

12442



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

**Case Reference** : **CHI/00MR/LSC/2017/0070**

**Property** : **Flat 7, 32 Alhambra Road, Southsea  
PO4 0RT**

**Applicant** : **32 Alhambra Road RTM Compay  
Limited**

**Representative** : **Mr Richard Adam Stidolph**

**Respondent** : **Mr Saprava Bhattacharya**

**Representative** :

**Type of Application** : **Transferred Proceedings  
Service Charges**

**Tribunal Members** : **Judge Tildesley OBE**

**Date and venue of  
Hearing** : **Havant Justice Centre  
14 September 2017**

**Date of Decision** : **5 October 2017**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal determines that the sum of £810 is payable by the Respondent in respect of the interim service charges for the year 1 January to 31 December 2016.
- (2) The Tribunal determines that the Respondent shall pay the Applicant £160 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.
- (3) The Respondent has already paid £525 towards the disputed service charge and £75 ground rent. The actual sum owed by the Respondent is £285 plus court application fees of £140 and Tribunal fees of £160 making a total of £585 (see the County Court Judgment).

## **The Application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of the interim service charge payable by the Respondent in respect of the service charge year for 1 January 2016 to 31 December 2016.
2. Proceedings were originally issued in the County Court Business Centre under claim no. C1QZ5XOP. The claim was transferred to Portsmouth County Court on 17 February 2017 and then in turn transferred to this Tribunal, by order of Deputy District Judge Alexandre on 16 June 2017.
3. In addition to a claim for unpaid service charges the Applicant sought to recover costs incurred on the issue of proceedings. Although the issue of costs is a matter for the Court, as a result of amendments made to the County Courts Act 1984, First-tier Tribunal judges are now also Judges of the County Court. This means that, in a suitable case, the Tribunal can decide issues that would otherwise have to be separately decided in the County Court; and should the Tribunal do so, this might then result in savings in time, costs and resources.
4. It was decided that this was a suitable case for the Tribunal Judge to sit also as a County Court Judge exercising the jurisdiction of a District Judge. To this effect District Judge Wilson sitting at Portsmouth County Court transferred all outstanding issues to the Tribunal on 9 August 2017.
5. The Tribunal directed a hearing of the outstanding matters on 14 September 2017.

6. The relevant legal provisions are set out in the Appendix to this decision.

### **The Hearing**

7. The Applicant was represented by Richard Adam Stidolph at the hearing and the Respondent appeared in person. Mr Stidolph is an employee of Litten properties Limited which is the owner of the freehold and also acts as Company Secretary to the Applicant.
8. The Tribunal admitted in evidence the Applicant's hearing bundle which included a witness statement of Mr Stidolph, and the "Defence Statement" which included Mr Bhattacharya's witness statement.
9. The Tribunal inspected the property immediately before the hearing.

### **The Background**

10. The property is a late Victorian terrace building arranged over five levels with a stucco elevation, three storey bay and a pitched roof. The property is just off Southsea South Parade on the seafront. The property was converted into seven flats of various sizes in or around 2006. At the inspection the Tribunal was shown the repairs and decorations to the communal hall, stairway and landings.
11. On 4 April 2013 Litten Properties Limited was registered with absolute title of the freehold of the property under title number HP114032. The property is managed under a Right to Manage by the Applicant which was incorporated on 30 September 2009.
12. The Respondent holds the leasehold of flat 7 which is at the top of the property on the third floor. The Respondent purchased the flat in December 2012, and is registered under title number PM15793.
13. The lease for flat 7 is dated 11 August 2006 and between Monarch Properties (UK) Limited of the one part and Matthew James Wylie of the other part. The term of the lease is 125 years from 1 August 2006. The ground rent payable under the lease is £75 per annum which rises every 25 years by an amount equal to twice the annual rent for the preceding 25 year period.
14. Paragraph 1 (2) to The Fourth schedule to the lease defines service charge as a sum equal to the percentage contribution of the total expenditure. The Respondent's service charge is one seventh of the expenditure incurred in an accounting period (1 January to 31 December in each year).

15. Paragraph 1(1) to The Fourth Schedule defines total expenditure as the aggregate of the expenditure incurred by the lessor in carrying out obligations under clause 5 of the lease and the costs of employing managing agents and an accountant. The obligations under clause 5 include insurance, repair and decoration of the exterior and structure of the property and the common parts, and keeping the common parts lighted and carpeted.
16. Paragraph 1(3) to the Fourth Schedule gives authority for the lessor to require the lessee to pay such sums on account of the service charge as the lessor shall reasonably estimate as likely to be incurred in the year in question. The lease refers to the sums on account as an interim service charge.
17. Paragraph 2 to the Fourth Schedule sets out the end of year provisions for the actual service charge. Essentially the Lessor's accountant shall draw up the accounts for total expenditure and service charge as soon as practicable after the expiry of the accounting period, and certify the amount the lessee shall pay by way of a balancing charge if the actual charge exceeds the interim charge. If there is no balancing charge to pay the surplus is carried forward and credited against the lessee's service charge in the next succeeding accounting period.

### **The Dispute**

18. The dispute related to the demand for an interim service charge in the sum of £815 plus ground rent of £75 for 2016, which was sent to the Respondent on 8 February 2016. The demand required the Respondent to pay the service charge by two equal instalments on 1 January and 1 July.
19. The demand included a sum of £400 for the repair and redecoration of the communal hallway and stairs at the property.
20. On 28 September 2015 Mr Stidolph emailed the members of the RTM Company which included the Respondent with details of a specification for the repair and redecoration of the communal hallway and stairs. Mr Stidolph requested comments on the specification and for names of any contractors for the proposed works.
21. On 15 October 2015 Mr Stidolph advised the members that he had obtained a quotation for the works from Somerstown Property Investments Limited in the sum of £4,850. Mr Stidolph added that he had inspected the contractor's work on a very similar job at 22 Elphinstone Road, and was impressed with the quality of the work. Mr Brown one of the members of the RTM company suggested that it would be prudent if Mr Stidolph obtained a quote from another

contractor. Mr Stidolph followed the advice and secured a quotation from Renovate XL in the sum of £5,470.

22. Mr Stidolph instructed Somerstown Property Investments to carry out the works which were completed in January 2017. Mr Stidolph produced invoices in the sums of £2,000 dated 28 July 2016 and of £2,850 dated 15 January 2017.
23. The Respondent's dispute was with his contribution towards the costs of the repair and redecoration of the communal hallway and stairs. The Respondent believed that some of the costs had been incurred on the alterations to flat 3 which the Respondent considered to be sole liability of the leaseholder of that flat. The Respondent who is a qualified structural engineer had carried out a costings exercise using SPON's Architects and Builders' Price Book and The Building Costs Information Service and produced a figure for the works which in his view justified the withholding of £285 from the interim service charge demanded in February 2016.
24. The Respondent also complained that he had not been consulted about the works, and more generally about the expenditure decisions taken by the Applicant in respect of the property despite the fact that the Respondent was a member of the RTM company. Finally the Respondent considered that the contractor carrying out the works to the communal areas had paid insufficient attention to the safety of the occupants at the property, and in particular the Respondent expressed concern about the high level of dust generated by the works which affected his breathing when he stopped overnight at the flat.
25. Mr Stidolph disagreed with the Respondent's assertions. Mr Stidolph stated that the entire costs of the renovations to flat 3 had been met by the leaseholder, Litton Properties. Mr Stidolph insisted that he had kept the Respondent informed of the Applicant's expenditure decisions on the building. Mr Stidolph said that he had met the Respondent on three occasions in 2015, and provided him with every invoice paid by the Applicant since its formation. Further Mr Stidolph had emailed the Respondent with the specification and the proposed costs of the works to the communal hallway. Mr Stidolph pointed out that the Respondent had invited Mr Shaw, the Building Control Manager working on behalf of Portsmouth City Council and Mr David Knight, Fire Safety Officer, Hampshire Fire and Rescue Services to the property whilst the works were ongoing. According to Mr Stidolph, Mr Shaw and Mr Knight were satisfied with the safety of the works after examining them and speaking to the contractors.

## Consideration

26. The Tribunal is concerned with the reasonableness of the interim service charge. In this respect the Tribunal is bound by the wording of section 19(2) of the 1985 Act which states that where a service charge is payable before the relevant costs are incurred no greater amount than is reasonable is so payable. What this means is that the Tribunal is examining the reasonableness of the estimate of the likely costs of the proposed works to the communal hallway and stairs having regard to the facts known when the service charge was demanded in February 2016.
27. In this case the Applicant based the estimated charge of £400 for the repairs and redecoration to the communal hallway on the two quotations of the contractors. The lowest quotation was £4,850 from Somerstown Property Investments Limited which eventually carried out the works. The estimate of £400 from each leaseholder, making a total of £2,800 was well within the lowest quotation, and met the requirement of no greater amount than was reasonable.
28. The Respondent's challenge to the interim service charge was misguided. The Respondent raised matters which only became known after the liability to pay the interim service charge arose. The Tribunal is entitled to disregard such matters when considering the reasonableness of the interim service charge ( see the Upper Tribunal decision in *Knapper v Francis* [2017 UKUT 3(LC)]). The Tribunal, therefore, finds that the Respondent's defence which raised issues about consultation, safety of the works and the eventual cost was not relevant to the question whether the estimate of £400 was of no greater amount than was reasonable.
29. There was no dispute between the parties about whether the estimated costs for the repairs and redecoration of the communal areas were recoverable as service charges under the lease. Also the Respondent did not argue that the works were not necessary. The Tribunal is satisfied for the reasons advanced above that the estimate of £400 was reasonable and that the Respondent was liable to pay the interim service charge in the sum of £810 for the year 1 January to 31 December 2016.
30. This does not mean that the Respondent has no remedy. The Respondent can challenge the actual service charges for 2016 and 2017 in respect of the costs actually incurred on the works. The income and expenditure ledger showed that £2,000 of the costs were paid in the year ending 31 December 2016, whilst the balance of £2,850 was met in the year ending 31 December 2017.
31. To assist the Respondent the Tribunal will give a view on the merits of his various challenges. The Tribunal did not consider the Respondent's

concerns on safe working practices were substantiated, having regard to Mr Stidolph's evidence about Mr Shaw and Mr Knight being content with the safety of the contractor's working practices.

32. At the inspection the Respondent informed the Tribunal that he was satisfied with the quality of the repairs and the redecoration undertaken by the contractors. The Respondent's principal issue was that the specification changed after the contractor had given his quotation. Essentially the alterations to flat 3 meant that a smaller area of the partition wall separating the communal half landing from the extended flat 3 required decoration. In the Respondent's view, this change in specification justified a reduction in the amount actually charged under the service charge. The Tribunal disagrees. The Tribunal finds the change in specification marginal and would not have affected the eventual costs of the works. The Tribunal also considers that the Respondent adopted an inflexible approach to the question of the reasonableness of charges believing that it was capable of a precise calculation. The Tribunal examines reasonableness from a broad perspective and looks at a range of factors including alternative quotations for the works when determining whether a charge is reasonable.
33. The Tribunal considers that the Respondent's challenge on consultation has merit but not for the reasons given by him. The Tribunal formed the view that the Applicant did not follow precisely the requirements as set out in the Service Charges (Consultation) (England) Regulations 2003 when carrying out the consultation on the proposed works to the communal areas. Where a lessor is found to fall down on the consultation requirements, the lessee's contribution is limited to £250. The Applicant can apply to the Tribunal for dispensation of consultation requirements which if granted would enable the Applicant to recover the full costs from each of the leaseholders.
34. In view of the above the Tribunal would caution the Respondent against making an application to the Tribunal challenging the actual costs of the works to the communal hallway and stairs. Although the Respondent may have a case on the failure to consult, it is likely that if the Applicant makes application for dispensation it would be granted. The Tribunal also reminds Mr Stidolph of the need to issue a balancing statement of the actual service charge at the end of each accounting period.
35. During the hearing the Tribunal invited representations on reimbursement of the Tribunal application and hearing fees in the sum of £160. The Tribunal indicated that its order in respect of the fees would depend upon the outcome of the case. As the Applicant has been successful with its claim the Tribunal orders the Respondent to reimburse the Applicant with its fees of £160 within 28 days. A separate order is made in respect of the court's fees.

## **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.

## 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

**General Form of Judgment or Order**



**In the County Court at  
Portsmouth**

**CLAIM NUMBER  
C1 Q75X0P**

32 Alhambra Road RTM Company Limited	<b>Claimant Ref</b>
Saprava Bhattacharya	<b>Defendant Ref</b>

Before **JUDGE TILDESLEY OBE** sitting as a County Court Judge exercising the jurisdiction of **District Judge** at Havant Justice Centre, Elmleigh Road, Havant PO9 2AL

**AND UPON** the determination of the First-tier Tribunal (Property Chamber) CHI/00MR/LSC/2017/0070 being known to the Court.

**IT IS ORDERED THAT**

1. This action had been allocated to the SMALL CLAIMS TRACK
2. There be judgment for the claimant in the sum of £285 plus £140 Court fees and £160 Tribunal fees
3. The total sum of £585 is payable by 3 November 2017

Dated: 5 October 2017

**All correspondence relating to this order should be sent to First-tier Tribunal (Property Chamber) Havant Justice Centre, The Court House, Elmleigh Road, Havant PO9 2AL  
Telephone 01243 779394  
Email [rpsouthern@hmcts.gsi.gov.uk](mailto:rpsouthern@hmcts.gsi.gov.uk)**