



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

Case Reference	:	CHI/45UH/LSC/2021/0120
Property	:	4 Holly Lodge, 80 St. Lawrence Avenue, Worthing, West Sussex, BN14 7JJ
Applicant	:	Nicholas Robert Dean and Susan Joyce Dean Flat 4 Kenneth Green Flat 1 Anthony Eagle Flat 2 Alison Charmont Flat 6 Margaret Cargill Flat 5
Representative	:	Nicholas Robert Dean
Respondent	:	J H Watson Property Investment Limited (Company number 02670477) (1) J H Watson Property Management Limited (Company number 01883919) (2)
Representative	:	
Type of Application	:	Determination of Service Charges (Section 27A of the Landlord and Tenant Act 1985
Tribunal Member(s)	:	D Banfield FRICS Regional Surveyor
Date of Decision	:	4 July 2022

DECISION

The Tribunal disallows a total of £3,310 from the service charges for the period 2017/18 to 2021/22.

The Tribunal makes Orders under section 20C of the Landlord and Tenant Act 1995 and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Background

1. The Applicant seeks a determination of the service charges for 2018, 2019, 2020 and 2021 according to the application with the total value in dispute stated to be £334.35.
2. The spreadsheet provided with the application sets out the service charges for each category of expenditure for the years from 2016/17 to 2020/2021 and the budget for 2021/22. Amounts highlighted in bold are those items the subject of this application and are limited to Health and Safety from 2017/18 onwards and Common Parts Electricity from 2020/21. It is additionally said that there is a charge for external decoration and, it seems related professional fees. It is asserted that the block has no common parts and with no external parts requiring decoration.
3. The Applicant has also made an application under section 20C of the Landlord and Tenant Act 1995 that the costs of the Respondent in respect of these proceedings are not to be recoverable as service charges and that the costs of these proceedings are not to be recoverable as administration charges pursuant to Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
4. The Tribunal made Directions on 23 February 2022 setting out a timetable for the provision by the parties of their respective cases leading to a determination on the papers by the Tribunal. In the absence of a response from the Respondent Judge Dobson made an Order on 30 May 2022 that he was minded to bar the Respondent from taking further part in the proceedings. As previous correspondence had been electronic I arranged for a hard copy to be sent to the Respondents and, on continuing to receive no response other than a letter from the second respondent advising they no longer managed the property, on 16 June 2022 I confirmed Judge Dobson's Order and barred the Respondents from taking further part.
5. This determination is therefore made on the information provided as part of the Application and a bundle of documents provided by the Applicants on 28 February 2022.

The Lease

6. The Lease is in standard form with the Respondent responsible for maintenance and insurance of the structure with each lessee paying 1/6th of the cost.

The Law

7. As set out in the Appendix.

The parties' cases

8. The Applicants' case is that;
 - There are no common parts that require an electricity supply
 - The external elements do not require decoration as the windows, soffits etc are of plastic and the walls are of undecorated brickwork
 - In the absence of common parts, expenditure on Health and Safety is unnecessary
 - There is no need for an asbestos survey as the construction materials are readily identifiable
9. The Respondents have not engaged with the Application, have not submitted any evidence and have now been barred from further participation.

Discussion and Decision

10. The determination sought from the Tribunal is limited to expenditure on Health and Safety, Common Parts Electricity and budgets for External redecoration and an Asbestos survey.
11. From the lease plan and photographs provided I am satisfied that this is a block of 6 self contained flats each with its own entrance and no internal common parts save for the structure.
12. Conflicting information has been provided regarding a power supply for an aerial distribution system with an invoice and emails from Pozitive Energy indicating that there is a supply from a meter in an adjoining property whereas the applicant says that the only connecting cable between the properties was severed some time ago and the supply now comes off a flat owners' ring main. The Pozitive Energy invoice shows that no electricity has been consumed and I am satisfied that the supply must now be as asserted by the Applicants.
13. Given that there is no other requirement for a communal electricity supply I determine that any costs incurred are not recoverable by way of the service charge.
14. Whilst the charges already made for Health and Safety are modest there is no indication as to how they have been incurred and as such must be disallowed. With regard to the sum for an asbestos survey in the Budget for 2022 I accept that on the unchallenged evidence before me that it is unnecessary and is therefore disallowed.
15. I accept Applicants' assertion that the block does not contain elements that require decoration and as such I disallow the costs relating thereto.
16. In summary the Tribunal disallows the following sums either charged or to be charged to the service charge;
 - 2017/18 H&S £72.00

• 2018/19	H&S	£72.00
• 2019/20	H&S	£72.00
• 2020/21	H&S	£144.00
•	Electricity	£100.00
•	General reserve	£1,200.00
• 2021/2022	H&S	£300.00
•	Electricity	£150.00
•	General reserve	<u>£1,200.00</u>
• TOTAL		<u>£3,310.00</u>

Costs

17. Given that the Respondents have not engaged in these proceedings it seems unlikely that they will have incurred any costs that could be recoverable by way of service or administration charges however for the avoidance of any doubt the Tribunal makes the Orders requested. The Applicants have been wholly successful in their application and whilst this is not the only factor in determining whether the Respondents' costs may be recovered it would be perverse for them to be able to do so given the outcome.
18. The Tribunal therefore Orders that any costs incurred by the Respondent in these proceedings may be not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.
19. The Tribunal also makes an Order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.s that no costs may be recovered by way of an administration charge.

D Banfield FRICS
4 July 2022

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 by email to rpsouthern@justice.gov.uk 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 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

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- (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.