



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

**Case Reference** : CHI/00ML/LSC/2020/0035

**Property** : Ground Floor Flat, 76 Franklin Road,  
Brighton, East Sussex, BN2 3AD

**Applicant** : 76 Franklin Road (Brighton) Limited

**Representative** :

**Respondent** : Davis Properties Limited

**Representative** :

**Type of Application** : **Section 27A of the Landlord and  
Tenant Act 1985**

**Tribunal Member(s)** : Judge J. Dobson

**Date of Decision** : 7th August 2020

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DECISION

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## **Summary of the Decision**

1. The Tribunal determines that the interim service charge demands for 2020 of £2625.28 made in March 2020 and intended to be made of £2625.29 in September 2020 are reasonable.

## **Application**

2. The Applicant originally applied for a determination as to the reasonableness and recoverability of service charges for the year 2019 and the reasonableness of interim payments demanded in 2020.

## **Directions made/ history of the case**

3. The Tribunal considered the application and made a Directions Order to progress the application to a final hearing. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute. In essence, those required the parties sending statements of case, witness statements and documents relied upon to each other and, if relevant, the Applicant briefly replying to the Respondent's case. Finally, the Applicant was directed to provide a bundle of documents.
4. The Directions advised that the Tribunal would proceed by way of paper determination without a hearing, unless either party objected. Neither party has subsequently objected and requested an oral hearing.
5. The Applicant has provided a Determination Bundle of the documents on which it wishes to rely. That includes no documents at all from the Respondent, the Respondent not having replied to the application by way of any statement of case, witness statement or document.
6. The Applicant has stated at paragraph 3 of its Statement of Case dated 29th May 2020 that the Respondent has accepted the accounts for the year ending 25th December 2019 and so the Applicant no longer requires a determination of the reasonableness and recoverability of the 2019 service charge demands. The Applicant continues to seek a determination of the reasonableness of the interim service charge instalments demanded and to be demanded in 2020.
7. There has been no application from either party to vary the directions given or for any further directions. Neither party requested an inspection and the Tribunal did not consider that one was necessary, or that it would have been proportionate to the issues in dispute.
8. The Tribunal has accordingly proceeded by way of a paper determination in relation to the interim service charge demands during 2020 on such evidence and arguments as have been produced by the parties and has not considered the 2019 service charges, given that the Applicant no longer asks for a determination in respect of those. This is the decision made following that paper determination.

## **The Background**

9. The property (“the Property”) the subject of this application is a one-bedroomed ground floor flat accessed via an entrance communal to it and the first floor flat above, although not the lower ground floor flat below, which has its own entrance. A plan indicates it to include a living room, a kitchen, a bathroom a WC and the bedroom. The flat is situated within a terraced property (“the Building”) which houses the 3 flats described.
10. The Applicant is the freeholder of the Building and has been since August 2016, when the freehold was purchased from the Respondent, hitherto the freeholder of the Building. The Applicant is a company created for the purpose of purchasing the freehold.
11. The Respondent holds a long lease of the property (“the Lease”). The Lease was originally granted, for a term of 99 years, commencing on 25th November 1986. The specific provisions of the Lease are referred to below, where appropriate.
12. No title numbers have been provided for either the freehold or the leasehold but there is no suggestion that title is in dispute.
13. There have been previous County Court proceedings between the parties and/or others connected to them in relation to service charges and/or other sums in relation to the Building and previous proceedings involving the same two parties as the current proceedings before this Tribunal in 2018, dealt with by a Tribunal chaired by Judge Agnew.
14. Amongst the questions for determination by the Tribunal then was one as to the reasonableness of interim service charge demands made for 2017. The Tribunal referred to paragraphs 1(iii) and (iv) of Schedule 7 to the Lease- the contents of which are set out below. The principal Decision, dated 25th September 2018, identified the expenditure for the year ended 25th December 2016 as appeared in the accounts for that year, found the Respondent’s share of the interim service charge for 2017 to be one- third of that figure and found that the sums demanded were correct according to the provisions of the Lease.
15. Several other issues arose in that case, including as to whether the interim service charge demands had been served and as to whether they were accompanied by the requisite summary of rights and obligations. However, like matters have not been raised in these proceedings.
16. A supplemental Decision of that Tribunal dated 27th November 2018, made following a failure of the parties to agree the revised balancing charge appropriate in consequence of the various findings of the Tribunal, noted that the Respondent objected to paying interim payments for 2018 based on the 2017 expenditure, which had by then been finalised. The Respondent asserted that there was no purpose in paying the figure demanded when the expenditure had been particularly high in

2017 and paying the same amount in 2018 would leave a large surplus at the end of the year.

17. The November Decision made it plain that the 2018 year was not included in the proceedings brought before the Tribunal and so the Tribunal could not make a determination as to the appropriate sum. However, the Tribunal specifically directed Mr Davis, the Director of the Respondent, to the Lease and especially to paragraph 1(iii) of that, quoting the wording of that paragraph and reminding Mr Davis of the relevant comments in the September Decision.
18. The Tribunal did point out that there was nothing to prevent the Applicant choosing to demand a lower sum than it was entitled to demand under the provision in the Lease if it were clear that the on-account payment calculated on that basis would be far more than required for expenditure in the year.

### **The Law in respect of the Applications**

19. The relevant legal provisions are set out in the Appendix to this decision.

### **The Lease and interpretation of it**

20. The relevant parts of the Lease read as follows:

“3. IN consideration of the premium paid by the Lessee..... the Lessor hereby demises to the Lessee the demised premises ..... for the Term SUBJECT to the Lessee ..... paying by way of additional rent such sums or service charges as are payable in accordance with the provisions of Schedule 7.

#### SCHEDULE 4

##### Lessee’s Covenants

- (1) To pay the Rent and additional rent in accordance with clause 3 of this lease.

#### SCHEDULE 7

##### Service Charge

1. In this Schedule:
  - (i) ‘Expenditure on services’ means the expenditure of the Lessor in complying with his obligations set out in Schedule 5 including .....
  - (ii) ‘Service charge’ means one third part of the expenditure on services
  - (iii) ‘Interim service charge instalment’ means a payment on account of service charge shown on the service charge statement last served on the tenant

- (iv) 'Service charge statement' means an itemised statement of
    - (a) the expenditure on services for a year (or on the first occasion a shorter period) ending on the 25th of December
    - (b) the amount of the service charge due in respect thereof (any apportionment necessary at the beginning or end of the term hereby granted shall be made on the assumption that expenditure on services is incurred at a constant daily rate) and
    - (c) sums to be credited against that service charge being the interim service charge instalments paid by the Tenant for that year or period and any service charge excess from the previous year or period or accompanied by a certificate that in the opinion of the accountant preparing the statement is a fair summary of the expenditure on services set out in a way which shows how it is or will be reflected in the service charge and is sufficiently supported by accounts receipts and other documents that have been produced to him.
4. On the 25th day of March and the 29th day of September every year the Lessee shall pay to the Lessor an interim service charge instalment."

### **Consideration and findings**

- 21. The Tribunal firstly records that the address provided for the Respondent in the application form is its registered office at Companies House and the correspondence address given to Companies House by its only director. Therefore, whilst it is relatively unusual that the Respondent has not responded to the application, the Tribunal has no reason to consider that reflects a lack of service of the application and instead must presume that the Respondent did not wish to address any aspect of the application.
- 22. This Tribunal is not bound by the findings of the Tribunal in 2018, despite the circumstances of the claim being extremely similar to part of the matters in those proceedings. However, a previous decision, especially one dealing with the same point that the Tribunal is now asked to determine, must be given considerable respect and this Tribunal sensibly should only take a different approach with very good reason.
- 23. Notably, the Tribunal in 2018 found the end of year accounts produced to be the service charge statement as defined in clause 1.(iv) of the Seventh Schedule.
- 24. The Respondent could have argued, amongst its arguments, in the proceedings in 2018 as to whether the certified accounts met the definition of a service charge statement as defined in the Lease. It is not apparent that it did- and if it did that was rejected- but more relevant is the fact that the Respondent has not in any event sought to run any such argument in these proceedings.
- 25. There is consequently no case advanced that this Tribunal should depart from the approach taken by the Tribunal in 2018 and so no reason even

suggested for this Tribunal to do so. This Tribunal having noted the approach taken in 2018 and the careful reasoning of the 2018 Decisions accordingly adopts the same approach as that in 2018, finding the 2019 end of year accounts produced to be the relevant service charge statement as defined in clause 1.(iv) of Schedule 7.

26. Adopting that approach, the interim service charge demand made is correct. The 2020 contribution payable by the Respondent as a whole- £5250.57- is clearly calculated as one-third of the expenditure on services figure in the 2019 accounts- £15751.71 (per Schedule 7 paragraph 7.1 (ii)). The sums demanded in March 2020 and to be demanded in September 2020 are clearly calculated as half- £2625.28 and £2625.29 (subject to minor and sensible rounding up or down to full pennies only)- of the contribution to service charge costs payable by the Respondent for the 2020 service charge year (per Schedule 7 paragraph 7.1 (iii)).
27. It is entirely clear that is the mechanism agreed in the Lease. The term within the Lease has not been challenged and nor is it apparently capable of challenge. The demand made of the Respondent applies that agreed mechanism and hence the calculation is correct.
28. It is worth noting that it appears from the evidence provided that the expenditure in 2019 was, much as it had been in 2016, unusually high as compared to the average year. Consequently, in the absence of major works or other significant expenditure in 2020, the interim service charge demands in 2020 are for a significantly greater sum than the likely level of expenditure. However, the Tribunal has no information as to whether, or not, there may be such major works or other significant expenditure and that is not directly relevant for the purpose of this particular application.
29. No more can be said than that it may therefore have been open to the Applicant, and may have engendered better relations with the Respondent as the only lessee not linked to the Applicant company, to reduce the demand to a level sufficient to meet any lower level of expenditure anticipated in 2020, rather than basing the demand specifically on the unusual level of expenditure during the previous year.
30. However, the Applicant is entitled under the specific provisions of the Lease to demand by way of interim service charge the sum which it did demand and, amongst a range of reasonable approaches which could have been adopted, it is a reasonable one for the Applicant to demand the sum provided for in the Lease and so the interim demands correctly calculated in accordance with the Lease are reasonable ones.
31. Accordingly, the Tribunal finds the interim service charge demands for in March 2020 and intended to be made in September 2020 to be reasonable.

## **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.

## **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 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.