



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

**Case Reference** : **BIR/OOCN/LIS/2015/0002  
BIR/OOCN/LIS/2015/0017  
BIR/OOCN/LAC/2015/0001**

**Property** : **813C and 813D Warwick Road,  
Tyseley, Birmingham  
B11 2EL**

**Applicant** : **Contratree Limited**

**Applicants  
Representative** : **Bude Nathan Iwanier Solicitors**

**Respondents** : **Mr B E Breslin & Mrs M Breslin**

**Respondents  
Representative** : **Reilly & Co Solicitors**

**Type of Application** : **Application under Section 27A (and  
19) of the Landlord & Tenant Act 1985  
for determination of the liability to  
pay and reasonableness of service  
charges and an Application under  
paragraph 5 of Schedule 11 of the  
Commonhold and Leasehold Reform  
Act 2002 for the determination of  
reasonable administration charges**

**Tribunal Members** : **Mr G S Freckelton FRICS (Chairman)  
Judge P Ellis**

**Date and venue of** : **24<sup>th</sup> November 2015 at the Tribunal  
Office, Birmingham**

**Date of Decision** : **9th December 2015**

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**DECISION**

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## **BACKGROUND**

1. These Applications were transferred to the First-tier Tribunal by Birmingham County Court.
2. Application BIR/OOCN/LIS/2015/0002 is for a determination of liability to pay and reasonableness of service charges under Section 27A (and 19) of the Landlord & Tenant Act 1985 (“the 1985 Act”) in respect of 813D Warwick Road, Tyseley, Birmingham.
3. Application BIR/OOCN/LIS/2015/0017 is for a determination of liability to pay and reasonableness of service charges under Section 27A (and 19) of the Landlord & Tenant Act 1985 (“the 1985 Act”) in respect of 813C Warwick Road, Tyseley, Birmingham.
4. Application BIR/OOCN/LAC/2015/0001 is for a determination of reasonable administration charges under paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) in respect of 813D Warwick Road, Tyseley, Birmingham.
5. Directions were issued by the Tribunal following which detailed submissions were made by both parties.

## **THE LEASES**

6. The Tribunal has received a copy of the lease in respect of 813C Warwick Road dated 3<sup>rd</sup> February 1989 between Contratree Ltd and Mr & Mrs A D Cashmore. Clause 2 details the Lessee’s covenants with the Lessor and in particular to pay *‘a reasonable proportion...of the costs expenses and outgoings and matters mentioned in the Sixth Schedule’*. The Sixth Schedule details the costs, expenses and outgoings in respect of which the Lessee is to make a contribution.
7. The Tribunal has also received a copy of the lease in respect of 813D Warwick Road. This is a more modern lease dated 2<sup>nd</sup> September 1999 between Contratree Limited and Miranda May Gordon. The lease contains similar provisions to the lease in respect of 813C Warwick Road. Schedule 5 defines the Service Charge and details the expenditure which the Lessee is obliged to reimburse to the lessor.

## **THE LEGAL FRAMEWORK**

8. Under Section 27A of the 1985 Act, the Tribunal has jurisdiction to decide whether a service charge is payable and if it is, the Tribunal may also decide:-
  - (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
9. Section 19 of the 1985 Act provides that service charges must be reasonable for them to be payable.

*“Relevant costs shall be taken into account in determining the amount of the service charge payable for a period –*

- (a) *Only to the extent that they are reasonably incurred, and*
- (b) *Where they are incurred on the provision of services and the carrying out of works, only if the services or works are of a reasonable standard:*

*And the amount payable shall be limited accordingly.”*

10. Section 21B of the 1985 Act provides, in so far as it is relevant to these proceedings:

- i. 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.
- ii. A tenant may withhold payment of a service charge which has been demanded of him if subsection (i) is not complied with.
- iii. Where a tenant withholds a service charge under this section any proceedings 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.

11. A charge is only payable by the Lessee if the terms of the Lease permit the Lessor to charge for the specific service. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (*Gilje v Charlgrove Securities* [2002] 1EGLR41). It was also stated in *Gilje* above “The Lease moreover, was drafted or proffered by the Landlord. It falls to be construed contra proferentum”.

12. If the Lease authorises the charges, they are only payable to the extent that they are reasonably incurred; and where they are incurred, only where the services for which they are incurred are of a reasonable standard.

13. The construction of the Lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (Yorkbrook Investments Ltd v Batten [1985] 2 EGLR 100).

### **THE PROPERTY INSPECTION**

14. The Tribunal inspected the property on Tuesday 24<sup>th</sup> November 2015 in the presence of Mrs K Charles, Counsel on behalf of the Applicant; Mr S Stern of Effective Management, the Applicants managing agent; Mr B Breslin, the Respondent and Mr K Reilly, Solicitor on behalf of the Respondent. Also in attendance were Mr R R Parmar and Mr R Parmar, part owners of Flat 813B and witnesses on behalf of the Respondent.
15. The Tribunal found the properties to be situated on the first and second floors above a retail shop. The flats were approached via a pedestrian door directly from Warwick Road. A concrete staircase led to the first and second floors. The Tribunal understands that there are four flats in total above 813 Warwick Road. Both subject flats are located on the second floor. At the time of the Tribunal's inspection there was noted to be scaffolding to the rear elevation and the Tribunal understands that repairs are being carried out to the gutters and downpipes. There is no outside space available to any of the leaseholders and the Tribunal therefore limited its inspection to the common internal areas.
16. The Tribunal noted that the staircase area required redecoration and understands that it was last redecorated by the Respondent some two years ago.

### **THE PARTIES' EVIDENCE AND SUBMISSIONS**

17. It was confirmed by both parties representatives that the dispute for both flats comprised of the same items, the only difference being the amount of ground rent payable in respect of the two properties. The Respondent confirmed that there were different provisions in the two leases with regard to service charge items. The Tribunal noted that the Scott schedules provided by both parties in respect of the two flats were for the same amounts.
18. For the Applicants, Mrs Charles called Mr S Stern, the Applicants managing agents to give evidence. Mr Stern provided a witness statement which was included in the trial bundle.

19. In the first instance the Tribunal asked Mr Stern to confirm the process by which service charge demands were sent to the leaseholders. The Respondents had stated in their evidence that no statements of the Tenant's Rights were included with the demands. Mr Stern confirmed that upon receiving instructions to act his firm would:
- i. Check through the lease and determine the service charge amounts due from the leaseholders.
  - ii. Arrange for a section 166 notice to be served in respect of the Ground Rent.
  - iii. Arrange for a service charge demands to be submitted. This was set out on a spreadsheet, transferred to the Demand and sent with copy invoices to the leaseholders.
  - iv. Ensure that a statement of the Tenant's Rights was included with the demand.
20. Mr Stern also confirmed that general costs for the block were split between 15 flats and that the costs for number 813 were divided by four being the number of flats in the property itself.
21. Under examination by the Tribunal, Mr Stern confirmed that he prepared the demands and that the Tenant's Rights and Obligations were included on a separate sheet. Mr Stern confirmed that he usually put the demands in the envelopes himself but if not then he would supervise the process. Mr Stern confirmed that his company, Effective Management was run by himself and his mother and that the copy of the Tenant's Rights was sent with all demands. Mr Stern also confirmed that the other Tenants' in the block had paid their service charges without dispute.
22. On behalf of the Respondents Mr Mohammed cross-examined Mr Stern who further confirmed that he had managed the property since 2012 and had submitted a total of three demands for service charge payment plus reminders where necessary.
23. Mr Stern accepted that he had omitted to include the Tenant's Rights and Obligations when sending one reminder but this had been reserved correctly. He confirmed that he oversaw all documents put into envelopes for posting and checked all 15 envelopes personally for this block to ensure that nothing was missing.
23. Mr Stern explained that expenses relating to the property were entered onto a spreadsheet and then sent to the leaseholders with copies of supporting invoices and a copy of the Tenant's Rights. If a copy of the Tenant's Rights was not put into an envelope that would be flagged up to him. He accepted that the demand for payment dated 13 May 2014 did not refer to an enclosed statement of rights but in his opinion it did not need to.

24. Mr Mohammed, Counsel for the Respondent confirmed that the Respondents position was that they did not receive the Tenant's Statements of Rights and Mr Parmar of flats 813 also confirmed that he had not received a statement either.
25. Mr Stern confirmed that when sending a demand for service charge payments the demand itself was stapled together. The copy invoices were stapled separately as was the Tenant's Statement of Rights.
26. Mr Mohammed asked Mr Stern why certification in respect of the service charges was not provided in accordance with the terms of the lease and why the apportionments between the properties was not in accordance with the rateable value of the various flats which was also provided for within the lease.
27. Mr Stern confirmed that all flats within the block were the same and that domestic rateable values had been abolished and replaced with Council Tax bands. He had taken advice from his client's solicitor who instructed him to apportion the charges equally between the flats.
28. With regard to the certification of the service charge accounts by a 'surveyor', Mr Stern had been instructed by his clients solicitor that this was not required as he was only charging for services that had already been provided. As such leaseholders were being asked to pay in arrears. The lease provided for payments to be made by the leaseholders on account of future charges but the landlord had not done this. As service charges were only charged in arrears certification was not required.
29. On behalf of the Applicant Mrs Charles again asked Mr Stern to explain the process within his office of how service charge demands were sent to the leaseholders. Mr Stern reiterated his earlier comments and confirmed that all service charge demands included copy invoices and a copy of the Tenant's Statement of Rights. He also confirmed that his system would 'flag up' if anything was missing but did not explain fully how this would happen. Mr Stern did confirm that he would know if anything was missing from a service charge demand.
30. The Tribunal asked Mr Stern how many properties his company managed and he confirmed that there were approximately 30 - 40 freehold properties and approximately 100 leasehold properties.
31. The Applicant, Mr Breslin was then cross-examined by Mrs Charles. Mr Breslin confirmed that his witness statement, which he had stated was correct, was actually incorrect as it stated that he had owned his flats for twenty years whereas he purchased 813C in 2006 and 813D in 2004. Mr Breslin stated that he had meant to say that he had been told the landlords had not been to the property for twenty years.

32. Mr Breslin confirmed that he had not owned a leasehold property prior to purchasing 813D Warwick Road and that the demand for service charges dated 13 May 2014 was the first demand he had received from Effective Management. Although he had paid the invoice he had changed his mind about whether or not the charges were due. On reflection he thought that the maintenance charges were getting out of hand and did not understand how they were worked out. Mr Breslin agreed that invoices were *probably* enclosed with the service charge demand and he recalled that he had seen them at that time.
33. Mr Breslin stated that the Tenant's Rights were not included with the service charge demand. Mrs Charles pointed out to Mr Breslin that the first invoice from Effective Management was actually sent in 2013 and not 2014. Mr Breslin confirmed that he could not remember receiving a demand in 2013 but it was pointed out to him that he must have received an invoice as he had paid the amount due. Mr Breslin confirmed that he had paid some invoices before May 2014 and on reflection accepted that he did receive a demand in 2013. During cross-examination Mr Breslin confirmed that he had mislaid the demand letters for flat 813D including the copy invoices although he had kept all the demands and invoices for flat 813C.
34. Mr RR Parmar was then cross-examined as a witness on behalf of the Respondent. Mr Parmar had provided a witness statement and he confirmed that the contents of the witness statements were correct.
35. Under cross-examination by Mrs Charles, Mr Parmar confirmed that he purchased flat 813B in 1997 and that in total he owned approximately 80 leasehold properties. Mr Parmar accepted that he had received a considerable number of service charge demands for his various leasehold properties over the years.
36. Mr Parmar was asked if the Tenant's Statement of Rights was included with the service charge demands but as he did not have this file with him he was unable to recall exactly what was included with the various demands he had received.
37. Mr Parmar stated that in his opinion the landlord had been an absent landlord since he purchased his flat in 1997 and that since Effective Management had taken over there had been problems although he did not explain that matter any further. He confirmed that he also had a case coming before the First-tier Tribunal in respect of the service charge for his flat, 813B Warwick Road.
38. Mr Parmar confirmed that in 2012 he had received a service charge demand from Cottons, who, Tribunal understands, were the previous managing agent. He subsequently received service charge demands from Effective Management in 2013 and 2014, the latter of which was currently in dispute. He had requested copies of the reports on the condition of the roof and details of the property insurance together

with a summary of the work carried out to the roof but these had not been sent to him.

39. On further cross-examination he accepted that he had received copies of the invoices in respect of work carried out but had not received a copy of the Tenant's Rights. When asked why he did not raise the issue of the Tenant's Rights not being included, Mr Parmar confirmed he had received a letter from Mrs Stern confirming that a Tenant's Schedule of Rights was not required with a reminder for unpaid service charges but only with the original demand.
40. On behalf of the Respondents Mr Mohammed submitted the landlords were not able to charge solicitors fees under the terms of the leases as there was a specific right to charge solicitors fees in respect of a consent to assign and in respect of the preparation of a notice under Section 146. However these specific rights did not give a general right to charge solicitors fees in respect of arrears.
41. On behalf of the Applicant Mrs Charles submitted that the clause referring to solicitor's fees was a standard clause and further submitted that the invoice for solicitors fees falls under the heading of a section 146 notice as it was a warning letter which could ultimately lead to forfeiture of the lease. Mr Mohammed submitted that this was a debt recovery letter regarding arrears which should have been dealt with by the managing agent as initially chasing arrears was normal generic management work and did not require the intervention of a solicitor.
42. With regard to the actual costs incurred which form the service charge there was no disputes by the Respondents of the amounts charged in respect of repairs and management. Consequently it is not necessary for the Tribunal to determine whether those costs were reasonable or reasonably incurred.
43. In conclusion Mr Mohammed summarised his submissions:
  - a) The charges were incorrectly apportioned. Under the terms of the leases the service charges should be apportioned by reference to the rateable value.
  - b) The accounts were not certified by a surveyor as required by the leases.
  - c) Effective Management on behalf of the Applicants had breached the legal requirement that the Tenant's Rights must be sent out with service charge demands and that it was likely that in May 2014 the Tenant's Rights were omitted.
  - d) The format of the service charge demand sent by Effective Management was unusual and that in his experience such demands were usually more formal.
  - e) That there had been a significant departure from the lease in respect of the service charge accounting periods and the lack of formal certification.
  - f) That the Landlords were required to comply with the law.



44. In her closing remarks Mrs Charles confirmed that:
- a) The question of the apportionment of the service charge was not raised until 13<sup>th</sup> November 2015 and that Mr Stern had been advised by the Landlords Solicitor to apportion the service charges equally between the flats as rateable values had now been abolished.
  - b) There were undoubtedly different ways of calculating the apportionment of the maintenance charge but as all the properties were identical two-bedroom flats it was logical to apportion service charges equally as Mr Stern had done.
  - c) With regard to certification of the accounts by a 'surveyor' as specified in the leases; this was unnecessary as the Applicants were only seeking to obtain payments of service charges in arrears and were not seeking payment in advance. There was an interest by all parties in keeping costs as low as possible and the demand issued by Effective Management did certify the amount payable.
  - d) It was accepted that the demands in respect of flats 813D did not fall neatly within an accounting period but the charges due were dealt with in arrears at the end of each period.
  - e) Effective Management do not take any money in advance which they are entitled to do under the terms of the lease but only charge at the end of an accounting period. There were no interim charges and no surpluses in respect of charges demanded and paid.
  - f) With regards to the summary of her Tenant's Rights there was only one occasion when the summary was not included with a service charge demand and then only with a reminder and not the original demand. Mr Stern oversees this block personally and has given evidence to the Tribunal that the Tenant's Rights were included.
  - g) With regard to the evidence of Mr Breslin and Mr Parmar their witness statements have been given some 18 months after the demands were issued so it was unlikely that they would have recalled exactly what was included with the demands and whether or not the Tenant's Rights were included not.

### **THE TRIBUNAL DECISION**

45. The Tribunal first considered the parties submissions in respect of the inclusion or otherwise of the Tenant's Rights with the service charge demands. The Tribunal carefully considered the evidence of the parties and on balance preferred the evidence of Mr Stern. It was clear to the Tribunal from Mr Stern's evidence that he has a procedure within his office to ensure that the statements of Tenant's Rights are included when the service charge demands are sent out. The Tribunal noted that the remaining flats (with the exception of 813B) had paid their service charges and that the leaseholders had not queried the absence of the Tenant's Rights.

46. The Tribunal then considered whether or not it was necessary for the service charge demands to be accompanied by a 'surveyor's certificate'. In this case the Tribunal would expect the landlords managing agents to qualify as the surveyor. The managing agents have arranged for the work to be undertaken and they have issued the service charge demands together with copies of the accompanying invoices. The Tribunal notes that service charges are demanded in arrears and in respect of works that have already been undertaken. As such Tribunal does not consider that a separate surveyor's certificate is required.
47. The Tribunal then considered the apportionment of service charges between the various flats. The leases quite clearly state that the service charges are to be apportioned in relation to the rateable values of the various properties although rateable values have been abolished and replaced by Council Tax bands. In the absence of rateable values it is necessary to determine a new method for apportioning the service charge. Although no evidence was given to the Tribunal in respect of the Council Tax bands of the various flats Mr Stern confirmed that all flats were very similar and all had two bedrooms. His evidence was not challenged on this point. As such the Tribunal considers that the decision by the managing agents to apportion the charges equally between all flats is not unreasonable. Indeed it is difficult to imagine an alternative practical approach. Therefore, the Tribunal determines that the present arrangement for apportionment of the service charges is reasonable.
48. Having determined that the statements of Tenant's Rights was likely to have been included with the service charge demands (and even if it was not, both parties accepted that subsequent reminders had included the Tenant's Rights) the Tribunal went on to consider the charges made.
49. With the exception of the legal fees amounting to £330.00 per flat the Respondents accepted the remaining costs in respect of works carried out and the Tribunal therefore determines that the costs as set out in the Scott schedule are payable in respect of both flats as follows for the Service Charge Account due on 13<sup>th</sup> May 2014:-

Roof repairs	754.66
Clearing of overgrown rear	32.80
Insurance	170.00
CCTV to drainage	26.00
Electricity repairs	243.75
Fire safety certificate	212.50
Communal lighting	12.70
<u>Management fee</u>	<u>145.24</u>
<b>Total</b>	<b>£1597.65</b>

50. The Tribunal then considered whether or not the legal fees amounting to £330.00 per flat was reasonable and chargeable under the terms of the lease.

51. In this matter the Tribunal agrees with the Respondents. The terms of the leases do not give a general right to charge solicitors fees and the Tribunal considers that the initial pursuit of arrears is a matter that should be dealt with by the managing agents. The Tribunal also considers that the invoice produced by Bude Nathan Iwanier which makes no mention of any work in pursuit of a claim under section 146 and only refers vaguely to 'consideration of instructions' and 'consideration of documentation' gives no indication to either the leaseholders or to the Tribunal of the actual work undertaken. The Tribunal therefore determines that the legal fees are not payable.
52. The Tribunal then considered the question of the Administration Fee of £200.00 which had been charged to the leaseholders. The Tribunal determined that although the service charge demands had been correctly served and had included a copy of the Tenant's Rights the lease did not provide for Administration Charges to be levied to cover the cost of the managing agents pursuing the overdue charges. The Tribunal therefore determined that the Administration Fee is not allowable.

### **APPEAL**

53. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Mr G Freckelton FRICS  
Chairman  
First-Tier Tribunal Property Chamber (Residential Property)