



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

**Case Reference** : LON/00AH/LSC/2017/0313

**Property** : 9 Bletchingley Close, Thornton Heath,  
Surrey CR7 7HT

**Applicant** : Mrs Teresa Hollidge

**Representative** : Mr Ray Hollidge (Husband)

**Respondent** : Retirement Lease Housing Association  
(Regd No. 19730R)

**Representatives** : Mrs L Collis CEO  
Mrs L O'Sullivan Asset and  
Compliance Manager  
Ethical Lease Management

**Type of Application** : Section 27A Landlord and Tenant Act  
1985 – determination of service  
charges payable

**Tribunal Members** : Judge John Hewitt  
Mr K M Cartwright FRICS

**Date and venue of  
hearing** : 19 February 2018  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 26 February 2018

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DECISION

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## **The issue(s) before the tribunal and its decisions**

1. The issues before the tribunal were:
  - 1.1 The reasonableness of the sum of £15,000 allocated to the Future Maintenance Fund (FMF) in the budget for the year 2017/18;
  - 1.2 An application pursuant to s20C Landlord and Tenant Act 1985 (the Act) in relation to any costs which the respondent might have incurred or might incur in connection with these proceedings; and
  - 1.3 An application by the applicant that the respondent reimburse her the sum of £300 being the fees paid by her to the tribunal in respect of these proceedings.
2. The decisions of the tribunal are:
  - 2.1 The amount of £15,000 to be allocated to the FMF put into the budget for the year 2017/18 was a reasonable sum;
  - 2.2 By consent an order shall be made (and is hereby made) that none of the costs incurred or to be incurred by the respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in any service charge payable by the applicant to the respondent; and
  - 2.3 The application by the applicant for reimbursement of the fees of £300 is refused.

### **Procedural background**

3. The applicant is now the lessee of the Property having inherited it from her late mother.
4. On 31 August 2017 the tribunal received an application from the application pursuant to s27A of the Act. Included was a related application pursuant to s20C of the Act in relation to any costs which the respondent might incur in connection with the proceedings. The respondent was cited as being Ethical Lease Management Limited (ELM).
5. Directions were duly given and the parties served their respective statements of case upon one another.
6. The matter came on for hearing before us on Monday 19 February 2018.

The applicant attended along with her husband who presented her case on her behalf.

The respondent was represented by Mrs Collis and Mrs O'Sullivan both of ELM.

As a preliminary issue it was clarified that the freehold title as registered at Land Registry is registered in the name of Retirement Lease Housing Association (RLHA), a registered Industrial and Provident Society and that ELM was its duly appointed managing agent. ELM is also a registered Industrial and Provident Society and is very closely connected with RLHA. Indeed they share offices at Victoria House, Aldershot.

Mrs Collis confirmed that she was fully authorised to represent RLHA.

We have formally amended the proceedings so that RLHA is designated as the respondent.

### **The issue**

7. The single principle issue before us concerned the budget for the accounting period 1 September 2017 to 31 August 2018 and the inclusion in that budget of an allocation of £15,000 to the FMF.
8. The development comprises 31 properties, most of which are bungalows, but there are three apartments. Thirty properties have been sold off on long leases. The 31<sup>st</sup> property is occupied by a warden or estate a manager. The development was built in the late 1980s and was intended to be a retirement complex.
9. The terms of the lease were not in dispute. In brief the landlord is to prepare a budget prior to each accounting period. The lessee is required to pay an interim payment (being a sum on account) by two equal instalments. At the year-end an account of actual expenditure is taken and there is a provision for balancing debits or credits as the case may be.

It is expressly provided (clause 4(ii)(d)) “... *that in specifying such interim payment the Lessor may create a reserve fund for future repairs or painting*”

10. The gist of the case for the applicant was that when the budget was prepared in July 2017 the respondent did not have before it sufficiently detailed information to justify an allocation of £15,000 into the FMF. As the year has gone on more detailed information has come to light which might (just) support that view, but that information was not before the respondent in July 2017. Mr Hollidge complained that the budget setting was not properly or professionally undertaken. In recent months Mr Hollidge has been provided with a spreadsheet which he considered to be reasonably professional, although there were some entries on it which might be questionable. Mr Hollidge was of the view that a spreadsheet along similar lines ought to have been provided at the start of the year when the budget was set, not part way through it.

Mr Hollidge was also critical of the manner in which accounting matters and information are dealt with by ELM. He complained that the meetings convened to discuss the budget and accounts are not proper consultations but more along the lines of information only and presentations about what decisions have already been made.

### **The respondent's position**

11. It may be helpful to set out a little background that was not in dispute.
12. There has always been a FMF and for a number of years there was an allocation of between £8,000 and £12,000 to it each year. At one point the balance in the FMF was £70,000 +.

In 2013 a lessee (not the applicant of her late mother) took the view that a FMF of circa £70,000 was too large and made an application to the LVT in connection with it. That application was compromised by the respondent agreeing to cap the FMF at around £50,000.

Thus, for the years 2014/15, 2015/16 and 2016/17 there was no allocation at all to the FMF.

13. Come 2016 major works of external redecoration were put in hand alongside a planned gradual and annual replacement programme for repair/replacement of Velux windows. There was also a need to carry out works to the warden's apartment.
14. In 2016 a firm named Pellings were instructed to undertake a Planned Maintenance Survey. Pellings reported in November 2016. That report did not cover all proposed works and its costing omitted VAT and professional fees.
15. The 2017/18 budget was put together by ELM's area manager who took into account the Pellings report, the continuing Velux window replacement programme and his general, if broad, experience of the likely costs of refurbishment of the warden's apartment. At some point, we were not told exactly when, the cost of the proposed external redecorations were estimated to cost £64,000 +. In the final accounts for 2016/17 a special levy was made to ensure there were sufficient funds available to pay for the works. Mr Hollidge told us that there was no issue over the quality or costs of those works and he was quite happy with them.
16. The above matters were taken into account in the budget setting and the view was also taken that the FMF should not be reduced below £15,000 in order to have funds available for any emergency that might arise.
17. Mrs Collis told us that in August 2017 the balance in the FMF was about £60,000 and that in the event the major works came in at about £54,000, leaving £6,000. At year-end the respondent will review actual expenditure and will review the actual amount to allocate to the FMF.

That might be £15,000 or it might be more or less depending on the financial position at year-end.

## **Discussion and conclusions**

### **The FMF allocation**

18. A five year plan for the FMF might be more helpful if it was set out in a different way and this was discussed at the hearing. There might also be some communication issues that would benefit by review and improvement which Mrs Collis accepted. But, budget setting sometimes involves taking a broad view. Precise information is not always available. We consider that Mr Hollidge' expectation of a reasonably detailed spreadsheet supported by some detailed costings at prior to the commencement of the year is an unreasonable expectation.
19. Looking at this matter in the round we find that the allocation of £15,000 to the FMF (for budget purposes only) was well within the range of what a landlord acting reasonably might arrive at. We do not say that all landlords would have arrived at the same figure but the amount was not so excessive that no reasonable landlord could have arrived at it. We thus find that the amount was a reasonable amount to insert in the budget.
20. We bear in mind also that it was only a budget figure and the actual amount to be allocated to the FMF in 2017/18 has not yet been determined. In due course when the 2017/18 accounts are issued it will be open to lessees to challenge any figure which they consider to unreasonable in amount.

### **The s20C application**

21. Mrs Collis told us that the respondent had no intention of passing any costs of these proceedings through the service charge account and that she was content that an order be made for avoidance of any doubt.

### **Reimbursement of fees £300**

22. The tribunal has a wide discretion, but is required to take a judicial approach as to what is fair and equitable.
23. In essence the applicant's case was without merit and the applicant has failed to establish her case. In these circumstances we find it would not be fair or just to require the respondent to reimburse the fees. We therefore refuse the application.

Judge John Hewitt

26 February 2018

## **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.