

9536



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

Case Reference : BIR/00CS/LIS/2013/0019

Property : No.5, Ascot Walk, Oldbury, Warley, West Midlands, B69 1HD

Applicant : Cyril Freedman Limited

Representative : Messrs Brady Solicitors

Respondent : Mr Mark Anthony Maskell

Representative : Mr Maskell acted on his own behalf.

Type of Application : An application to determine the liability to pay and reasonableness of service charges under s.27A of the Landlord & Tenant Act 1985

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
P.J. Hawksworth (Lawyer)

Date and Venue of Hearing : 29th October 2013 at the offices of the First-tier Tribunal, 35 Bull St., Birmingham, B4 6DS

Date of Decision : 25th November 2013

DECISION

Introduction

- 1 The is an application by Cyril Freedman Ltd., the landlord of a block of flats, for the Tribunal to determine the reasonableness of unpaid charges totaling £802.36 for the period 1st January 2011 to 30th June 2011. The Respondent is the Lessee of Flat 5, Mr M.A. Maskell.
- 2 The action was originally brought in the County Court and transferred to the Leasehold Valuation Tribunal (LVT) by Order of Judge Jabbar dated 3rd May 2013, claim reference 3XV05031 with instructions for the case to be remitted to the County Court to determine any outstanding issues not determined by the LVT.
- 3 The LVT became the First-tier Tribunal (Property Chamber) on 1st July 2013 and acquired the cases formerly referred to the Leasehold Valuation Tribunal.

Issues in Dispute

- 4 Although the claim is for £802.36 the Tribunal is only empowered to deal with those items falling within the definition of service charge under the Landlord & Tenant Act 1985 or administration charge under Schedule 11 to the Commonhold and Leasehold Reform Act 2002. This was explained to the parties at the hearing and as a preliminary issue the Tribunal accepted jurisdiction in respect of the following matters:

Service charge	£ 294.91
Late payment fee	£ 67.20
Late payment fee	<u>£ 67.20</u>
Total within Tribunal jurisdiction	£ 429.31

Relevant Law

- 5 The Tribunal's powers derive from statute.
- 6 In respect of Service Charges:
Section 27A(1) of the Landlord & Tenant Act 1985 provides that an application may be made to a Leasehold Valuation Tribunal (LVT) for a determination of whether a service charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made.
- 7 Section 18 of the Act defines a 'service charge' as an amount payable by a tenant of a dwelling as part of or in addition to rent which is payable directly or indirectly for services, repairs, maintenance, improvements, insurance or the landlord's cost of management, the whole or part of which varies according to the relevant cost.
- 8 Section 19 of the Act provides that relevant costs shall be taken into account in determining the service charge payable for a period (a) only to the extent that they are reasonably incurred and (b) where they are incurred on the provision of services or carrying out of works, only if the works are of a reasonable standard and in either case the amount payable is limited accordingly.
- 9 These sections apply to the service charge element of the claim of £294.91.

- 10 In respect of Administration Charges:
The key statutory provisions are in Schedule 11 to the Commonhold & Leasehold Reform Act 2002 ('the Act').

An 'administration charge' is defined by paragraph 1 to Schedule 11 as:

'... an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly -

- a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.'
- 11 Paragraph 5 of Schedule 11 provides that an application may be made to the LVT for determination of whether an administration charge is payable and if so, the person by whom it is payable, to whom, the amount, the date payable and manner of payment. The subsection applies whether or not payment has been made which mirrors the requirements for service charges in the 1985 Act.
- 12 These sections apply to the two late payment charges of £67.20 each.

Lease

- 13 The Lessee's liability is determined by the terms of the lease.
- 14 The lease of Flat 5 Ascot Walk is dated 29th July 1975 made between A.& J.Mucklow & Co.Ltd. (landlord) and Philip Wild (tenant) granted for a term of 99 years from 25th December 1972 at a ground rent of £10 p.a. The tenant's interest was acquired by Mr Maskell the present lessee on 23rd May 1990.
- 15 In addition to ground rent, the tenant is required to pay a proportion of the landlord's expenses defined in the Third Schedule Part II.2(i) as 1/24th of the estimated costs of providing services for the following year in advance. These costs are in turn defined in the Eighth Schedule Part 1 which covers the normal elements of expenditure for the building such as repair and maintenance of the roof, gutters, entrance halls, lighting, decorating, insurance and accountancy services and Part II which covers estate items such as garden maintenance, repairs to the common driveways and management fees associated with the estate areas.
- 16 The landlord is only required to provide the services if the tenant has already paid in advance according to the Sixth Schedule (4), i.e. a condition precedent, but the point was not pressed by the landlord which is seeking to recover the estimated costs in arrear.
- 17 The terms are therefore fairly standard for a 1970s residential long lease.

Facts Found

- 18 The Tribunal inspected the property on the morning of the hearing with Miss Gilmour, Solicitor Advocate instructed by Messrs Brady Solicitors acting on behalf of the landlord. The tenant was not present and the Tribunal was unable to inspect the interior of the Flat but there was no reason to do so as all the items in issue related to exterior parts of the building and the grounds.
- 19 The property is a ground floor flat in a 1970s development of two storey flats with communal gardens fronting the A4123 Wolverhampton Road near its junction with Newbury Lane at Oldbury in the West Midlands.
- 20 The Tribunal inspected the property to identify the points raised by the tenant including the condition of the door to the Flat, the Bin Store door, the rear elevation window where there were two loose bricks, a fascia board and the car park. However, the claim relates to service charge items in early 2011 since when the management of the block has been taken over by a Right to Manage Company and some of the defects referred to in the tenant's submission have since been repaired.

Hearing

- 21 The case was heard at the Tribunal office in Priory Court, 35 Bull St. Birmingham on 29th October 2013 at which the applicant landlord was represented by Miss Gilmour, Solicitor Advocate, and the tenant Mr Maskell represented himself. Both parties provided written submissions before the Hearing.

Submissions

- 22 The landlord provided an estimate of the service charge for the year ending 30th June 2011 at page 133 of its Bundle. It listed service charge items for which the parties' submissions and the Tribunal's findings are set out below:

- 23 **Building Insurance** Estimate: £5,200.00

Applicant

Miss Gilmour submitted that the estimated amount was reasonable. In her opening statement she set out the basis of 'reasonableness' for service charge cases and referred to the case of *Forcelux Limited v Sweetman and Another* [2001] 2 EGLR 173 where the Court held:

'The question was not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.'

By way of further authority she also referred to *Regent Management Limited v Thomas Jones* [2010] UKUT 369 (LC).

Miss Gilmour said the tenant had made no request to see the policy schedule and as he had provided no evidence of alternative quotes she invited the Tribunal to find that the amount was reasonable.

Respondent

Mr Maskell conceded the point and accepted the sum.

Tribunal

The Tribunal finds the estimated sum to be reasonable.

24 **Repairs & Maintenance**

Estimate: £500.00

Applicant

Miss Gilmour said that the repairs were unspecified but as the provision in the accounts amounted to only £500 for the whole year and the cost per tenant would be only £20.83, it would be reasonable.

Respondent

Mr Maskell said that as far as he was aware no repairs had been carried out. However, he was prepared to concede the point as it was a nominal sum.

Tribunal

The Tribunal finds the estimated sum reasonable.

25 **Gardening**

Estimate: £2,500.00

Applicant

Miss Gilmour said that the Respondent had provided no evidence to prove the claim that the car park had not been maintained in 2011 and as he had provided no evidence of alternative quotes from other contractors, the provision in the accounts should be found to be reasonable.

Respondent

Mr Maskell advised the Tribunal that the weeds in the car park had since been removed by the new management, the Right to Manage Company.

Tribunal

In the absence of any evidence to the contrary the Tribunal finds the estimated sum reasonable.

26 **Health & Safety Inspection**

Estimate: £420.00

Applicant

This was undertaken every three years and necessary to comply with the landlord's statutory obligations. No cost had been incurred in the previous year but as it was only £350 plus VAT or £17.50 per lessee it should be regarded as reasonable.

Respondent

Mr Maskell conceded the point at the Hearing.

Tribunal

The Tribunal finds the estimated sum reasonable.

27 **Asbestos Re-Inspection**

Estimate: £206.00

Applicant

Similar points were made in respect of this item to the Health & Safety charge. It was only £206.00 which was £8.58 per tenant and should be regarded as reasonable.

Respondent

Mr Maskell made no comment on this item.

Tribunal

The Tribunal finds the estimated sum reasonable.

Applicant

Miss Gilmour noted that the previous year's fee had been £4,230 which had increased by only £282 for 2011. The 2010 fees had been paid unchallenged by the tenants and the increase amounted to £11.75 / flat which was submitted as reasonable. The 2011 fee was £188 / flat.

Respondent

Mr Maskell submitted that it was not reasonable for the service provided. He had telephoned the management company (Trust Management) to report problems on several occasions to be told that the person dealing with the property was out of the office but they never called back. He was 'fed up with looking at the property the way it was' and eventually withheld his service charge to try and prompt some action. In the end, the residents were so frustrated by the lack of action that they established their own management company (RTM) to take over the service charge responsibilities.

In answer to questions raised by the Tribunal, Mr Maskell suggested that a reasonable charge for the work carried out by the agents might have been £180 / flat.

Tribunal

Most of the items identified by Mr Maskell as examples of lack of repair in 2011 had been repaired by the RTM company by the time the Tribunal inspected two years later. There was therefore little or no evidence of disrepair to see on site but it is clear from Mr Maskell's submission that there had been grievances and it is noted that the tenants took action to establish an RTM company to take over the service charge responsibilities. On the balance of probabilities the Tribunal finds that the standard of management may have been less than satisfactory for arranging the repairs. However, the agents were clearly providing other services such as placing gardening and insurance contracts and accordingly we find a reasonable fee to be in accordance with Mr Maskell's suggestion of £180 / flat.

29 **Accountancy Fee**

Estimate: £817.80

Applicant

Miss Gilmour said the provision in the accounts was reasonable.

Respondent

Mr Maskell made no comment on the figure.

Tribunal

Accordingly the Tribunal finds the estimated sum reasonable.

30 **Late Payment Fees**

Claim: 2 x £67.20

Applicant

Miss Gilmour submitted that the landlord's right to claim these charges arose by the Third Schedule, Part II (11) of the lease 'to pay all costs charges and expenses (including Solicitors' costs and Surveyors' fees) *incurred* (our italics) by the Lessor for the purpose of or incidental to the preparation and service of a notice under Section 146 or 147 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court'.

Respondent

Mr Maskell made no comment.

Tribunal

The two late payment fees are administration charges under the 2002 Act. However, the Tribunal finds that they are not payable as the tenant is under no covenant to pay in the lease. The clause referred to by Miss Gilmour relates to forfeiture proceedings but only requires the tenant to pay the landlord for 'costs charges and expenses ... incurred' and no evidence was produced by the landlord that the costs had been 'incurred'. They appeared to be simply penalty charges designed to encourage the tenant to pay but without a reservation in the lease they are not payable.

Decision

31 In summary we find as follows:

- 1 we have no jurisdiction in respect of outstanding ground rent;
- 2 we find the reasonable service charges to be:

<u>Item</u>	<u>£</u>	
Building insurance	5,200.00	
Repairs and Maintenance	500.00	
Gardening	2,500.00	
Health & Safety inspection	420.00	
Asbestos re-inspection	206.00	
Management Fees	4,320.00	
Accountancy Fee	817.50	
Total (full year)	13,963.50	
1.1.11-30.6.11	6,981.75	
Tenant's Liability (1/24)		£290.90

- 3 We find the late payment charges of £67.20 each to be not payable.

32 This case is remitted to the County Court to determine the outstanding issues of claim.

I.D. Humphries B.Sc.(Est.Man.) FRICS

Date: 25th November 2013