FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at Kingston-upon-Thames sitting at Havant Justice Centre, Elmleigh Rd, Havant PO9 2AL

Tribunal reference	**:**	**CHI/45UE/LSC/2021/0041**
Court claim number	**:**	**G84YX187**
Property	**:**	**Flats 1,2 & 3, 5 High Street, Crawley, West Sussex RH10 1BH**
Applicant/Claimant	**:**	**Andrew David Hunt**
Representative	**:**	**Faisel Sadiq, instructed by Dean Wilson LLP**
Respondent/Defendant	**:**	**Anastasia Nevzorova**
Representative	**:**	**Paul McCarthy**
Tribunal members	**:**	**Judge E Morrison** **Mr K Ridgeway MRICS**
In the county court	**:**	**Judge E Morrison**
Date of hearing	**:**	**7 October 2021 (by video)**
Date of decision	**:**	**18 October 2021**

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be the date this decision is sent to you.

Summary of the decision made by the Tribunal

1. The service charges recoverable by the Applicant lessor from the Respondent lessee of Flats 1,2,& 3 are as follows:

   Period 1 July 2017 – 30 June 2018: £943.27
   Period 1 July 2018 – 30 June 2019: £665.58
   Period 1 July 2019 – 30 June 2020: £688.02.

Summary of the decision made by the Court

2. Claim dismissed.

   No order for costs.

Procedural background

3. On 29 July 2020 the Applicant lessor issued a money claim in the county court under Claim No. G84YX187. The substantive claim was for the sum of £6092.23 comprising service charges totalling £3999.58, interest of £292.65, and legal costs of £1800.00.

4. Default judgment was entered but subsequently set aside. The Respondent then filed a Defence, and on 7 April 2021 the whole claim was transferred to the Tribunal. As a result of amendments to the County Courts Act 1984 the issues falling outside of the Tribunal's jurisdiction can be determined by a Tribunal judge sitting as a judge of the county court.

5. The Tribunal gave Directions that required each side to serve witness statements, permitted the Applicant to serve a Reply, and provided for a bundle to be prepared for a hearing on 7 October 2021.

6. The bundle prepared by the Applicant's solicitors did not comply with the requirements of the Directions but was nonetheless utilized. It included a witness statement from each party and a large amount of documentation (much unnecessarily duplicated). The Applicant did not serve a Reply.

7. At the hearing the Applicant was represented by Mr Sadiq of counsel, and the Respondent was represented by her husband Mr McCarthy. The parties were also present.

The Property and the background to the dispute

8. Flats 1, 2 and 3 form the upper floors of 5 High Street, Crawley. On the ground floor is the Applicant's estate agency office with a studio flat (Flat 4) to the rear. The upper floors are reached by a separate door from the street leading to a hallway and staircase ("the common parts").

9. On 18 July 2018 the Tribunal decided an earlier application (Case Ref. CHI/45UE/LDC/2017/0072 and CHI/45UE/LSC/2017/0092). The Tribunal dealt with various items in dispute for service charge year 2017/18. The decision does not identify the precise dates of that service charge year, but it is clear that the Tribunal considered a demand relating to that period and concluded that the demand was invalid, that in any event certain cost items were irrecoverable, and that money should be repaid to the Respondent[1].

10. Following that decision a sum of money was refunded to the Respondent. It was for a sum less than that the Respondent contended was due.

11. No further demand was made for service charges until 19 July 2019. On that date a demand was made in the following terms:

Due date	Description	Period	Due	Total due
01/07/2018	Service charge	2018	31/07.18	1098.00
01/07/2019	Service charge	2019	31/07.19	1501.58
01/07/2017	Service charge	2017	31/07/17	1400.00

Accompanying this demand was the Summary of Rights and Obligations required by section 21B of the Act and three sheets of paper headed "Revised budget for 2017", "Budget for 2018" and "Budget for 2019" respectively. Each sheet listed a number of items of expenditure for the Respondent's flats which totalled the precise sum requested in the demand for that year.

12. This is the only demand relied upon by the Applicant and the total of the sums demanded, namely £3999.58, constitutes the service charge arrears claimed in the county court, less £1000.00 paid in July 2019. At the hearing the Applicant accepted that a further sum of £1000.00 was paid in July 2020, just prior to issue of the claim.

13. At the outset of the hearing Mr Sadiq accepted that the £1800.00 claimed as "legal costs" had never been formally demanded as an administration charge, and therefore was not a matter for the Tribunal. This simply referred to costs incurred in relation to the proceedings, a matter for the court.

14. Thus the remit of the Tribunal was to determine the service charges for the three years described in the claim as 2017, 2018 and 2019. The Tribunal Judge would then decide, sitting as a judge of the county court, whether any service charge monies were in fact still

[1] There were several copies of this decision in the bundle. None of them were complete, as pages were omitted. However the Tribunal has considered the decision in full.

owing to the Applicant, and decide issues about interest and costs.

CASE BEFORE THE TRIBUNAL

The Tribunal's jurisdiction

15. 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.

16. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. When service charges are payable in advance, no more than a reasonable amount is payable.

The lease

17. The Tribunal was provided with a copy of the lease for Flat 1 and was told that the leases for Flats 2 & 3 were in the same form. The lease, dated 2 May 2014, is for a term of 99 years, and which term was later extended. It provides as follows with respect to the service charges:

- The service charge is defined as "a fair and reasonable proportion determined by the Landlord of the Service Costs".
- The scope of the Service Costs is set out and will be referred to in more detail below where necessary.
- By para. 2 of Schedule 4 the tenant covenants "To pay to the Landlord the Service Charge demanded by the Landlord under paragraph 4 of Schedule 6 by the date specified in the Landlord's notice".
- By para. 3 of Schedule 4 the tenant covenants to pay the "insurance rent" in the same way.
- Schedule 6 contains the landlord's covenants. Under para. 4.2 he is required "to serve on the Tenant a Notice giving full particulars of the Service Costs and stating the Service Charge payable by the Tenant and the date on which it is payable as soon as reasonably practicable after incurring, making a decision to incur, or accepting an estimate relating to, any of the Service Costs". This is the extent of the service charge machinery set out in the lease.

Defining the service charge years

18. The demand of 19 July 2019 and the county court pleading referred to the service charge years simply as 2017, 2018 and 2019. However in the Applicant's witness statement dated 23 July 2021 he stated at paragraph 3: "I am claiming service charge arrears … for the years of 2017/18, 2018/19 and 2019/20".

19. When the Tribunal asked for clarification as to the period covered by each service charge year, Mr Sadiq said, on instructions from the Applicant, that the 2017 year was for the period 1 July 2016 – 30 June 2017, the 2018 year was for the period 1 July 2017 – 20 June 2018, and that the 2019 year was for the period 1 July 2018 – 1 July 2019. The reason why the demand was accompanied by sheets headed "Budgets" was because the Applicant used a template which he simply revised at the year end. The sums demanded were for actual costs incurred, not budgeted sums. Indeed Mr Sadiq took the position that the lease did not permit service charges to be demanded in advance/on account.

20. The Applicant then told the Tribunal that paragraph 3 of his witness statement was in error so that, for example, the claim for 2017 did not in fact refer to costs in 2017/18 but referred to costs in 2016/17. The sheet for 2017 was headed "Revised Budget" so that it could take account of the previous Tribunal decision in July 2018; the costs claimed for dampworks 2017 had been revised to reflect only the reduced sum the Tribunal had said would be payable.

21. Mr McCarthy for the Respondent said that this was incorrect. The 2017 service charge demanded on 19 July 2019 referred to the period 1 July 2017 – 30 June 2018, just as stated in the Applicant's witness statement. The sheets were headed Budget because they set out estimated sums for the year ahead, save for a few items which were either for known costs or which had been amended after costs had been incurred. He referred to the evidence submitted by the Applicant with his witness statement to support this position.

22. Thus the Tribunal was confronted with a situation where the parties could not even agree on what period of time the disputed service charges related to.

23. There were no other service charge accounts or accounting records in evidence to shed light on the matter. However, the Tribunal noted that the documents submitted by the Applicant did not support his amended case. These did not refer to any costs incurred in 2016, yet on his amended case the last six months of 2016 would be covered by the "2017" service charge. He produced EDF electricity bills covering the period September 2017 – September 2019, but there were no bills covering any earlier period. Furthermore, although bank statements were exhibited for the period January 2017 – July 2021, to show what was spent, there were no statements for the period 1 July 2016 – 31 December 2017. The expenditure list for "2018" includes the insurance premium for the period 1 August 2018 – 31 May 2019, yet on the Applicant's amended case, this would fall into year "2019". Further, if the "2019" demand referred really covered the year ending 30 June 2019, there was no evidence that the £600.00 listed for pest control was incurred in that period. However, just before the demand was issued on 19 July 2019, a cost of £225.00 had been incurred for pest control. It is therefore more likely that the demand reflected the amount the Applicant thought might be incurred in the year commencing 1 July 2019. All these matters point in favour of accepting Mr McCarthy's submission.

24. The Tribunal was not impressed by the Applicant, to the extent he gave evidence direct to the Tribunal. We have taken into account his limited evidence on the other issues in dispute (see below); he did not appear to understand the rudiments of how to deal with service charges. We have come to the conclusion that his evidence about the service charge periods to which the demands relate

changed after being advised by his counsel, who was instructed at a late stage, that the lease did not permit service charges to be demanded in advance of being incurred[2]. The Tribunal's view is that the documents headed "budgets" were indeed originally broad estimates of costs to be incurred, but were later amended in some respects to reflect actual costs. Our conclusion is strengthened by the fact that most of the items of expenditure listed in these documents are round figures, which bear little relation to the actual costs that appear to have been incurred.

25. Therefore, the Tribunal has determined the service charges on the basis that "2017" refers to the period 1 July 2017 – 30 June 2018, and similarly for the following two years.

Service charge period 1 July 2017 – 30 June 2018

26. As stated above, the amount claimed was originally £1400.00. However, in Mr Sadiq's Skeleton Argument served just before the hearing, this sum was amended downward to £1050.00, deleting the Applicant's claimed fee for his own management of £300.00, and fire extinguisher servicing in the sum of £50.00.

27. This left a claim for £150.00 bank charges, £150.00 for common parts electricity, and £750.00 for dampworks.

Bank charges

28. Mr McCarthy objected to the bank charges. He pointed out that although the 2018 Tribunal had told the Applicant he should set up a trust account to hold service charge monies, this had not been done. The account was a normal business account in the Applicant's name which, in earlier years, had even been used for transactions that had nothing to do with the service charges. He also submitted that in any event the bank charges should not be paid in full by the Respondent; they should be shared with the Applicant.

29. Mr Sadiq referred to section 42 of the Landlord and Tenant Act 1987 and said this did not require a "trust" bank account; service charge monies just had to be kept separate from other funds and only used for service charge purposes. This was satisfied in the period in question. The monies were only used for costs for which Flats 1, 2 & 3 were liable.

30. Mr Hunt was asked whether Flat 4 was demised on a long lease. He said No, it was let on an assured shorthold tenancy, and did not contribute to the service charge fund.

31. Although Mr Sadiq is correct in saying that section 42 does not require that the account must be specified as a "trust" account, an ordinary bank account in one name that does not carry any identification to show that the monies belong to others does not afford sufficient protection for the lessees. The RICS Service Charge Residential Management Code states that a client account should be opened, notification given to the bank that all monies belong to others and cannot be used to set-off monies owed to the bank by the account holder, and the account must never be overdrawn. If the Applicant is going to continue to hold

[2] Although that is not an accurate characterisation of what the lease provides (see para.17 above).

service charge funds in the future, he must immediately open an appropriate client account.

32. Having said that, there is no evidence that during the period 1 July 2017 – 30 June 2018 the account was used other than for service charge expenditure. The Tribunal has reviewed the bank statements, and the actual bank charges for normal operation of the account in that period total £70.06 (as opposed to the £150.00 claimed). The Service Costs as defined in the lease include costs reasonably and properly incurred in providing the Services and the bank charges fall into this category.

33. The Tribunal does not accept Mr McCarthy's submission that the Respondent should not pay all of these charges. The account is operated only in respect of service charges for Flats 1,2 and 3. Accordingly the Tribunal finds that £70.06 is payable by the Respondent for bank charges.

Common parts electricity

34. The Services for which a charge can be made include "lighting the Common Parts", which consist only of the hallway and stairway to the Respondent's flats. It was not disputed that the electricity charges relate only to this part of the building.

35. Mr McCarthy again objected to the Respondent being liable for all of the cost, which he suggested should be apportioned according to the floor area held by parties across the building.

36. Mr Sadiq said the electricity only benefitted Flats 1,2 & 3 and should be paid in full by the Respondent.

37. The Tribunal agrees with the Applicant. Only those occupying the Respondent's flats ever need to use the Common Parts; the ground floor has a separate entrance. The lease provides that the lessee should pay "a fair and reasonable proportion" of the costs and in the case of the common parts electricity that proportion should be 100%.

38. Turning to the actual cost, the stated expenditure figure of £150.00 is clearly incorrect. The only reliable evidence is found in the bank statements, which show direct debit payments totalling £135.00 and a credit of £11.79, resulting in a net spend of £123.21. The Tribunal finds this sum is payable by the Respondent..

The dampworks

39. These were determined by the 2018 Tribunal in the sum of £750.00.

40. Accordingly the total service charge recoverable for the period is £943.27.

Service charge period 1 July 2018 – 30 June 2019

41. The amount claimed was originally £1098.00 but Mr Sadiq's Skeleton Argument revised this downward to £798.00, deleting the claimed management fee. The

revised figure comprised £175.00 bank charges, £55.00 fire extinguisher servicing, £165.00 common parts electricity, and £403.00 insurance. Only the bank and electricity charges were disputed (the insurance premium for the building having been apportioned equally between the parties).

Bank charges

42. The parties took the same position as previously. Reviewing the bank statements, as a result of the account becoming overdrawn in June 2018, there were some debit interest charges on top of the normal monthly charge. Although the Applicant then used his own funds to bring the account back into credit[3], there is no reason why the Respondent should be responsible for the interest charges, as the account should not have been allowed to become overdrawn in the first place. The regular charges total £67.59 and that is the sum we find to be payable.

Common parts electricity

43. Reviewing the bank statements, direct debit payments totalled £141.00 and there is one credit of £1.01, resulting in a net cost of £139.99 which we find to be payable.

44. Accordingly the total service charge recoverable for this period is £665.58.

Service charge period 1 July 2019– 30 June 2020

45. The amount claimed was originally £1501.58 but again this was amended downwards to £819.78, removing the claim for management fees, reducing the pest control sum to £225.00, and the fire extinguisher servicing cost to £34.00.In dispute were the bank charges, electricity, insurance, and pest control. It has to be borne in mind that the costs demanded were all demanded in advance at the start of the year. However the Respondent has not taken the point that the demand was invalid and only practicable approach is to treat the demand as a demand for costs incurred as the Applicant has elected not to make any further demand at the year end.

Bank charges

46. Adopting the same approach as for the earlier years, the Tribunal has looked at the regular charges made by the Bank for operating the account. These add up to £75.00 but as only £66.00 has been demanded, £66.00 is the sum allowed.

Common parts electricity

47. Reviewing the bank statements, direct debit payments totaled £180.00 and there was one credit of £9.00, resulting in a net cost of £171.00. However, only £144.00 has been demanded and that is the sum we find to be payable.

[3] There is no accounting record to indicate how sums paid in by the Applicant are to be treated.

Insurance

48. The buildings insurance cost £604.80 for the whole building. The Applicant has demanded that the Respondent pay £58% of this (although he only demanded 50% in the previous year).

49. The parties agree that apportionment should be based on floor area as calculated in the Energy Performance Certificates. The Applicant relied on a calculation made by Nicholas Jones, a surveyor, on 28 August 2018. Mr Jones took the floor area of the three flats to be 45, 49 and 71m2, and added 9.5m2 for the common parts, resulting in a floor area for the Respondent of 174.5m2. This compared with 128m2 for the ground floor, yielding an apportionment of 58% for the Respondent, 42% for the Applicant.

50. Mr McCarthy said that the 71m2 flat was not one of the Respondent's flats, but a maisonette above the neighbouring property which had mistakenly been recorded as being part of 5 High Street. The bundle contained recent EPCs which confirmed that the floor areas of the Respondent's flats were 44m2, 45m2 and 50m2. He also did not agree that the common parts should all be allocated to the Respondent.

51. It is clear from the lease plan that the flats do not differ greatly in size and the Tribunal agrees that Mr Jones mistakenly included the neighbouring maisonette, which is much larger, instead of the smallest flat. However, it is fair and reasonable for the Respondent's area to include the common parts, for the same reason as stated with regard to the electricity charges. This yields a total floor area for the Respondent of 148.5m2 which is 53.7% of the total. The Tribunal therefore finds that the Respondent should be liable for 53.7 % of the insurance premium, which is £324.77.

Pest Control

52. The Respondent agrees that £225.00 was expended but says that this should be apportioned in the same way as the insurance. Mr McCarthy said rats had come in through the roof, which is not demised, and got between the walls. There were no rats actually in the Respondent's flats. This evidence was not challenged. The Tribunal agrees that the cost should be apportioned and finds that the Respondent is responsible for 53%, namely £119.25.

53. Acccordingly the service charge recoverable for this period is £688.02.

Tribunal's concluding remarks

54. The evidence presented by the Applicant was unsatisfactory and confusing. Although this should be a very straightforward building to manage, the service charges have not been properly administered in accordance with the lease, and the costs have not been properly reflected in the demands served. To an extent the Applicant has done himself a disservice because it is clear from some documents in the bundle (bank statements, invoices) that there was other expenditure during the periods under consideration which has never been demanded. Unless management and administration of the service charges is dealt with properly in future, it is very likely that disputes between the parties

will continue. The lease permits the lessor to recover the cost of employing managing agents, and this would appear to be the best way forward, although it will inevitably result in the Respondent having to pay considerably higher service charges.

The county court issues

55. The Tribunal has determined that a total of £2296.87 is recoverable in service charges for the periods claimed. The Applicant (Claimant in the county court) accepts that the Respondent (Defendant in the county court) paid £2000.00 prior to issue, leaving a balance of £296.87.

56. The Defence served by the Respondent asserted that (i) the sum of £750.00 payable for the dampworks had already been paid and (ii) the Applicant still owes the Respondent a refund for previous years. Thus the Respondent was in credit on her service charges. This was expanded on in the Respondent's witness statement.

57. Although the Applicant was given permission to serve a Reply after considering the Respondent's witness statement, he did not do so. In his own witness statement he said he had no record of ever having received £750.00 for the dampworks from the Respondent, but he did not deny that the money was initially paid by the Respondent. He did not deal at all with the allegation regarding monies owed from previous years.

58. In light of the Respondent's contentions the most glaring omission was the Applicant's failure to provide a statement of account showing all debits and credits to the Respondent's service charge account over time, with a running balance. When asked about this, he appeared to have difficulty understanding this concept.

59. Mr Sadiq addressed the matter in his Skeleton Argument in just one sentence: "The evidence produced by [the Respondent] is somewhat thin and the Applicant invites the FTT to reject it".

60. The Respondent's evidence as to the £750.00 for the dampworks was that a cheque for this sum was sent to the Applicant's then solicitor. She no longer had the cheque stub or supporting bank statement. However, an email from the Respondent's solicitor (now deceased) dated 20 August 2017 to the Applicant's solicitor (no longer in practice) stated "The payment by my client for the damp works was made in error… I suggest that £750 is returned to my client forthwith and within 7 days". The 2018 Tribunal decision, almost a year later, states: "The Tribunal understands that the sum of £750 representing payment for all three flats has already been tendered to the Applicant".

61. Mr Sadiq pointed out that "tendered" is not the same as "paid".

62. Alleging payment of the £750.00 is an affirmative defence raised by the Respondent and she has the burden of proof. On the evidence provided the court

is satisfied that £750.00 was paid as opposed to simply tendered; otherwise there would be no reason for the solicitor to request repayment. The Respondent's evidence was that it was never repaid, and the court finds the Respondent and her husband Mr McCarthy to be honest and reliable witnesses. The Applicant may also be correct in saying that he personally never received the money, because it is possible that the monies were used by his solicitor to defray legal bills. On a balance of probabilities, the court finds that this sum was paid by the Respondent prior to 20 August 2017 and has never been repaid.

63. Turning to the earlier service charge years, the 2018 Tribunal disallowed certain items of expenditure and said they should be repaid to the Respondent. At paragraph 30 of the Decision (a page omitted by the Applicant in the bundle) the Tribunal said "The Tribunal was only asked to consider the service charges for 2017-18 but the principles outlined above will also be relevant to subsequent years. The parties may need to consider whether those principles have application to charges demanded in earlier years".

64. An email from the Applicant's solicitor dated 21 September 2018 acknowledged that sums were repayable in respect of earlier years, and the Applicant then refunded £2156.86 on 1 October 2018. It is the Respondent's case that this sum was too low by some several hundred pounds. Furthermore, the Respondent produced her own statement of account which suggested that even before the 2018 Tribunal decision was taken into account she had a credit balance of £1499.08 as at the end of June 2017.

65. The Applicant provided the court with no answer to any of this and did not challenge the Respondent's figures. The court is therefore satisfied on a balance of probabilities that when the current claim was issued the Respondent did not owe the Claimant any money. For that reason the claim is dismissed, and there will be no order as to costs.

66. It is of course essential that the parties now engage with each other to agree a reconciled statement of account that will provide a starting point for dealing with service charges as from 1 July 2020. It in their mutual interest to resolve this. Unless and until this is done, disputes are likely to continue.

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

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.

The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case.

The date that the judgment is sent to the parties is the hand-down date.

From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties;

1. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

2. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the xx office within 21 days

after the date the refusal of permission decision is sent to the parties.

3. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

4. In this case, both the above routes should be followed.