

10669



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

Case Reference : **BIR/00CN/LIS/2013/0047**

Properties : **Flat 2 and Flat 3, 122-124 Fentham Road, Erdington Road, Erdington, Birmingham, B23 6AN**

Applicant : **Mrs Coneca Patrick**

Representative : **Mr Sebastian Lorenzo**

First Respondent : **Oakwest Ltd (Flat 2)**

Representative : **Unrepresented**

Second Respondent : **Gillian Moore (Flat 3)**

Representative : **Powell & Co Solicitors**

Type of Application : **Under sections 19 and 27A of the Landlord and Tenant Act 1985 for the determination of liability to pay and reasonableness of service charges**

Tribunal Members : **Judge S McClure
J E Ravenhill FRICS**

Date of hearing : **Paper determination**

Date of Decision : **25 FEB 2015**

DECISION

Decision of the tribunal

In respect of Flat 2

- (1) The Tribunal determines that no service charge is payable for the service charge year 6 April 2011 – 5 April 2012.
- (2) The Tribunal determines that the service charge payable for the service charge year 6 April 2012 – 5 April 2013 is £480.00.
- (3) The Tribunal determines that the service charge payable for the service charge year 6 April 2013 – 5 April 2014 is £480.00.
- (4) The First Respondent is ordered to pay £125.00 costs to the Applicant.

In respect of Flat 3

- (5) The Tribunal determines that no service charge is payable for the service charge year 6 April 2011 – 5 April 2012.
- (6) The Tribunal determines that the service charge payable for the service charge year 6 April 2012 – 5 April 2013 is £720.00.
- (7) The Tribunal determines that the service charge payable for the service charge year 6 April 2013 – 5 April 2014 is £720.00.
- (8) The Second Respondent is not ordered to pay any of the costs the Applicant incurred in making this application.

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 service charge payable by the Respondents in respect of the service charge periods 6 April 2011 – 5 April 2012, 6 April 2012 – 5 April 2013, and 6 April 2013 to 5 April 2014.
2. On 25 February 2014 the Respondents were barred from taking part in the proceedings due to their lack of response to the applications and subsequent directions.
3. On 4 August 2014 the Second Respondent made an application for the bar to be lifted. On 1 October 2014 the Tribunal lifted the barring order against the Second Respondent.

4. In October 2014 the First Respondent acknowledged receipt of the application and asked for, and received, an extension of time to respond. No response was received. The barring order remains in place against the First Respondent.
5. Neither party requested an oral hearing. The Tribunal was of the view that an oral hearing was not necessary and the matter was determined by way of paper determination.

The Background

6. The Applicant is the owner of the freehold of a block of four flats known as 122–124 Fentham Road, Erdington, B23 6AN (the Building). The freehold comprises the block of four flats, four garages in a separate block and a communal court yard area (the Property). The Applicant is also the leaseholder of one of the flats within the Building, Flat 4, and she is resident in Flat 4. The fact that she is a leaseholder and occupier of a flat within the Building, is not material to this application. She makes this application as freeholder of the Property.
7. The First Respondent, Oakwest Ltd, is the leaseholder of Flat 2 of the Building. The First Respondent currently lets the property to a residential tenant.
8. The Second Respondent, Gillian Moore, is the leaseholder of Flat 3 of the Building. The Second Respondent does not live at the property. Flat 3 is unoccupied, and has been so for several years.
9. The Applicant's representative, Mr Sebastian Lorenzo, is the leaseholder of Flat 1 of the Building. He has lived in Flat 1, but no longer does so. He provides caretaker services to the Property, under the instruction of the Applicant.
10. The Applicant contends that since June 2011 she has demanded service charge payments from the Respondents and she says no payments have been made.
11. An application was made to the Tribunal on 13 December 2013 by the Applicant for a determination under sections 19 and 27A of the Landlord and Tenant Act 1985 for the determination of liability to pay and reasonableness of service charges.
12. On 8 May 2014 the Tribunal conducted an inspection of the Building. In July 2014, prior to the application being determined by the Tribunal, the Second Respondent made her application for the bar to be lifted.

13. Following the 1 October 2014 decision whereby the Tribunal lifted the barring order against the Second Respondent, further directions were issued and the matter proceeded to determination.

The law

Landlord and Tenant Act 1985

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.

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.

The Service Charge provisions of the lease

14. The lease contains a provision at Clause 3(2) that the First Respondent is to pay 20% of the total service charge for the Building to the Applicant, and the Second Respondent is to pay 30%.
15. The lease for Flat 2 is in all other material respects identical to the lease for Flat 3.

Inspection and submissions

16. On 8 May 2014 the Tribunal conducted an external inspection of Property, in the presence of Mr Lorenzo. The Respondents were not present. They were, at that time, barred. The Second Respondent was subsequently given the opportunity to attend a further inspection of the property and she chose not to do so.

17. The Building and the entire Property appeared to be in overall reasonable condition, save that there was damage to the garages following a fire. The common areas were reasonably clean and tidy.
18. There were detailed submissions from the Applicant and the Second Respondent.
19. This decision will deal with the claim against the Second Respondent first. There is more discussion with regard to the claim against the Second Respondent. It is sensible to deal with that claim first.

The Claim against the Second Respondent – Flat 3

The issues

20. The Tribunal identified the relevant issues for determination as follows:
 - (i) Whether the Applicant was correct to send the service charge demands to the Respondent at Flat 3 instead of sending them to an alternative address.
 - (ii) Whether the service charge demands were valid service charge demands in accordance with the lease.
 - (iii) The reasonableness of the charge for cleaning.
 - (iv) Whether the Second Respondent paid £200 toward the porch repair.

Service charge item & amount claimed

21. The Applicant claims service charges, ground rent and legal fees, for the period 6 April 2011 – 5 April 2014, as follows:

Service charge 6 April 2011 – 5 April 2012	£806.10
Service charge 6 April 2012 – 5 April 2013	£720.00
Service charge 6 April 2013 – 5 April 2014	£720.00
Additional legal fees, October 2012	£45.00
Ground rent, 2011-2013	£90.00

Service charge demands sent to Flat 3

22. The Second Respondent contends that she did not receive any service charge demands or service charge information until the Applicant sent some service charge information to her solicitor in June 2013. She submitted that the Applicant knew she did not live at Flat 3 and knew that she visited the Property only infrequently. She submitted that the Applicant had an alternative address for her, and should have sent all correspondence, including the service charge demands, to that alternative address. Further, she submitted, the Applicant knew that Powell & Co were her solicitors and the Applicant should have sent copies of the service charge demands to Powell & Co.
23. The issue, considering the above arguments, is whether the Applicant should have sent correspondence only to Flat 3. The Tribunal finds that, unless specifically requested otherwise, the Applicant was correct to send service charge demands to the Second Respondent at Flat 3. The Applicant sent letters to the Second Respondent during 2011 and 2012, setting out the service charge due and asking for payment. Those letters were sent to the Second Respondent at Flat 3. There is insufficient evidence to show that the Second Respondent had asked for service charge demands to be sent to her at any address other than Flat 3.
24. Further, the Second Respondent knew, or ought reasonably to have known, that she was obliged under the terms of the lease to pay a service charge. Even if she had not read the lease, or otherwise had the contents made known to her, it is common knowledge that leasehold properties generally come with an obligation to pay a service charge. On her evidence, she was not getting any correspondence from the Applicant regarding the service charge. She had a responsibility to contact the Applicant regarding the service charge, which she knew she had to pay and which she knew she was not paying.
25. The Tribunal finds that it was reasonable for the Applicant to send correspondence regarding the service charge to the Second Respondent at Flat 3.

Validity of the service charge demands

26. The Second Respondent contends that the service charge information provided to her solicitor with the Applicant's letter of 6 June 2013 did not meet the requirements of Clause 3 of the lease. The 6 June 2013 information was only a summary sheet. She submits that it would not have been reasonable to expect her to pay the service charge, without the full certificate being produced.

27. Clause 3(2)(b) of the lease requires the amount of the service charge to be ascertained and certified by a certificate as soon after the end of the financial year as may be practicable and, at 3(2)(e), the certificate shall contain details of service charge expenditure during the year. Clause 3(2)(c) entitles the Second Respondent to inspect the certificate, but does not require the Applicant to provide a copy to her. Clause 3(2)(h) requires the Applicant to provide an account of the service charge payable to the Second Respondent, as soon as practicable after the end of the financial year.
28. The Tribunal finds that the Applicant prepared a service charge certificate and provided the Second Respondent with an account of the service charge payable for the years 2011/2012 and 2012/2013. The issue is whether the Applicant did so in accordance with the time scales set out at Clauses 3(2)(b) and (h) of the lease.
29. The service charge certificate for both the 2011/2012 and 2012/2013 years is dated 17 May 2013. The 2011/2012 financial year ended on 5 April 2012. The Applicant has provided no explanation as to why the certificate was prepared more than 13 months after the end of the financial year. The Tribunal finds that the certificate for 2011/2012 was not prepared as soon as was practicable after the end of the financial year. Therefore, the 2011/2012 service charge was not demanded in accordance with Clause 3(2)(b) of the lease and so is not payable.
30. The 17 May 2013 certificate was prepared soon after the end of the 2012/2013 financial year. The account of the service charge payable was provided to the Second Respondent's solicitor with the 6 June 2013. The 2012/2013 service charge was demanded in accordance with the terms of the lease and is payable.
31. The 12 November 2014 certificate for 2013/2014 was prepared sufficiently soon after the end of the 2012/2013 financial year to comply with Clause 3(2)(b). The account of the service charge payable was provided to the Second Respondent's solicitor on 14 November 2014 and was in compliance with Clause 3(2)(h). The 2013/2014 service charge was demanded in accordance with the terms of the lease and is payable.

Reasonableness of the charge for cleaning

32. The Second Respondent contends that the amount the Applicant charged for cleaning is too high. She submits that the area to be cleaned is small, comprised of common parts of a hallway, landing and window. She submits that a reasonable rate for the work would be no more than £23.55 a fortnight, rather than the £50 charged by the Applicant.

33. The common parts covered by the lease cover the external area, at Clause 4(a), in addition to the internal area. The Applicant provided evidence of quotes for cleaning from three local companies, with sums quoted of £75 and £100 a fortnight, and £150 with no frequency given. The Tribunal finds the sums charged by the Applicant for cleaning to be reasonable.

Payment of £200 towards the porch repair

34. The Second Respondent contends that she made a payment of £200 toward the porch repair.
35. The submission by the Second Respondent that she paid this sum, weighed against the evidence overall of non-payment of service charge and lack of contact with the Applicant, is insufficient evidence to find that the payment was made.

Decision

36. The Tribunal determines that no service charge is payable for the service charge year 6 April 2011 – 5 April 2012.
37. The Tribunal determines that the service charge payable for the service charge year 6 April 2012 – 5 April 2013 is the sum of £720.
38. The Tribunal determines that the service charge payable for the service charge year 6 April 2013 – 5 April 2014 is the sum of £720.
39. The ground rent is not a service charge. The Tribunal has no jurisdiction within these proceedings to make a determination in respect of ground rent.
40. The Applicant has not provided sufficient information regarding the legal fees. The sum of £45 claimed from the Second Respondent is not allowed.

The Claim against the First Respondent – Flat 2

The issues

41. The Tribunal identified the relevant issues for determination as follows:
- (i) Whether the Applicant was correct to send the service charge demands to the First Respondent at Flat 2 instead of sending them to an alternative address.

- (ii) Whether the service charge demands were valid service charge demands in accordance with the lease.

Service charge item & amount claimed

42. The Applicant claims service charges, ground rent and legal fees, for the period 6 April 2011 – 5 April 2014, as follows:

Service charge 6 April 2011 – 5 April 2012	£537.40
Service charge 6 April 2012 – 5 April 2013	£480.00
Service charge 6 April 2013 – 5 April 2014	£480.00
Additional charge door, December 2012	£20.00
Additional charge door, May 2013	£80.00
Additional legal fees, October 2012	£45.00
Ground rent, 2011-2013	£60.00

Service charge demands sent to Flat 2

43. The Tribunal accepts that the Applicant wrote to the First Respondent at Flat 2 regarding the service charge. The Applicant contends that she was never asked by the First Respondent to send correspondence to an address other than Flat 2.
44. There is no evidence with the papers to contradict the Applicant's contention. The Tribunal finds that it was reasonable for the Applicant to send correspondence regarding the service charge to the First Respondent at Flat 2.

Validity of the service charge demands

45. The account of the service charge payable for the years 2011/2012 and 2012/2013, provided to the Second Respondent's solicitor with the 6 June 2013 letter, also includes the amounts due for those years in respect of Flat 2. The Tribunal finds, on the balance of the evidence, that the Applicant sent the June 2013 account of the service charge payable to the First Respondent.
46. Applying a similar analysis as for Flat 3, the Tribunal finds that the service charge for 2011/2012 was not demanded in accordance with the terms of the lease and so is not payable, and finds that the service

charge for 2012/2013 was demanded in accordance with the terms of the lease and so is payable.

47. The 12 November 2014 certificate for 2013/2014 was prepared sufficiently soon after the end of the 2012/2013 financial year to comply with Clause 3(2)(b). The Tribunal finds that, on the balance of the evidence, the account of the service charge payable was provided to the First Respondent in compliance with Clause 3(2)(h). The 2013/2014 service charge was demanded in accordance with the terms of the lease and is payable.
48. The Applicant appears to have incorporated the additional sums of £20 and £80 into the final charge for the year, as certified on 12 November 2014. Accordingly, no separate finding is required from the Tribunal regarding these two payments.

Decision

49. The Tribunal determines that no service charge is payable for the service charge year 6 April 2011 – 5 April 2012.
50. The Tribunal determines that the service charge payable for the service charge year 6 April 2012 – 5 April 2013 is the sum of £480.
51. The Tribunal determines that the service charge payable for the service charge year 6 April 2013 – 5 April 2014 is the sum of £480.
52. The ground rent is not a service charge. The Tribunal has no jurisdiction within these proceedings to make a determination in respect of ground rent.
53. The Applicant has not provided sufficient information regarding the legal fees. The sum of £45 claimed from the First Respondent is not allowed.

Application under Regulation 13 for payment of costs

54. The Applicant makes a claim for costs for this application of £250. She provided a breakdown of costs and the Tribunal finds that those costs are reasonable.
55. The Tribunal's powers to award costs are contained in Regulation 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and may only be exercised if a person has acted unreasonably in 'bringing, defending or conducting' proceedings. The Tribunal finds that the First Respondent did act unreasonably in choosing not to respond to the application once it had come to their attention, save

acknowledging receipt of the application and asking for, and receiving, an extension of time to respond. The First Respondent is to pay half of the Applicant's costs of the application, a sum of £125.

56. The Tribunal finds that the Second Respondent did not act unreasonably in either her defence of, or her conduct of, the proceedings and no costs order is made against the Second Respondent.

In reaching their determination the Tribunal has had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision which is given below (regulation 52 (2) of The Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rule 2013) stating the grounds upon which it is intended to rely on in the appeal.

Name: Judge S McClure

Date: 25 FEB 2015