



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

Case Reference : **CHI/00ML/LIS/2013/0104**

Property : **Flat 1, 54/55 Marine Parade,
Brighton, BN2 1PH**

Applicant : **54/55 Marine Parade Residents
Association (Brighton) Ltd (1)
Mr S Lilley (2)
Dr P Parulekar (3)**

Representative : **Miss L Wadey of Callaways,
managing agents**

Respondent : **Mr James Robertson – no attendance**

Type of Application : **Application to determine service
charges under section 27 Landlord
and Tenant Act 1985 (“the Act”)**

Tribunal Members : **Judge E Morrison (Chairman)
Mr N I Robinson FRICS (Surveyor
Member)
Ms J Morris (Lay Member)**

**Date and venue of
hearing** : **13 January 2014 at Holiday
Inn, Brighton**

**Date of further
consideration:** **9 April 2014**

Date of decision : **14 April 2014**

DECISION

The Application

1. Under the application dated 19 September 2013 the First Applicant freeholder applied under section 27A of the Act for a determination of the Respondent lessee's liability to pay budgeted service charges for service charge years 2011/12 and 2012/13. The application was subsequently amended to seek a determination of the actual service charges for those years.

Summary of Decision

2. The service charges for the years in question are determined as follows:

Year	£
2011-12	40,024.06
2012-13	69,833.93

3. The Respondent's share of the service charge is 5.24%.

The Lease

4. The Tribunal had before it a copy of the lease for Flat 1, 54-55 Marine Parade. There was no evidence about the other leases and the Tribunal has proceeded on the assumption that they are in similar form. The lease is dated 18 January 2004, is for a term of 99 years from 25 December 1998 at a yearly ground rent of £275.00 for the first 25 years and rising thereafter.

5. The relevant provisions in the lease may be summarised as follows:

(a) By clause 3.1 the lessee covenants to observe and perform the obligations in Parts One and Two of the Seventh Schedule.

(b) Paragraph 3 of Part One of the Seventh Schedule requires the lessee to pay to the lessor the lessee's proportion of the Maintenance Expenses.

(c) The Sixth Schedule sets the lessee's proportion at 5.24% of the Maintenance Expenses attributable to matters mentioned in the Fifth Schedule, and provides for on account payments on each 1st October and 1st April in such sum as is estimated will be required to meet those expenses in the year ending on the next 30th September. Additional on account demands may be made at any time. After the year end an account certified by an accountant is to be prepared and any balance required from the lessee will then be payable on demand.

(d) The Fifth Schedule itemises the type of expenditure on works and services which may be recovered as Maintenance Expenses and

which, by clause 4 and paragraph 4 of the Eighth Schedule the Lessor has covenanted to carry out . These include a Reserve fund,

The Inspection

6. The Tribunal inspected the property on 13 January 2014 accompanied by MsWadey of Callaways. The property comprises two adjoining 1820s houses, one mid terrace, the other end terrace, situated on the corner of Marine Parade and Atlingworth Street, which have been converted into 17 flats and now function as one building. The buildings are Grade II listed with stucco or rendered elevations and are on six floors, including basement and ground floor levels. The fronts of the buildings face almost due south, have a direct view across Marine Parade and Marine Drive to the sea and are therefore in an exposed position. The exterior of the building appeared in generally fair condition with works recently having been undertaken to the first floor balcony of no 54. The front of No 55 has a 19th century addition, possibly originally a shop, now part of one of the flats which has had roof and minor render repairs. Both buildings appeared due for external redecoration and no doubt other repairs will be found necessary when this is undertaken. A single common stairway serves the upper flats together with a small lift which also serves the basement flats. The common stairs were in fair condition with new low energy LED lighting having recently been provided. It was noted that Flat 1 was situated in the basement but none of the flats themselves were visited.

Procedural Background

7. A hearing took place on 13 January 2014, but had to be adjourned because, although the Respondent had not filed any evidence and did not attend, the First Applicant did not produce the necessary documentation to support its claim. Further directions were issued, which allowed all parties to submit further evidence and to consent or object to the matter being decided without a further oral hearing. Nothing being heard from the Second or Third Applicants or the Respondent , and upon the First Applicant consenting, the Tribunal has determined this matter on the papers.

Evidence before the Tribunal

8. No evidence was submitted by the Second and Third Applicants (other lessees in the building who had requested to be joined) or the Respondent. The First Applicant provided copies of on account demands and the service charge accounts for the years in question, together with a statement from its representative Ms Wadey, of Callaways the managing agents, and other supporting papers.

The Law and Jurisdiction

9. 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.

Discussion and Determination

10. As the First Applicant's case had not been challenged, it was not necessary for the Tribunal's consideration to go beyond checking that the service charge provisions in the lease had been complied with, that no costs were being charged that were obviously outside those permitted by the lease, and that the demands were in proper form.

Service charge year 2011-12

11. The accounts for this year were initially prepared and certified in January 2013, but were amended a year later, the amended figures being noted in the accounts for 2012-13. The amended accounts included the Reserve provision, which had originally been omitted.
12. There was no reason for the Tribunal to interfere with any of the heads of expenditure save for "Company administration expenses" claimed in the sum of £764.00. This appears to relate to expenses of the First Applicant, a company formed by some of the lessees at the building and which acquired the freehold several years ago. There is no provision in the lease which permits recoverability of such expenses through the service charge, beyond the lessor's own management fee which is permitted and has been separately charged.
13. Accordingly the sum of £764.00 is deducted from the total expenditure of £40,788.06, producing a recoverable amount of **£40,024.06**. The Respondent's share of this sum is £2137.29. Demands have so far been made for the sum of £1639.92. (Ms Wadey's statement indicated that the deficit arises from an adjustment to the Reserve provision affecting all lessees, and the intention is to fund this deficit from future surpluses rather than issue a further demand at this point).

Service charge year 2012-13

14. In this year once again the only adjustment made to the sum claimed is to delete the entry relating to Company administration expenses. This results in a recoverable amount of **£69,883.93**. The Respondent's

share of this sum is £3659.30. The Tribunal saw demands totalling £3299.24 and reference to a further demand for £363.91.

15. In both service charge years, but particularly in 2012-13, substantial Reserve provision has been made. The Tribunal saw section 20 consultation documentation showing that extensive external repair and renovation work is planned, which will cost over £50,000.00. The Reserve provision therefore appears to be reasonable.

Dated: 14 April 2014

Judge E Morrison (Chairman)

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.