

12861



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

Case Reference : CHI/21UG/LSC/2018/0016

Property : Flats 1,2,5 & 6 Colben Court, 17 Rafati Way,
Bexhill on Sea, East Sussex TN40 2EX

Applicant : Katharine Kennedy Redmile Gordon

Representative :

Respondent : Colben Court Residents Ltd

Representative : Godfrey John and Partners

Type of Application : Liability to pay service charges and/or
Administration Charges

Tribunal Member(s) : Mr D Banfield FRICS

:

Date of Decision : 11 July 2018

DECISION

The following sums are determined as payable;

Flat 1	£2,761.75
Flat 2	£2,781.63
Flat 5	£2,761.75
Flat 6	£2,781.63

Background

1. The Applicant seeks a determination under Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) as to whether service charges are payable for the years 2005 to 2018.
2. The Applicant also seeks an order for the limitation of the landlord's costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985 and Part 5A of Schedule 11 of the 2002 Act.
3. The Applicant has referred to the following previous applications in respect of this property.
 - CHI/21UG/LSC/2007/0012
 - CHI/21UG/LSC/2008/0080
 - CHI/21UG/LSC/2010/0018
 - CHI/21UG/LSC/2011/0089
 - CHI/21UG/LSC/2012/0001
 - CHI/21UD/LSC/2015/0074
4. These decisions are in respect of service charge years 2006 to 2013/14 and in accordance with Section 27A (4) of the 1985 Act the Tribunal has no jurisdiction to make a further determination in respect of these years and will therefore restrict itself to determining service charge years 2014/15, 2015/16, 2016/17 and 2017/18.
5. For each year in question except 2017/2018 the Applicant refers to *"No end of year service charge account, accountant's certificate, service charge demands, end of year summary with regard to leaseholder's credit or debit or offer of repayment of credit has been made"*
6. The Applicant asks the Tribunal to decide;
 - Whether or not new Managing agents have been appointed in the absence of nay(sic) proerly (sic) convened Company meetings
 - If so what they have agreed to do for the Company.
 - If so whether or not the paperwork they have issued complies with the lease and statute.
7. For 2017/18 the Applicant says that no service charge demands have been issued and asks the Tribunal to determine "whether paperwork issued complies with legal requirements"
8. The Tribunal's jurisdiction is set out in S.27A of the 1985 Act and is to determine whether a service charge is payable and if so by whom, to whom and the amount which is payable. The matters the Applicant refers to in paragraph 6 above will only be considered in so far as they have a bearing on the requirements of S 27A as described other matters being within the jurisdiction of other judicial bodies.

9. Directions were made on 19 February 2018 indicating that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objects in writing to the Tribunal within 28 days of the date of receipt of the directions.
10. No objection has been received and the matter is therefore determined on the papers received.
11. In accordance with an order for Disclosure Geoffrey John and Partners wrote to the Applicant and enclosed the following documents;
 - Service charge demands and statements for each of the applicant's flats from 4 September 2015 to 18 January 2018 which until June 2017 referred to the landlord as Hastings & Rother Property Services Ltd
 - Tenant's statements of account indicating no payments had been received
 - A Section 20 Notice of Intent dated 12 November 2015 on behalf of Hastings & Rother Property Services Ltd
 - A Statement of Estimates dated 4 October 2016 on behalf of Hastings & Rother property services Ltd together with a covering letter dated 17 September 2016.
 - Contractors' quotations referred to in the statement
 - Maintenance Fund statements showing the balance owed at 30/11/15 for each flat
 - Budgets for 24 June 2015 to 23 December 2015, 24 December 2015 to 23 June 2016, 24 June 2016 to 23 June 2017 and 24 June 2017 to 23 June 2018.
 - Report and Accounts for Cobden Court Residents Limited to 30 November 2015 and dated 30 July 2016
 - Statements of expenditure for years ended 23 June 2016 and 23 June 2017 with a detailed breakdown on the reverse and indicating the proportion due from each lessee
 - An undated sheet entitled "Service Charges – Summary of tenants' rights and obligations"
12. In her statement of case dated 27 March 2018 the Applicant refers to;
 - Incorrect company details on S.20 Notices, demands and statements.
 - Budgets with incorrect year end dates.
 - Company accounts for y/e 30 November 2015 not Service charge accounts
 - No statement of income from Accountants
 - Incorrect name used
 - Lack of compliance with previous Tribunal decisions
13. The Applicant further refers to;

- Abortive company AGM
 - No approval for change of address and year end
 - No company accounts approved
 - Debtors incorrectly shown in 30 November accounts
 - No agreement that reserve fund may be held
 - Company pursued her for debt when accounts showed no money owing
14. The Applicant says however that if the documents are accepted;
- Bank charges are lower than previously accepted by Tribunal, previous years should be reduced in line
 - Accountant's fees higher than those previously capped by Tribunal
 - No details of repairs provided
15. Subject to satisfactory explanations in respect of the matters referred to in 14 above the Applicant accepts the payments as reasonable if correctly demanded.
16. However, the Applicant then goes on to say that;
- Documents provided do not accord with monies spent
 - No sums repaid to tenants where estimates exceed expenditure
 - Credits to her account not made correctly and in part treated as payments to the company not to the service charge account
 - Insurance payment not credited to her account after she had paid for works
 - Emergency roof works carried out by Rother District Council charged to her account
 - Despite calls by previous Tribunals service charge accounts not prepared.
 - No proof that Managing Agents properly appointed.
17. In a reply by Godfrey John & Partners on behalf of the Respondent Mr John refers to the Applicant's efforts to frustrate the maintenance of the building and the use of the Tribunal to further delay their contribution. He says the points raised are simple errors that have and will be promptly addressed or have been dealt with by previous Tribunal hearings. He says that reference to the Company complicates matters as it is the service charge which is to be determined. Whilst he is unclear from the Applicant's statement what it is that is disputed he provides a point by point response. A summary of which is as follows;
- No contributions have been made by the Applicant following service charge requests
 - Demands have been amended to show the correct landlord
 - S.20 Notices will be re-issued in the correct name
 - Maintenance fund details are correct and the Applicant has not identified any inaccuracies
 - The year end is correct at 23 June
 - The statement of expenditure complies with the 1985 Act

- Company accounts have been filed
- The Applicant has never advised him that an incorrect name was being used
- Company accounts and service charge accounts are different. Company accounts only need to be approved by a Director
- The statement of expenditure assumes lessees have paid their contribution.
- Bank charges for previous years have been determined and for the years in question are reasonable.
- Accountant's fees are reasonable and have not previously been challenged.
- Invoices are available if the Applicant requests to see them
- Other than late service charge accounts the terms of the lease have been complied with
- Service charge accounts have been sent to all leaseholders
- The Reserve Fund does not require an account as the service charge is in arrears. A separate bank account has been opened
- Both years to June 2017 have been certified by Derek Evans Chartered Accountants
- A copy of the Management Agreement has been sent to the Applicant

Discussion and Decision

18. The Tribunal's jurisdiction is set out in section 27A of the Act and is to decide all aspects of liability to pay service charges. Section 19 of the Act states that service charge is only payable to the extent that it has been reasonably incurred and the works are of reasonable standard.
19. The Applicant raises a number of issues as referred to in paragraph 13 above regarding the governance of the company which do not fall within the tribunal's jurisdiction as referred to above and will not therefore be considered in this determination.
20. At paragraph 27 of her statement of case the Applicant accepts the payments as reasonable subject to clarification in respect of Bank Charges, Accountant's fees, management charges and repairs.
21. However, from paragraph 28 onwards the Applicant then raises a number of other objections as referred to in paragraph 16 above.
22. The Applicant refers in her application to Judge Morrison's decision of 12 July 2016 but inexplicably fails to include it in her hearing bundle. As the case concerns the same parties and the question of prejudice does not arise I intend to refer to the decision in this determination.
23. The matters raised in her paragraph 35 and summarised by me in paragraph 16 appear to have featured in previous decisions but as no indication as to when these incidents occurred it is impossible to say for

certain. It is for the Applicant to make her case and in respect to the matters raised she has failed to do so.

24. Various aspects of the service charge regime at this property have been decided in the 6 previous tribunal determinations and it is not intended to rehearse the arguments once again. In summary those decisions have determined that;
- The service charge mechanism of the lease is clearly set out in paragraph 8 of Judge Morrison's decision of 12 July 2016 and, as far as is relevant to this application, requires estimated on account payments to be made on 24 June and 25 December, an end of year final account by the Management Company, certification of the total expenditure and tenant's proportion with the balance paid by the tenant within 21 days or to credit any excess to the tenant.
 - The year end is 23 June although the management company may substitute another date and it was noted at paragraph 20 of Judge Morrison's determination that the service charge year now runs from 1 December to 30 November.
 - At paragraph 32 Judge Morrison explains that the requirement for certified accounts does not affect the tenant's obligation to pay the on-account charges. The payment of any balancing charge would however require such accounts to be produced.
 - At paragraph 64 it was determined that accountancy fees are limited to matters referred to in the Fifth Schedule to the lease and for 2012/13 were reduced to £200 from £530.
 - At paragraph 65 £1,360 management fees were allowed but not the £520 company secretarial fees claimed.
25. Previous decisions of this Tribunal have criticised the management of the property and the failure to separate company from service charge expenditure. Once again company accounts for 2014/15 have been submitted as service charge accounts which they are not. For 2015/16 and 2016/17 however statements of expenditure have been provided which appear to be compliant with Sixth Schedule para 6.3.
26. Demands with the correct identity of the landlord are in the bundle and the covering letters refer to the inclusion of the Tenant's rights and obligations notice. As such I have no difficulty in determining that where reasonable the sums claimed are payable subject to no arrears charges being added until after the demands have been corrected, that the demands relate to on account charges only and subject to any S.20 and other adjustments.
27. Whilst the sums demanded are not identified as such it is clear from the dates on which they became due that they are "on account" and need only be based on the landlord's estimate of likely expenditure for the for the forthcoming year. As long as the estimated charges appear reasonable it is unnecessary for the Tribunal to examine actual expenditure.

28. There are budgets for each of the years in question in the bundle and I am satisfied that each of the items referred to are recoverable under the lease and, save for Accountancy are reasonable in amount.
29. Accountancy charges are indicated at £300 for 2016/17 and £360 for 2017/18 with nothing included for 2014/15 and 2015/16. These charges were subject to Judge Morrison's decision where she indicated the amount of time that the preparation of simple service charge accounts should involve. In 2012/13 she allowed £200 and following the same logic I allow £250 for each of the years at issue resulting in a total reduction of £160 equating to £20 per flat.
30. The respondent accepts that the S.20 notices incorrectly referred to Hastings and Rother Property Services Ltd and not to the landlord. In determining whether this error was fatal to the process I have considered whether the recipient lessee would have been prejudiced. At the time this error was repeated in most communications from the landlord or his agent and whilst the form of rent demands is strictly regulated that is not the case with S.20 notices. The recipient must have known on whose behalf the notice was prepared and the error did not prevent her from responding should she chose to do so. As such I determine that the consultation was properly carried out.
31. The sums demanded are identical for each flat save that for the half year from 24 June 2016 flats 1 and 5 have a charge of £350 whereas for flats 2 and 6 the charge is £369.88. The charges are;

	1 & 5	2 & 6
24/06/2015	£350.00	£350.00
24/12/2015	£350	£350
24/06/2016	£350.00	£369.88
02/11/2016 S.20	£507.37	£507.37
24/12/2016	£369.88	£369.88
24/06/2017	£417.25	£417.25
27/09/2017 Admin	£36.00	£36.00
24/12/2017	£417.25	£417.25
10/10/2017 Admin	<u>£60</u>	<u>£60</u>
Total	<u>£2,857.75</u>	<u>£2,877.63</u>

32. Turning now to the sums and years at issue evidence of which are the documents appended to Mr John's letter to Miss Kennedy of 13 March 2018;

Flat 1

33. A letter from Godfrey John & Partners dated 17 January 2018 encloses a service charge demand to 23 June 2018 and a Tenant Statements of

- Account showing a total of £2,857.75 which include £96 in administration fees and a section 20 payment of £507.37.
34. The first compliant demand showing the correct landlord was dated 6 June 2017 and the first administration charge of £36.00 was levied on 27/09/2017 and a second of £60 on 10/10/2017.
 35. After a number of years serving incorrect demands I consider that to levy an administration charge some 3 months after the first correct demand is harsh and I disallow the charges of £96 in their entirety.
 36. After deducting £20 for accountancy charges and £96 administration charges I determine that the sum of £2,761.75 is payable.

Flat 2

37. Applying the same adjustments to the demand for £2,857.63 dated 18/01/2018 I determine that the sum of £2,781.63 is payable.

Flat 5

38. As Flat 1, I determine that the sum of £2,761.75 is payable.

Flat 6

39. As Flat 2, I determine that the sum of £2,781.63 is payable.
40. I repeat the suggestion of previous Tribunals that the parties try and resolve their differences. Whilst the management procedures in the past have been far from ideal a managing agent has now been appointed who it is to be hoped can provide some degree of separation between the company and the service charge.
41. Judge Morrison's decision was clear that with regard to on account charges the provision of accounts as prescribed by the lease was not required. Nevertheless, despite demands having been compliant since June 2017 the Applicant has not paid the outstanding sums due, receipt of which is required for the satisfactory management of the property.

Costs

42. Neither party has addressed the applications under S.20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 to Commonhold and Leasehold Reform Act 2002.
43. If parties wish to make submissions on these matters they should send them to the Tribunal by **25 July 2018** following which a determination will be made.

D Banfield FRICS
11 July 2018

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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate 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.