

11989



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

**Case Reference** : **MAN/00BY/LSC/2016/46**

**Property** : **Flat 2, 49 Catharine Street  
Liverpool L8 7NE**

**Applicant** : **Helen Catherine Wilson**

**Respondent** : **Liverpool Mutual Homes**

**Respondent's Representative** : **Brabners**

**Type of Application** : **s27A Landlord and Tenant Act 1985**

**Tribunal Members** : **Mr. John Murray LLB  
Ms. Dianne Latham**

**Date of Decision** : **7 November 2016**

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**REASONS FOR DECISION**

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## **DECISION**

The Tribunal determines that service charges payable by the Applicant for the years under review are as follows:

2013-2014: £15,392.15  
2014-2015 : £244.58  
2015- 2016: £297.37  
2016-2017: £303.14

## **INTRODUCTION**

1. This was an application to determine liability to pay and reasonableness of service charges under s27A Landlord and Tenant Act 1985 in respect of Flat 2 49 Catherine Street Liverpool L8 7NE ("the Property") and limitation of costs under s20C of the same Act for the years
2. The application seeks a determination for the service charge years April 2013 - 2014, April 2014 - 2015, April 2015 - 2016, and April 2016 - 2017 (current/future years).

## **THE PROCEEDINGS**

3. Directions were made on 5 August 2016 by a procedural judge. The parties complied with the Directions.
4. A Tribunal was appointed and an external inspection of the Property took place on 7 November 2016 at 10.30 am.
5. The substantive hearing of the application was on 7 November 2016 at 11.45am. At the substantive hearing, the Applicant represented herself, and was accompanied by her husband Dr. Panagiotis Athanasopoulos. The Respondent was represented by Solicitor Mr. Ian Alderson of Brabners. Gary Croll Housing Director, and Paul Needham offices of the Respondent were also present.

## **THE PROPERTY**

6. The Property is a one bedroomed, first floor flat in a grade II listed building, comprising three flats in the Georgian district of Liverpool ("Number 49"). The Respondent is the Freeholder and the other two flats are let under assured tenancies.

7. Inside the Property the Tribunal was shown four replacement windows, in the kitchen, bedroom and two to the sitting room. The windows were wooden, double glazed sash Georgian windows. All the windows were seen to have peeling paint to the exterior. The two windows to the sitting room each had one defective double glazing panel, which had "misted". There were three holes in the casement between the sitting room windows which had been drilled out for inspection purposes after the windows had been installed. There was cracking around the plaster to the windows.
8. The Tribunal was shown internal communal works including fire safety works to the meter doors in the downstairs hall, a new rear door, internal painting and emergency lighting.
9. The front and rear of Number 49 had been re pointed, and masonry (lintels and sills) had been painted. The roof had been overhauled and the chimney which was shared with the neighbouring property also appeared to have been re pointed.

#### **THE LEASE**

10. The Property is held under a 125 year lease dated 16 October 2000, under which the Applicant agrees to pay on demand the amounts specified in the first Provision to the First Schedule, and part of the costs incurred/to be incurred by the Respondent in carrying out repairs to the demised property and to the remainder of the building, and a ground rent of £10 per annum.
11. The repairing obligations are set out in Clause 4 of the Lease, or implied by Part III Of Schedule 6 of the Housing Act 1985. The Respondent accepted at the outset of proceedings that they could only charge for repairs, and not improvements to the Property (save when a repair they were obliged to effect would simultaneously result in an improvement, such as single glazed windows being replaced by double glazed windows.)
12. At Clause 4 of the Lease the Landlord covenanted with the Tenant
  - i. to paint the structure and exterior of the demised property and the main building
  - ii. to insure the demised property and the main building for rebuilding costs against destruction or damage
  - iii. to give quiet enjoyment.

13. The Service Charge is described in the Fourth Schedule to the lease. The accounting period is described as the period commencing on the 1st January and ending on the 31st December each year. The Tribunal was told that at some point following the grant of the lease and before the stock transfer to the Respondent by Liverpool City Council, the accounting period had been changed (by custom and practice rather than by documentation) to 1st April to 31st March.
14. Services and facilities granted to the Tenant are described in Clause 6 of Schedule 4. Cleaning, Lighting and heating of common parts, heating of the demised property (if applicable) and the provision of hot water to the demised property (if applicable), window cleaning gardening, aeralis, and 'such services as are from time to time provided" to the demised property.
15. The lease provides at clause 1(iv) of the Fourth Schedule for an Initial Interim Charge to be paid on account of the Service Charge in respect of each Accounting Period as the Landlord or Agent shall specify. Service charges are divided at Clause 1(iii) of the Fourth Schedule according to relevant Rateable Values for the respective flats in the building.

## **THE LEGISLATION**

16. The relevant legislation is contained in s27A and s20C Landlord and Tenant Act 1985 which read as follows:

s27A Liability to pay service charges: jurisdiction.

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject of an application under subsection (1) or (3).
- (7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

s20C Limitation of service charges: costs of proceedings.

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal] or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

## **THE EVIDENCE AND SUBMISSIONS**

### **Applicant**

17. The Applicant's main concern in respect of the service charges for the years under review arise from major works carried out between October 2013 and March 2014. Her submissions and evidence referred to the lack of information provided to her about the likely cost that would be apportioned to her at the conclusion of the works. The Applicant had been told of varying costs from approximately £120,000 (one third of the entire costs of the works to Number 49) until the final charge sought for the works was £20,021.03 in April of 2016. The Applicant had repeatedly asked for evidence of works that had been carried out, by way of invoices or job specifications.
18. She had concerns about the quality of the replacement windows which had faulty (misted) double glazing units, peeling external paint work, cracking around the plasterwork, and inspection holes left in the plasterwork of the window reveal. The Applicant was also aggrieved that the windows let more traffic noise in than the windows they had replaced, which had been renovated using the Ventrolla system by the Applicant in 2011. A report prepared for the Respondent by an acoustics expert found that sound was blocked better at some frequencies than others.
19. The Applicant sought a determination as to which of the major works were properly consulted on, and properly recoverable under the terms of the lease and under s19 of the Act.
20. The only other service charges challenged by the Applicant were for management charges, interest on sinking fund contributions, and responsive repairs
21. The Respondent agreed to remove the interest charges on the outstanding service charge deficit and reduced management fees.

## **Respondent**

22. The Respondent accepted through Mr. Alderson that information had not been as good as it might have been. The major works had been part of a major scheme across their Georgian properties in Liverpool. They had worked hard subsequently to try to reach agreement with the Applicant and had conceded a number of points, and during the course of the hearing, they conceded a number of other points and accepted that evidence of the need to carry out repair, or repairs carried out, was often not available.
23. The Respondent formally agreed that the current sinking fund balance was given for £2036.64 and not £1901.56 as had been recorded.
24. The Respondent agreed to remove interest of £189.01 from the 2014/15 accounts.
25. The Respondent agreed that management fees for 2014/15 would be £93 (down from £119.27) for 2015/16 £95 (down from £121.89) and £95 for 2016.17 (down from £121.89).

## **THE DETERMINATION**

26. The Tribunal considered the Scott Schedule (at pages 213 - 231 of the bundle) which set out in detail the position of each party and the Summary and Schedule prepared by the Respondent (at pages 134 -158 of the bundle).
27. Because of the nature of the major works, and the contract that the Respondent operated under, there was no documentary evidence available for the Tribunal to determine what works (if any) had been carried out, and consequently what charges might be made for them to the Applicant. The Tribunal relied upon the written and oral representations of the parties, admissions made, and its own inspection to arrive at its conclusions as to what work had been carried out, and then determined if such work was permitted under the lease, and whether the costs of such work was reasonable.
28. The Tribunal's determinations in respect of each item in the major works are appended in the Schedule at the rear of this judgment. The Tribunal determined that the Respondent's contribution for the major works be £15,510.60. The amount will be included in the service charges for the year 2013/14.

29. The Tribunal makes no finding as to when the service charge contributions should be paid. Service charges are payable in accordance with the lease, and it is for the parties to come to acceptable terms as to repayment of those service charges taking into account prior discussions and offers made by the Respondent. It is not appropriate to record payments for past works in the service charge budgets and accounts as a sinking fund contribution, and consequently in the absence of further information sinking fund contributions are determined by the Tribunal for later years at a notional £100 per annum for future, not past sinking fund works.
30. The Tribunal was able to consider service charge accounts for 2013/14, 2014/15 and 2015/16 but for the last year considered only budgets, as no accounts were available.
31. The Respondent has included ground rent of £10 in service charges when it is not a service charge. Ground rent does not come under the Tribunal's jurisdiction. The sum of £10 for ground rent is consequently removed from the determination for service charges.
32. The charges for insurance and internal lighting are not challenged and appear reasonable.
33. The Respondent agreed to reduce the management fees for 2014/15 to £93, for 2014/15 and 2015/16 to £95. The estimated fee for 2017 is £122.28 which the Tribunal considers a reasonable service charge for management.
34. For 2013/14 the total service charges payable by the Applicant are £207.40 (being the actual amount in the accounts of £217.40 less £10 ground rent) plus £15184.75 for the major works, totaling £15,392.15
35. For 2014/15 the total service charges payable by the Applicant are £244.58 (being the actual amount in the accounts of £280.85 less £10 ground rent, and reducing management fee to £93 from £119.27). The sinking fund amount of £100 is reasonable.
36. For 2015/16 the total service charges payable by the Applicant are £297.37 (being the amount of the actual service charge of £1494.32 less £10 ground rent, reducing management fee to £95 from £121.89 and reducing sinking fund contribution from £1260.06 to £100). Responsive repairs at £20 are reasonable.



37. For 2016/17 the total service charges payable by the Applicant are £303.14 (being the amount in the service charge budget of £1198.24 less £10 ground rent and reducing sinking fund contribution to £100). The management fee of £122.28 and responsive repairs of £30 are reasonable.

**Costs**

38. The Respondent acknowledged that no legal costs were recoverable under the Lease, and consequently there was no reason to make an order under s20C Landlord and Tenant Act 1985.

## Schedule

Item	Original Cost	Finding	Allowed
Windows	£8732	The windows were of poor quality which had been acknowledged for some time yet not repaired. The Respondent had agreed to repair them at their cost and agree retention of £1500 from the service charges. The Tribunal did not agree. They were not of good quality and had not been repaired. The original windows to the living room were not in need of repair, having been renovated, and the Respondent had agreed they might be replaced on the basis that they would offer better sound proofing. Whilst this could not be guaranteed, she was dissatisfied and put up with windows in poor condition for many years. £1500 should be deducted for poor service and windows should be repaired and repainted without charge as offered to be in the condition new windows should be in.	£7232
Walls/ Rendering (Masonry)	£4764	Parties agreed revised figure of £2802	£2802
Roofs	£2717.43	The Applicant agreed a figure of £2542.43 to include the additional slates that were necessary. The Tribunal determined that the figure of £2542.43 was reasonable but that it was realistic to expect additional slates would be required. The Tribunal could not make a determination increasing time scale for payment.	£2542.43
Insulation	£105	The Respondent agreed to withdraw this amount	0

Item	Original Cost	Finding	Allowed
Windows in communal areas and other timber works	£1319.49	There was no evidence that the back door was in need of repair. Deduct £367. The cost of the back gate was considered reasonable. The basement door needed fire proofing and is part of the communal areas despite the Applicant not having access to the basement; it would be economic to replace it. Timber work for roof: no evidence in need of repair, quality did not appear good. Deduct £60 allowing £47 offered by Applicant. No evidence that was necessary or even carried out to service risers. Deduct £433.	£459.49
Drainage	£217	the Tribunal found this amount was reasonable	£217
Rainwater Goods	£560.07	There was no evidence that the rainwater goods were in need of repair	£0
Waste Pipe Work (internal soil pipe)	£235.85	There was no evidence that this work was necessary or was carried out	£0
Electrical Installation	£586.66	Fire safety lighting could be seen and this cost did not appear unreasonable. The Applicant agreed to pay 25% of the total, as she has no access to the basement; but she must pay one third of the costs.	£586.66
Decoration and Finishes	£471.87	The parties agreed that £208.33 should be deducted	£263.54
Metal Work	£88	The Respondent agreed to withdraw these charges	£0

Item	Original Cost	Finding	Allowed
Variations/ Extra work	£2168	<p>There was no evidence of the following items, costs for which should be deducted:</p> <p>Timberworks basement £1241.78  Prep for Insulation £171.28  Basement ballustrade £160.57  Extra. Over Sheep's Wool insulation £1063.01  Asbestos floor tile removal £186.27  Drainage survey angering out £438.91</p> <p>Other items were allowed;  Scaffolding/monoflex £321.15</p> <p>Electricity Cupboard £187.34</p> <p>basement sewage works £802.88</p> <p>new locks to front door £80.29</p> <p>Temporary Lights Basement £262.27</p> <p>Extra Bricks £296.40</p> <p>Extra Slates £1294.56</p> <p>Total £3244.89  one third = £1081.63</p>	£1081.63
			£15,184.75