



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

Case Reference : (1) CHI/29UN/LSC/2014/0102 &
(2)CHI/29UN/LDC/2014/0048

Property : 21 Augusta Road, Ramsgate, Kent CT11
8JP

Applicant : 21 Augusta Road RTM Company Limited

Representative : Ms F Meyer (Director)

Respondents : Mr Stuart Evans (Flat 1)
Mr Roy Wyrill (Flat 2)
Ms Françoise Meyer (Flats 3&4)

Representative :

Type of Application : (1) Liability to pay service charges & (2) To
dispense with the requirement to consult
lessees about major works.

Tribunal Member : Mr D Banfield FRICS

Date of Hearing : On the papers, 22 January 2015

Date of Decision : 22 January 2015

DECISION

Decision

- **The service charges for 2013 are payable with the exception of the £67 filing fee.**
- **The “on account payment” of £902.38 is properly payable.**
- **The costs for external redecoration may properly be included within the 2014 service charge accounts.**
- **The S.20 procedures have been satisfactorily carried out.**
- **An order under Section 20ZA of the Act is made.**

Background

1. By way of two applications dated 7 October 2014 the Applicant sought determinations under **Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act)** as to whether service charges are payable and **Section 20ZA of the 1985 Act** for dispensation from all/some of the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. This second application was made “in the event that the applicant failed to comply with the consultation process”
2. The Tribunal identified the issues to be determined included:
 - Whether the service charges for 2013 listed in the application are payable:-

○ Accountancy	£300.00
○ Repairs and Maintenance	£4,938.84
○ Management Charges	£400.00
○ Professional Fees	£1,516.76
○ Annual return filing fee	£67.00
 - Whether the “on account payment” of £902.83 for 1 January to 31 December 2014 is payable.
 - Whether the sum of £3,612 for intended redecoration works is payable.
 - Whether the landlord has complied with the consultation requirements under Section 20 of the 1985 Act
 - Whether the works are within the landlord’s obligations under the lease / whether the cost of works are payable by the leaseholder under the lease
 - Whether the costs of the works are reasonable, in particular in relation to the nature of the works, the contract price and the supervision and management fee
 - Whether an order under Section 20C of the 1985 Act should be made
 - Whether an order for reimbursement of the application / hearing fees should be made

- Whether dispensation from the consultation requirements of S.20 of the 1985 Act could be dispensed with
3. The Tribunal made directions dated 14 October 2014 setting out a timetable for the proper disposal of the case requiring the parties to exchange statements of case and for the Respondents to make submissions on whether dispensation should be given under S. 20ZA of the 1985 Act.
 4. Neither Respondent is resident at the property and documents were therefore sent to their correspondence addresses and/or by email.
 5. In the event the only correspondence received has been from Mr Evans.
 6. It was stated that the application would be determined on the papers **without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013** and in the absence of any objection from the parties the matter is so determined.

The Lease

7. A copy of the lease for flat 3 has been supplied and it is understood that the leases of the other flats are on broadly similar terms. (Tab 1)
8. The demise is defined in the First Schedule as *shown edged red on the plan attached hereto includingthe internal walls and the interior surfaces of the external walls between the floors and ceilings of the Flat together with all windows and window frames contained in such walls and the external door of the flat.*
9. Examination of the plan indicates that the first floor balcony is not included within the demise.
10. The sixth schedule sets out the landlord's obligations which may be summarised as to repair the property except where demised to a lessee, To decorate the exterior every 4 years, to make good consequential damage, to clean and light the common parts, to insure, to keep accounts and employ agents to manage the building.
11. The fourth schedule sets out the lessees' obligations to pay a service charge. Clauses relevant to this dispute are
 - *1 (ii) Service charge means one-quarter part of the expenditure on services for the estate; 1. (iii) Interim service charge instalment means a payment on account of service charge of one hundred and twenty five pounds per half year or of one-half of the service charge shown on the service charge statement last served on the tenant whichever is the greater; 1(v) Service Charge Deficit means the amount by which the*

service charge shown on a service charge statement exceeds any credits shown thereon.

- *2. The Landlord shall keep a detailed account of the expenditure on services and shall procure that a service charge statement is prepared.....by a member of the Institute of Chartered Accountants....or an Associate of Certified and Corporate Accountants.*
- *4. By equal half- yearly payments in advance on the 30th day of June and 31st day of Decemberthe Tenant shall pay to the Landlord an interim service charge instalment which may if the Landlord so stipulates be applied for the purpose of creating a reserve fund to meet anticipated future expenditure...*
- *5. Forthwith upon service on him of a service charge statement the Tenant shall pay to the Landlord any service charge deficit shown thereon.*

EVIDENCE AND DECISION

12. Mr Evans statement of case dated 17 November 2014 at Tab 6 is not in accordance with Directions 7 and 13 and largely fails to address the issues before the Tribunal. In opposing the application he refers to failed attempts to become involved in the management of the RTM company and the need for an AGM to discuss matters of mutual interest. Neither of these issues is before the Tribunal. He considers that a second opinion should have been obtained regarding the maintenance schedule.
13. Despite the lack of specific challenges the Tribunal has examined the bundle and makes the following determinations.

LIABILITY TO PAY SERVICE CHARGES **CHI/29UN/LSC/2014/0102**

2013

14. Included in the bundle is a certificate of management expenditure for 20 August 2012 to 31 December 2013 together with supporting invoices (Tab 13)
15. Attached to service charge demands dated 28 March 2014 (Tab 15) are further copies of the certificate but now shown as covering the period 1 January 2013 to 31 December 2013.
16. It is clear from the lease plan that the first floor balcony is not demised to flat 3 and therefore that the cost of any repairs may be properly charged to the service charge account.

17. The Sixth schedule sets out those heads of expenditure that may be charged to the service charge. Examining those items on the 2013 accounts the Tribunal determines that all items have been properly charged with the exception of the filing fee of £67.00 which does not come under one of the heads of expenditure referred to and is therefore disallowed.

The “on account payment” of £902.38

18. The fourth schedule to the lease permits interim service charge demands to be made for one-half of the previous year’s expenditure. Certified expenditure for 2013 (per flat) was £1,805.65 half of which is £902.82 and as such the demand was made in accordance with the requirements of the lease and therefore allowed.

£3,612 for intended redecoration/Whether the landlord has complied with the consultation requirements under Section 20 of the 1985 Act

19. At tab 2/9 is a Notice of Intention to Carry Out Works dated 16 May 2013. Included on the list of proposed works is “the front balcony including all metalwork” and “External redecoration works”. Written observations were invited together with nominations of potential contractors.
20. Mr Evans responded requiring that a second survey report be obtained. The Applicant disagreed that this additional expenditure should be incurred and no further action was undertaken.
21. At tab 2/10 is a Statement of Estimates dated 29 October 2013 listing the quotations received for the work to the balcony and external redecoration. Copies of the quotations were attached and observations invited before 29 November 2013.
22. Before the expiry of the consultation period a deposit cheque was paid to one of the contractors. However the payment was made on the condition that if the works were not to commence due to comments received during the consultation period the deposit would be returned less 10% cancellation fee for which the Applicant would be personally liable.(tab2/11)
23. Works to the balcony were carried out the cost of which is included within the 2013 service charges referred to above. The redecoration works are we are advised to commence shortly.
24. On the evidence before us we are satisfied that the S.20 procedures have been satisfactorily carried out and that the costs for external

re-decoration may properly be included within the 2014 service charge accounts.

To dispense with the requirement to consult the lessees about major works - CHI/29UN/LDC/2014/0048

25. The application to dispense with the requirement to consult the lessees was made in case the Tribunal found that the consultations already carried out in 2013 failed to comply with the requirements of the Act.
26. The Tribunal have confirmed that the 2013 consultations are in order and it is therefore not strictly necessary to continue to make an order under S.20ZA.
27. However for the avoidance of any doubt we do make such an order and dispense with the requirement for the Applicant to consult with the lessees in respect of those works referred to in the Statement of Estimates dated 29 October 2013.

D Banfield FRICS
Chairman

22 January 2015

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. 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.
2. 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.
3. 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