FIRST TIER PROPERTY CHAMBER DECISION

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| Crest |  | FIRST-TIER TRIBUNAL**PROPERTY CHAMBER****(RESIDENTIAL PROPERTY)** |
| **Case Reference** |  **:** | **CHI/00HN/LSC/2024/0020** |
| **Property** |  **:**  | **7 McKinley Road, Bournemouth, Dorset, BH4 8AG**  |
| **Applicant** |  **:**  | **7 McKinley Road Bournemouth Ltd** |
| **Representative** | **:** | **Owen Jones** |
| **Respondent** | **:** | **Marie Hopp** |
| **Type of Application** | **:** | (1) Liability to pay and reasonableness of service charges section 27A Landlord and Tenant Act 1985. |
| **Tribunal:**  |   **:** **:** | **Judge T. Hingston** |
| **Date of Decision**  |  **:** | **9th October 2024** |

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**DECISION**

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**The Tribunal determines that the amount payable by Ms. Hopp in service charge contributions for the year from September 2018 – September 2019 is £4,831.93, plus £100 reimbursement for the Tribunal application fee.**

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**BACKGROUND**

1. 7 McKinley Road Bournemouth (the Property) is a 2-storey property constructed in the early 190os which is divided into three residential flats, one on each floor. The second floor flat (7A) is occupied by the Respondent Ms Marie Hopp, and the remaining two flats are occupied by Mr. Owen Jones Ms Ruth Davies (ground floor) and Ms. Ilse Prince (first floor.)

2. The Respondent Ms. Hopp holds her flat under the terms of a long lease dated 4 July 2002.

3. The freehold interest in the Property is owned by the Applicant company, 7 McKinley Road Bournemouth Ltd., and the shareholders of this company are Mr. Jones, Ms. Davies and Ms. Prince.

4. There have been two previous Applications to the Tribunal in respect of this property, under reference numbers:-

CHI/00HN/LIS/2023/0008 and CHI/00HN/LDC/2023/0164.

5. The first of these was an application as to liability to pay and reasonableness of the service charges (under Section 27A of the Landlord and Tenant Act 1985) for the years from 2012 to 2022 (in each case the service charge year ends on 29 September).

6. The second was a retrospective application (under Section 20ZA of the same Act) for an order granting dispensation from the statutory consultation requirements for specific works carried out during 2018.

7. In respect of the first of these applications, on the 3rd of November 2023 the Tribunal determined that the service charges for the years 2012 to 2018 and 2020 to 2022 were reasonable and Ms. Hopp was liable to pay them in full. However, only £250 was payable for the year 2018-2019 because the consultation requirements had not been complied with in relation to the extensive decorative and repair works carried out during that period.

8. In respect of the second application, on the 23rd of January 2024 the Tribunal ruled that the consultation requirements (relating to the works as above which contributed to the higher service charges for the year ending September 2019) should be dispensed with.

9. In the light of the dispensation granted in Paragraph 8 above, the current Application seeks a further determination from the Tribunal - pursuant to section 27A of the Landlord and Tenant Act 1985 - as to the reasonableness and payability of the service charges for that particular year September 2018- September 2019.

10. Following Directions which were issued by the Tribunal on 17th July 2024, a bundle of relevant documents (72 pages) was filed and the matter was listed for a paper determination on the 3rd of October 2024.

11. Neither party had requested an inspection of the property or an oral hearing.

**RELEVANT LAW**

12. The relevant statutory provisions are to be found in sections 18, 19, 20, 20ZA and 27A of the Landlord and Tenant Act 1985 (the 1985 Act). See attached Appendix.

**THE LEASE**

13. There is a copy of the lease at Page 15 of the bundle. It is dated 4 July 2002 and is for a term of 99 years from 25 March 1965. It is understood to have replaced a previous lease so as to be consistent with the leases of the other two flats.

14. The Lease provides for a ground rent of £10 per annum payable by half yearly equal instalments on 25 March and 29th September in each year.

15, In addition the lessee covenants at clause 3.2: *‘To pay the service charge calculated in accordance with the Third Schedule on the dates stated there’.*

16. Clause 1 of the Third Schedule provides:

*“Service Costs” means the amount the Landlord spends in carrying out all the obligations imposed by this Lease (other than the covenant for quiet**enjoyment) and not reimbursed in any other way including the cost of borrowing money for that purpose*

17. “*final service charge” means one-fifth of the Service Costs*

18. *“interim service charge” means a half-yearly payment on account of the final service charge which is half of the final service charge on the latest service charge statement*

19. Clause 2 of the Third Schedule provides that the landlord must keep detailed accounts of service costs and produce a service charge statement for each period ending on 25 March and 29th September, setting out the service costs for that period with particulars of the amount spent on each major category of expenditure and stating the amount of the final service charge, the amount of the interim service charge paid by the lessee, and the amount by which the final service charge exceeds the interim service charge instalment or vice versa.

20. The service charge instalments are payable on the same dates as the ground rent, 25th of March and 29th September in each year.

21. By clause 4 of the Lease the landlord covenants to insure the Property, to pay all rates, taxes and outgoings in respect of the common parts, to provide the services listed in the Fourth Schedule and to maintain a reserve fund. The landlord may engage the services of such employees, agents, contractors et cetera as are considered necessary.

22. The services set out in the Fourth Schedule include repairing the roof, main structure and foundations of the building, decorating the outside (but not the window frames or the conservatory) at least once every 5 years, maintaining, cleaning, lighting and decorating the common parts, and maintaining the grounds.

**APPLICANT’S CASE**

23. The Applicant’s case was contained in their Statement of Case and in Witness Statements from Mr. Jones and Ms. Prince.

**24. Service charges for the year September 2018 – September 2019.**

The interim and year-end service charge statements for this particular year are at pages 47 and 51 of the bundle. There was a total expenditure of £25,250.06 for that year (towards which £2000 was drawn down from the reserve fund), the greater proportion of which was for essential repairs, redecoration and maintenance costing £24,117.36.

25. On the 23rd of August 2018 Mr. Jones wrote to Ms. Hopp, giving details of 3 quotations for the works and inviting her comments. The parties ultimately selected the cheapest quotation from a company called S&D Decorating & Maintenance Limited (SDDM), and the uncontested evidence from previous proceedings was that Miss Hopp had expressed her support for this choice on the basis that SDDM had performed satisfactory work several times for a neighbour.

26. The works were completed and invoiced accordingly. There was no issue raised as to the quality of the work.

27. Although Ms. Hopp made a payment of £2,200 in January 2019, the Applicant stated that no other payments had been made at all despite the Tribunal’s ruling in November 2023. Substantial service charge debts for Ms. Hopp’s one-fifth share of costs during the years from 2012 to date are still outstanding, and this makes it difficult to undertake further necessary maintenance works.

28. The Applicant submitted that the service charge costs of the year in question were reasonable, the works had been done to a reasonable standard, and the Tribunal should order the Respondent to pay them forthwith.

29. The Applicants also sought an order for reimbursement of the Tribunal Application fee in the sum of £100, as the proceedings were only necessary because of the Respondent’s failure to comply with her obligations under the lease.

**RESPONDENT’S CASE**

30. The Tribunal issued Directions on 17th July 2024, which were sent to the Respondent Ms. Hopp together with a form for her to indicate to the Tribunal whether she agreed with or opposed the application and whether she requested an oral hearing.

31. The Directions stated that if Ms. Hopp agreed with the application or failed to return the form she would be removed as Respondent, although she would remain bound by the Tribunal’s Decision.

32. No response was received and no request for an oral hearing was made. The matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal’s Procedural Rules.

**TRIBUNAL FINDINGS AND CONCLUSION**

33. The Tribunal was satisfied that the Lease clearly defined the Applicant landlord’s obligation to maintain the property, and the Respondent leaseholder’s obligation to pay service charges by way of reimbursement for the costs of doing so.

34. It was determined that the service charge costs for the year September 2018 – September 2019 were reasonably incurred, the works were done to a reasonable standard, and the landlord had complied with all the requirements in respect of service charge statements and accounts.

35. The Tribunal therefore determined that the service charges payable for the year in question were as follows: -

One-fifth share of the interim charge (March 2019) - £4,069

One-fifth share of the end-of-year charge (Sept. 2019) - 533.92

Interest on unpaid service charges - 229.01

 TOTAL  **£4,831.93**

36. The Tribunal orders the Respondent to reimburse the application fee of £100.

37. No order is made for payment of Ground rent, which is outside the jurisdiction of the Tribunal.

38. As Ms. Hopp paid £2,200 into the service charge account during the period 2018 - 2019, that amount may be deducted from the amount payable.

39. However, the outstanding debt in respect of the other years from 2012 – to date remains.

 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.