



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

Case reference : **CHI/29UL/LSC/2019/0105**

Property : **Flats 1-7 11 Crow Hill, Broadstairs,
Kent, CT10 1 HN**

Applicant : **John Edward Harris and Jane
Kathleen Williams (Flat 1)
Paul James Rohan (Flat 2)
Adrian and Tara Gilham (Flat 3)
Callum Alexander Hobson (Flat 4)
Kristopher Stewart McLelland Bate
(Flat 5)
Helen Pearce (Flat 6)
Deborah French (Flat 7)**

Representative : **Adrian Gilham**

Respondent : **Tindrell Limited**

Representative : **Wade Barker
Bamptons**

Type of application : **Liability to pay service charges
section 27A of Landlord and Tenant
Act 1985**

Tribunal member(s) : **Judge Tildesley OBE,**

Venue and Hearing : **Margate Law Courts
18 December 2019**

Date of decision : **20 December 2019**

DECISION

Application

1. The Applicants seek a determination under Section 27A of the Landlord and Tenant Act 1985 as to whether service charges for 2015 to 2018 and the estimated service charge for 2019 are payable.
2. The Tribunal determinations of CHI/29UN/LSC 2018/0049 and CHI/29UN/LIS2018/0001/0002/0012/0055 provide the background in respect of the property and the leases and give context to the present dispute.
3. The Applicants supplied a hearing bundle which contained a copy of their application, the Respondent's statement of case, and their response to the Respondent's statement of case.
4. The Application was heard on 18 December 2019. Mr Gilham represented the Applicants. Mr Harris, Ms Williams, Ms Clair Hobson (for her son Callum Hobson) and Mr Bate were also in attendance. Mr Barker represented the Respondent. Ms Francesca Elu, Director of the Respondent, was in attendance.

The Dispute

5. The parties agreed that there remained five issues in dispute which were identified in the Respondent's statement of case.
6. Judge Tildesley stated at the commencement of the hearing that he would give a view and record the understanding reached by the parties at the hearing on each issue. Judge Tildesley explained the rationale for adopting this approach which was that in respect of the issues (a) to (d) the Tribunal did not have the power to make the orders requested. The act, however, of recording the understanding between the parties would provide a platform for moving forward and reflected the current constructive relationship between the parties.
7. Judge Tildesley had regard to the parties' arguments which are set out in the Respondent's statement of case and the Applicants' response. Judge Tildesley does not intend to repeat the arguments in this decision, and asks the parties to refer to their respective arguments in the said documents.
8. The lease referred to in this decision was for Flat 4 dated 8 November 2002 and made between MCL Holdings of the one part and Jerry Boer of the other part for a term of 125 years from the 1 January 2002. Judge Tildesley understands that the lease is representative of the other leases at the property.

Issue (a): The Validity of Service Charge Accounts for the Years ended 24 December 2015, 2016, 2017 and 2018?

9. The Respondent accepted that under paragraph 9 to Schedule IV to the lease that a Chartered Accountant is required to prepare an annual account and an audit of those accounts which is to be provided to the leaseholder of each flat.
10. The parties agreed that draft audited accounts for the year ended 24 December 2018 had been prepared and were acceptable subject to additional wording to be agreed by the parties.
11. The Respondent is prepared to provide audited accounts for the Years ended 24 December 2015, 2016, and 2017 but it would cost £3,000 for each year which would be recoverable as a service charge from the leaseholders. The Applicants were urged to consider whether their remaining questions on the accounts for 24 December 2015, 2016, and 2017 could be resolved without the necessity for the accounts to be audited in accordance with the lease.
12. Judge Tildesley pointed out that he had no power to Order the Respondent to supply audited accounts. The Applicants would have to pursue an application before the Court, if that is what they required.

Issue (b): The Policy of Using the Reserve Fund as a Float rather than utilising a balancing charge in the years ended 24 December 2015, 2016, 2017 and 2018.

13. Judge Tildesley expressed the view that the reserve fund can only be used for the authorised purpose in the lease which is to meet obligations not of an annually recurring nature. Judge Tildesley stated that it was inappropriate for the reserve fund to be used as a balancing mechanism for end of year surpluses and deficits. Judge Tildesley stated that in the absence of clear wording in the lease, the general rule should apply, namely, that surpluses at the end of year are returned to the leaseholders and that deficits are met by demands for additional service charge at the end of the year.
14. Judge Tildesley did not give a ruling on whether the Respondent had used the reserve fund inappropriately, although he noted that the Respondent had debited deficits of £1,057 and £1,021 to the reserve funds for years ended 24 December 2016 and 2017 respectively.
15. Judge Tildesley recorded the Respondent had agreed that the surplus which presently stands at £2,205 in the year ended 24 December 2018 accounts will be returned to the Applicants as a credit to their individual service charge accounts.

Issue (c): A credit to be given for reduction in insurance costs awarded by the FTT on 22 November 2018 in the year ended 24 December 2018.

16. The Respondent agreed that the credit of £750 for insurance will appear in the leaseholders' individual service charge accounts for the year ended 24 December 2020.
17. Judge Tildesley noted that the Applicants did not challenge the actual costs of £1,5213.14 for insurance in 2018 which had been apportioned between 2018 and 2019 and the apportioned charge for the year ended 24 December 2018 is £1,459.

Issue (d) A request that a list of income and expenditure is provided from 6 June 2018 to the date of the Application and that such information is provided in the future.

18. Judge Tildesley noted that the Respondent had provided the leaseholders with the supporting information for the year ended 24 December 2018 accounts.
19. Judge Tildesley recorded that the leaseholders had the following rights in respect of accounts and supporting information:
 - a) To be sent a copy of the annual account and an audit of those accounts prepared and certified by a Chartered Accountant in accordance with Paragraph 9 of Schedule 1V to the lease.
 - b) A leaseholder may request in writing a written summary of the costs and where a summary of the costs is obtained a request to inspect the accounts, receipts and other documents supporting the summary and to take copies of such documents (sections 21 and 22 of the Landlord and Tenant Act 1985). Failure to comply with such requests without reasonable excuse may constitute a summary offence.
 - c) The Respondent agreed to abide with the information requirements specified in The Service Charge Residential Management Code published by RICS (third edition). The Tribunal can take into account the requirements of the Code when determining any question arising in proceedings.
 - d) The Applicants may apply for disclosure of documents relevant to the proceedings. Whether the documents are disclosed is a matter for the Tribunal or the Court.

Issue (e): A reduction to the interim demands for the year ended 24 December 2019

20. The Respondent agreed to remove the allocation of £5,000 to reserves from the 2018/19 budget. Judge Tildesley determines by consent that the service charge payable in advance for the year ended 24 December 2019 is £9,678.60.
21. Judge Tildesley recorded that the Respondent intended to issue a demand for £5,000 to be allocated to the reserves. The demand will be supported by an updated specification for the proposed decoration and repairs to the building, a building condition survey, a planned maintenance programme, and if available the costs for the planned works. The Applicants agreed that the £5,000 already paid can remain in the service charge bank account without prejudice to their right to challenge the reasonableness of the costs for the proposed works.
22. Judge Tildesley expressed the view that the necessity for a new section 20 consultation would depend upon whether there has been a significant change in the specification from the last section 20 consultation. Judge Tildesley left it to the parties to decide whether the Applicants are able to nominate contractors for the proposed works. Judge Tildesley noted that the Respondent hoped to start the works in April 2020, and that it was prepared to invite separate quotations for the internal and external decorations and repairs, although the Respondent was not convinced that this would produce savings.

Other Matters

23. Judge Tildesley recorded that the parties had reached agreement on the monies budgeted for the new entry phone system. Essentially the Respondent had agreed to credit the leaseholders with the unspent amount.
24. Judge Tildesley intends to make no order for costs/reimbursement of fees which means that the parties will bear their own costs in relation to the application. If any party disagrees please write to the Tribunal within 14 days from the date of this decision.

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.