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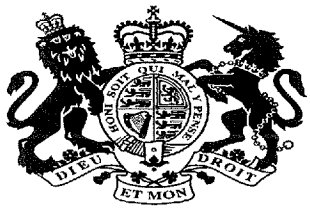


**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case Reference** | : | CHI/29UG/LIS/2015/0058 |
| **Property** | : | 63 The Hollies, Gravesend, Kent, DA12 5ER. |
| **Applicant** | : | Hever Court Residents Management (E&F) Limited. |
| **Respondents** | : | Mr Josephus and Mrs Rosamund Renner. |
| **Type of Application** | : | Liability to pay service charges and/or administration charges. |
| **Tribunal Members** | : | Judge S Lal, Mr R Athow. |
| **Date of Inspection** | | :21st January 2016- No Hearing |
| **Date of Decision** | : | 22nd January 2016 |

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**DECISION**

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## Application

1. This is a case which was transferred from the Dartford County Court on 7th August 2015 for a determination by the Tribunal under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable and under schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to whether administration charges are payable.

2. Directions were issued on 2nd September 2015. The application is to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013.

3. Further Directions were issued on 5th November 2015 relating to a further statement issued by the Respondents on 31st October 2015 which the Tribunal has deemed admissible.

## The Background and Case for the Applicant

4. The Applicant is the freeholder of the Property and the Respondents are the leaseholders of the Property under a 999-year lease dated 21st June 1977 between (1) Greenfinch Property Company Limited (2) the Applicant and (3) Clive and Christina May (the "Lease"). The Applicant purchased the freehold of the Property on 29th June 1979 and is responsible for the Lessor's obligations under the Lease. The Applicant appointed an agent, Maltby Surveyors to manage the development, of which the Property forms a part, on its behalf.

5. The Respondents purchased the leasehold interest in the Property on 28th April 1987 with the assistance of a mortgage from the Chelsea Building Society.

6. The Applicant is claiming the sum of £606 in respect of unpaid service charge amounts for the period 25th September 2013 to 24th March 2015 together with a £150 fee paid to the debt collection agency appointed by the Applicant to recover the outstanding service charge amounts. The Applicant is also claiming a further £720 in respect of costs incurred in relation to this matter.

7. The Applicant submits that the service charge amounts are recoverable from the Respondents under the provisions of the Lease. In particular, the Applicant relies upon clause 4(b)(i) and (ii) of the Lease which states that:

   *"(ii) The Lessee covenants with the Society and as a separate covenant with the Lessor that during the subsistence of the said term the Lessee will pay to the Society an annual subscription of fifty pounds or such other subscription as may from time to time be payable to the Society under the Society's Articles of Association."*

*"If at any time or times during the subsistence of the said term the Society shall expend or shall require to expend any sum or sums of money in excess of the available resources of the Society the Lessee shall forthwith pay the Society on demand one thirty ninth part of the same....."*

8. The Applicant asserts that the Lease is in force and that the Respondents are bound by its provisions.

9. The Applicant further claims that the service charge demands were reasonable and it was unreasonable for the Respondents to refuse to pay them. The Applicant also submits that it was reasonable to instruct the debt collection agency to recover the outstanding service charge amounts.

10. The Applicant has provided the Tribunal with documents and invoices outlining the maintenance work carried out to the whole of the development for the period in question. In addition, the Applicant has provided details of exterior decoration work carried out at the Property together with a feedback form completed by the Respondents and sent to the Applicant's agent. Further details of the maintenance work are outlined in the AGM minutes of the Applicant dated 18th July 2014 and in the witness statement of Sukhjiwan Sangha, an employee of the Applicant's agent. The Applicant points out to the Tribunal that the Respondents have not indicated which items within the service charge budget they consider unreasonable and they have not provided alternative quotes for similar work.

11. The Applicant submits that maintenance was carried out to the Property during the period in question and the Respondent is incorrect in asserting that the roof of the Property is within the Applicant's maintenance obligations. The Applicant states that the roof is not communal and therefore does not fall under the Applicant's responsibilities under the Lease.

**The Respondents' Case**

12. The Respondents claim that they are not liable to pay the service charges under the Lease as these obligations only applied whilst their mortgage with the Chelsea Building Society was in force. The mortgage was repaid on 1st May 2007. The Respondents also allege that the Lease is outdated and unworkable and so they should not be bound by it. They believe that account should be taken of the fact that the Property is a house with no common areas rather than a leasehold flat

13. The Respondents further claim that the service charge amounts referred to above are unreasonable because no maintenance was carried out to the Property during this period and essential maintenance to the roof has not been carried out by the Applicant's agent. The Respondent's submit that repairs to the roof of the

Property should be covered by the building insurance which is included in the service charge.

**The Inspection**

14. The Tribunal inspected the property on the morning of 21st January 2016. It comprises part of a major development on the outskirts of Gravesend which is divided into smaller sections. This part of the development comprises 39 units built about forty years ago, which are a mix of houses and flats, mainly over two floors and of traditional design. This is known as "Courts E & F". There are communal gardens, footpaths, driveways and car ports which are maintained through the subject service charge account.

15. During the inspection the Tribunal was shown the extent of the relevant part of the estate for which maintenance expenditure is incurred through the service charge account. We were shown the areas that had been painted in the 2012 major works programme and the repairs that had been undertaken to the drains and tarmac driveway.

16. The Tribunal has reviewed the documentation provided together with the Statements from the Respondent and the Applicants. The Tribunal has considered the terms of the lease and the obligations of the parties thereunder together with the statutory provisions that are relevant.

**The Law**

17. Sub-sections (1) and (2) of section 27A of the Act provide that the First Tier Tribunal can determine in respect of the service charges the following:

    a. *the person to whom it is payable*
    b. *the person by 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.*

18. The Tribunal, on the basis of the evidence before it, the written submissions of the Applicant and the Respondent and exercising its own independent expertise has determined the following:

19. The Lease obliges the Respondents to pay their share of Expenses to the Applicant. This is a contractual obligation and would survive the repayment of any mortgage. To suggest otherwise is an argument devoid of merit. Even if the mortgage were to be paid off, the Appellant would still derive the benefit from the upkeep of the common parts.

20. The Respondents still hold the property on a lease dated 21st June 1977 for a term of 999 years and remains liable to comply with its terms. This is registered at HM Land Registry under title Number K458097, copy of which was included in the bundle. Additionally, the Land Registry Official copy of register of title for K488228, which is the relevant area of the development in this case, shows that the Parking space 85 is included within title K458097

21. The Tribunal was unable to ascertain that the Applicant has done anything obviously wrong or inconsistent with the Lease. The Respondents or their representative at the time of purchase should have considered their liability as leaseholders in accordance with the terms of the lease. To suggest that it is now "defective and flawed" is an argument without merit as it was a contract freely entered into at the time of purchase.

22. Furthermore, the Tribunal notes the obligation under the Lease that the Lessee is responsible for the upkeep of their property and that this would include the roofing area which was of particular concern to the Respondents. The Lessors obligation extends only to the common parts and the external decoration of the individual units.

23. The Tribunal has reminded itself as to the approach to be adopted in assessing reasonableness. The notion of something being reasonable has been held to mean that the landlord does not have an unfettered discretion to adopt the highest standard and to charge the tenant that amount; neither does it mean that the tenant can insist on the cheapest amount.

24. The proper approach and practical test were indicated in **Plough Investments Ltds v Manchester City Council [1989] 1 EGLR 244** that as a general rule where there may be more than one method of executing in that case, repairs, the choice of method rests with the party with the obligation under the terms of the lease.

25. Further the tenant cannot insist on the cheapest method and a workable test is whether the landlord himself would have chosen the method of repair if he had to bear the costs himself.

26. Ultimately it is for the court or tribunal to do decide on the basis of the evidence before it and exercising its own expertise. In that regard the Tribunal is an expert tribunal and is able to bring its own expertise and experience in assessing the evidence before it.

27. In this case the Tribunal notes and accepts that the Respondents have not specifically stated which items contained in the service charge budget they consider unreasonable. Their argument is based on the assumption that because they have paid the mortgage off they do not have to pay anything anymore.

28. The Tribunal was however supplied with relevant invoices by the Applicant and the Tribunal was satisfied that they covered reasonable

expenditure for the subject premises. As a matter of evidence the Tribunal is satisfied that maintenance work was carried out in 2012. For example, the inspection disclosed the new tarmac areas as a result of drainage issues adjacent to the garages. The Tribunal has seen no evidence that would justify as a matter of law or as a fact, the withholding of the service charge.

29. Having regard to the guidance given by the **Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000**, the Tribunal considers it just and equitable to make no order under s.20C of the Landlord and Tenant Act 1985. This would be consistent with its findings above.

30. The Tribunal therefore finds that the Respondents have a liability to pay the service charge as set out in the original Particulars of Claim for £606. The matter will be sent back to the County Court.

31. In respect of the £150 administration fee and costs the Tribunal has seen nothing to gainsay the chronology as set out in the Applicants statement dated 13th October 2015. The first service charge demand had been served in September 2013. The matter was referred to an external debt collection agency despite three opportunities where the demand was served, the various letter are attached in the papers and the Tribunal notes that no response was received from the Respondent even up until 12th March 2015 when solicitors were finally instructed. The Tribunal could see nothing in the chronology to suggest that the costs were unreasonable or excessive although ultimately this will be for the County Court.

32. 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. 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.

33. 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.

34. 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.

Judge S.Lal