

13010



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

**Case reference** : **LON/00BD/LSC/2018/0247**

**Property** : **Flat 9, St Richards Court,  
Ashburnham Road, Ham,  
Richmond, Surrey TW10 7NS**

**Applicant** : **New Hill Ltd (a company  
incorporated in the British Virgin  
Islands)**

**Representative** : **Freemans, solicitors.**

**Respondent** : **Mr B Tench**

**Representative** :

**Type of application** : **For a determination of the liability  
to pay and the reasonableness of  
service charges**

**Tribunal member(s)** : **Judge S Brilliant  
Mr L Jarero BSc FRICS**

**Date and venue of  
hearing** : **31 October 2018 at 10 Alfred Place,  
London WC1E 7LR**

**Date of decision** : **31 October 2018**

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**DECISION**

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1. The Tribunal finds that Mr Tench (“the tenant”) is liable to pay to New Hill Ltd (“the landlord”) the following service charges:

|                                    |                  |
|------------------------------------|------------------|
| 01 January 2013 – 31 December 2013 | £1,325.33        |
| 01 January 2104 - 31 December 2014 | £1,350.91        |
| 01 January 2015 - 31 December 2015 | £1,270.88        |
| 01 January 2016 - 31 December 2016 | £1,379.89        |
| 01 January 2017 - 31 December 2017 | <u>£1,416.35</u> |
| Total                              | £6,743.36.       |

### **The application**

2. This is an application made by the landlord for the determination of the liability to pay and the reasonableness of service charges. The application is made in respect of services provided to the tenant by the landlord for Flat 9, St Richards Court, Ashburnham Road, Ham, Richmond, Surrey TW10 7NS (“the flat”).
3. The tenant is the lessee of the flat under a lease dated 1 June 1978 originally made between Biskeep Nominees Ltd and Ms K Whatmough. The reversion of the lease was assigned to the landlord on 30 November 2016. The residue of the term of the lease was assigned to the tenant on 31 August 2004.
4. St Richards Court (“the block”) is a three storey building with commercial premises located on the ground floor and 14 flats located on the first and second floors. The flat is situated on the first and second floors of the block. Since 1999 the block has been managed by Urban Property Service Ltd (“the managing agents”).

### **The procedural history**

5. The application was received by the Tribunal on 29 June 2018. The application sought a determination in respect of the five years ending 31 December 2013 through to 31 December 2017. The application was accompanied by a 22 paragraph grounds in support.
6. An oral case management conference took place on 19 July 2018. The tenant failed to attend or to send in any objections or representations in respect of the amount of service charges being claimed by the landlord.

7. The tenant was directed in the usual way to provide to the landlord by 30 August 2018 a Scott schedule setting out by reference to each service charge year the item and amount in dispute, the reason why the amount was disputed, and the amount, if any, which the tenant would pay for that item.
8. Directions were also given in the usual way for the disclosure of documents, the exchange of witness statements of fact and the preparation of a hearing bundle. There was to be a one day hearing on 22 November 2018.
9. The tenant failed to provide a Scott schedule. On 17 September 2108, it was directed that any documents to be disclosed and any witness statements should be provided directly to the Tribunal by the landlord. There would not be a one day hearing but the matter would be considered on the papers. On 17 October 2018, the Tribunal received a comprehensive witness statement from Ms Toson of the managing agents.

### **The lease**

10. Pursuant to clauses 2(2)(i), 2(2)(ii) and Part 5 of Schedule 5 to the lease, the tenant covenants to pay a service charge being 7.65% of the expenses set out in Schedule 3 to the lease. By clause 2(2)(ii)(b) the service charge year is 1 January to 31 December in each year.
11. These expenses include the maintenance and repair of the block, insuring the block, cleaning and decorating the common parts, the managing agents' fees and the certifying accountants' fees. They also include other costs necessary or advisable for the proper maintenance of the block.
12. Clause 2(2)(f)(ii) of the lease also provides for an advance service charge of a fair and reasonable amount to be paid in two instalments on 24 June and 25 December in each year. Provision is made in clause 2(2)(ii)(g) for the service charge to be ascertained and certified annually, and for any appropriate balance to be paid or credited. Provision is made in clause 2(2)(ii)(e) for the service charge to include a sinking fund.
13. By clause 2(14)(a) of the lease the tenant covenants to pay costs incurred by the landlord in contemplation of any proceedings under s.146 of the Law of Property Act 1925. The service charges are not recoverable as rent and in her witness statement Ms Toson explains that, as a result of this, a s.146 notice will have to be served on the tenant. She confirms that the landlord has brought this application as a precursor to forfeiting the lease.

them. Our finding is that these charges were reasonably incurred and are of a reasonable amount.

20. The landlord is entitled to recover the costs of these proceedings pursuant to clause 2(14)(a) of the lease.

**Name:** Simon Brilliant

**Date:** 31 October 2108

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

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