



9038

**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/00KF/LSC/2013/0025

Property : Flat 2, 42 Cossington Road,
Westcliff-on-Sea,
Essex SSo 7NG

Applicant : Cyril Freedman Ltd.

Respondent : Dean Keith Bradford

Date of Transfer from Southend County Court : 6th February 2013

Type of Application : to determine reasonableness and
payability of service charges and
administration charges

The Tribunal : Bruce Edgington (Lawyer Chair)
Stephen Moll FRICS
Lorraine Hart

Date and place of Hearing : 31st July 2013 at Southend
Magistrates' Court, Victoria Avenue,
Southend-on-Sea SSo 7NG

DECISION

1. The Tribunal determines that of the claim of £2,965.90, the following amounts are reasonable and payable:-

<u>Item</u>	<u>Date</u>	<u>Claim (£)</u>	<u>Decision</u>
Service charges	01.05.10	105.14	nil – in credit
Service charges	01.11.10	477.89	434.70
Service charges	01.05.11	429.38	341.75
Service charges	01.11.11	429.37	341.75
Service charges	01.05.12	471.50	427.63
Service charges	01.11.12	471.50	427.63
Administration charge		67.20	not payable
Balancing service charge	30.04.12	3.92	nil
Claim fee		80.00	no jurisdiction
Solicitors costs for claim		280.00	no jurisdiction
Ground rent		<u>150.00</u>	no jurisdiction
		2,965.90	

Therefore, of the claims for service charges and administration charges within the jurisdiction of the Tribunal (£2,455.90), the decision is that £1,973.46 is reasonable and payable of which the Tribunal has evidence that the Respondent paid £434.70 on the 19th July 2013 leaving a balance due of £1,538.76.

2. The claim is transferred back to the Southend County Court under claim no. 2QZ51206 for determination of the outstanding issues and enforcement. The parties should note that it will be up to them to make any application to the court in relation to those matters.
3. The Tribunal makes an order pursuant to Section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Applicant from recovering its costs of representation before this Tribunal as part of any future service charge demand addressed to the Respondent.

Reasons

Introduction

4. This application is a follow on application relating to the same property involving the same parties when the service charges and administration charges for the year ending 30th April 2010 were determined under case no. CAM/00KF/LSC/2011/0080. As the parties are the same and the members of the Tribunal are the same, this decision must be read in conjunction with that decision if anyone needs to find a description of the property, the background, the law and the terms of the lease.
5. By an exchange of e-mails between the Respondent and the managing agents for the Applicant, which was sent to the Tribunal, it appears that the service charges and administration charges up to and including 30th April 2011 have been agreed at £434.70 taking into account an opening credit of £254.47 as at 1st May 2010. It was also agreed that, in addition, £50 was payable in respect of ground rent.
6. The remaining claims for service charges are for payments on account. However for the year ending 30th April 2012, there are now service charge accounts available and the Tribunal can consider those.
7. Court proceedings were issued by the Applicant for the sum stated above on 3rd December 2012. The Respondent filed a generally worded defence which did not deal with any of the particular parts of the claim. This may have been partially due to the fact that claim itself is just a total without any details. However, the Respondent, in effect, says that he has been overcharged for years and does not think that he owes anything.
8. Despite being ordered to do so, the Respondent has not in fact filed any details of his defence even though he now has full accounts in respect of the period up to 30th April 2012.
9. It should be recorded that this was the second hearing in these proceedings. Because the Applicant had failed to lodge a hearing bundle in good time, the previous hearing had just been to hear an application to dismiss. In fact the case was not dismissed because a

bundle was filed at the last minute and the Respondent said that he wanted more time to look at the additional documents in such bundle.

10. As to the present hearing, the managing agent's representative, Anntoinette Griffiths, an unqualified property manager employed by Trust Property Management Ltd. ("TPM"), objected to the hearing taking place on the 31st July because she was on holiday. This date had been fixed to suit the members of the Tribunal, the case worker, the Respondent and the venue. As the Applicant is a limited company with the same directors as TPM, it was considered by the Tribunal chair that someone else from TPM, a large company of managing agents, or a legal representative would have to attend the hearing to represent the Applicant. Ms. Griffiths did not suggest that she was a key witness.
11. On the morning of the hearing, no-one from the Applicant turned up at the hearing. A telephone call was put through to TPM who faxed back a letter saying:-

"Further to our conversation today morning, I write to inform you that we have resolved the matter with Mr. Bradford. He informed us by email on 18th July that he would be contacting the LVT to inform that the hearing due to be held today would no longer be necessary.

My Colleague Anntoinette further emailed him yesterday to request confirmation that he had contacted the LVT to inform them that the hearing would not be necessary. However from our conversation today morning it appears that you may not have been advised of this. Please note that it is on this basis that no representative from Trust is attending the hearing as we were of the view that Mr. Bradford had notified the LVT to cancel the hearing".

12. At the hearing, Mr. Bradford produced copies of the e-mails referred to. On the 18th July 2013 at 14.21, Mr. Bradford sent a detailed analysis of the figures for the year ending 30th April 2011 showing a net figure due from him to the Applicant of £434.70 for service charges plus £50 ground rent. Thereafter the messages say:-

*"18th July at 15.06 from TPM to Mr. Bradford –
Hi Dean. I agree with you total for the period ending 30th April 2011. I'm glad you can understand it as well. I think you will need to advise the LVT that you are settling your account year by year, so a hearing may not be necessary on the 31st July.*

*18th July at 16.53 from Mr. Bradford to TPM –
Good news, we are making progress! I'll make the payment 1st thing in the morning. I'll go over the year to 30th April 2012 tomorrow (Had enough today, too hot, going for a beer!!)*

*I'll contact LVT tomorrow as well.
Thanks Anntoinette*

*18th July at 17.19 from TPM to Mr. Bradford –
Brilliant! Glad we are finally getting there. Regards,
Anntoinette*

*19th July at 9.34 from Mr. Bradford to TPM –
Hi Anntoinette, I have made the payment of £484.70 to cover
the 30th April 2011 account. Unfortunately I have been called
away to clients for the rest of the day, so I'll have to email you
the 30th April 2012 figures over the weekend if OK?*

The message he had back immediately thereafter was an automatic response saying that Anntoinette Griffiths was on leave and would return to the office on the 13th August. There appeared to be no system for anyone else to pick up e-mail messages and deal with any problem.

13. Accordingly the faxed letter to the Tribunal on the morning of the hearing was clearly wrong and misleading.

The Inspection

14. There was no inspection. Neither party wanted the Tribunal to inspect and in view of the issues, this was deemed to be unnecessary.

The Hearing

15. The hearing was attended by Mr. Bradford. He helped the Tribunal as much as he could. He said that he had not really had enough time to go through the 2012 and 2013 figures in detail and was content for the Tribunal to come to its own conclusions. He still challenged the figures and produced 2 extremely important invoices for health and safety work. The first of these appeared to be the invoice for £350 referred to in the 2011 decision of this Tribunal which was from T B Property Maintenance, was dated 7th February 2011 and the previous decision had recorded that this was for clearing the gutters and putting a 'danger' sign for the fuse box in the common parts.
16. The other was from Harriott Property Ltd. of an address which Mr. Bradford said was a residential house. It was dated 1st August 2011 and was for "*Cleared blocked guttering at property – Supply & install 2 smoke alarms in communal area – H & S signage throughout communal area*". It was for £440 and asked for any cheque to be paid to a Mr. Newman. Mr. Bradford's evidence was that the gutter cleared was a 6 foot gutter between the front door and the balcony, that this person had replaced one smoke alarm and had added another but that there was no change to the signage which consisted of 4 stickers stating that there was a telephone number to ring in the event of emergency but with a gap where that telephone number was supposed to be.

Conclusions

17. Of the items claimed, the **buildings insurance** in 2012 is just over £60 more than the previous year which the Tribunal found to be reasonable in the 2011 decision. The Respondent has produced nothing

to suggest that the 2012 or 2013 figures are unreasonable and the claims are therefore determined as being reasonable.

18. As to the **health and safety Assessment**, there is no invoice with the papers. The Respondent had produced the invoice for £440 but the work described in that invoice could hardly be described as a Health and Safety Assessment. The Tribunal accepted Mr. Bradford's evidence. Using the Tribunal's own knowledge and experience, 2 fire alarms would have cost in the region of £250 to supply and install. Having said that, the Tribunal was concerned to note that the Applicant was prepared to instruct a small company, not registered for VAT, which may not have had the appropriate insurance cover bearing in mind that payment was to be made to an individual. The Tribunal was not satisfied that this company had done anything substantial to the low level guttering or the signage. £250 is allowed for this item.
19. As to the **management fees**, these were considered in the previous decision and it was found that in respect of the management fees incurred in 2010, they were limited to £100 plus VAT as the management agreement was a long term agreement upon which there had been no consultation. In respect of 2011, 2012 and 2013, the Applicant appears to have cured that problem and produces 1 year agreements. All 3 are specific to this property. The agreement of 1st May 2011 refers to a fee of £450 plus VAT, that dated 1st May 2012 refers to a fee of £540 plus VAT and that dated 1st May 2013 refers to a fee of £600 plus VAT. The amount in the 2012 accounts would be covered by the 2011 agreement which provides for a fee of £540 inclusive of VAT and not the £666.00 as set out in the accounts.
20. The claim for the period up to 30th April 2013 is £720.00 which again is not in accordance with the agreement. £648.00 is the correct figure.
21. None of the agreements include the preparation of service charge accounts within the fee which does seem to be an extraordinary omission. It is this Tribunal's view that any reasonable landlord would want the preparation of service charge accounts to be included in the annual fee. It is certainly included in the RICS Service Charge Residential Management Code at paragraph 2.4(c) as something which should be included in a managing agent's fixed annual fee. TPM claim to be regulated by the RICS.
22. There are 3 dwellings in the building of which the property forms part, which would mean annual charges of £180 per unit in 2011, £216 per unit in 2012 and £240 per unit in 2013 – all figures inclusive of VAT. The whole issue of managing agent's fees was discussed in the previous decision. For the reasons set out therein, the Tribunal agrees that £180 per unit was a reasonable fee for 2011 and £216 per unit was reasonable for 2012. However, in these days of constraint by everyone, there is no excuse for a further increase in 2013 and the fee, if claimed, would be determined as being unreasonable to that extent.
23. As to the **accountancy fees**, Ms. Griffiths, in her Scott Schedule, says that it is a statutory requirement to certify the annual service charge

accounts. She does not mention the particular piece of legislation she refers to. It may be the proposed amendments to Section 21 of the 1985 Act which provide for service charge accounts to be certified by a qualified accountant but which have not yet been brought into effect. As has been said the RICS Code of Practice assumes that the preparation of annual service charge accounts would be included in the annual fixed fee, particularly, as in this case, the accounts are certified not by a qualified accountant but by TPM themselves. These fees are not held to be reasonable.

24. Moving on to the applications for payments on account of service charges from May 2011, the Tribunal considers that those figures can now be determined as a finite figure as the accounts have been produced for the relevant period. For that year and the monies required on account for 2012/2013, the decision of the Tribunal is as follows:-

Period up to 30th April 2012

	<u>Claim (£)</u>	<u>Decision (£)</u>
Insurance	1,032.66	1,032.66
Health & Safety	440.00	250.00
Management fee	666.00	540.00
Accountancy	162.00	nil

Period up to 30th April 2013

Insurance	1,032.66	1,032.66
Repairs etc.	600.00	600.00
Management fee	720.00	648.00
Accountancy	162.00	nil

25. This means that the amount allowed for the period up to 30th April 2012 is a total of £1,822.66 of which the Respondent's share (37.5%) is £683.50. The claim is in 2 half yearly amounts and the decision, for convenience, is therefore set out as 2 half yearly figures of £341.75. Using the same method for the period up to 30th April 2013, means a total allowed of £2,280.66 or £855.25 for the Respondent's share. The half yearly figure is therefore £427.63 to 2 decimal places
26. As to the Applicant's costs of representation before this Tribunal, the lease does not provide for such costs to be recovered. There is no question of a Section 146 notice being served. However, for Mr. Bradford's peace of mind, the Tribunal considers that an order under Section 20C of the 1985 Act is just and equitable.
27. Mr. Bradford did, at the hearing, point out that a note in an e-mail from TPM indicated that they were VAT exempt. The Tribunal has considered this. What Ms. Griffiths from TPM actually said in her e-mail was "Yes VAT is exempt on trust invoice, as the contractors charge VAT on their invoices, so we do not charge extra VAT on top of that". The Tribunal concludes that all Ms. Griffiths is saying here is that if a contractor puts in an invoice for charges plus VAT, TPM does not add VAT again.

28. The wording is not very clear but it is clear from the actual invoices submitted by Trust that there is a VAT number and they are charging VAT, as one would expect from a large company of managing agents. Accordingly, the Tribunal has included VAT when calculating the management fees.
29. Finally, the Tribunal noted its comments in the 2011 decision about the standard of management of TPM. The management fees allowed would be those of a proficient managing agent. The figures in the agreements have been allowed because Ms. Griffiths does appear to have been liaising with Mr. Bradford. However, even now the figures put forward by TPM are far from satisfactory. There is a statement of account at pages 63 and 64 in the bundle which does not make any sense at all. Neither Mr. Bradford nor the members of the Tribunal could fully understand the figures and there is no explanation in Ms. Griffith's statement of evidence
30. The figures for management fees put into the accounts and the demand for payments on account bear no relationship to the figures agreed between the Applicant and TPM as set out in the agreements disclosed.
31. There are 2 large health and safety reports in the bundle both of which arose from a site visit on the 21st September 2012. Both are from 4site Consulting Ltd. One is 49 pages long, is headed 'Health, Safety & Fire Risk Assessment' and recommends a 'review' date of 20th September 2014. The other is 36 pages long, is headed 'Asbestos Management Survey Report and Register' and recommends a re-inspection date of 20th September 2013. These reports appear to be completely irrelevant to any item of claim and, in view the size and age of the building, the Tribunal would question the need for such detailed reports or the need for the frequent re-assessments they suggest. If this level of service continues, TPM can expect any future claims to be examined very carefully by a Tribunal. Even the level of fees claimed now could be reduced dramatically.

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Bruce Edgington
Regional Judge
2nd August 2013