



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

Case Reference : **CHI/29UL/LSC/2018/0094**

Property : **Flat 1, 17 St Johns Church Road
Folkestone
Kent CT19 5BQ**

Applicant : **Mr R S Avery**

Representative : **In person**

Respondent : **BCB Developments Ltd**

Representative : **Mr Jason Reynolds**

Type of Application : **Determination of service charges:
Section 27A Landlord and Tenant Act 1985**

Tribunal Member : **Mr B H R Simms FRICS (Chairman)
Mr N I Robinson FRICS (Surveyor Member)**

Date of Decision : **24 May 2019**

DECISION & REASONS

SUMMARY OF DECISION

1. The Tribunal determines that none of the disputed service charge amounts are reasonable or payable.
2. The Tribunal makes no orders as to costs.

THE APPLICATION & BACKGROUND

3. The application dated 14 October 2018 seeks a determination under section 27A of the Landlord and Tenant Act 1985 (“the Act”) of the Applicant’s liability to pay various service charges. The Applicant also seeks an order for the limitation of the Respondent’s costs in the proceedings under S. 20C of the Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”).
4. The Applicant is the long lessee of the Ground Floor Flat and the Respondent is the Freeholder of the building.
5. A telephone Case Management Hearing was held on 09 January 2019 following which Directions for conduct of the case were issued dated the same day. These Directions identified the service charges in dispute as:
 - 2006/07 charge for major works
 - 2015/16 charge for major works
 - 2016/17 and/or 2017/18 charge for major works
6. Although a bundle of documents was received in accordance with the Directions it was deficient in several respects. On 15 March 2019 the Tribunal wrote to both parties identifying the missing documents and requesting copies. As nothing further was received the Tribunal wrote again in a similar manner and advised the parties that if these documents were not provided by 18 April 2019 the Tribunal would determine the case based on the documents provided. Neither party requested an oral hearing.
7. Nothing further was received and the Tribunal determined the case based on the documents and the Bundle received.

LEASE

8. The Tribunal had before it a certified copy of an undated lease for the ground floor flat 1 at 17 St Johns Church Road, Folkestone, Kent between East Kent (Folkestone) Properties Ltd and Alan Douglas Young and Alison Long which is agreed as the lease under which the parties to these proceedings hold the property. The term is 99 years from 01 January 1987 at a rent of £50.00 p.a.
9. The Tribunal has had regard to the full lease but terms relevant to this determination are summarised as follows:

10. The Landlord is required to maintain the building as set out in the Second Schedule of the lease. In general terms this means maintaining and keeping in good repair and condition the main structure and roof, the common parts, insurance and the painting of the whole of the outside wood and iron work.
11. Clause 3 of the lease requires the Tenant to pay, on account, a maintenance contribution of one third of the certified estimated annual cost of maintenance as described in the second schedule. This payment is made by two equal instalments on 25 March and 29 September in each year.
12. At the end of each year on the 29 September the account is reconciled and if there is a shortfall this becomes payable by the Tenant. If there is a surplus in the fund this is carried forward to the credit of the Tenant. Should it be found that the estimated amount for maintenance is insufficient to cover the total cost then the Landlord may issue a supplementary certificate and the tenant is required to pay this extra amount on demand.
13. Proper accounts are to be kept and as soon as practicable after 29 September in every year the Tenant is to be provided with a copy of them.

LAW AND JURISDICTION

14. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable.
15. The Tribunal's jurisdiction derives from the Act as amended, it can decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties.
16. S.18 defines the meaning of a service charge as being "*an amount payable by a tenant ... in addition to the rent – (a) which is payable directly or indirectly, for services, repairs, maintenance, 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*".
17. S.19 limits the relevant costs to be taken into account in determining the amount of service charge only to the extent that they are reasonably incurred and only if the services or works are of a reasonable standard.
18. S.20 requires consultation, in accordance with regulations¹, when the contribution to the service charge by any lessee for qualifying works exceeds the relevant amount. If the procedure is not followed the amount of any contribution to the service charge is limited to this relevant amount, currently for this type of work £250.00.
19. S.20C provides that the Tribunal may make an order that all or any of the costs incurred or to be incurred by the landlord in connection with proceedings before it are not to be regarded as relevant costs to be taken into account in determining the

¹ The Service Charges (Consultation Requirements) (England) Regulations 2003 S.I. of 2003 No. 1987

amount of any service charge payable by the tenant. The order may be made if the Tribunal considers it just and equitable in the circumstances to do so

20. S.27A provides that a Leasehold Valuation Tribunal may determine whether a service charge is payable and if it is, the Tribunal may also determine the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable and the manner in which it is payable. These determinations can (with certain exceptions) be made for current or previous years and also for service charges payable in the future.
21. Paragraph 5A of Schedule 11 to the 2002 Act provides that a tenant may apply for an order reducing or extinguishing the tenant's liability to pay an administration charge in respect of litigation costs.

INSPECTION

22. The Tribunal members did not inspect the property.

REPRESENTATIONS AND EVIDENCE

23. Both parties provided written representations, supported in part by bundles of documents. Neither party was able to furnish the Tribunal with documents that showed that proper demands had been made for service charges or that the on-account amounts, or final account amounts had been certified by the Landlord or Managing Agent on which the demands could be based.
24. It may be that the relevant documents and certificates exist but the Tribunal is not in possession of them in spite of several attempts to obtain them.
25. The Representations of the Applicant are jumbled and relate to amounts paid and insurance claims rather than the reasonableness or payability of the service charges.
26. The Landlord's, or Landlord's agent's statement, does not address, or is unable to address the issues raised.

CONSIDERATION

27. The Application is limited to the matters listed in the Directions.
28. As the Tribunal has no documents to identify the amounts demanded set out in a proper form the Tribunal is unable to determine that any of the disputed service charge amounts are reasonable or payable.

COSTS

29. There are applications for costs as set out in paragraph 3 above. Neither party addressed the Tribunal on either application, accordingly no orders are made.

DETERMINATION

30. The Tribunal determines that none of the disputed service charge amounts are reasonable or payable.
31. The Tribunal makes no orders as to costs.

Mr B H R Simms FRICS (Chairman)

Date: 24 May 2019

Appeals

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.