



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

**Case Reference** : **CHI/45UG/LSC/2013/0112**

**Property** : **21 Kilbarn Court, Haywards Heath RH16 4SE**

**Applicant** : **Mr James Henry Perry**

**Respondent** : **Accent Peerless Limited**

**Type of Application** : **Section 27A of the Landlord and Tenant Act 1987**

**Tribunal Members** : **Judge D. R. Whitney  
B.H.R. Simms FRICS**

**Date of Hearing** : **28<sup>th</sup> March 2014**

**Date of Decision** : **4<sup>th</sup> April 2014**

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**DECISION**

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1. This was an application by Mr Perry who is the long residential leaseholder of 21 Kilnbarn Court, Haywards Heath, Sussex ("the Property") for a determination of the liability to pay and reasonableness of certain service charges. The Respondent is the freeholder of the building in which Mr Perry's flat is situate.
2. An oral directions hearing was held on 8<sup>th</sup> November 2013 at which the Applicant only attended. Certain directions were given including direction that unless either party requested a hearing the matter would be dealt with by written representations only. No request for a hearing was received.

## THE LAW

3. In reaching its determination the Tribunal had regard to Sections 27A and 19 of the Landlord and Tenant Act 1985.

## DISCUSSION AND DETERMINATION

4. The tribunal had before it various documents. These included a letter and attachments received from the Applicant dated 1<sup>st</sup> October 2013, bundle of documents from the Respondent dated 28<sup>th</sup> January 2014 and letter and attachments from the Applicant dated 24<sup>th</sup> February 2014. The tribunal also had a copy of the original application dated 2<sup>nd</sup> September 2013 and the directions order dated 8<sup>th</sup> November 2013. In reaching its determination the tribunal had regard to all of these documents.
5. The directions highlighted that the issues for determination were the lighting under the communal services for the years ending 31<sup>st</sup> March 2009, 2010, 2011, 2012 & 2013. It is only these issues which this tribunal has determined. We make this point clear as the tribunal notes that Mr Perry in his reply to the Respondent's statement of case refers to management charges and these are not matters being determined. Further this tribunal has jurisdiction to determine the amounts which may or may not be payable but does not take an account of what payments have or have not been determined.
6. It appeared to the tribunal that the issue was that Mr Perry believes the charges he is expected to pay for the cost of electricity and communal lighting are high. He refers to his own electricity costs for his flat and the fact that given he says there are only some six light bulbs he believes the costs are high.
7. The Respondent in their statement of case candidly admit "the accounting methods used in calculating the electricity charges to the block is not satisfactory...". The Respondent explained that they own 3 blocks at the site. They refer to the service charge provisions within the lease. The respondents state that there are three meters (one for each building) and one of these meters also supplies the electricity for a car parking area although they do not know which one. In light of this in practical terms the Respondent adds together the charges for all three meters and then divides this equally between the 20 flats within the three blocks.
8. The Respondent explained that a separate company manages the meter readings and "validation" process ensuring that electricity is supplied at a competitive rate. No charge is made by this third party company to the Respondent.
9. The Respondent further acknowledges that there may be issues as a result of a failure to regularly read the meters but the Respondent states these will now be read on a regular basis.
10. The Respondent provided details of the electricity payments made for 2009 onwards and the amounts included in the certified accounts for the block for the service charge

years ending 2009 onwards. The Respondent indicated that within these costs was provision for changing the light bulbs but no invoices were included. The Respondent did include a very considerable bundle of invoices for electricity supply.

11. The Applicant's case was that he had been seeking information but had not received responses. This was accepted by the Respondent. By reference to his own flat he could not understand how the amounts being charged were so high. Typically the Respondent was paying in total for electricity about £3000 per year save for the year ending 2013 when they paid £856.23. Mr Perry also highlighted that the certified account charges did not reconcile with the total electricity figures.
12. The tribunal considered the documents. It was far from clear to the tribunal how the electricity charges had actually been calculated. The tribunal understood that the Respondent charged each flat an equal share of the total amount. However the tribunal agreed with Mr Perry that they could not reconcile these figures with the certified account figures set out in the Respondent's statement of case. Mr Perry queried the number of flats, in reaching its determination the tribunal assumes that there are 20 flats given the evidence it has seen. Whilst not spelt out the tribunal imagines the discrepancy arises as whilst the flats appear to number 1-21 the tribunal assumes, as is common practice, there is no flat numbered 13.
13. The starting point for the tribunal was the lease. The tribunal agrees that the communal electricity costs for lighting the building being the block in which Mr Perry resides are recoverable. The tribunal notes that no reference is made to the cost of lighting the car park in the lease. The tribunal were not referred by either party to any provision within the lease which allowed recovery of this item. The Respondent relied upon clauses 5(4) and 7(5) of the lease. These only referred to the building. The tribunal finds that the Respondent is not entitled to recover in the service charge the cost of lighting the car park.
14. The Respondent indicate that the sums claimed include sums for changing light bulbs. No invoices or explanation as to what charge was made was given by the Respondent. The tribunal determines that nothing is payable for this. It was for the respondent to supply evidence and they have not done so.
15. Turning to the reasonableness of the actual electrical charges we note that it is not challenged by the respondent that only modest lighting is provided and in their statement of case the Respondent acknowledge they have had little control over the charges made. The tribunal was puzzled and troubled by the figures given by the Respondent. The tribunal was unable to reconcile these figures and could readily understand the Applicants frustration leading to this application. Even now with the Respondent's statement of case matters were less than transparent.
16. The tribunal has bought its own expertise to bear in considering the reasonableness of the charges. For a development of three blocks consisting of 20 flats the tribunal would not expect such high electricity usage for lighting communal areas. The Tribunal therefore determines that the electricity charges for the service charge years ending 2009,2010,2011 & 2012 are unreasonable.
17. In light of this the tribunal must determine what amount is reasonable. The tribunal takes account of the fact that the respondent does not have to go for the cheapest supplier but must charge a reasonable rate. The tribunal has used its own general knowledge of this area as well as the parties information and determines matters using a broad brush approach having regard to the limited evidence before it to determine this issue. Having regard to the number of blocks and flats the tribunal determines that the reasonable amount which the Applicant should pay for each of the service charge years as set out in paragraph 16 above is £60 per annum.

18. In respect of the service charge year ending in 2013 the tribunal notes the total electrical charge was £856.23 which according to the Respondent the certified accounts for the Applicants block had allocated £344.71. One presumes that the figure on the certified accounts includes an element for changing the light bulbs which we have disallowed. Given the Respondent states that the amount of the electricity charge is divided equally amongst all residents the tribunal determines that the Applicant should pay £42.81 for the service charge year ending 2013 being 1/20<sup>th</sup> of the electricity charges.
19. The Applicant also sought an Order under section 20C of the Landlord and Tenant Act 1985 limiting the Respondent's right to recover any costs associated with this application as a service charge. The Respondent did not oppose this application and indicated it would not be looking to pass on any charges. Given this, and the fact the tribunal is satisfied it was reasonable for the Applicant to make the application given the lack of information given by the Respondent the tribunal makes an order under section 20C.
20. In summary the tribunal determines matters as follows. For the electricity charges for each of the service charge years ending 31<sup>st</sup> March the tribunal determines that the Applicant should pay:

2009	£60
2010	£60
2011	£60
2012	£60
2013	£42.81

The Tribunal makes an order that no costs associated by this application incurred by the Respondent may be added by them to the Applicants service charge account.

21. It will now be for the Respondent to make the necessary adjustments and credits to the Applicants service charge account to give effect to this determination.

Judge David Whitney  
Chair

#### Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands 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.

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.