in the Fifth Schedule hereto

THE FIFTH SCHEDULE

1. All reasonable costs and expenses incurred by the Management Company for the purpose of complying or in connection with the fulfilment of its obligations pursuant to clause 6 of this lease

8. The fees and disbursements paid to the Managing Agents (if any) appointed by the Management Company in respect of the building.....

Clause 6 (b) That (subject to the contribution and payment as herebefore provided) the Management Company will maintain and keep in good and substantial repair and condition: -

- (i) The main structure of the building including the foundations and the roof thereof and gutters and rainwater pipe
- (ii)
- (iii) The main entrance forecourt and other parts of the building enjoyed or used by the Lessee in common as hereinafter provided and the boundary walls and fences of the building

The Law

11. See the attached Appendix.

The Evidence

12. The bundle contains copy invoices, a summary of which is: -

- Hawke £78,567.00 [42 & 58]
- Breeze £6,600.00 [43]
- Dack £2,250.00 [44]
- Longhurst £6,600.00 [45, 46, 47]

It is noted that 46 and 47 are duplicates, both referring to Stage 3. However it is assumed that as Stage 2 is missing that this is a simple error in assembling the bundle.

- Now £6,728.40 [53-56]
- Friend £1,176.00 [57] This is a quotation only
- **Total £101,921.40**

Decision

13. Although the Tribunal has not received any challenge from the Lessees it has nevertheless examined the relevant lease terms, the costs claimed and supporting invoices.

14. The Tribunal is satisfied that the terms of the lease referred to above require the Applicant to maintain the structure of the property and its common parts and that the Respondents are to meet the costs through their respective service charge payments.
15. Although not yet incurred the Tribunal has included the estimate from Friend in respect of carpets. It is noted that the total cost for which invoices have been provided is less than that referred to in paragraph 7. No explanation has been given and **the Tribunal in relying on the evidence provided therefore determines that the sum of £101,921.40 has or will be properly incurred and is recoverable from the lessees through the service charge.**

D Banfield FRICS
5 February 2024

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 to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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.