



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

<b>Case Reference</b>	:	<b>LON/00AX/LSC/2015/0508</b>
<b>Property</b>	:	<b>4 Concord House, 58-64 Coombe Road, KT3 4RJ</b>
<b>Applicant</b>	:	<b>Mr B Staff</b>
<b>Respondent</b>	:	<b>G&amp;O Properties</b>
<b>Representative</b>	:	<b>Urbanpoint Property Management</b>
<b>Type of Application</b>	:	<b>For the determination of the reasonableness of and the liability to pay a service charge</b>
<b>Tribunal Member</b>	:	<b>Judge Dickie</b>
<b>Date of Decision</b>	:	<b>28 April 2016</b>

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**DECISION**

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**Decisions of the tribunal**

The tribunal makes the determinations contained in the attached Schedule. Applications in respect of costs are determined below.

**The application**

1. The Applicant leaseholder seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2012/13 to 15/16 inclusive.
2. The relevant legal provisions are set out in the Appendix. The tribunal issued directions on 23 December 2015. Neither party has requested an oral hearing and I have proceeded to determine the application on the papers.

### **The background**

3. The property which is the subject of this application is a self contained flat within a purpose built block known as Concord House which originally comprised 24 flats above commercial premises. In around 2000 those commercial premises were converted into an additional 15 flats. Concord House is adjacent to a building known as Oriel House in which building the Respondent's managing agent's offices are located.
4. Photographs of the building were provided to the tribunal. Neither party requested an inspection and I did not consider that one would it have been proportionate to the issues in dispute.
5. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred where appropriate.

### **The issues**

6. The Applicant has set out 14 issues for the determination of the tribunal, which I have found it convenient to set out in the schedule attached with a summary of the parties' respective cases and my determination, reached on consideration of the documents and submissions put forward.
7. The sums involved in this dispute are each very small. The Applicant has made multiple requests that the tribunal determine service charges that would be payable in undefined future circumstances (e.g. in terms such as "any such problems in the future that can be solely attributable to Oriel, should be assigned solely to Oriel"). The tribunal is unable to make any such predictive hypothetical determinations.
8. The Applicant's challenge is to certain items of expenditure, not (other than as set out in the schedule in relation to car park use) to their apportionment. The service charges are in practice apportioned in respect of some costs in proportion to the number of flats that now exist, and not according to the proportion specified in the lease, and I have therefore not calculated and set out in this decision the proportionate share payable. I have determined whether each disputed sum is payable, so that those payable may be apportioned appropriately.

### **Application for costs and under s.20C**

9. In its statement of case the Respondent has sought an order for its costs. It discloses that it offered £121 to the Applicant to settle his case. However, it has not specified what those costs are, nor has it made clear

(e.g. by production of the management agreement) that the landlord has incurred any which are not covered by the management fee. Taking into account the outcome of these proceedings, I do not consider that the grounds on which I may make an order for costs are made out and, in any event, would not exercise my discretion in the circumstances to do so. I note however that the Applicant has claimed some very small sums indeed. I would expect any leaseholder who disputes a service charge to raise the matter clearly with the managing agent before deciding whether the issue of tribunal proceedings is proportionate and necessary, and a failure to do so in the future may well render the conduct of an Applicant unreasonable in bringing further such proceedings before the tribunal.

10. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having considered the evidence and taking into account the determinations above, I determine that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act so that the Respondent (subject to any costs having actually been incurred, and subject to their being payable under the terms of the lease) may not pass more than 50% of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** F. Dickie

**Date:** 28 April 2016

## Appendix of relevant legislation

### Landlord and Tenant Act 1985

#### 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 a leasehold valuation 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 a leasehold valuation 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.

### **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.

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Item	Description	Expenditure Challenged	Applicant's case	Respondent's Case	Tribunal's decision
1.	Insurance 2014/15, 2015/16				<p><b>No Jurisdiction</b>            Clause 3(ix) of the lease requires the Applicant to: <i>“At all times during the said term insure and keep insured comprehensively for the full value thereof the demised premises in Alliance Assurance Company Ltd. High Street Kingston-upon-Thames through the agency of the Lessor or such person firm or body corporate as it may appoint or some other reputable Insurance Office nominated by the Lessor in the joint names of the Lessee and the Lessor from time to time and whenever required to produce to the Lessor the policy or policies of such insurance and the receipt for the last premium for the same.”</i></p> <p>The insurance is not recoverable as a service charge under the lease, since it is the lessee's obligation to insure according to its terms. The tribunal has no jurisdiction to determine this aspect of the application.</p>
2.	Car park drainage repairs 2013/14	£834	Concord's main drains are shared with Oriel. Repairs should be reapportioned 50/50 between the blocks.	The repairs were in the car park within the title of Concord (title plan produced).	<p><b>Dismissed</b>            The Applicant bears the burden of proof but has not produced sufficient evidence to make out his case. There are no reasons to conclude that the work as recorded on the invoice of 15/10/13 referring to Concorde (sic) House was carried out</p>

					on other property, was unreasonable expenditure, or that it was the legal obligation of another party to contribute to it in the asserted proportion.
3.	Car park/bins cleaning 2013/14	£280	Cleaning was poor, photos provided in support. £56 per visit is extortionate and £10 per visit is sufficient. Letters from 2 other Concord occupants produced in support.	The concerns were not raised with the Respondent. 2/3 of flats are rented - lower standard of care from these transient occupiers. Previous contractor was not dismissed but gave up contract.	<b>Dismissed</b> There is no evidence of complaints having been made to the agent about the cleaning, which suggests a broad level of satisfaction and that the Respondent did not have the chance to monitor the level of service in response. The limited evidence produced by the Applicant is not persuasive that the charges were unreasonable.
4.	Car park signage 2013/14	£150	Erected to deter unauthorised parking. Two signs were placed on Oriel's car park, which serves as an entrance to Concord's car park, the signs acted as a deterrent to such use of their 6 parking spaces as well and should be born 50/50.	Signs were effective – 2 were located near entrance and positioned to be visible to cars entering from either direction. A third sign was located on Concord's car park.	<b>Allowed in part - £100 to be charged to Concord service charges</b> The Respondent does not dispute that the 2 signs were for the benefit of both car parks.
5.	Car park maintenance	£6,850	Respondent's agent's employees and associates park in the Concord car park. The Applicant reported that an unnamed Oriel resident was charged by the Respondent to park in the Concord car park. Respondents should pay 10% of Concord car park maintenance charges. Photos produced of	Lessees have the right under the lease to park a vehicle in the car park. Plan of Oriel and Concord parking spaces produced. Respondent unaware of charges being levied for parking.	<b>Allowed – car park maintenance is reduced by 10% for the 3 years in question.</b> The Respondent has not denied the Applicant's assertion that its agent permits or encourages non leaseholders to use the Concord car park. That being so, notwithstanding that the Concord leaseholders are able to exercise their right to park there, it is not reasonable that they should bear the whole of the cost of maintenance and repair of the car park. The extent of that use is not clear, but it is not insignificant and the Appellant's proposed 10% is reasonable in the circumstances.



			vehicles parked during and outside office hours. Two other residents have written to confirm that vehicles used by people from Oriel are regularly parked in the car park.		This decision would not prevent another tribunal considering the forthcoming major works bill from determining a different (or no) percentage reduction based on another service charge period and different facts. The Respondent has not disputed the Applicant's figure for car park maintenance over the 3 years in question, after appropriate credits, and I accept it.
6.	Car park tarmac 2016 -		Respondent has consulted on major works to retarmac the car park. The Respondent should contribute 10% if car park use remains the same.	The Applicant did not respond to an informal letter dated 17 February 2015 sent to all leaseholders inviting comments regarding the proposed works.	The works do not appear to be imminent or certain at the present time. The tribunal cannot determine the reasonable cost in advance of a schedule of works / tenders.
7.	Common parts cleaning 2013/14	£312.50	Contractors did a poor job and were dismissed. Spent no more than an hour per visit. £10 per visit is reasonable.	Contractors were not dismissed and Respondent's agent received no complaints.	<b>Dismissed</b> There is no evidence of complaints having been made to the agent about the cleaning, which suggests a broad level of satisfaction and that the Respondent did not have the chance to monitor the level of service in response. The limited evidence produced by the Applicant is not persuasive that the charges were unreasonable.
8.	Common parts cleaning 2016-	£65 + VAT per visit	New cleaners have a Schedule of Cleaning Duties which does not include the walkways, allowing dirt and cobwebs to accumulate. Cleaning walkways should be included in the cost of £65 plus VAT per visit.	Walkways are open and subject to weather, and not included in cleaning contract. Cleaning will at high level will take place in Spring at additional cost.	<b>Dismissed</b> The Applicant has produced insufficient evidence to show that the common parts cleaning cost is unreasonable.

9.	Cleaning and maintenance 2014/15	£102	Duplicate charge	Conceded	Conceded by Respondent.
10.	Lock to communal entrance door 2013/14	£279	Duplicate charge	Conceded	Conceded by Respondent.
11.	Repairs to Sky dish 2013/14	£636 £88.80 £88.80	Installation of a Sky dish was an improvement. Applicant did not express an interest when Respondent offered free installation. The 12 leaseholders who took up a connection should pay for the maintenance.	Provision of satellite dish in 2006 has not been questioned for 10 years. Thus it appears the majority of lessees accept and require this service, which adds value to the demise.	<b>Allowed</b> I have not found this an easy issue to determine owing to the limited evidence before me. The parties may contract outside of the service charge provisions of the lease, but for the purposes of my determination I may only consider whether the Sky dish repairs are payable as a service charge. The landlord recovers service charges (pursuant to the lease terms) for performing his covenants which include the obligation under Clause 6(i) to "maintain repair redecorate and renew (d) A communal Television Aerial and its ancillary equipment. The Respondent has not evidenced that the Sky aerial is the only television aerial, and thus I understand that it does maintain such an aerial also which is sufficient for free access to digital television. Maintaining multiple / additional communal aerials does not fall within the above covenant. Clause 7 of the lease provides that the Service Charge includes "all other liabilities properly incurred for the benefit of the building or of the lessees of the flats comprised therein..." There is no evidence as to the nature of the service obtainable using the Sky dish, but I

					assume it requires some additional payment or subscription. There are numerous options available to today's TV consumer and there is no evidence that a Sky aeria will add value to the properties. I find that the Sky dish maintenance is not for the benefit of the building or its lessees (on the Applicant's undisputed evidence only 12 of 39 flats use the Sky dish). Accordingly I find the lease terms do not provide for the payment of a service charge for the maintenance of the Sky aerial.
12.	Works to roof flat 33 2014/15	£120	Repairs to flats converted from ground floor commercial premises should not be charged to the Applicant as a service charge.	Repairs were to an existing roof.	<b>Dismissed</b> Repairs to the existing roof are chargeable as a service charge.
13.	Associated costs, flat 24 new front door 2013/14, 2014/15	£100 £165	Door forced to trace leak from flat 24 which was actually coming from hopper on Oriel. Door replaced on insurance. Insurance excess and clearance should not be charged to service charge.	Lessee of flat 16 called Police, not Respondent's 24/7 service. Police broke door. Cost of replacement paid by insurer.	<b>Dismissed</b> The Applicant bears the burden or proof but has produced insufficient evidence to prove his version of events.
14.	Charges arising from Flat 9 negligence 2012/13	£240 £70 £159	Leak from flat 9 owing to towel left in sink of running water.	Agent attended owing to leak into ground floor entrance hall, called fire brigade as he was unable to break in. Cost of damage covered by insurers.	<b>Dismissed</b> The Applicant bears the burden of proof and had not produced sufficiently persuasive evidence to make out his case. There was damage to the common parts. It is not disputed that the managing agent is entitled to charge for providing a responsive service.