



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

**Case Reference** : **CHI/00HE/LSC/2022/0040  
P:REMOTE**

**Property** : **Flat 4 Leskinnick House Leskinnick  
Place Penzance Cornwall TR18 2EZ**

**Applicant** : **Kevin Hanley and Phillipa Hanley**

**Representative** : **In person**

**Respondent** : **MW Freeholds Ltd**

**Representative** : **Laurence Freilich**

**Type of Application** : **s27A and s20C Landlord and Tenant  
Act 1985; Schedule 11 paras 1 and 5  
Commonhold and Leasehold Reform  
Act 2002, Rule 13 Tribunal Rules of  
Procedure**

**Tribunal** : **Judge F J Silverman MA LLM  
Valuer Chair J Coupe FRICS**

**Date of Consideration** : **04 November 2022**

**Date of Decision** : **04 November 2022**

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## DECISION AND ORDER

- 1 The Applicants' requests as set out in their application do not fall within the Tribunal's jurisdiction under s27A Landlord and Tenant Act 1985, consequently the Tribunal was unable to consider them and makes no determination in respect of them.**
- 2 The Tribunal makes no order under either s20C Landlord and Tenant Act 1985 or Schedule 11 para 5 Commonhold and Leasehold Reform Act 2002.**
- 3 The Tribunal declines to award costs to the Applicants under Rule 13 of the Tribunal Rules of Procedure and further declines to order the repayment to the Applicants of their application fees.**

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**This has been a remote consideration on the papers which has been consented to by the parties. The form of remote hearing was P:REMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which the Tribunal was referred are contained in an electronic bundle the contents of which are referred to below. The orders made in these proceedings are described above.**

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## REASONS

- 1 The Applicants are the leaseholders of Flat 4 Leskinnick House Leskinnick Place Penzance Cornwall TR18 2EZ (the property) which is a one bedroomed ground floor flat forming part of a renovation/conversion of a larger building and currently comprises 13 self-contained flats. The Respondent is the current freeholder of the property.
- 2 The hearing took place as a paper consideration to which the parties had previously consented.
- 3 In accordance with current Practice Directions relating to Covid 19 the Tribunal did not make a physical inspection of the property but was able to obtain an overview of its exterior and location via GPS software.
- 4 The Applicants hold the property under a lease dated 03 June 2009 for a term of 999 years from 01 January 2009 and made between BBCB Ltd as landlord and the Applicants as tenants.
- 5 The Application was filed on 04 April 2022 and Directions were issued on 29 June 2022.
- 6 In their application the Applicants asked the Tribunal to deal with service charges for the years 2014, 2015, and the first half of 2016 which was the period during which the Respondent was both the freeholder and responsible for the management of the property through its associated management company. Although the Respondent

- continues to own the freehold, an RTM company assumed control of the management of the property from June 2016 onwards.
- 7 It is clear from the contents of the electronic bundle supplied to the Tribunal for the consideration (which the Tribunal had received and read prior to making their decision) that the relationship between the parties had not been easy and the Tribunal notes that there had been some delay on the part of the Respondent in complying with the Tribunal's Directions.
  - 8 The Applicants' requests for the Tribunal's assistance as set out in their application are amplified in paragraph 24 of Mr Hanley's statement (page 43) as follows:  
'The Tribunal is respectfully requested to:
    - a) Determine, with regard to the lease, and payments made by the Applicant what service charge etc. payment is due by the Applicant to the Respondent.
    - b) Direct that any and all outstanding arrears letters charges (sic) as at the date of determination are voided as being unreasonable and unjustified.
    - c) Direct that the balance of the £2,652.18 surplus service charge account monies received by the Respondent on its acquisition of Leskinnick House be paid to Belmont Property Management for the account of Leskinnick House RTM Ltd for the benefit, in so far as they can be identified, of the then tenants. (This sum amounts to £2,448.17 after adjusting for monies apportioned in favour of the Applicant).
    - d) Determine Rule 13 costs. The Applicant requests a figure of no less than £1,000 – modest in the context of many, many hours of work over many years culminating in the submission of this Application.
    - e) Determine that any sums due by the Applicant to the Respondent are to be set off against any sums due by the Respondent to the Applicant. This is requested given the Respondent's past refusal to comply with Tribunal decisions necessitating further legal action to enforce such decisions [*here the Applicant refers by name and case number to a previous Tribunal case unrelated to the present property but to which the present Respondent was a party.*]"
  - 9 The above issues are dealt with in turn below.
  - 10 In relation to a) above: it is noted that the lease does not require the accounts to be certified or audited but provides that the annual statement of account issued is conclusive (page 29). The Applicants do not challenge any specific items of expenditure in any of the years in question, do not suggest or provide evidence that any charge(s) made are not within the remit of the service charge and have not suggested the inadequacy of the standard of any service supplied.
  - 11 That being so, the Tribunal does not have jurisdiction within s27A Landlord and Tenant Act 1985 to adjudicate on the matters requested. It is not the Tribunal's duty (and it does not have jurisdiction) to act as an auditor or investigative accountant and even if it were so empowered would not be able to do so in the present instance because the amount of information supplied is insufficient to conduct such an investigation.
  - 12 Similarly, the Tribunal does not have the jurisdiction to make the order requested in b) above.

- 13 In the same way, the Tribunal does not have jurisdiction to order the payments requested in c) above. The Tribunal would have expected that on the acquisition of the property by the Respondent, any surplus in the service charge account would have been transferred to the Respondent's (or their managing agent's) service charge account for this property and credited against each leaseholder's future liability. A similar procedure would have applied on the transfer of management responsibility to the RTM company. It is a misconception to expect that such funds would be returned to each flat owner.
- 14 Turning to d) above. The Tribunal is essentially a 'no costs' jurisdiction; in other words, each party is normally expected to bear their own costs. Rule 13 of the Tribunal Rules of Procedure allows the Tribunal to award costs only in exceptional cases where the behaviour of one party satisfies the test now set out in the Willow Court case to which the Applicants refer. Although the Tribunal does not condone the behaviour of the Respondent, which appears to have been reluctant to engage in these proceedings, it does not consider that in the context of this case such behaviour satisfies the Willow Court test. Further, costs would normally only be awarded to a party whose application had been successful and where a detailed particularised bill of costs (normally those of a legal representative) had been placed before the Tribunal. The Applicants' application for costs is therefore refused.
- 15 In relation to e) above, the Tribunal has a limited jurisdiction in relation to set off which can only be exercised where there is a primary claim against which the set off can be matched. The primary claim here is made by the Applicants; any rights of set off would belong not to them but to the Respondent. Since the Tribunal lacks the jurisdiction to determine the Applicants' claim it follows that there can be no counterclaim or set off by either party in this application. The Tribunal notes however, that the Applicants recognise that the Respondent has now accepted that payments of ground rent and service charge were made by the Applicants (Page 41).
- 16 In e) above the Applicants cited a previous Tribunal case to which the Respondent was a party. No additional evidence to substantiate the allegations made in that sub-paragraph has been supplied. In such circumstances the former decision cannot be relevant to the present case and to preserve the privacy of the parties and property involved they are not named here.
- 17 The Applicants questioned the discrepancy in the lease between the leaseholders being required to pay one twelfth of the previous year's total service charge on account by monthly instalments and the provision that the actual allocation of service charge between the various leaseholders was set at one thirteenth, the latter reflecting the number of flats in the block. The Tribunal is unable to speculate on the reason for this. Any variation of these figures would need to be the subject of an application to vary the lease and is not within this Tribunal's jurisdiction under the present application.
- 18 The Applicants also queried whether the Respondent had demanded advance payments in accordance with the lease. The provisions relating to this are found in schedule 4 (page 28) which requires the current year's monthly advance payments to be based on the 'latest

service charge statement'. The latter phrase appears in clause (b) on page 29 and appears to refer to the annual final service charge accounts. It is not however the Tribunal's duty under the present application to interpret the terms of the lease and not having seen all the demands made by the Respondent landlord would in any event be unable to determine whether or not such demands had been made correctly.

- 19 The Applicants also asked the Tribunal to make an order under s20C Landlord and Tenant Act 1985 and/or Schedule 11 para 5 of Commonhold and Leasehold Reform Act 2002 which prevents the Respondent from adding the litigation costs of this application to a future service charge bill.
- 20 No additional evidence was provided in relation to these applications. In view of the Applicants' failure to establish their case the Tribunal declines to make orders under either of the above provisions and further declines to order the repayment to the Applicants of their application fee.

21 **The Law**  
**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 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise

exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **21B Notice to accompany demands for service charges**

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **S22 Landlord and Tenant Act 1985**

22 Request to inspect supporting accounts &c.

(1) This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2) The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a) for inspecting the accounts, receipts and other documents supporting the summary, and

(b) for taking copies or extracts from them.

(3) A request under this section is duly served on the landlord if it is served on—



(a) an agent of the landlord named as such in the rent book or similar document, or

(b) the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

### **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.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
  - (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  - (a) in a particular manner, or
  - (b) on particular evidence,
 of any question which may be the subject matter of an application under sub-paragraph (1).

### **Section 47 Landlord and Tenant Act 1987**

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge [F1 or an administration charge] (“the relevant amount”) shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3)The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court [F2or tribunal], there is in force an appointment of a receiver or manager whose functions include the receiving of service charges [F3or (as the case may be) administration charges] from the tenant.

(4)In this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Withholding of service charges Landlord and Tenant Act 1985 s21

21 (1)A tenant may withhold payment of a service charge if—

(a)the landlord has not provided him with information or a report—

(i)at the time at which, or

(ii)(as the case may be) by the time by which,

he is required to provide it by virtue of section 21, or

(b)the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2)The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a)the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b)amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3)An amount may not be withheld under this section—

(a)in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b)in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4)If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(4) The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5) The landlord shall—

(a) where such facilities are for the inspection of any documents, make them so available free of charge;

(b) where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6) The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

### **Rule 13 of the Tribunal Rules of Procedure.**

13.—(1) The Tribunal may make an order in respect of costs only

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case, (ii) a **residential property case**, or

(iii) a **leasehold case**; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs—
- (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
- (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
- (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
- (a) summary assessment by the Tribunal;
- (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
- (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

Judge F J Silverman as Chairman  
**Date 04 November 2022**

Note:

## **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 by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk).
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.