



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

Case Reference : **BIR/00FY/LIS/2015/0035**

Property : **Apartment 618, Marco Island,
Huntingdon St, Nottingham, NG1 1EA**

Applicant : **Mr Naim Mirza**

Representative : **None**

Respondent : **Blue Property Management UK Ltd**

Representative : **None**

Type of Application : **Application for determination of liability to pay and reasonableness of service charges under sections 27A and 19 of the Landlord and Tenant Act 1985 and for a determination on liability and reasonableness of administration charges under schedule 11 of the Commonhold and Leasehold Reform Act 2002**

Tribunal Members : **Judge C Goodall
Mr Colin Gell FRICS**

Hearing Date and venue: **11 December 2015 at Nottingham Magistrates Court**

Date of Decision : **21st December 2015**

DECISION

Background

1. On 24 March 2015, the Applicant commenced these proceedings in order to establish his liability to pay service charges claimed from him by the Respondent by virtue of his long leasehold tenancy (dated 25 August 2006 for a term of 150 years) of Apartment 618 Marco Island, Huntingdon Street, Nottingham (“the Apartment”). The apartment is one unit in a mixed residential / commercial development constructed in about 2004 on Huntingdon St in Nottingham (“the Property”).
2. In Directions dated 17 June 2015, the Tribunal directed that it would treat the application as being an application for consideration of both service charges and administration charges (the latter under Schedule 11 of the Commonhold and Leasehold Reform Act 2002), as the sums claimed from him appeared to encompass both types of charge.
3. Blue Property Management UK Ltd (“Blue”) is not a party to the lease but used to act as managing agents for a company called Marco Developments Ltd, which was the original lessor. Marco Development Ltd subsequently went into LPA receivership. In litigation between the receivers and Blue, a consent order was agreed by which the receivers assigned to Blue the right to collect outstanding service charges up to 30 September 2011. As from that date, a new management company acted as agent for the receivers. It is in its capacity as assignee of the right to collect certain service charges that Blue is the Respondent in these proceedings.
4. The hearing of the case took place on 11 December 2015 at Nottingham Magistrates Court. The Applicant represented himself. Mr Peter Evans, a Director of Blue, represented Blue.
5. The Tribunal did not carry out an inspection of the Property. The issues in the case relate to consideration of accounts, interpretation of the Lease, and the legal implications of the receivership of Marco Developments Ltd rather than the condition of the Property. Insofar as the issues also covered the layout of the Property, the Tribunal is familiar with the Property from involvement with previous cases relating to it.

The issue

6. The Applicant’s issue was the attempt by Blue, including a notice of intention to commence county court proceedings, to collect sums from him said to be arrears of service charges and administration charges due under the lease. Statements of account claiming that the Applicant has a liability to pay historic invoices were sent to the Applicant regularly. The Applicant wished to establish that he was not under an obligation to pay these invoices. The invoices claimed are:

Item No	Date	Invoice for	Amount (£)
1	16/5/2011	Excess charge for 2009/10	300.56

		service charge year	
2	17/8/2011	Excess charge for 2010/11 service charge year	141.16
3	02/11/2015	Arrears admin charge	50.00
4	29/3/2012	Arrears admin charge	50.00
5	25/5/2012	Excess charge for 2011/12 service charge year	233.74
6	06/8/2012	Arrears admin charge	50.00
7	09/12/2013	Fee for issuing notice of issue of county court summons	178.20
8		Total	1,003.66

7. In his application form, the Applicant also challenged an invoice for £488.00 that he had received from Blue as a service charge due for the period 1 October 2011 to 31 March 2012. Mr Evans accepted that this invoice was issued in error and said it had been withdrawn and was not payable.

The state of account between the parties

8. Blue's accounting system showed that as at the date of hearing, the Applicant owed it £1,199.19. The difference between the amount in dispute, shown above, of £1,003.66, and total sum said to be owing, is £195.53. The Applicant does not dispute that he owed that sum but he said it was paid on 10th November 2011 (or rather that he had paid £194.54 which was his calculation of the sum he did not dispute). Mr Evans said that Blue had no record of receiving that sum. This question is not one for the Tribunal to consider, but for the parties to resolve through the courts if they remain in dispute about it.

Previous proceedings

9. This is not the first Tribunal case in which service charges and administration charges due to Blue for services delivered in respect of the Property have been considered by the Tribunal. In a decision dated 17 February 2013 under references BIR/00FY/LAC/2013/0004 and BIR/00FY/LSC/2013/0012 ("the Previous Decision"), the Tribunal specifically considered the liability of another lessee of an apartment at the Property for excess service charges for the 2009/10, 2010/11 and 2011/12 service charge years, and the recoverability of administration charges levied by Blue. The Previous Decision found against Blue on recoverability of all administration charges. It also determined that excess charges for 2009/10 and 2010/11 had been overstated and were not payable as the expenditure in those years had been less than the service charge actually collected. Finally, it found that there was no right under the lease to claim an excess service charge for 2011/12. Blue had, in the Previous Decision represented Marco Developments Ltd, which had been the Respondent. Counsel had been engaged, and Mr Evans had attended the hearing of that case.

10. The Tribunal reminded Mr Evans of the Previous Decision and said that unless Mr Evans was able to present arguments to convince the Tribunal that it had incorrectly determined the Previous Decision, any issues that were identical in this case to those in the Previous Decision would, for the sake of consistency and because Blue had already litigated them, be determined as in the Previous Decision. Mr Evans accepted that where the Previous Decision had determined an identical issue, he did not wish to argue that the Previous Decision was wrong and so he accepted that the outcome of that issue in the Previous Decision would also apply to this case.

The Law

11. The powers of the Tribunal to consider service charges are contained in sections 18 to 30 of the Landlord & Tenant Act 1985.
12. Under Section 27A of that Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-
 - a. The person by whom it is or would be payable
 - b. The person to whom it is or would be payable
 - c. The amount, which is or would be payable
 - d. The date at or by which it is or would be payable; and
 - e. The manner in which it is or would be payable

13. Section 19(1) of that Act provides that:

“Relevant costs shall be taken into account in determining the amount of 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 and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly.”

14. In relation to administration charges, the law is contained in Schedule 11 of the Commonhold and Leasehold Reform Act 2002, the relevant parts of which provide as follows:
 - 1 (1) In this Part of this Schedule “administration charge” means 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.

...

(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

...

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

...

5 (1) An application may be made to an appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on an appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

...

6 (6) “Appropriate tribunal” means –

(a) in relation to premises in England, the First-Tier Tribunal...

Discussion

15. It will be most convenient to consider the issues that arise under the following headings:
 - a. On what basis does Blue have any right to claim any sum from the Applicant?
 - b. Are any sums still payable as service charges for 2009/10 and 2010/11 (i.e. are items 1 and 2 of the table at paragraph 6 payable)?
 - c. Is there any basis for Blue to claim an excess charge for 2011/12 (i.e. is item 5 of the table at paragraph 6 payable)?
 - d. Are any administration charges due from the Applicant to Blue (i.e. are items 3, 4, 6 and 7 of the table at paragraph 6 payable)?

(a) On what basis does Blue have any right to claim service charges from the Applicant?

16. Blue is not a party to the lease. It therefore has no legal basis for relying on the lease to establish its right to any payment from the Applicant.
17. Blue was, however, the managing agent for the Landlord, Marco Developments Ltd, until receivers were appointed over the Property under the provisions of the Law of Property Act 1925 on 13 December 2010. The receivers did not adopt Blue's management agreement. On 13 June 2011, the receivers appointed a new manager of the Property, but Blue also continued to assert its right to manage. Litigation then ensued between the receivers and a number of defendants including Blue. So far as Blue was concerned, they came to an agreement with the receivers on 31 August 2011 which was recorded in a Tomlin Order made in the Chancery Division of the High Court.
18. Paragraphs 6 and 13 of the Tomlin Order are relevant, They are:

“6. The 5th Defendant [Blue] shall pay all salaries, utilities and other costs and outgoings incurred in respect of the Property in the period up to and including 30 September 2011. ...

13. The 5th Defendant shall be entitled at its own cost to collect all moneys due in respect of service charge relating to the Property in respect of any period prior to 1 October 2011 and in respect of such period to demand a Maintenance Adjustment as provided for in the tenants' leases, and to apply all such receipts first towards payment of their proper fees and second towards payment of costs or expenses which have been incurred by the 5th Defendant pursuant to the Management Agreement by which the 5th Defendant discharged sums payable to third

parties in relation to the Property's management. The 5th Defendant shall not be entitled to bring court proceedings in the name of the Claimants or their agents. The 5th Defendant shall provide the Claimants with a summary of the arrears position on a monthly basis, the first such summary to be provided on or before 30 September 2011 at 4pm. Upon payment of such fees, costs and expenses in full, the 5th Defendant shall have no further entitlement to recover service charge payments in respect of the Property and the 5th Defendant shall provide to the Claimants details of all service charge arrears at that date."

19. To put these agreed terms into effect, an agreed joint letter from the receivers and Blue, dated 1 September 2011, was sent to all leaseholders which said:

"We confirm that this dispute has now been resolved by mutual agreement and that Blue Property Management is in the process of handing over management to Eddisons Residential Ltd. The handover will take effect from 1 October 2011.

Service charges in respect of the period to 30 September 2011 remain payable to Blue Property Management, including any Maintenance Adjustment for this period if demanded by Blue Property Management.

Service charges in respect of the period from 1 October 2011 will be payable to Eddisons Residential Limited and these will be invoiced to you by Eddisons Residential Limited shortly. Please ignore any invoices received from Blue Property Management in respect of service charges payable for the period 1 October 2011 to 31 March 2012. Should Blue Property Management receive any sums in respect of service charges payable from 1 October 2011 these will be transferred to Eddisons Residential Limited."

20. In the Previous Decision, the Tribunal considered the terms of paragraphs 6 and 13 of the Tomlin Order. At paragraph 89, it said:

89. ... the Tribunal ... considers that the right to demand both the initial service charge payments for 2011/12 and payments due as a result of the Maintenance Adjustment provisions for the 2009/10, 2010/11, and 2011/12 years passed to the receivers on their appointment, and that right has been validly assigned to Blue as a result of the consent order in litigation between them. No specific words or methodology are required for an assignment of a chose in action; it is sufficient for there to be clarity about intent, and that seems clear from the consent order.

21. The Tribunal therefore accepts that Blue is entitled to payment of service charges due under the lease from the Applicant for 2009/10 and 2010/11 and (in respect of the initial demand on account) for the first six months of 2011/12.

(b) Are any sums still payable as service charges for 2009/10 and 2010/11 (i.e. are items 1 and 2 of the table at paragraph 6 payable)?

22. In the lease, the material provisions relating to service charges are:

- a) A covenant in clause 3.1 by the tenant to pay the Service Charge by two equal instalments in advance on the Payment Days
- b) A definition of "Service Charge" in clause 1.1, which is "a sum equal to the Service Charge Proportions of the aggregate Annual Maintenance Provision for each Maintenance Year
- c) A definition in the Particulars of "Service Charge Proportions" which are "The proportions set out in Part 1 of Schedule 4 (subject to Part 2 of Schedule 4)."
- d) A definition in the Particulars of "Payment Days" as 1 April and 1 October
- e) Further definitions in clause 1.1, the following being material:
 - i) "Annual Maintenance Provision" means expenditure (actual or anticipated) calculated in accordance with Schedule 4 Part 3
 - ii) "Maintenance Adjustment" means the amount (if any) calculated under paragraph 3 of Part 3 of Schedule 4
 - iii) "Maintenance Year" means every twelve monthly period ending on 31 March (or such other date as the Landlord may from time to time decide) the whole or any part of which falls within the Term
- f) Schedule 4 which provides:

Schedule 4

Part 1 – Service Charge Proportions

- 1 Subject to Part 2 of this Schedule the Service Charge Proportions are as set out in the following paragraphs of this Part 1
- 2 Where any item of the Annual Maintenance Provision relates to the Estate generally, the proportion to be attributed to the Apartment and paid by the Tenant is to be calculated as follows:
 - 2.1 firstly the cost is apportioned between the residential Units on the Estate and the commercial Units on the Estate (according to the relative floor areas of the residential Units and the commercial Units)

- 2.2 then, of the proportion attributed to the residential Units, this is apportioned between each residential Unit according to its floor area (relative to the total floor area of all the residential Units)
- 3 Where any item of the Annual Maintenance Provision relates solely to the residential Units on the Estate, the proportion to be attributed to the Apartment and paid by the Tenant is calculated by apportioning the cost between each residential Unit on the Estate according to its floor area (relative to the total floor area of all the residential Units)

Part 2 – Variation of Proportions

[not relevant to this decision]

Part 3 – Computation of Annual Maintenance Provision

1 Calculated prior to Maintenance Year

The Annual Maintenance Provision in respect of each Maintenance Year shall be computed not later than the 31 March immediately preceding the commencement of the Maintenance Year

2 Annual Maintenance Provision

The Annual Maintenance Provision shall comprise:

- 2.1 the expenditure estimated as likely to be incurred in the Maintenance Year by the Landlord for the purposes mentioned in Schedule 5; together with
- 2.2 an appropriate amount as a reserve towards those matters mentioned in Schedule 5 which are likely to give rise to expenditure after such Maintenance Year being matters which are likely to arise either only once during the remainder of the Term or at intervals of more than one year during the remainder of the Term including such matters as decorating the exterior of the Estate, the repair of the structure of the Estate and the repair of the Conduits: and
- 2.3 a reasonable sum to remunerate the Landlord for its administrative and management expenses (including a profit element) which, if challenged by any tenant, is to be referred for determination by an independent chartered accountant appointed on the application of either party by the President of the Institute of Chartered Accountants in England and Wales acting as an expert and whose fees and disbursement shall be paid as the independent chartered accountant directs

3 Maintenance Adjustment

3.1 After the end of each Maintenance Year the Landlord shall determine the Maintenance Adjustment

3.2 The Maintenance Adjustment shall be the amount (if any) by which the estimate under paragraph 2.1 falls short of the actual expenditure in the Maintenance Year

3.3 The Tenant shall be allowed or shall on demand pay (as the case may be) the proportion of the Maintenance Adjustment appropriate to the Apartment

4 Manager's certificate

Subject to provisions of paragraph 2.3 a certificate signed by the Landlord and purporting to show the amount of the Annual Maintenance Provision or the amount of the Maintenance Adjustment for any Maintenance Year shall be conclusive of such amount

5 Annual Accounts

The Landlord shall arrange for accounts of the Service Charge in respect of each Maintenance Year to be prepared and shall supply to the Tenant a summary of such accounts

23. To summarise these provisions, the Applicant has to pay two instalments a year, on 1 April and 1 October, towards the budgeted service charge costs for the year. The proportion payable is calculated under Part 1 of Schedule 4.
24. At the end of the year, if there has been an underpayment, the landlord is entitled to charge a maintenance adjustment.
25. It is not disputed that in this case the Applicant has already paid the initial service charge instalments claimed for both 2009/10 and 2010/11 in the sum of £876.36 in each year. In the invoices claimed by Blue at items 1 and 2 of paragraph 6 above, Blue claims a further £300.56 for 2009/10 and a further £141.16 for 2010/11 as a maintenance adjustment for that year.
26. At the hearing, Mr Evans said that Blue had revised its calculations. He said that for 2009/10, the revised amount due is £975.01, which after credit for the initial payment of £876.36, meant there was now a sum due of £98.65. For 2010/11, he said his revised figure was £1,103.58, which left a shortfall after credit for initial payments of £227.22.
27. The Previous Decision carefully considered the correct apportionment of the service charge costs attributable to a residential apartment. The Tribunal in that case determined that unoccupied residential

apartments, which had not been counted as part of the residential area at the Property by Blue in that case, still had to have a proportion of the service charge cost attributed to them. It determined that the total floor area of the residential apartments was 194,295 square feet, whereas Blue had used a floor area of 162,895 square feet. That resulted in a consequent reduction in the amount the applicant in that case had to pay towards the residential service charge costs because the costs ought to have been apportioned across a larger area. Furthermore, the Tribunal also decided in the Previous Case that the correct apportionment between residential and commercial units in the Property was 82.5%/17.5%.

28. In this case, Blue says that the floor area of the Applicant's flat is 0.297% of the smaller residential area it had (wrongly) calculated. The Tribunal considers that this proportion has to be adjusted. Expressed as a percentage, it calculates that if 0.297% is the correct percentage if the total residential floor area is 162,895 square feet (which the Applicant did not challenge), that will equate to 0.249% if the correct total residential floor area is 194,295 square feet.
29. Adopting the expenditure figures given by Blue (which have not been challenged by the Applicant), and using the approach adopted in the Previous Decision (see paragraph 32 below), the Tribunal considers that the amounts due from the Applicant for these two service charge years are the amounts shown in the following tables.

30. Table 1 (2009/10)

		Residential	Estate
	Apr 09 - Mar-10		
Electricity	35,190	35,190	
Legal & Prof			
Insurance	39,616		39,616
Repairs, Renewals	40,758	40,758	
Accountancy	4,900		4,900
Refuse Collection	7,129	7,129	
Management	56,400		56,400
Fire Risk Ass	4,213		4,213
Health & Safety Risk Assessment	4,213		4,213
Bank Charges	1,039		1,039
Miscellaneous			
Telephone & Stationery	2,377	2,377	
Ground Rent			
Security	82,640		82,640

Wages & Salaries	72,651	72,651	
Lift	10,612	10,612	
Depreciation	580	580	
Sinking Fund			
Exceptional Items			
Total	362,318	169,297	193,021
Residential contrib		100%	82.50%
%age payable by Respondent		0.249%	0.249%
Apt 618		421.55	396.51
Total Apt 618 contrib			818.06
Less initial payment			876.36
Total due from (to) Resp			(58.30)

31. Table 2 (2010/11)

	Mar-10	Residential	Estate
Electricity	41,976	41,976	
Legal & Professional			
Insurance	37,430		37,430
Repairs, Renewals & Cleaning	37,017	37,017	
Accountancy	4,900		4,900
Refuse Collection	7,379	7,379	
Management	56,700		56,700
Fire Risk Assessment	2,106		2,106
Health & Safety Risk Assessment	2,106		2,106
Bank Charges	1,067		1,067
Miscellaneous			
Telephone & Stationery	1,604	1,604	
Ground Rent			
Security	87,625		87,625
Wages & Salaries	77,331	77,331	
Lift	26,172	26,172	
Depreciation	320	320	
Sinking Fund	0	0	
Total	383,733	191,799	191,934
Resid contrib		100%	82.50%

		0.249%	0.249%
Apt 618		477.58	394.28
Total Apt 618 contrib			871.86
Less initial payment			876.36
Total due from (to) Resp			(4.50)

32. The Tribunal has made the same adjustments to Blue's expenditure account as it made in the Previous Decision, namely the transfer of expenditure on security from being a residential cost to an estate cost, as security cost is reasonably covering the whole building rather than just the residential part, and removal of a sinking fund charge of £20,000 in the 2010/11 expenses as it did not seem to the Tribunal to be an expense in that year.
33. As will be seen from the tables above, the Tribunal determines that the Applicant has no liability to pay Blue under the invoices identified as items 1 and 2 of paragraph 6 above. Rather, the Applicant is entitled to a total credit of £62.80 for the two service charge years considered.

(c) Is there any basis for Blue to claim an excess charge for 2011/12 (i.e. is item 5 of the table at paragraph 6 payable)?

34. Under the lease provisions discussed above, any maintenance adjustment for a service charge year has to be computed over a Maintenance Year, which is defined as a twelve month period. In the Previous Decision, the Tribunal had determined that there was no right under the lease for whoever was entitled to claim the maintenance adjustment to do so in respect of a six month period. This is covered in paragraphs 77 and 78 of the Previous Decision.
35. No argument was advanced by Mr Evans to seek to persuade the Tribunal to depart from the Previous Decision, and the Tribunal accordingly determines that Blue has no legal basis for demanding a further sum by way of Maintenance Adjustment for the first six months or 2011/12.

(d) Are any administration charges due from the Applicant to Blue (i.e. are items 3, 4, 6 and 7 of the table at paragraph 6 payable)?

36. As Blue has no right to pursue any claim against the Applicant as if it were the landlord under the lease, as it is not a party to the lease, no provisions in the lease can assist Blue in establishing any right to payment of administration charges. As there is no basis in law for the writer of a letter to claim the costs incurred in writing it from the recipient unless there is some contractual arrangement between them or they are awarded as costs in legal proceedings, the Tribunal determines that Blue cannot claim payment of items 3, 4, 6 and 7 of the table at paragraph 6 above.

37. This outcome is the same outcome as in the Previous Case, the specific point here having been explained at paragraph 91 of that decision.

Determination

38. The Tribunal determines that none of the invoices identified in paragraph 6 of this decision are payable by the Applicant. In respect of service charge years 2009/10 and 2010/11, the Applicant is entitled to a credit of £62.80.

Costs

39. The Applicant has requested that the Tribunal order that Blue should refund his fees for making this application. He paid £125 for the application, and a further £190 as a hearing fee. The hearing was required by Blue (as is their right).
40. The Tribunal has discretion under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to require a party to reimburse any other party the whole or part of any fee paid.
41. The Tribunal has taken into account, firstly, that Blue continued to send demands to the Applicant for payment of the allegedly outstanding invoices until the end of 2014, and did not reply to a number of letters sent by the Applicant seeking an explanation for these demands. Secondly, Blue has ignored the determinations in two previous unappealed Tribunal decisions and has sought payment of sums that it should have known would not survive a Tribunal challenge. Thirdly, at the hearing Blue sought different figures from those claimed in items 1 and 2 of paragraph 6, and only introduced those new figures on the day of the hearing, and fourthly, Blue has comprehensively lost this case.
42. In those circumstances, the Tribunal orders Blue to reimburse the Applicant the fees paid in the sum of £315.00.

Appeal

43. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal
Property Chamber