



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

Case Reference: CHI/00HN/LIS/2019/0021

Property: San Remo Towers, Sea Road, Bournemouth,
Dorset BH5 1JR

**Applicant:
Representative:** San Remo Towers Limited
Aileen Lacey-Paine

**Respondent:
Representative:** All Leaseholders
Unrepresented

Type of Application: Section 27A of the Landlord and Tenant Act
1985
(Liability to pay service charges)
Landlords application for the determination
of reasonableness of service charges.

Tribunal Members: Judge A Cresswell (Chairman)

Date of Decision: 9 July 2019 on the Papers

DECISION

The Application

1. This case arises out of the landlord's application, made on 6 March 2019, for the determination of liability to pay service charges for the year 2020, specifically in respect of "*Dry lining of walls to flat B23*".

The Issue

2. The sole issue for this Tribunal was to determine whether "*Dry lining of walls to flat B23*" can be recovered via the Service Charge.

Summary Decision

3. This case arises out of the landlord's application, made on 6 March 2019, for the determination of liability to pay service charges for the year 2020. Under Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended) service charges are payable only if they are reasonably incurred. The Tribunal has determined that anything attached to or covering the inner surface of the external wall of Flat B23 forms part of the demise, such that dry lining of that surface is the responsibility of the tenant and costs related thereto should not be included within the Service Charge.

Directions

4. Directions were issued on 3 April 2019.
5. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
6. This determination is made in the light of the documentation submitted in response to those directions.

The Law

7. The relevant law is set out in sections 18, 19 and 27A of Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
8. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
9. The relevant law is set out below:

Landlord and Tenant Act 1985 as amended by Housing Act 1996 and Commonhold and Leasehold Reform Act 2002

18 Meaning of "service charge" and "relevant costs"

- (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.

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

Ownership and Management

10. The Applicant is the owner of the freehold. The property is managed for it by Napier Management Services Limited.

The Lease

11. The lease before the Tribunal of Flat A25 is dated 22 June 2005, and was made between San Remo Towers Limited as lessor and Cleo Skilton as lessee. The Tribunal has approached this case on the basis that all leases were written in the same terms.
12. The issue here was solely concerned with the construction of the lease.
13. The construction of a lease is a matter of law and imposes no evidential burden on either party: **((1) Redrow Regeneration (Barking) ltd (2) Barking Central Management Company (No2) ltd v (1) Ryan Edwards (2) Adewale Anibaba (3) Planimir Kostov Petkov (4) David Gill [2012] UKUT 373 (LC))**.
14. When considering the wording of the lease, the Tribunal adopts the guidance given to it by the Supreme Court:
Arnold v Britton and others [2015] UKSC 36 Lord Neuberger:

15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to “what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”, to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party’s intentions. In this connection, see *Prenn* at pp 1384-1386 and *Reardon Smith Line Ltd v Yngvar Hansen-Tangen* (trading as HE Hansen-Tangen) [1976] 1 WLR 989, 995-997 per Lord Wilberforce, *Bank of Credit and Commerce International SA (in liquidation) v Ali* [2002] 1 AC 251, para 8, per Lord Bingham, and the survey of more recent authorities in *Rainy Sky*, per Lord Clarke at paras 21-30.

15. The Tribunal details below the relevant terms of the lease.
16. *The Property* is defined in the Particulars as San Remo Towers, i.e. the whole building.
17. The Second Schedule, in part:
The *Demised Premises* is defined as The Flat shown on plan 2 and is said to “include:-
1.1 *the internal plaster tiles or other coverings of the external and internal load bearing walls...*”
18. Exclusions appear in Paragraph 2 of that Schedule and detail, in part:
2.2 *“the main timbers joists and other structural parts of The Property and the external and internal load-bearing walls of The Demised Premises”*
19. The lease has the usual bargain of lessee covenanting to pay a Maintenance Charge (Part 1 of the Fifth Schedule) to the lessor for the services it covenants to perform (the Sixth Schedule).
20. Paragraph 1 of Part 1 of the Sixth Schedule says:
“Subject to payment by The Lessee ofThe Maintenance Charge.....to maintain repair and redecorate and to renew and replace (including by way of modern substitutes therefore) as and when The Lessor may from time to time consider necessary The Property (excluding The Demised premises and Other Units) including: _

1.1 *The roofs and foundations*

1.2 *All the walls whether external or internal”*

Agreed Facts

21. The Respondents have not disagreed with any of the background put forward by the Applicant. The agreed facts are detailed here.
22. The Applicant obtained a defect analysis report on dampness from Ellis Belk. That report concluded that a number of flats were showing signs of condensation and/or

penetrating dampness. It was the author's view that "*the condensation is simply due to the fact that the walls are uninsulated*". The external walls are solid of a cement-based construction without a cavity and thus not breathable.

23. Amongst a number of solutions/approaches identified was the dry lining of the inner face of the exterior walls with metal following the replacement of cracked and contaminated plaster with a salt retardant plaster.

The Applicant's Case

24. The Applicant has asked the Tribunal to decide whether "*Dry lining of walls to flat B23*" can be recovered via the Service Charge (the Maintenance Charge). The Tribunal restricts itself, therefore, solely to that question.
25. Some advice had been received, but there was disagreement between the lessees at the Property and, as an honest broker, the management company wanted to clear the issue up so as to ensure a proper way forward.

The Respondents' Case

26. The position of the lessee Respondents was somewhat varied. Some believed that the landlord was liable for the costs in question, others that responsibility lay at the door of the individual tenants. Some felt that no costs should be met by their number, whilst others believed that a measure of costs should fall to the collective tenants.

Consideration and Determination

27. The Tribunal finds it clear from examination of the papers that the issue here is one of construction of the lease. A tenant can only be required to pay a Service Charge if required to do so by the terms of the lease. Generally a lease details who owns what part of a building and the responsibilities of landlord and tenant for repair and decoration. The fact that a party carries a heavy burden consequent upon the terms of a lease is a factor not relevant to the Tribunal's decision; obviously tenants are able to seek legal advice upon the construction of a building and the true interpretation of a lease at the time of purchase and normally that is a constituent part of the preparations for purchase.
28. The Tribunal's jurisdiction does not extend to determining the liability for consequent loss. Put simply, if a failure by a landlord or tenant to comply with the terms of the lease, or negligence in attempting to comply with those terms, leads to loss for other tenants or for the landlord, those losses are generally recoverable, if recoverable at all, by agreement or via civil suit in the courts. The Tribunal's jurisdiction is detailed succinctly in paragraph 8 above.
29. The Tribunal finds itself in agreement with the advice already given to the Applicant and finds that "*Dry lining of walls to flat B23*" cannot be recovered via the Maintenance Charge. Put quite simply, this is because the works would be to a part of the Building, the Demised Premises, specifically excluded from the ambit of the Maintenance Charge by the Second and Sixth Schedules, the relevant parts of which the Tribunal has detailed above. The Tribunal agrees with the independent advice that the Demised Premises starts with the inner face of the external wall, which is the same point where the responsibility of the Applicant's covenant for services ends.
30. The lease provides no support for an alternative view. The terms "*maintain repair and redecorate and to renew and replace (including by way of modern substitutes therefore)*" are all associated with the Building and not with the Demised Premises.
31. Paragraph 1.1 of the Second Schedule makes clear that anything attached to or covering the inner surface of the external wall of Flat B23 forms part of the Demised Premises.

32. Dry lining of the walls of Flat B23 would, therefore, be within the Demised Premises, i.e. beyond the surface of the load-bearing wall. Effectively, and in fact, the current plaster (part of the demise) would be removed and then replaced with the dry lining. Just as a matter of pure logic, and in an attempt to answer the question in another way, if the plaster is beyond the reach of the Maintenance Charge, why would the dry lining which replaces it also not be beyond its reach?
33. Key to the Tribunal's decision are the terms of the lease. A Service Charge can only be demanded of tenants where the lease requires. In this lease, the terms, when read together, specifically exclude beyond the surface of the external walls from the parts of the building which the landlord is required to maintain and for which it can demand a Service Charge.
34. In (**Hallissey v Petmoor Developments Limited** (2000) WLR) Mr J Patten highlighted "*the need to construe particular terms in a lease in the context of the lease as a whole and in the light of the relevant surrounding circumstances.*" The Tribunal finds that its assessment of the meaning of this lease is "*what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean.*"
35. It appears to the Tribunal to be entirely proper that the landlord should have sought clarification of the meaning of the lease so as to provide certainty for the way forward.

A Cresswell (Judge)

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.