



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

**Case Reference** : CHI/21UD/LSC/2019/0018

**Property** : Flat 1, 1a West Hill Road, St Leonards-on-Sea, East Sussex TN38 0NA

**Applicant** : Ooty Freehold Management Limited

**Representative** : Godfrey John & Partners

**Respondent** : Mr Michael O'Reilly deceased

**Representative** :

**Type of Application** : Determination of service charge

**Tribunal Member(s)** : Judge D. R. Whitney  
Mr B Simms FRICS

**Date of Hearing** : 30<sup>th</sup> August 2019

**Date of Decision** : 10<sup>th</sup> September 2019

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DETERMINATION

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## **Background**

1. The Applicant seeks a determination of the Respondents liability to pay and the reasonableness of various service charges.
2. The application relates to 1a West Hill Road, St Leonards-on-Sea (“the Property”). The Applicant is a company in which four of the six leaseholders are a member. Flat 1a belongs to a Mr Michael O’Reilly who died in 2012. He was a member of the freehold company. It appears that no person has obtained probate.
3. Directions were issued on 22<sup>nd</sup> March 2019 following a telephone CMH. Mr J. Reilly the deceased Respondent’s brother took part in the same. He indicated he wished to be heard on the application and was in the process of obtaining a grant of probate. Accordingly directions were issued.
4. The Applicant has complied with the directions but no further substantive steps have been taken by Mr J Reilly. The Applicants representative has supplied a hearing bundle. References in [] are to pages within that bundle.

## **Inspection**

5. The tribunal inspected the Property immediately prior to the hearing. Mr Graham John, managing agent, Ms K. Holloway (flat 2) and Patrick and Nicolas Glass (flat 1c) were in attendance. No representative of the Respondent or his estate was in attendance. The tribunal did knock the door to the flat which has a sticker on it directing people to call Mr J Reilly but there was no reply.
6. The Property is a converted house. It appears to have been built probably in the 1800’s and is constructed of brick with tile hung upper parts and a multi pitched clay tile roof. It is apparent that the Property would benefit from works being undertaken.
7. At the front there is a small garden with a path leading to a door and communal hallway. The hallway leads through to the staircase for accessing the first and second floors. The entrance to the Respondent’s flat is on the ground floor. The hallway was carpeted and decorated although it would benefit from renovation. Many original features were present such as a stain glass window on the stairway landing.
8. Externally to the Eastern side was a passageway leading to the rear. The entrance to flat 1c was off the same. At the rear was a small garden area. The tribunal could see that some works had been undertaken to the rear and the tile hangings. Again it was apparent some works were required.

## **The Law**

9. The relevant law is contained in section 27A of the Landlord and tenant Act 1985 a copy of which is attached marked Annex A.

## **The Hearing**

10. The hearing was attended by Mr Graham John, Mr Nicolas Glass, director of the Respondent and Mr Patrick Glass. Messrs Glass are the joint owners of Flat 1c.
11. There was no attendance by any person on behalf of the deceased Respondent. The tribunal was satisfied that Mr J. Reilly, the brother of the Respondent had been given notice of the hearing. He had not communicated with the tribunal. Mr John confirmed he had received no communications from him.
12. The tribunal did remind those present that of course given the Respondent was deceased whilst it could determine whether or not valid demands had been issued and whether the sums claimed were reasonable the Applicant would then need to take advice as to enforcement. The tribunal highlighted that it would appear no one had obtained a grant of probate or letters of representation.
13. The tribunal was provided with a statement of Mr Nicolas Glass [Tab 4 pg 1 and 2]. Mr Glass confirmed that Mr John was appointed as the Applicants managing agent.
14. Mr John confirmed that the bundle only contained the statements of expenditure for the maintenance charge years ending 2014 to 2018 inclusive. These were the years which the tribunal would be adjudicating upon.
15. The tribunal was taken through the various lease terms relied upon by the Applicant.
16. Mr John explained whilst the lease referred to the subject flat paying one third of the maintenance costs [Tab 1 pg31] in fact the service charges were apportioned equally between all 6 flats. Pursuant to clause (q) of Part 1 of the Third Schedule the leaseholder was to pay the maintenance charge within 21 days of demand. The mechanism for calculation and demanding the service charge was set out in the Sixth Schedule [Tab 1 pgs 31,33 and 34]. The maintenance charge consisted of all costs incurred by the landlord in complying with its obligations under paragraphs 2,3,4 and 5 of the Fourth Schedule. These clauses covered repairs, decorations, cleaning and insuring the Property.
17. The tribunal next was taken through in turn each of the years in dispute [Tabs 7-11 inclusive]. Mr John confirmed in respect of each of the years the tribunal was being asked to determine that the net expenditure for

the year was reasonable and that the Respondent should pay one sixth of this sum.

18. Mr John confirmed that his firm as managing agents received no commission for arranging and placing the insurance. As a result they made a charge of 10% of the insurance cost for dealing with the same. This was in addition to his management fee which was listed separately.
19. In respect of bank Charges Mr John's practice was to charge these to the service charge. Various invoices were included within the bundle detailing the same, by way of example [Tab 8 pg 51] an invoice for a charge of £35 for a returned standing order.
20. Mr John explained in respect of reserves there was no separate account. Reserves currently were held in the general service charge account which was non-interest bearing. On questioning by the tribunal it was explained that due to the large arrears owing by the Respondent effectively there were only very limited reserve funds of currently not more than £1,000. Sadly for many years there had been substantial arrears relating to this flat which now amounted to about £10,000 [Tab 12 pgs 22 & 23].
21. For each of the years there were copies of invoices for the expenditure incurred including for major works undertaken in 2018 and copies of section 20 Notices [Tab 13] were included.
22. At [Tab 12] were copies of what Mr John called the invoices being the demands for sums claimed. He confirmed that with each demand a copy of the summary of rights and obligations would have been sent.
23. Mr John confirmed that the address on the demands was his office address as the managing agent. Mr Nicholas Glass confirmed the registered office address was different and he believed it was his home address. The tribunal raised the case of Beitov Properties v. Ellison Martin [2012] UKUT 133 (LC). Mr John was not familiar with the case and understood he could simply include his address as being an address for service on the demands.
24. Turning to the amounts Mr John confirmed that budgets were prepared although none were contained within the bundle. The invoices were issued seeking amounts on an annual basis. Insurance was invoiced separately as and when the premium was paid being usually in June of each year. On questioning by the tribunal Mr John appeared to accept this was not in accordance with the requirements of the lease for interim charges and balancing charges and that the maintenance charges under the lease should include the cost of insurance.
25. The tribunal noted that whilst the first invoices were sent to Mr M. O'Reilly subsequent demands were addressed to Mr J. Reilly, the deceased's brother. Mr John stated this had changed at the request of

Mr Reilly. No Land Registry entries were in the bundle but Mr Nicholas Glass indicated he believed that sometime ago he had checked at the Land Registry and the registered owner of the lease of the flat was Mr M. O'Reilly.

26. Mr John confirmed that throughout this period the majority of leaseholders have paid their service charges and currently save for this flat there are no significant arrears.
27. At the end of the hearing Mr John requested that there do be an Order that the Respondent pays the tribunal fees totalling £300. He further submitted that an Order should be made by the tribunal under Rule 13 seeking costs. His submission was that Mr. J. Reilly had unreasonably conducted the litigation. He confirmed he did not have with him a statement of costs.

### **Determination**

28. This is an unfortunate case. The Respondent died now over 7 years ago and the Applicant finds itself in an invidious position with maintenance charges being incurred and no one having dealt with the Respondents affairs. The tribunal made clear to those present they would need to take legal advice as to how to resolve matters following on from our determination.
29. Whilst Mr J. Reilly initially expressed a wish to be involved with this determination he has taken no substantive part beyond two letters to the tribunal [Tab 5]. Mr Reilly appears to challenge whether Godfrey John and Partners are properly appointed managing agents and challenges the way the Applicant company is run. Mr Nicholas Glass as director confirmed that Godfrey John and Partners have been the companies managing agents at all material times. The tribunal is satisfied on this point and Mr Reilly must take his own advice as to the running of the company which is not something this tribunal has jurisdiction over.
30. Mr Reilly highlights he does not have probate for his late brothers' estate and that this limits his options. We agree.
31. Turning to the matters to be determined we were not persuaded that valid service charge demands had been issued.
32. The lease (in the Sixth Schedule) sets out a clear mechanism. The Landlord is to produce an estimate for each year and can demand this sum on account by two equal payments on 25<sup>th</sup> March and 29<sup>th</sup> September in each year [Tab 1 pg 33]. This estimate should include an amount for insurance and any major works envisaged and a reserve fund which may be set up under clause 1(d) of the Sixth Schedule. The service charge year runs from 25<sup>th</sup> March in each year and after the year end if there is any balance due this may be demanded.

33. None of the demands were issued in accordance with the terms of the lease. Demands appear to have been issued on an ad hoc basis seeking payment of insurance, the agents administration charge on the same and estimated service charges payable for the whole year. The bundle contained no evidence of estimates or of any balancing charges having been requested.
34. Further none of the demands contained the Landlords actual address. The landlords name was given and an address for service. This is not sufficient under Beitov Properties v. Ellison Martin [2012] UKUT 133 (LC). Further it seems certain demands have not been addressed to the legal owner of the flat. Again this is a requirement for a valid demand. For all of these reasons we were not persuaded that valid demands had been issued.
35. Taking account of the above currently none of the sums claimed are payable by the Respondent. It may be that demands can be issued but the Applicant must take advice on this point.
36. Turning next to the reasonableness of the costs claimed. Whilst the proportion which is sought from the Respondent does not comply with its requirements under the lease the Applicant is only seeking one half of the sum it may be entitled to under the lease. The tribunal is satisfied the Applicant can seek less than its strict legal entitlement and this is reasonable.
37. The tribunal considered carefully all of the statements of expenditure. Each was certified by a Chartered Accountant that the sums were a “fair and accurate summary...”. Copies of invoices were attached.
38. Whilst normally costs such as administration fees for arranging insurance and bank charges would fall within the management fee payable to any agent we take note of the modest management fee charged. The lease allows “reasonable fees and disbursements paid to any managing agents...” and we were satisfied on the facts of this case that such charges are reasonable.
39. All other sums appeared reasonable including the need to build up a reserve fund. On the tribunals own inspection of the Property it plainly requires major works to be undertaken in the not too distant future. It is clear that the non-payment in respect of the subject flat over many years is adversely affecting the management of the Property as a whole.
40. The tribunal was satisfied that the Net Expenditure for the Year in each year in question was reasonable and finds that 1/6 th of this sum is a reasonable amount for the Respondents estate to be required to pay being:

2014

£779.87

2015	£788.89
2016	£864.93
2017	£879.75
2018	£1,972.78

41. The tribunal is satisfied that the Respondent should pay the tribunals fees of £300. The tribunal is satisfied it was reasonable and proportionate for the application to be made to try and move matters forward. The tribunal directs that the Respondent shall pay such sums within 28 days.
  
42. The tribunal declines to make an order under Rule 13. This was the Applicants application to determine the reasonableness of the charges. Whilst initially Mr J. Reilly engaged with the process, he then took no further part. Mr. J. Reilly was so entitled given currently he has not been appointed Executor of the estate. No additional costs have been incurred by the Applicant as a result of this, as the Applicant, having decided to apply to the tribunal would always have had to go through each of the various steps to obtain the determination on the sums due.

Judge D. R. Whitney

#### RIGHTS OF APPEAL

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





