



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

Case Reference : CHI/00HN/LSC/2020/0130

Property : Flat 2, 11 Eldon Place, Westbourne,
Dorset BH4 9AZ

Applicant : Howard Phillips

Representative : n/a

Respondent : Sheila Lewis

Representative : n/a

Type of Application : For the determination of the reasonableness of
and the liability to pay a service charge

**Tribunal
Member(s)** : Judge JA Talbot
Mr P Turner-Powell FRICS

**Date of Paper
Determination** : 7 July 2021

Date of Decision : 12 July 2021

DECISION

Decisions of the Tribunal

1. The tribunal determines as follows:-

Mr Phillips is liable to pay nil service charges for the years 2018, 2019 and 2020.

2. The tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985 and on reimbursement of fees.
3. The tribunal declines to make an order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

The application

4. The Applicant, Mr Phillips, seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 (“the Act”) as to whether service charges are payable by him in the years 2018, 2019 and 2020. The application is dated 31/11/2020.
5. Several sets of Directions were issued in this case, firstly by Judge Dobson on 14/01/2021 including Directions for the Respondent, Mrs Lewis, to provide copies of service charge demands and accounts for the property, and Statements of case from both parties. Judge Dobson pointed out that the tribunal can determine whether any service charges demanded were payable and reasonable and in accordance with the provisions of the lease, and that the tribunal would be able to determine the effect of any failure to comply with the lease terms on payability of charges. Judge Dobson also stated that the “Statement of Account” provided by Mrs Lewis’s solicitor, Mr M Hudson, did not meet the requirements of the lease
6. On 29/03/2021 Judge Agnew extended time for compliance on request from Mrs Lewis. On 06/04/2021 Regional Surveyor Banfield refused to vary Judge Agnew’s Directions. Mrs Lewis did not comply fully with the Directions to provide service charge demands and property accounts. On 07/06/2021 Judge Morrison issued further Directions for Mr Phillips to confirm whether he was the lessee and to provide a replacement and expanded bundle of documents for the case. The tribunal cannot see that he has specifically clarified his position as lessee, but there has been no suggestion that he is not, nor any objection by Mrs Lewis.
7. Mr Phillips supplied a written Statement of Case and the amended bundle. Mrs Lewis has provided letters to the tribunal (presumably drafted by her son who she said was assisting her. However, there is no clear Statement of Case. The tribunal did receive an undated, unsigned handwritten document which it assumes is from Mrs Lewis.
8. The relevant legal provisions are set out in the Appendix to this decision.

Paper Determination

9. Neither party requested an oral hearing or objected to the matter being determined on the papers. Final Directions were made by Judge Barber on 25/06/2021 in which he reviewed the hearing bundle and decided the case was suitable to be determined on the papers without an oral hearing. Accordingly, the tribunal carried out a paper determination on 07/07/2021. The tribunal did not inspect the property as it was not necessary, and in any event, inspections have been suspended during the Covid-19 national emergency.

The Lease

10. Mr Phillips is the lessee of Flat 2. The lease provided has an illegible date as the complete year is missing from the copy. It is for a term of 99 years from 01/01/1983. The current freehold owner and landlord is presumed to be 11 Eldon Place Freehold Limited. The ground rent is £25 per year payable on 1 January each year.
11. Under the Sixth Schedule of the lease, at paragraphs 18, the tenant covenants to pay the service charges of “thirty three and one third per centum of all costs charges and expenses incurred by the lessor in carrying out its obligations under the Seventh Schedule”.
12. Paragraph 19 provides for the lessee to pay a service charge on account of £50 on the 1 January and 1 July each year. There is no provision for this amount to be increased, or for a reserve fund. Under paragraph 20, a balancing charge is payable within 21 days of the lessor serving on the lessee “a notice in writing stating the proportionate amount (certified in accordance with clause 8 of the Seventh Schedule) due from the lessee ... for the accounting period to which the notice relates”.
13. Under the Seventh Schedule, the lessor covenants, in summary, to keep the property insured, in good repair, to decorate the exterior, and keep the common parts clean and adequately lighted.
14. At paragraph 8, the lessor is required to “keep proper books of accounts of all costs charges and expenses incurred by him in carrying out his obligations under this Schedule and an account shall be taken in each year of the said term of the amount of the said costs charges and expenses incurred since the commencement of the term”.
15. Paragraph 9 provides that the accounts must be prepared by the lessor and “such account shall show the total amount of the said costs charges and expenses ... for the period to which the account relates and the proportionate amount due from the lessee to the lessor pursuant to clause 18 of the Sixth Schedule”, i.e. the service charge.
16. Paragraph 10 requires the lessor within two months of the accounting date to serve on the lessee “a notice in writing stating the said total and

proportionate amounts”. This mirrors the balancing charge provision at paragraph 20 of the Sixth Schedule (see above).

Background Facts

17. The subject property is a first floor flat in a terraced house converted into three flats. Mr Phillips does not occupy the flat which is sub-let to sub-tenants on an assured shorthold tenancy. Mrs Lewis is the owner and occupier of flat 1. She is also a Director of 11 Eldon Place Freehold Limited. It is not known whether she is the sole Director, or whether this is a tenant-owned management company in which all the lessees have shares. However, it is evident that Mrs Lewis in person takes responsibility for the management of the property
18. Mrs Lewis has made various allegations about the behaviour of the sub-tenants of flat 2 which are not relevant to this determination and will not be considered further.
19. It is not known when Mr Phillips acquired the lease. It appears that he is a joint lessee with a Mr A Featherstone, and that the flat has been sub-let for some years, previously managed by Mr Featherstone and an assistant. In his Application Mr Phillips states that he took over “hands on” management of the flat in 2019 and in early 2020 was informed by “the freeholder” (presumably meaning Mrs Lewis) that service charges for the years 2018, 2019 & 2020 had not been paid.
20. Mr Phillips says he first wrote to the freeholder in April 2020 requesting details and accounts so that he could see what expenses had been incurred. His case is that he has always been willing to pay service charges but only on receipt of a budget and subsequent accounts supported by invoices to show expenditure. He requested the information many times but it was never provided.
21. On 20/10/2020 Mr Phillips was sent by email from Mrs Lewis’s solicitor, Mr M Hudson, a document headed “Statement of Account” presumably prepared by Mr Hudson based on what he called “a full history of the current state of account for flat 2” from his client Mrs Lewis. There are different versions of this Statement of Account in the bundle but at that stage the total said to be outstanding was £5,121,23 which Mr Hudson requested to be paid into his client account.
22. The “Statement of Account” served on 20/10/2020 purported to set out expenditure for 2018, 2019 & 2020. It listed buildings insurance costs for those years, ground rent, and service charges of £425.00 said to be due twice per year on 1 January and 1 July, a total of £850 per year. The Statement also includes emergency roof works “not covered by insurance” of which Mr Phillips’s share was said to be £762.00 plus £200, a total of £962.00. No date was given for these works. The only other claimed expenditure was £60.00 for deep cleaning of carpets and £600 legal costs for preparation and service of a Section 146 Notice which presumably relate to Mr Hudson’s own charges.

23. A later, different version of the Statement of Account was sent to Mr Phillips under cover of a letter from Mrs Lewis dated 01/02/2021. This time, without explanation, the carpet cleaning costs, insurance costs for 2020 and legal costs were omitted. The emergency roof works were still included, even though in her letter Mrs Lewis said that the cost of those works were paid in full by the insurance company. The total then said to be outstanding from Mr Phillips was £4,010.13.
24. There is subsequent correspondence between Mr Phillips and Mr Hudson in which Mr Phillips stated that the Statement of Account was not sufficient evidence to demand full payment, and that the service charge accounts and evidence of expenditure still had not been provided as per his earlier requests.
25. Mr Phillips stated in correspondence that Mr Featherstone had previously requested the same information in 2018 and had refused to pay the interim service charge demands of £425.00 unless and until that information was forthcoming. Mr Phillips provided evidence that Mr Featherstone had paid ground rent in 2018.
26. It appears that Mrs Lewis provided copies of some service charge demands with her letter of 01/02/2021, addressed to Mr Featherstone in 2018 & 2019, and to Mr Phillips on 26/06/2020 and 01/01/2021. There are also demands for ground rent. However, only one of the demands supplied to the tribunal (dated 01/01/2021) was accompanied by the Summary of Tenants' Rights and Obligations, which is a statutory requirement. The earlier demands are undated. Mr Phillips says that Mr Featherstone did not receive demands for service charges or ground rent in 2019 & 2020. It is not clear whether these were sent at the time.
27. In an attempt to resolve the matter, on 13/11/2020 Mr Phillips made a payment on account of £3,000 which he intended to cover ground rent for 2019 and 2020, and once the accounts and supporting information were provided, he said he would pay any balance due or it could be offset against ground rent and service charges for 2021. This money was paid to Mr Hudson's firm's client account.
28. Eventually, in respect of expenditure, Mrs Lewis supplied (via Mr Hudson): an invoice from Deacon Insurance of £804.50 for the period 31/08/2017 to 30/08/2019; from Jelf Insurance of £464.90 dated 25/09/2019; CiSL Insurance of £559.31 dated 13/10/2020; Building & Plastering Ltd invoice, undated, for £2286.00 which presumably relates to the emergency roof works on the Statement of Account which was paid by the insurer; and a quote for carpet deep cleaning of £60 from Anna & Henry Best Cleaning Solution which is noted as paid by cheque on 18/10/2020 (presumably the note is by Mrs Lewis); and another roofing invoice for work done in 2021 which is not part of this Application.
29. In an email to Mr Phillips dated 07/12/2020, Mr Hudson stated that the payment of £3,000 was not sufficient and that £5,121.23 was still the full

amount due. He said: “I attach a full statement of account together with every invoice and other notification that is available. That is all there is and you will have to take a view on the subject”. He added that Mrs Lewis had paid for “work” which had been done and was out of pocket as a result. He was silent about the missing service charge accounts.

30. The tribunal would infer from this, that neither Mrs Lewis nor any prior managing agent had prepared and served accounts as required under the terms of the lease, or sent to Mr Phillips the written notice required two months after service of the accounts for any balancing charge.
31. The only other information in the bundle relating to alleged expenditure at the property is contained in purported Company accounts for 11 Eldon Place Freehold Limited, comprising a “Profit and Loss Account”, presumably prepared by Mrs Lewis, as they are dated by her on 19/12/2019 and 19/10/2020. However, these do not assist because they relate to the Company and not the service charge accounts required under the terms of the lease.
32. In addition, the contents are unreliable, as each of the “Profit and Loss accounts” are exactly the same, even though they purport to be for different years. The claimed income is obscure as it refers to a “Window Replacement Levy” of £2,046, a Director’s loan of £1,340, and “Flat 2 outstanding monies” of £1,750. The alleged service charge arrears cannot be actual income and the amount of £1,750 bears no relation to the Statement of Account prepared by Mr Hudson.
33. As for the alleged expenditure, the insurance is stated as £794 in each of the Profit and Loss accounts. This the claimed amount for 01/10/2018 to 30/09/2019 in the Statement of Account but is not supported by any of the insurance invoices provided. The other alleged expenditure is puzzling as it includes window replacement of £2,046 but there is no evidence of any works to windows in 2018, 2019 or 2020 and again this is not in the Statement of Account. Finally, general administrative costs, legal & profession costs and management costs totalling £1,792 are included as expenditure but these are completely unsupported.
34. The remaining correspondence between Mr Phillips and Mr Hudson concerns a proposed lease extension and the possibility of acquiring the lease of Flat 1 and the freehold of the property. These are not relevant to this Application.

Reasons for the Tribunal’s Decision

35. The tribunal carefully considered all the written evidence, statements and submissions.
36. It is quite clear that the landlord has not complied with the terms of the lease in respect of service charge demands, the provision of accounts and the requirement for written notice to be served for any balancing charge.

37. The landlord is only entitled to demand £50 interim payments on account twice yearly. There is no provision for this amount to be increased at the choice of the landlord.
38. Therefore, the purported service charge demands of £425 twice yearly are not payable because they have not been validly demanded in accordance with the lease. In addition, there is no evidence that the mandatory statutory notice was sent other than with the demand of 01/01/2021.
39. £50 interim charges on account twice yearly would only be payable if they have been validly demanded, which they have not.
40. The purported Statement of Account on which Mrs Lewis and Mr Hudson seek to rely, plainly does not amount to proper service charge accounts required under the terms of the lease. This was pointed out to the parties by Judge Dobson in his initial Directions of 14/01/2021. At best it is an attempt to set out a summary of certain expenditure and alleged service charge demands in 2018, 2019 and 2020.
41. The tribunal was unable to reconcile the differences in the two versions of the Statement of Account as sent to Mr Phillips, as those differences are unexplained. Moreover, neither version of the Statement of Account bears any resemblance to the alleged expenditure in the purported Company Profit and Loss Accounts.
42. It is therefore not possible to identify any expenditure which might have been reasonably incurred and be properly covered by service charges for the years in issue, even if they had been validly demanded, apart from the insurance costs, and possibly the carpet cleaning, although as this was for the common parts, Mr Phillips would only be liable for one third of those costs.
43. There is no provision in the lease for the landlord to recover its legal costs as part of the service charge. The £600 mentioned in the Statement of Account in relation to a Section 146 Notice would not be payable as service charges or administration charges. There is only a provision covering managing agents fees. There was previously a managing agent, Initiative Property Management, which Mrs Lewis says ceased acting on 31/10/2018. It is not clear whether any management costs have been properly incurred since then.
44. The result is that no service charges are lawfully due because they have not been validly demanded, and Mr Phillips has nil liability for the years 2018, 2019 and 2020.
45. The tribunal has no jurisdiction over ground rent but notes that Mr Phillips intended part of his payment of £3,000 to cover any arrears of ground rent.

46. The tribunal further notes that Mr Phillips has asked Mr Hudson to refund £1,000 of the £3,000 held in his client account and this has been refused. In his Written Statement to the tribunal dated 04/06/2021, Mr Phillips requested that the tribunal should require the Respondent to repay him £2,502 which in his view is the amount not supported by any expenditure and less the ground rent.
47. The tribunal has no power to order Mrs Lewis, the freehold Company or indeed Mr Hudson to repay any monies, although the outcome of this tribunal's decision is that Mr Phillips was not liable to make that payment. Mr Hudson, as a solicitor, may on reflection consider that the £3,000 should not remain in his client account nor be paid to Mrs Lewis.

Section 20C and reimbursement of fees

48. The tribunal makes an order under s20C. This is because Mr Phillips has succeeded in his application to the extent that his potential liability has been reduced to nil. Mr Phillips raised his queries throughout with Mrs Lewis and Mr Hudson but received no satisfactory replies until after this Application was made. It is therefore reasonable in all the circumstances to make the order, which means that any costs incurred by the landlord in these proceedings cannot be included in the amount of any service charge payable by the tenant.
49. The tribunal further orders that Mrs Lewis should reimburse Mr Phillips the cost of the fee for the application within 28 days.
50. The tribunal makes no order for costs under rule 13. This is because this only applies if a person has acted unreasonably in bringing, defending or conducting proceedings. This is a high bar. The tribunal considers that although Mrs Lewis initially failed to comply with the Directions and in the end had very little evidence to support the service charges demanded, this does not amount to unreasonable behaviour. She instructed a solicitor and has also corresponded herself with Mr Phillips and the tribunal. She has not failed to co-operate.

Name: **Judge JA Talbot**

Date: **12 July 2021**

RIGHTS OF APPEAL

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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate 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 the appropriate 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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).