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| Crest |  | FIRST-TIER TRIBUNAL**PROPERTY CHAMBER****(RESIDENTIAL PROPERTY)** |
| **Case Reference** |  **:** | CHI/43UE/LSC/2024/0017 |
| **Property** |  **:** | Campden Place, 7 Noel Court, Calf Lane, Chipping Camden, Gloucestershire GL55 6BS |
| **Applicant** |  **:** | Skipper Roland |
| **Respondent** | **:** | Noel Court Management Co. Limited |
| **Representatives** | **:** | Nicola Glover |
| **Type of Application** | **:** | Determination of liability to pay and reasonableness of service chargesSection 27A, andApplication for limitation of landlord’s costs under Section 2o(C) Landlord and Tenant Act 1985 |
| **Tribunal:** |  **:** **:** | Judge T. HingstonM.J.F. Donaldson FRICS. |
| **Date of Decision** |  | 6th November 2024 |

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 **DECISION**

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**The Tribunal determines that the Leases for the flats and maisonettes in Noel Court, including the Lease for the Applicant’s maisonette Number 7, provide that the individual lessees are responsible for arranging their own insurance. Therefore the £879.54 share of the ‘block’ insurance premium, which was demanded from the Applicant in June 2023, was not reasonably incurred and not payable.**

**The Tribunal further determines that the service charges relating to a share of the cost of roof repairs to Flat Number 5 in 2023 were not reasonably incurred, because the Applicant Ms. Roland was not obliged to contribute to such costs under the terms of her Lease.**

**In relation to the question of what proportion of the overall costs of maintaining the ‘service installations’ and common parts of the estate should be borne by the lessee, the Tribunal considers that the cost should be divided equally between the six units, meaning that in future Ms. Roland would be liable to pay 1/6th of all expenses in this category.**

**Upon the Applicant stating that she was happy to bear the costs of the Application herself, no Order is made under Section 20(C).**

**BACKGROUND**

**1.** The property in question is a residential block comprising 7 separate units or dwellings, some of which are maisonettes and others are flats on one level only, with one semi-detached two-storey house at the end of the block. The house is Number 1 Noel Court, and the owner is not a party to these proceedings.

**2.** All the flats and maisonettes are held on 999 year leases, commencing on the 25th of December 1993.

**3.** The Applicant Ms. Roland is the lessee/leaseholder of Number 7 Noel Court, which is a maisonette on the first and second floors of the block.

**4.** The Respondent Management Company is represented by Ms. Nicola Glover, Company Secretary and Lessee of Flat 4, and by Mr. Charles Bradley, Director and lessee of flats 5 and 6 (both of which are let on assured shorthold tenancies).

**5**. The Freehold is held jointly by the owners and shareholders in the Noel Court Management company.

**6**. An Application for determination as to the payability and reasonableness of the service charge for the year 2023 was lodged on the 17th of January 2024.

**7**. The Applicant is seeking a determination in respect of three elements of the service charge as follows: -

£25 - 1/6th share of £150 cost of roof repairs to No. 5 Noel Court

£210.20 – 1/6th share of £1,261.20 cost of further roof repairs to No. 5

£879.54 – 2/5th share of £2,198.84 insurance premium for the whole block.

**8**. Tribunal Directions were issued on the 11th of July 2024, and a Case Management and Dispute Resolution Hearing was then held on the 21st August 2024.

**9**. An Application in respect of disputed Administration charges was withdrawn at the Case Management Hearing, but the remaining issues were not resolved.

**10.** Further Directions were made as to preparation of the bundle and filing of position statements, and the matter was set down for final hearing on the 16th of October 2024.

**THE LEASES**

**11.** Copies of all the leases for numbers 2 – 7 Noel Court were provided to the Tribunal.

**12**. The Land Registry title number for the whole original plot of land was GR129558, and the title number for maisonette Number 7 is GR174497.

**13.** The relevant clauses from the Lease of Flat 7 are cited below, and they are compared and contrasted with the leases for the other flats in the block.

**14.** **Clause 1** of Flat 7’s Lease (at Page 29-30 of the PDF bundle) defines the extent of the demise (referred to as a ‘*maisonette on the first and second floors’*), which includes certain parts of the structure (walls, ceilings etc) and: -

 ‘...*all parts of the Block shown coloured red on the plan...above the level of the upper surface of the ceilings of the Lower Maisonette…’.*

This clause further states that the demise includes the staircase at the rear of the property, together with parking spaces and part of the ‘shared access’.

**15.** Sub-clause iii) of Clause 1, in the final paragraph at the bottom of Page 30, states that the various elements of the demise (as listed above) are to be collectively called ‘the Premises’. It confirms that the premises (i.e. the Maisonette, Number 7), is part of the land comprised in Title number GR129558.

**16.** **Clause 1** of the Lease for Flat 5 (at Page 55) defines the extent of the demise in a similar manner, referring to it as a ‘first floor maisonette’ which includes:

‘.*.. all parts of the Block shown coloured yellow...above the level of the upper surface of the ceilings of the Lower Maisonette…’* , and

*‘... the roof over the Maisonette…’* (top of Page 56.)

**17**. **Clause 1** of the Lease for Flat 6, the other first floor maisonette, is in the same terms as the Lease for Flat 5 and also refers specifically to ‘*the roof over the maisonette.’*

**18.** **Clause 1(c)** of the Leases for the Ground floor flats, numbers 2, 3 and 4 (at Pages 231, 251 and 271 respectively) are different from those for the maisonettes. In these Leases the demise is defined as: -

 ‘...*the land edged red on the plan, together with the ground floor Maisonette erected on part thereof…’ ,* including: -

(a) ‘*...all parts of the block below the level of the upper surface of the ceiling of the Maisonette…’.*

(b) *‘the walls...’* ( with certain exceptions), and

(c) *‘… the soil and foundations under the maisonette...’*

**19.** **Clause 2** of the Leases is identical for all 6 of the flats. It sets out the Lessee’s covenants, which are summarised as follows:-

(a) to pay the annual £1 ground rent on the 25th of December each year.

(b) to indemnify the lessor in respect of all rates and outgoings of the premises.

(c) to keep in ‘*good and substantial repair*’ and ‘*where necessary to rebuild or* *reinstate the Maisonette’,* including a list of items referred to as ‘...*such parts... as form* *part of the premises…*’. The list includes such items as foundations, internal and external walls, roof**,** guttering and sewers.

(d) to re-paint the external painted areas of wood or metal every 3 years.

(e) (i) ‘*jointly and severally’* with other lessees of the block, and all owners and occupiers of the maisonettes and of the adjoining house, to be responsible for the repair, renewal and cleansing of the ‘*service installations’* (as defined in this clause).

(ii) to pay on demand a ‘*due and proportionate part of the expense*’ of keeping the common parts of the estate and the service installations in good repair and condition.

(iii) to pay on demand 1/12th of the cost of maintaining and repairing the main access.

(iv) to pay on demand 1/3rd of the cost of maintaining and repairing the ‘shared access’.

(f)(g)(h) … (not relevant to the issues in this case)

(i)to insure and keep insured the premises with an insurance company approved by the Lessor, in the joint names of the Lessee and the Lessor, ‘...*against loss or damage by fire and such other perils as the Lessor may from time to time require...’*

[Note: this sub-clause provides that the Lessor may take out insurance for the Premises if the Lessee fails to do so.]

(j)Not to do anything which may void the insurance.

**20.** **Clause 5 (a)** is the same in each Lease, and it provides that the covenants in relation to repair, maintenance, insurance and reinstatement of the premises are covenants as between the various lessees as well as with the Lessor.

**21.** **The Third Schedule Paragraph 9** requires the Lessee to pay:

‘..*.a fair proportion of the expense….of cleansing, repairing or maintaining the service installations serving the maisonette and any other premises...’*

**RELEVANT LAW**

**22.** See attached Appendix.

**THE HEARING**

**23**. The hearing was held at Havant Justice Centre, with the Tribunal sitting in person and the parties (the Applicant Ms. Roland, and Ms. Glover for the Respondent Company) attending by video link. Mr. Bradley sent his apologies.

**APPLICANT’S CASE**

**24.** The Applicant’s case is set out in her Application form, in her position statement and in the documents and correspondence produced in support of her arguments. Ms. Roland also gave oral evidence at the hearing.

**25.** In addition to asking the Tribunal to make a ruling on the 3 items of service charges for the year 2023 (as set out above), Ms. Roland asked the Tribunal to determine the following questions -

i) Whether she and all other leaseholders in the block are liable to pay a share of the cost of repairing the roof of Flat 5, and if so, in what proportions?

ii) Whether it is mandatory under the Lease for the Management Company to arrange insurance for the whole block in one policy, and if so, what proportion of the premium should be paid by each of the 6 properties?

iii) What would be a fair way to calculate the proportion payable by each of the 6 leaseholders for the costs of maintaining and repairing the ‘service installations’ ?

**26.** Ms. Roland stated that there was no provision in the lease for formal service charge demands or dates for payment. Repairs were just dealt with on an ad hoc basis. She had acquired the property in 2022.

**27.** In June 2023 Ms. Roland received an invoice for service charges, including accountancy fees (which she did not dispute), a bill for her contribution towards roof repairs to Flat Flat 5, and a bill for her share of the premium for renewing the block insurance with Kudos.

**28.** Insurance.

So far as Insurance was concerned. upon checking her Lease Ms. Roland thought that in fact she was entitled to arrange her own insurance policy.

**29**. She accepted that the property is in a Flood Risk Zone according to maps re-drawn in 2022, but her understanding was that it had never actually been flooded. When she had made enquiries with other insurance companies she was quoted approximately £600 to insure her individual flat.

**30.** However, when Ms. Roland proposed to take out separate insurance cover Ms. Glover told her that she was not allowed to do so, that it would be a breach of the Lease, and that there would be sanctions if she went ahead.

**31**. As a result, she duly paid her share of the block premium which had been demanded.

**32.** Roof repairs.

In respect of the roof repairs to Number 5, Ms. Roland thought initially that under the Lease she was obliged to contribute, and she did so when she received the demand. She was surprised that Mr. Bradley had apparently paid the whole £1,261.20 which had been quoted in the builder’s estimate, because the estimate had included the use of scaffolding but the works were actually completed (in November or December) with access via the loft next door, without scaffolding, in one afternoon.

**33.** The proportion of roof repair costs payable by each leaseholder was calculated according to the number of bedrooms, so that her share was ¼ because she had 2 bedrooms. That would have been £315.30, but she refused to pay more than a 1/6th share, i.e. £210.20.

**34**. In terms of liability for roof repairs according to the Leases, Ms. Roland submitted that on closer consideration of the wording it appeared that she was responsible for the roof above her maisonette, and Mr. Bradley was responsible for the roof above his, because the ‘roof’ is expressly mentioned in Clause 2(c) as part of the demise which leaseholders of the upper flats/maisonettes are obliged to maintain.

**35**. It was Ms. Roland’s understanding of the Lease that the Ground floor flats had responsibility for the foundations directly under their accommodation, and that the upper floors had responsibility for the roof above theirs.

**36.** Apportionment.

As for the method of apportionment of costs between the Flats, Ms. Roland submitted that it was not fair to charge a greater share to those lessees with more bedrooms, regardless of floor area.

**RESPONDENT’S CASE**

**37**. The Management Company’s case is set out in their statement of case, written submissions and documentation, including copies of the Leases and correspondence.

Ms. Glover also gave oral evidence at the hearing.

**38**. Ms Glover told the Tribunal that the Management Company was set up when the freehold was acquired in 2003. All the leaseholders were also freeholders and shareholders in the company.

**39**. Insurance.

There were no records as to the system of insurance prior to 2003, but it was understood (by all parties) that individual leaseholders had arranged their own separate insurance prior to 2005. Then it was changed to a ‘block’ policy and had remained so to date.

**40**. Having considered the terms of the Lease and consulted an insurance adviser, it was Ms. Glover’s understanding that all freeholders were jointly liable to insure the block as a whole. She submitted that the Lease provision at Page 38/39 of the bundle (Clause 5(a), in respect of Flat 7, which is duplicated in all the other Leases) meant that they all had joint liability to insure the block.

**41.** Since the block policy had been in place, apportionment had been calculated according to the number of bedrooms. Ms. Glover considered that either that method, or a share according to floor area, would be acceptable.

**42**. Ms. Glover had taken over as Secretary in about 2020, and she had had considerable difficulty in finding insurance for the property because of the flood risk.

**43.** In terms of actual flooding, Ms. Glover believed that there had been a ‘flash flood’ at the property in 2007, but it had not actually gone into the building. She did not live there at that time.

**44.** Roof repairs.

As far as roof repairs are concerned. The Respondent’s case was that all leaseholders were obliged to contribute to structural repairs and maintenance of the whole block.

**45.** Apportionment.

In respect of costs for the common parts and service installations, Ms. Glover had no preference for any particular method of apportionment.

**TRIBUNAL FINDINGS AND DETERMINATION**

**46.** Insurance

The Tribunal finds that the individual lessees are, according to the Leases (Clause 2(i)) clearly obliged to arrange their own insurance, on terms that are acceptable to the lessor (which would reasonably include the risk of flood).

**47.** They have also covenanted not to do anything which might compromise or void the insurance, so it is important that each lessee gives accurate information to their insurance company. This can be checked by other residents because, at the request of the lessor or other lessees in the block, they must produce their policy.

**48.** It is understandable that perhaps it has been convenient and sensible in the past to insure the whole property as a ‘block’, but this was done by agreement between all concerned and was in fact contrary to the terms of the Lease.

**49.** The Tribunal does not find that Clause 5 (a) confers a duty on all leaseholders or lessees to be jointly liable for ‘repair, maintenance, insurance (and) reinstatement’ of the whole block. This Clause is clarifying that the covenants between lessor and lessee are enforceable as between the various lessees as well.

**50.** Although the definition of ‘the Premises’ in each Lease is badly worded, the Tribunal finds that the term does not refer to the whole block, property or ‘estate’: it refers to each separate demise, which includes the particular dwelling and any extra facilities outside.

**51.** In terms of payability of the insurance premium for the year 2023-2024, Ms. Roland has conceded that she had the benefit of that insurance for a year and therefore she does not seek to recoup the £879.54 which she paid. However, the Tribunal finds that Ms. Roland’s share of that premium was not ‘reasonably incurred’ because it was contrary to the terms of the Lease.

**52**. Roof repairs

So far as the roof repairs are concerned, the Tribunal determines that the Leases of Flats 5 and 6 (in Clause 1) unequivocally include the roof over the maisonettes as part of the demise. The lessee of these flats (Charles Bradley) therefore has full responsibility for repairing and maintaining the roof above his own properties, and Ms. Roland and the other lessees should not have been required to contribute to the costs thereof.

**53.**The Lease of Flat 7 is differently worded, in that it does not refer specifically to the roof above Ms. Roland’s maisonette as part of the demise. It does, however (in Clause 1) refer to:-

 ‘...*all parts of the Block shown coloured red on the plan...above the level of the upper surface of the ceilings of the Lower Maisonette…’,* which can be taken to include the roof unless stated otherwise.

**54.** The Tribunal finds that it is reasonable to infer that the intention was for each upper-floor maisonette to have responsibility for its own roof as part of the demise, and therefore Ms. Roland is correct in assuming that she has responsibility for repair and maintenance of the roof above Flat 7.

**55.** In conclusion, neither of the sums which Ms. Roland paid in 2023 towards the cost of repairs to the roof of Flat 5 were ‘reasonably incurred’ because they were not her responsibility under the Lease, and therefore they were not payable and should not have been paid.

**56**. Even if Ms. Roland *had* been liable to contribute under the Lease, it should be noted by all concerned that service charge contributions for works costing more than £250 per unit cannot be demanded from individual lessees without the proper consultation process (under Section 20 of the Landlord and Tenant Act 1985) being followed.

**57**. Apportionment

The Tribunal considers that the costs of maintaining the common parts of the estate and the ‘service installations’ could reasonably be divided equally between the 6 units. It would not necessarily be logical to argue that the 2-bedroom flats cause greater wear and tear to the installations, and calculation by floor area would be more complex and subject to argument as to what measurement of floor area should be used.

**58.** Therefore a 1/6th share would be fair and proportionate.

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**Right to Appeal**

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application 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. Where possible you should send your further application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal to deal with it more efficiently.

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.