



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

Case Reference : **CHI/45UG/LSC/2015/0021**

Property : **7 Arundel Court, West Street,
Burgess Hill, West Sussex RH15 8NL**

Applicant : **Old Estates Limited**

Representative : **Circle Residential Management
Limited**

Respondent : **Mr Brian Hills**

Representative : **-**

Type of Application : **Determination of service charge –
section 27A Landlord and Tenant Act
1985 (“the Act”)**

Tribunal Members : **Judge E Morrison
Lady Davies FRICS**

**Date of inspection
and determination** : **9 June 2015**

Date of decision : **11 June 2015**

DECISION

The Application

1. By an application dated 13 March 2015 the Applicant lessor sought a determination of the on account service charge payable by the Respondent lessee for service charge year 2014/15. There is also a request for reimbursement of the application fee.

Summary of Decision

2. The on account service charge payable by the Respondent for 2014/15 is £790.86, being 1/20th of the overall budgeted expenditure of £15,817.10 for Arundel Court.
3. The Respondent shall by 1 July 2015 reimburse to the Applicant the fee of £90.00 paid by the Applicant to the Tribunal.

The Lease

4. The Tribunal had before it a copy of the lease for Flat 7, which is for a term of 99 years from 25 December 1988. The relevant provisions in the lease may be summarised as follows:
 - (a) The tenant is liable to pay 1/20th of specified expenditure incurred by the landlord pursuant to covenants in the lease;
 - (b) An on account payment is payable on the rent day each year (25 December) in such sum as the landlord considers expedient;
 - (c) At the end of each year the landlord must prepare accounts showing actual expenditure incurred in that year;
 - (d) The landlord's covenants include the insurance of the building, and the repair and maintenance of those parts of Arundel Court which are not demised to a tenant, including the roof, external walls, internal common parts, and external common areas which the gardens and car park. The lease also allows the employment and recovery of fees (through the service charge) of agents and such other persons as the landlord considers necessary to the performance of its obligations.

The Inspection

5. The Tribunal inspected Arundel Court on 9 June 2015. A local contractor employed by the lessor's managing agents was in attendance and provided the Tribunal with access to the internal common parts. The Respondent was not present and there did not appear to be anyone at home in Flat 7.
6. Flat 7 is a first floor one-bedroom flat in one of two purpose-built two-storey blocks comprising a total of 20 flats, built in the 1980s. Construction is of brick, part-rendered part-tile hung, under an interlocking tiled roof. The blocks are situated within communal

grounds with external parking on site. The grounds comprise lawns and shrubs and are reasonably well maintained. Externally the property is in fair to reasonable condition, although there is staining and cracking of some areas of render, and the wooden doors and windows, mainly single-glazed, are in some places in need of maintenance. There are 5 separate entrance doors, each serving a common hall/stairway accessing four flats. The internal common parts are plain but in reasonable order with worn fitted stair carpets, and are served with communal lighting and an entry phone system.

Procedural Background

7. Following a case management hearing by telephone on 28 April 2015 in which the Respondent failed to participate, Directions were issued providing that if the Respondent failed to identify which items of the service charge he was disputing by 12 May 2015, he could be debarred from taking further part in the proceedings. The Respondent did not take any action and on 13 May 2015 the Tribunal made an order barring the Respondent from participation.
8. The Directions also stated that the application would be determined on the basis of written representations and without an oral hearing.

Evidence for the determination

9. As the Respondent failed to make any response whatsoever to the application before he was debarred, the determination has been made solely on the basis of the Applicant's statement of case and supporting documentation, and the Tribunal's inspection.

The Law and Jurisdiction

10. 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.
11. By section 19(1) 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. Under section 19(2) where a service charge is payable before the costs are incurred, no greater amount than is reasonable is payable.
12. Under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal has a general discretion whether to make an order for reimbursement of tribunal fees.

Discussion and Determination

13. The lease makes it clear that the Respondent must pay an advance/on account service charge at the beginning of each service charge year, which starts on 25 December. His share of the overall service charge is 1/20th. The service charge demand dated 7 January 2015 in the sum of £790.86 appears to comply with the lease and the appropriate statutory provisions relating to service charge demands.
14. The demand is based on an overall budget of £15,817.10 for Arundel Court which comprises 8 specific heads of expenditure: year-end accounting, building repairs, cleaning, common parts electricity, gardening, buildings insurance, security/intercom, and management fee. In its statement of case the Applicant has provided an explanation of how each head of expenditure has been calculated.
15. The Tribunal has considered the amount for each head, and the overall budget, and concludes that there is no evidence that any of the budgeted amounts or the total budget is other than reasonable, as required by section 19(2) of the Act.
16. Before making this application, the managing agents wrote to the Respondent inviting him to admit the service charge. He did not reply. It is unclear why the Respondent has failed to participate in the proceedings. While at the property, a neighbour confirmed to the Tribunal that the Respondent lived at the flat, but were concerned that he had not been seen for about two weeks. According to the Applicant's managing agents they spoke to the Respondent on 29 April 2015 and he confirmed that correspondence should be sent to the flat, where he lived. In the absence of any explanation for his apparent refusal to engage in any way, thus making a determination necessary, the Tribunal considers it appropriate that he should reimburse the Applicant for the application fee paid to the Tribunal.

Dated: 11 June 2015

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.