



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

**Case reference** : **CHI/00MR/LSC/2021/0114**

**Property** : **Flat 3, Burlington Lodge, 89  
Victoria Road South, Southsea, PO5  
2BU**

**Applicant** : **89 Victoria Road South Limited**

**Representative** : **Mr Jussab, counsel, instructed by  
PDC Law**

**Respondent** : **Ziad Said**

**Representative** : **Mrs Saffrova-Said**

**Type of application** : **Transferred Proceedings from  
County Court in relation to Service  
Charges**

**Tribunal member(s)** : **Judge D Whitney**

**Date of hearing** : **25<sup>th</sup> April 2022**

**Date of written reasons** : **13<sup>th</sup> May 2022**

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**Written Reasons for decision**

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## **Determination**

- 1. The Tribunal finds that the sums due and owing by way of service charges and administration charges totals £1800.**
- 2. Issues relating to payment of company charges and costs are remitted for the County Court to determine.**

## **Background**

1. The Applicant seeks and following a transfer from the County Court the Tribunal is required to make, a determination in respect of service charges and of administration charges.
2. The original proceedings were issued in the County Court under Claim HO1YY807 and the transferred to the Tribunal by District Judge Ball by order dated 10th November 2021.
3. The Applicant has also claimed the fee incurred on issue of proceedings court fee and costs, including contractual costs. Those are matters within the jurisdiction of the Court. There is no claim for interest.
4. Directions were issued on 15<sup>th</sup> December 2021 listing the matter for hearing before a Tribunal to determine those matters within its jurisdiction and subsequently a Tribunal Judge sitting as a Judge of the County Court would determine any remaining matters.
5. The directions had been substantially complied with and an electronic hearing bundle was supplied. References in [ ] are to pages within that bundle.

## **The Law and the lease**

6. The relevant law is set out in the annex to this determination.
7. A copy of the Respondent's lease was at [13-27]. The lease is dated 15<sup>th</sup> April 1969 between Waldron and Son (Builders) Limited and Harry Harrison and Nellie Helen Harrison. The lease demises Flat 3, Burlington Lodge, 89 Victoria Road South, Southsea, PO5 2BU. The current landlord is the Applicant and the owner of the leasehold interest is the Respondent.
8. Copies of Clause 3(i) to (ix) are annexed to this decision.

## **The Hearing**

9. The Applicant was represented by counsel Mr S Jussab. Ms Berry, director of the Applicant attended as a witness for the Applicant. Mr Jussab and Ms Berry attended by CVP video link.
10. Mrs Saffrova-Said attended to represent her husband assisted by Ms Parker. They attended in person at Havant Justice Centre.
11. The hearing proceeded as a hybrid hearing. At the end all parties confirmed they had made all representations they wished to make.
12. At the start of the hearing the Tribunal raised that no authority had been received from Mr Said for his wife to represent him. The Tribunal explained that Mrs Saffrova-Said could represent her husband in the Tribunal proceedings but authority would be required. It was explained that if Mr Said was not present the situation would be different in respect of the County Court proceedings.
13. Mrs Saffrova-Said arranged for her husband to email the Tribunal to confirm she could represent him. She explained her husband could not attend due to family reasons which she did not wish to elaborate upon. She confirmed her husband did not seek an adjournment but wished to proceed to have the matter determined.
14. The Tribunal was satisfied it was appropriate to proceed to determine matters.
15. Mr Jussab confirmed that the sums being sought were those as set out in the statement of Mrs Berry at paragraph 17 [54 and 55]. The Applicant relied on earlier Tribunal decisions CHI/00ML/LIS/2018/0056 [240-267] and CHI/00MR/LSC/2015/0071 [271-282] which found that as a result of an estoppel by convention the interim service charge which could be demanded was £900 per annum. He looked to rely on clauses 3(i) and 3(viii) of the lease [18-19] which set out the Respondents liability to pay one ninth of the service charges incurred by the Applicant.
16. Mr Jussab suggested that the Applicant could recover as an administration charge what was called the “Standing Order Charge” being a monthly charge of £18 (£15 plus vat) levied by the managing agent for receiving varying standing order payments from the Respondent. He suggested that such sums were an administration charge as they were recovered in contemplation of the lease being forfeited and so recoverable under clause 3(vi) [19].
17. Mr Jussab submitted on instructions from his client that there was no requirement for a surveyors certificate to be served within any balancing charge although he accepted it was an express term of the lease that such certificate would be provided.

18. Mr Jussab suggested that the lease expressly allows the collection of a reserve fund under clause 3(viii) of the lease and this may be demanded as a separate sum. Mr Jussab had relied on the various invoices, demands and letters within the bundle [64-84].
19. Mr Jussab accepted that the Company Costs which were being claimed were not recoverable as a service charge. These were matters to be determined by the County Court. Likewise the claim for legal costs associated with these proceedings should be properly adjudicated upon by the County Court.
20. Mr Jussab called Ms Berry. She relied upon her witness statement [50-58] and confirmed the same was true and accurate.
21. Mrs Said was given the opportunity to question her.
22. Mrs Berry stated that she did not believe a surveyor's certificate was needed. She referred to another Tribunal decision not within the bundle whereby in granting dispensation from statutory consultation the Tribunal had determined a chartered surveyor was not required. This was an application in respect of flooring. She relied upon this as authority for not requiring a surveyor's certificate.
23. This concluded the case for the Applicant's case.
24. The Tribunal explained Mrs Saffova-Said could make submissions but she could not give evidence. She could tender her husband's witness statement [159-184].
25. She stated her husband relies upon his witness statement and the documents attached to the same. She has nothing further to add.
26. In reply Mr Jussab invited the Tribunal to attach less weight to the evidence of Mr Said given he had not attended to be cross examined.
27. Further he suggests that also by way of an estoppel by convention a surveyor's certificate is not required for the accounts and balancing charges. He suggested it was the case that for many years payments had been made without these being required.
28. He suggested all amounts were due and owing.
29. At the conclusion the Tribunal indicated it would adjourn and then announce its determination with these reasons to follow. Thereafter the Judge would sit as a Judge of the County Court to determine any remaining issues.

### **Determination and reasons**

30. In reaching my determination I have considered all the evidence given at the hearing and that contained within the bundle.

31. I agree that the Company costs are not matters which as a Tribunal I can determine. I make no determination in respect of the same and those are left to the County Court to determine.
32. I deal firstly with what are called “Standing Order charge”. Mrs Berry in her statement at paragraph 14 [53] explains that charges were levied as the managing agents received a large number of small payments (said to range from 12p to £11.99) without any explanation. Notice was given that the agents would start making a charge and look to recover the same from the Respondent. The Respondent does not seem to deny that payments were made in this fashion. In fact he suggests it was his way of demonstrating that he was paying what he could afford whilst his business was affected by the pandemic.
33. I am satisfied that the making of payments in this way was unreasonable. I fully accept that in so doing additional time had to be spent by the managing agents beyond that which may reasonably have been expected. Further given the letters sent the Respondent could, and should, have desisted from making payments in this way. I would certainly urge the Respondent to desist from acting in this way in future or it may be his ability to make direct payments to the bank account may be withdrawn by the agents.
34. Mr Jussab suggested that the costs were only billed after the Applicant determined that they were going to bring action with a view to potentially forfeiting the Respondent’s lease. As a result he suggests the costs can be recovered under clause 3(vi) which states:
- “to pay unto the Landlord all costs charges and expenses (including legal costs and costs payable to a Surveyor) which may be incurred by the Landlord in contemplation of any proceedings under Section 146 or 147 of the Law of Property Act 1925”
35. I do not agree with this interpretation. These costs were charged for a specific purpose: that being to cover the administration fees incurred in allocating and processing the various standing order payments. These are not costs incurred in contemplation of forfeiture as envisaged by clause 3(vi) of the lease. No other basis for recovery of these charges was advanced by the Applicant. With regret I determine that these costs are not recoverable as an administration charge under the lease from the Respondent.
36. I turn next to the Interim Service charges. Clause 3(viii) allows an interim charge of £30 per annum to be paid in advance. Mrs Berry and Mr Jussab refer to previous Tribunal determinations which found that the amount which could be recovered had by an estoppel of convention increased to £900 per annum. Neither decision has been appealed as far as I am aware and the parties are the same as in these proceedings. I am satisfied that I should follow such determinations. I accept the reasons given within those decisions. I find that the amount recoverable as an interim charge is £900 per annum.

37. Mr Said in his statement appears to acknowledge the interim sums and he refers to matters relating to the protocol. These are matters which might (and I go no further) affect issues of costs but I am satisfied relying on the evidence given and contained within the bundle that the interim service charges for the years 2019 and 2020 are due and payable in the sum of £900 per annum thereby totalling £1800 as claimed by the Applicants.
38. In respect of the balancing charges Clause 3(viii) sets out the mechanism to be adopted. The clause specifically provides that the costs and expenses incurred are to be certified by the “Landlord’s Surveyors”. The term Landlord’s Surveyors is not specifically defined within the lease.
39. Neither party suggested there was anything which could be said to be a “Landlord’s Surveyors” certificate. Mr Said had clearly raised this point within his witness statement as being a matter in dispute. He was clear in his view the demands were not compliant with the lease. This was a point he had repeatedly raised in correspondence. I find the Applicant was well aware of the case it has to meet in this regard.
40. Mr Jussab in closing for the first time raised that he suggested there was an estoppel by convention allowing the demands to be issued without the need for any certificate. Mrs Berry did not address this specifically within her witness statement. In her evidence she referred to an earlier Tribunal decision.
41. This decision was not within the bundle. It appears from what Mrs Berry said in evidence that this was a determination of an application for dispensation from consultation.
42. I find that the Applicant did not produce any evidence as to their being an estoppel by convention. The lease is clear as to what is required. It is not unusual to require such certification and Mr Said had been indicating he required compliance with the lease. I accept a cost may be involved in complying with this term and that practically there may be little or no benefit to Mr Said or any other leaseholder. However in my judgment he is entitled to require the Applicant to comply with the lease terms and I find those sums referred to as “Balancing Charges” not to be due and payable. In respect of the Tribunal decision referred to the Applicant could have produced the same if it was relevant. As an aside it appears to relate to a wholly different class of case and would have no bearing on the issues I had to determine. Further the Applicant could have presented evidence as to an estoppel of convention but it chose not to.
43. I turn now to the “Reserve Fund” payment. The invoice is dated 19<sup>th</sup> November 2019 [72]. The narrative on the invoice is “25-12-2019 Reserve Fund 2019-2020 £1000”. Mr Said denies he is obligated to pay towards this cost.

44. I am satisfied that under clause 3(viii) the Applicant is entitled at the year end to allow within what I will call the service charge accounts an amount by way of a reserve subject to the same being certified by the Landlord's Surveyor. This is not however how this sum is being demanded.
45. The demand is for an amount in advance of the service charge year said to be specifically for the "Reserve Fund". This was demanded in November 2019 for the service charge year 2019-2020. Effectively the Applicant is looking to charge an additional interim payment. The interim payment is a fixed sum. That sum is currently £900 per annum as determined by the previous Tribunal's whose decisions the Applicant has sought to rely upon.
46. As a result I find that this additional sum of £1000 is not due and payable by the Respondent.
47. Finally the claim included various claims for costs. The Respondent had made an application pursuant to paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. I have considered all of the various submissions. The Respondent suggests an order should be made on various grounds as set out at [192]. In short that the Applicant has failed to comply with protocols, information provided is inaccurate and they have claimed sums they knew should not be claimed given earlier determinations.
48. I take on board the fact that I have found certain sums are not payable. This is however only one factor I need to consider when considering the exercise of my discretion. It seems to me inevitable Tribunal proceedings would be required. I am critical of the Respondent for making often very small payments without explanation.
49. Overall I am not persuaded that I should within these Tribunal proceedings make an order pursuant to paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 and I decline to do so.
50. Turning to the costs claimed by the Applicant there are two heads of costs. Pre-litigation and post issue of claim costs. Both are claimed I understand as contractual costs under the lease. As I indicated to the parties at the hearing I determine that all such costs shall be determined by the County Court and each party will be given opportunity within those proceedings to make such submissions as they consider appropriate.
51. I have found the sums payable total £1800. The balance of the claim is now to be determined by the County Court.

## **ANNEX - RIGHTS OF APPEAL**

### *Appealing against the tribunal's decisions*

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.