

9601



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

**Case Reference** : **MAN/36UD/LSC/2013/0122**

**Property** : **FLAT 4, 7/11 CHELTENHAM PARADE, HARROGATE,  
HG1 1DD**

**Applicant** : **MR CHRISTOPHER HILL**

**Respondents** : **(1) PAVEMENT PROPERTIES LIMITED**  
**(2) WATSON PROPERTY MANAGEMENT**

**Type of Application** : **Sections 27A Landlord & Tenant Act 1985 and 20c  
Landlord & Tenant Act 1985**

**Tribunal Members** : **A M Davies (Lawyer Chair)**  
**J Jacobs MRICS**

**Date of Decision** : **16 December 2013**

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**Decision**

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## **Order**

1. The service charges claimed from the Applicant for the years 2011, 2012 and 2013 shall be revised in accordance with the table appended to this order.
2. Administration charges applied to the Applicant's service charge account in the years 2011, 2012 and 2013 are not payable by the Applicant.
3. Management fees payable by the Applicant to the Second Respondent shall be reduced to £120 plus VAT for the year 2013.
4. The Applicant's contribution to the cost of bin hire paid to Harrogate Borough Council shall be 7.71% of the annual charge for one bin in the years 2011, 2012 and 2013.
5. The Applicant's contribution to Accountancy charges invoiced on 21 September 2011 shall be one tenth of the whole.
6. The First Respondent shall reimburse to the Applicant the application and hearing fees in the sum of £365, which may be recovered by deduction from the Applicant's service charge account.
7. The First and Second Respondents shall not add to the service charge account any costs associated with this application.

## **REASONS**

1. Following a determination of his service charges on 14 December 2010 the Applicant was unable to agree his service charge account with the Second Respondent, and continued to withhold monies which he believed were being wrongly charged, or in order to recover credits as determined by the Tribunal. On 5 August 2013 the Applicant lodged this application for a further determination of his service charges for the years ending 31 December 2011, 2012 and 2013.
2. A second directions order dated 17 October 2013 joined in the freeholder's agent Watson Property Management as Second Respondent so that the Tribunal could obtain disclosure of copy invoices and an explanation of the service charge accounts. The Second Respondent provided a written statement and copies of all relevant invoices, but declined to attend an inspection of the property or a hearing. The First Respondent provided a short statement, and also declined to attend a hearing. Both Respondents having had sufficient notice of the hearing time and date, the Tribunal determined to hear the application in their absence but having regard to the documents they had supplied.
3. The Tribunal inspected the common parts of 7 – 11 Cheltenham Parade on 16 December 2013 in the presence of the Applicant and other leaseholders of flats in the building. The property has been decorated internally and a new carpet has been applied to one of the stairwells. The meter cupboard in the basement remains

difficult and dangerous to access. The rear yard, which is also used by other residential and commercial premises, remains dirty and untidy.

4. A hearing was held after the inspection. Having had an opportunity to examine the invoices supplied by the Second Respondent in support of the service charge accounts, the Applicant was able to limit the issues before the Tribunal. Some oral evidence to supplement their written statements was also taken from Mr Jones and Mrs Ellis, who are leaseholders of flats 3 and 1 respectively.
5. The invoices paid by the Second Respondent in the course of managing the property were annotated by the Second Respondent so as to show whether the sums paid were divided between the leaseholders of 7 – 11 Cheltenham Parade, or between those leaseholders and the residents of the adjoining property 13 – 15 Cheltenham Parade. Some also indicated that the cost should be shared by the First Respondent and/or commercial leaseholders of the units on the lower floors of 7 – 15 Cheltenham Parade. Where all commercial and residential occupiers are to contribute to a cost, the Applicant's share is 3.13%.
6. The Tribunal has where necessary re-assessed how the invoices should be divided between the occupiers of the building, having regard to the lease provisions which require the commercial units to share the cost of maintaining the structure, and the use of the rear yard mainly as a storage area for commercial (particularly restaurant) waste. The appendix to this Order sets out, by reference to specific invoices, the Tribunal's alterations to the percentages applied by the Second Respondent when determining the share payable by the Applicant. Two of the invoices, both marked "Chelt 2" meaning that they were payable by the residents of the adjoining property 13 – 15 Cheltenham Parade, have been assumed, in the absence of information to the contrary, not to have been charged to the residents of 7 – 11 Cheltenham Parade although they were included in the Respondent's bundle.
7. Other invoices referred to by the Applicant at the hearing are found to have been properly divided between those responsible for payment, and the correct percentage has already been applied by the Second Respondent to the Applicant's account.
8. The Applicant raised queries as to the reasonableness and payability of some of the invoices produced by the Respondents. Of these, the invoice for a Health and Safety inspection and report has been allowed in full as there is no evidence as to when a previous inspection was carried out and the amount charged is reasonable. However the invoice for a Fire Safety inspection and report has been disallowed, since a full report had been prepared in the previous year (2011) and its recommendations had not been put into effect. Properly managed, the property would comply with the recommendations of the Fire Office, and would need only a simple annual review unless any alteration to the property necessitated another detailed report.
9. The cost of periodic wiring inspections, the purchase of spare keys, fire exit signs, the new carpet, and internal decorations has been allowed as being appropriate expenditure, reasonable in amount, and properly divided between the residents.

10. The residents of 7 – 15 Cheltenham Parade have only one trade bin available for their waste, which is inadequate provision. They should only be paying for the cost of hiring that bin from Harrogate Borough Council.
11. The Applicant has been withholding service charge payments because he says the Tribunal's 2010 determination has not been properly implemented by the Respondents, and because of his on-going queries, many of which have been justified by this decision. The Second Respondent has purported to add administration charges to his service charge account to reflect the cost of sending him reminders to pay. However the Applicant's lease does not provide for the imposition of administration charges, and these are therefore to be removed from the account.
12. The charges paid to the accountants for preparation of annual financial statements in 2011 should be paid by each residential leaseholder in the properties 7 – 15 Cheltenham Parade equally since the cost/benefit does not vary with the size of each flat.
13. The Second Respondent has carried out minimal management of the property since June 2013. To reflect this reduced level of activity, the Applicant's management fee for the current year is reduced from £175 plus VAT to £120 plus VAT.
14. The Tribunal takes the view that if previous Tribunal decisions had been accepted and implemented by the Respondents, this application should not have been required. The Applicant has incurred personal costs and time in making this application. The Tribunal determines that it is fair and reasonable to require the First Respondent to reimburse to the Applicant (by deduction from the service charge account if necessary) the £365 in fees which he has paid to the Tribunal Office. An application under section 20C of the Landlord and Tenant Act 1985 having been made by the Applicant, the Tribunal further orders that no costs incurred by the Respondents in connection with this application may be added to the service charge account.

APPENDIX

| Year Determination                               | Supplier                  | Invoice no. | Invoice date | Invoice total £                  |
|--|---------------------------|-------------|--------------|----------------------------------|
| <b>2011</b>                                      |                           |             |              |                                  |
| Reduce from 13.83% to Applicant's share @ 3.13%: |                           |             |              |                                  |
|  | Broadley & Hazell Ltd     | 011.1157    | 16.12.2011   | 238.06                           |
|  | M Rawlings                |             | 15.11.2011   | 324.00                           |
|  | PBS (Yorkshire) Ltd       | 800         | 26.1.2011    | 57.76                            |
| Reduce from 7.71% to Applicant's share @ 3.13%   |                           |             |              |                                  |
|  | PBS (Yorkshire) Ltd       | 1116        | 30.9.2011    | 300.00                           |
|  | Extrawell Ltd             | 3577        | 31.12.2010   | 94.00                            |
| Reduce from 7.71 % to Applicant's share @ 0%:    |                           |             |              |                                  |
|  | Harrogate Borough Council | 2283464     | 1.7.2011     | 179.40                           |
|  | Extrawell (Yorkshire) LLP | 3737        | 9.6.2011     | 144.00                           |
| Reduce from 13.83% to Applicant's share @0%:     |                           |             |              |                                  |
|  | Peter Petts               | 90846       | 31.1.2011    | 324.00                           |
| <b>2012</b>                                      |                           |             |              |                                  |
| Reduce from 13.83% to Applicant's share @ 3.13%: |                           |             |              |                                  |
|  | Blade Roofing Ltd         | 101018      | 4.11.2012    | 1915.64                          |
|  | Blade Roofing Ltd         | 101019      | 14.10.2012   | 780.00                           |
|  | M Rawlings                |             | 13.11.2012   | 72.00                            |
|  | A L Mears LLP             | 12055       | 30.9.2012    | 24.00                            |
|  | M Rawlings                |             | 19.9.2012    | 72.00                            |
|  | Broadley & Hazell Ltd     | 012.86      | 26.4.2012    | 72.00                            |
|  | Blade Roofing Ltd:        | 100554      | 18.3.2012    | 1902.00 less insurance recovered |
| Reduce from 7.71% to Applicant's share @ 3.13%:  |                           |             |              |                                  |
|  | M Rawlings                |             | 18.10.2012   | 36.00                            |
|  | M Rawlings                |             | 17.7.2012    | 48.00                            |
|  | Beecham Cleaning Services | WD2718      | 2.5.2012     | 25.00                            |
| Reduce from 13.83% to Applicant's share @0%:     |                           |             |              |                                  |
|  | MacDonald Martin Ltd      | 12572       | 31.12.2012   | 360.00                           |
|  | Harrogate Borough Council | 2411372     | 3.7.2012     | 161.82                           |
| <b>2013</b>                                      |                           |             |              |                                  |
| Reduce from 13.83% to Applicant's share @ 3.13%: |                           |             |              |                                  |
|  | Blade Roofing Ltd         | 101341      | 11.5.2013    | 756.00                           |
|  | Farnley Roofing           |             | 1.4.13       | 100.00                           |
|  | Farnley Roofing           |             | 21.2.2013    | 70.00                            |
|  | Farnley Roofing           |             | 16.1.2013    | 70.00                            |