



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

**Case Reference** : CHI/29UG/LIS/2020/0048

**Property** : Flat 7, Regents Court, West Street,  
Gravesend, Kent DA11 0BT

**Applicant** : Regents Court Estate Limited

**Representative** : Shoosmiths LLP

**Respondent** : Eleanor Jane Payne

**Representative** :

**Type of Application** : Landlord and Tenant Act 1985 s.27A  
(service charges)

**Tribunal Members** : Judge MA Loveday  
Mr D Barnden MRICS

**Date and venue of hearing** : Determination without a hearing on the  
papers (26 March 2021)

**Date of Decision** : 26 March 2021

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**DETERMINATION**

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## Introduction

1. This is an application for a determination of liability to pay service charges under s.27A Landlord and Tenant Act 1985. It is a determination on the papers without a hearing under Rule 31 of the Tribunal Procedure (First-tier Tribunal) Procedure Rules 2013.
2. The Applicant is the freehold owner of Regents Court, West Street, Gravesend, Kent DA11 0BT, which is a modern block of some 65 retirement homes on the banks of the River Thames. The Respondent has been the registered leasehold owner of Flat 7 since 18 August 2015. Flat 7 is a 1-bedroom ground floor property.
3. The application dated 21 August 2020 seeks a determination in respect of service charges of £9,690.24 for the 2016 to 2020 service charge years. According to the application, they comprise:
  - a. 2016 - interim service charges of £276.02 (of which the Respondent has paid £193.50).
  - b. 2017 - interim service charges of £2,118.36, less a balancing credit of £23.72 at the end of the of the service charge year.
  - c. 2018 - interim service charges of £2,323.21, less a balancing credit of £16.45 at the end of the of the service charge year.
  - d. 2019 - interim service charges of £2,596.98 less a balancing credit of £35.40 at the end of the of the service charge year.
  - e. 2020 - interim service charges of £2,609.34.
4. Directions were given on 9 October 2020 and 27 November 2020. These provided *inter alia* for the Respondent to submit written representations by 8 January 2021, but nothing was received from the Respondent. The Applicant relies on the application and the witness statement of Mr William Duncan dated 22 January 2021 (with its extensive exhibits). The matter was originally listed for but adjourned for 14 days to enable the Applicant to provide further documentation.

## The Lease

5. By a Lease dated 18 August 1994, the flat was demised for a term of 99 years from 1 July 1989 at a peppercorn ground rent. As with most retirement homes, occupation was restricted to persons “who shall have attained the age of 55 years of age”. The Lease included conventional service charge provisions, which can be summarised as follows:
  - a. By para 2(a) of Sch.4, the lessee covenanted to pay a percentage of the maintenance cost in accordance with the provisions of Sch.6.
  - b. By clause 3, the landlord covenanted to keep proper book and accounts etc.
  - c. By Sch.5, the landlord covenanted to provide various services, such as repairs to the Demised Premises themselves (para 1), repairs etc. to certain common parts (described as the “Amenity Premises”) (para 2), maintenance of a communal alarm system (para 3), insurance of Regents Court (para 5), payment of staff salaries etc. (para 8) and employment of a resident supervisor (para 9). There was also a wide-

ranging 'sweeper' clause (para 6) which enabled the landlord to provide such other services which are in the opinion of the landlord "necessary or desirable in the interest of good estate management".

- d. By Part I of Sch.6, the "Maintenance Cost" was defined as including the cost of complying with clause 3 or Sch.5 to the Lease (para 1), the cost of recovering service charges from other lessees (para 2), the rental of the communal alarm system etc. (para 3), agents' fees (para 5), legal and professional costs (para 6) and reserve fund contributions (para 7).
  - e. The interim service charge was set out in para 1 of Part II of Sch.6. This provided that at the "at the beginning of each of the Landlord's management periods of twelve months the Landlord shall make an estimate of the amount of the Maintenance Cost due for the ensuing twelve months and will supply a copy of the estimate to the Tenant with a notice of the payments in advance on account of the Maintenance Cost that will be paid by the Tenant during the said twelve months".
  - f. There was provision for calculation of a balancing service charge in paras 2 and 3 of Part II of Sch.6. At the end of each service charge year, the Landlord would "render to the Tenant a Maintenance Account showing the Maintenance Cost actually expended during the twelve-monthly period and shall certify the actual amount of the Tenant's liability in respect of the Maintenance Cost for that twelve monthly period" (para 2).
  - g. Part III of Sch.6 then provided for the Tenant's liability to pay an apportioned part of the above. The interim service charge (described as the "estimated Maintenance Cost") was payable by quarterly or half yearly instalments "either three monthly or six-monthly ... on days to be appointed by the Landlord" (para 1). On receipt of a "duly certified Maintenance Account" the Tenant was "to pay to or to be entitled to receive from the Landlord the balance (if any) by which the Maintenance Account shows that such amount falls short of or exceeds" the sums "already paid" as interim charges (para 2).
6. It is clear from the evidence presented that the Applicant adopted a service charge year ending on 31 December and an apportionment of 1.49% of relevant costs for Flat 7.

### **The accounts and demands**

7. Mr Duncan and the Applicant produced various accounts and demands for Flat 7. It should be noted that in each year the income and expenditure section of the accounts breaks down the budgeted costs and actual costs incurred into between 24 and 27 separate headings. However, it is not always easy to reconcile the figures in the accounts with the sums demanded from the Respondent, and Mr Duncan's statement does not attempt to explain the sums claimed. The Tribunal should not be expected to engage in forensic accountancy to determine what ought to be a straightforward (and effectively unopposed) application for determination of liability to pay service charges. The Applicant should note that future Tribunals may not be so tolerant of applications presented in this way.

## 2016

8. The application does not include any claim for routine ‘on account’ or balancing service charges for 2016, so the Tribunal can deal with these shortly. The 2016 budget figures appear in the 2016 service charge accounts dated 31 March 2017. They show the 2016 net budgeted expenditure on the premises was apparently £126,668 (gross expenditure of £127,868 less anticipated rental from letting out a guest flat for £1,200). As far as year-end accounting is concerned, a similar approach to para 13 below suggests the net actual costs incurred in that year were £145,822 (£147,722 less actual receipts of £1,900 from the guest flat). The Tribunal calculates this exercise would have produced a deficit of £19,154, of which the Respondent’s 1.49% contribution ought to have been £285.39.
9. Before leaving the 2016 accounts, the Tribunal notes they include some further material information about actual costs incurred in 2016. The income and expenditure statement in the accounts includes a single line item of £18,564 under the heading of “other expenditure”, which is described as “Additional Contribution – External Redecoration”. The Tribunal calculates a 1.49% apportionment of this figure would be £276.02. There is a corresponding demand dated 27 September 2016 for payment of £276.02 “due on 25/10/16”, which is described as being a “Contribution to External Decorations”. No other evidence was produced to support the claim for £276.02. The Tribunal finds as a fact that the claim for £276.02 mentioned in the application relates to unbudgeted relevant costs incurred during the 2016 service charge year, which were demanded as a single one-off payment on 25 October 2016.

## 2017

10. The 2017 budget figures can be derived from the annual service charge accounts dated 11 May 2018. The 2017 net budgeted expenditure on the premises was apparently £142,171 (gross expenditure of £143,371 less anticipated rental from letting out a guest flat for £1,200). The Tribunal calculates a 1.49% apportionment of this figure would be £2,118.36. There is a corresponding demand for payment dated 1 July 2017 for payment of £2,118.36. It is therefore clear the Applicant approached the Applicant’s interim service charges by applying the 1.49% apportionment figure to net estimated relevant costs.
11. Mr Duncan explains that the budgets are prepared in each by the Applicant’s agents ELM. The budget is agreed annually by the directors of the Applicant company and ordinarily ELM will attend the development to present it to leaseholders. The copy of the 2020 budget mentioned below makes it clear that expenditure for the forthcoming year is estimated by reference to previous budgets and the known costs incurred in the most recently available service charge year draft accounts.
12. At 2017 year-end, the Tribunal first considers a similar approach to that used by the Applicant when calculating the interim service charges. The accounts suggest the net actual costs incurred in 2017 were £140,636 (£141,446 actual costs less receipts of £810 from the guest flat). There was therefore a surplus

of £1,535 over the 2017 budgeted expenditure. An apportionment of 1.49% on this basis would produce a credit of £22.87 at year-end.

13. However, this is apparently not the way the Applicant calculated the credit for 2017 year-end. Instead, there is a credit note for £23.72 dated 22 November 2018 which is described as being the “Surplus From Annual Accounts YE 31/12/17”. Although the difference is small, there is no explanation for the difference between this figure and the £22.87 explained above. Unfortunately, Mr Duncan does not explain the methodology used to arrive at the credit note figure. He simply states that following the end of each service charge year ELM prepares accounts and circulates these to the tenants with a year-end statement including any balancing demand or surplus.

#### *2018*

14. In 2018, the budget figures can again be derived from the annual service charge accounts dated 16 January 2020. These show net estimated relevant costs of £155,920 (gross costs of £157,120 less budgeted guest flat income of £1,200). The Respondent’s 1.49% proportion of budgeted costs amounts to £2,323.21 and there is a demand for payment of this sum dated 1 January 2018.
15. At year-end, the annual service charge accounts show net relevant costs of £155,145 (gross costs of £156,254 less the guest flat income of £1,109). A similar approach to para 13 above suggests a balance of £775 over 2018 budgeted expenditure. The Tribunal calculates that an apportionment of 1.49% of actual costs would have resulted in a credit of £11.55 at year-end.
16. Once again, the Applicant appears to have adopted a different approach to 2018 year-end service charge accounting. There is a credit note for £16.45 dated 7 May 2020 described as “Surplus from Y/E accounts 2018”.

#### *2019*

17. In 2019, the budget figures can again be derived from the annual service charge accounts dated 19 June 2020. These show net estimated relevant costs of £174,293 (gross costs of £175,493 less budgeted guest flat income of £1,200). The Respondent’s proportion of 1.49% budgeted net costs amounts to £2,596.97 and there is a demand for payment of this sum dated 1 January 2019 [p.168].
18. At year-end, the annual service charge accounts show net relevant costs of £172,809 (gross costs of £173,717 less guest flat income of £908). A similar approach to para 13 above suggests a balance of £1,484 over 2019 budgeted expenditure. The Tribunal calculates that an apportionment of 1.49% of actual costs would have resulted in a credit of £22.11 at year-end.
19. Once again, the Applicant appears to have adopted a different approach to 2019 year-end service charge accounting. The Respondent’s Statement of Account shows her account was credited with £35.40 on 14 August 2020.

2020

20. The Applicant has produced a copy of the 2020 budget. These show net estimated relevant costs of £175,124, of which the Respondent's proportion of 1.49% amounts to £2,609.34. There is a demand for payment of this sum dated 1 January 2020.

### Determination

21. The Tribunal has considered the individual cost headings in the income and expenditure section of the annual accounts and in the 2020 budget. It is satisfied the estimated and actual relevant costs incurred in each year fall within the scope of the "Maintenance Cost" in Part I of Sch.6 to the Lease. These relevant costs all appear to be within specific headings of clause 3 or paras 1-9 of Sch.5 to the Lease or they are within the scope of the 'sweeper' clause in para 6 of Sch.5. The service charge accounts for each year were audited and certified by independent accountants and the Tribunal is satisfied the Applicant incurred the costs in each year. The Respondent has not suggested any of these relevant costs were not reasonably incurred under s.19(1) Landlord and Tenant Act 1985 or that interim charges were not reasonable under s.19(2) of the Act. Neither the relevant costs incurred nor the interim service charges are obviously excessive or unreasonable in amount.

22. As far as the interim service charges are concerned, the Tribunal is satisfied they have been properly computed in each of the years in question in accordance with Pt.II and para 1 of Pt.III of Sch.6 to the Lease.

23. The Tribunal has considered the charge of £276.02 which was demanded on 27 September 2016 for external decorations. This was an *ad hoc* 'in year charge', which was outside the conventional scheme of interim and balancing charges laid down by Pts.II and III of Sch.6 to the Lease. There is no express provision in the Lease providing for additional 'in year' service charges. Absent such a provision, the general rule is that once a landlord sets an interim service charge, it cannot then reopen that charge and demand additional 'in year' sums on account: *LB Southwark v Woelke* [2013] UKUT 0349 (LC); [2014] L. & T.R. 9 at paras 50-52. That does not of course mean the Applicant was necessarily precluded from ever recovering contributions towards the relevant costs of internal decorations, simply because it failed to reflect the estimated cost in its 2016 interim service charge demand under para 1 of Pt.III of Sch.6 to the Lease. But such costs would have to be reflected in the end of year accounting exercise and recovered from the Applicant under para 2 of Pt.III of Sch.6 to the Lease. Whether the Applicant is now able to reopen the 2016 end of year accounting exercise and demand the contribution under para 2 is not a matter for this Tribunal. Suffice it to say that the sum of £276.02 referred to in this application is not payable under the terms of the Lease.

24. As to the three 'end of year' adjustments in 2017, 2018 and 2019, it is evident from the above that the Tribunal is not satisfied the Applicant has computed the end of year adjustments in accordance with the terms of the Lease. The lessee's 'end of year' liability under para 2 of Pt.III of Sch.6 is to receive or pay her proportion of "the balance (if any) by which the Maintenance Accounts

shows that [the Maintenance Cost] exceeds [the estimated Maintenance Cost]”. The term “Maintenance Cost” is clearly defined in Pt.I of Sch.6 by reference to sums “actually expended”. The Tribunal has done its best with the evidence provided to compute the costs “actually expended” in each year, and by applying the appropriate apportionment of 1.49% reaches the above conclusions about the sums which ought to have been credited to the Respondent in each of these three years. But since these are less than the figures relied upon by the Applicant and set out in the application, the Tribunal finds that the Respondent should be credited with £23.72, £16.45 and £35.40 at the end of the 2017, 2018 and 2019 service charge years.

25. Finally, the Tribunal notes the suggestion the Respondent has paid £193.50 on account of the 2016 charges, but that is not a matter for determination under s.27A of the 1985 Act.

## **Conclusions**

26. The Tribunal finds the Respondent is liable to pay the following interim service charges under para 1 of Sch.6 to the Lease:
- a. 2017 - interim service charges of £2,118.36.
  - b. 2018 - interim service charges of £2,323.21.
  - c. 2019 - interim service charges of £2,596.98.
  - d. 2020 - interim service charges of £2,609.34.
27. The Tribunal further finds the Respondent’s service charge liability at year-end under para 2 of Sch.6 to the Lease is as follows:
- a. 2017 – a credit of £23.72.
  - b. 2018 – a credit of £16.45.
  - c. 2019 – a credit of £35.40.

Judge Mark Loveday  
26 March 2021

## **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.