



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

Case reference : **CAM/22UB/LSC/2015/0022**

Property : **19 Grant Close,
Wickford,
Essex SS12 9NF**

Applicant : **John Michael Roberts**

Respondent : **Cranfield Park Management Co. Ltd.**

Date of Application : **28th February 2015**

Type of Application : **To determine reasonableness and
payability of service charges**

The Tribunal : **Bruce Edgington (lawyer chair)
Roland Thomas MRICS
John Francis QPM**

Date and venue of hearing : **18th August 2015 at Southend Magistrates'
Court, 80 Victoria Avenue, Southend-on-
Sea, Essex SS2 6EU**

DECISION

© Crown Copyright

1. The Tribunal determines that the amount of service charges payable by the Applicant from 1st January 2015 are 9.25% of 37.50% of the total service charges incurred in respect of Grant Close and Napier Crescent, Wickford.
2. The Tribunal also determines that (a) as the Respondent has not honoured its agreement to serve proper 'signed off' service charge accounts for the year ending 31st December 2013 by 6th June 2015 and those for 2014 by 6th July 2015 and (b) as no attempt seems to have been made to find out the reason for the discrepancy in the figures for the reserve between the 2009 accounts and the 2010 accounts, no service charges are currently payable by the Applicant until these omissions have been rectified.

Reasons

3. These reasons must be read in conjunction with the Order and reasons of this Tribunal dated 7th May 2015 following a hearing on the 6th May 2015 (“the May decision”) which set out the background, the law, the relevant parts of the lease and what happened at the hearing which gave rise to the Order made. The case has been brought back to the Tribunal by the Applicant as the Respondent did not keep to the agreement reached at the hearing to supply proper service charge accounts for the years 2010, 2011, 2012, 2013 and 2014.
4. It must be noted that the Respondent’s representative at the hearing on the 6th May, Ms. Debbie Perry telephoned the Tribunal office on the morning of this hearing to explain that she had been involved in a serious car accident whilst on her way to the hearing and she was waiting for her vehicle to be recovered. She was unable to attend the hearing although no request for an adjournment was conveyed to the members of this Tribunal.
5. However, in the circumstances, the Tribunal did carefully consider whether an adjournment should be granted in the interests of justice. It determined that as the current facts were clearly set out in the correspondence and as the decision taken would be likely to be based on the reasons already given when making the order on the 6th May, it would allow the hearing to proceed as it would not be proportionate to adjourn for yet a 3rd hearing. However, it also resolved that if there was anything said at the hearing which was not in the correspondence or earlier reasons, an adjournment may have to be reconsidered. As it turned out, this was not necessary.
6. Mr. Roberts simply said that he was still awaiting a complete set of accounts and the decision taken by the Respondent (a) to defer the change to the correct apportionment of service charges to 2016 rather than 2015, (b) to defer the provision of service charge accounts for 2014 until the first week of October 2015 and (c) not to have started an investigation into the discrepancy in the reserve fund identified at the last hearing, led him to ask for this hearing.
7. The facts as set out in the correspondence are that on the 17th June 2015, the Respondent’s agent, Balinor Group Holdings Ltd. wrote to the Tribunal and said that the 2012 accounts had been prepared and were being signed off, the 2013 accounts were being prepared and the 2014 accounts were not due until 30th September according to Companies House, and would not be issued until the first week in October.
8. On the 13th August 2015, a further letter was written by Balinor to the Tribunal saying that the 2014 accounts had been prepared and were being signed off. A request for an adjournment was made in the letter which was refused. It was also recorded in the letter, as is the case, that Mr. Roberts had indicated that he was not making the payment due on the 1st July until the outstanding matters were rectified. Finally, it is said that the matter of the reserve fund discrepancies would not be investigated until all the accounts had been finished. As the 2014

accounts were said to have been completed, the Tribunal inferred that such investigation would wait until after the 2015 accounts had been prepared.

9. At the hearing, Mr. Roberts said that he had only received draft accounts for 2011 and 2013. The only signed off accounts were for 2010 and 2012. He had not received the 2014 accounts. Thus it appears that the only signed off accounts prepared and served since the May decision have been the 2010 and 2012 accounts. This must be rectified. After all, the final signed off accounts for at least 2013 must exist and be in the Respondent's possession. As far as the 2011 draft is concerned, this covered a period before the current managing agent and it may not be possible to find the signed off ones if they were not filed at Companies House. Both parties could investigate this.
10. As is clearly set out in the May decision, the Respondent agreed to serve the 2013 accounts by the 6th June but its agent's letter of the 17th June is clear evidence that this was not done. It promised to serve the 2014 accounts by 7th July but the letter of 13th August is clear evidence that this did not happen either. The serious discrepancy in the difference between the 2009 and 2010 reserve figures had received no attention at all.
11. Finally, the May decision clearly recorded the Tribunal's view that the admitted incorrect apportionment of service charges between Grant Close and Napier Crescent should be rectified "*for the year 2015 and onwards*". The Respondent has ignored this and proposes to do it as from 2016.
12. The Tribunal chair caused letters to be written to both parties prior to this hearing to urge them to resolve matters to avoid the public expense of such further hearing. It was felt that as the current managing agents had been in post for over 3 years, the problems they had when taking over should have been resolved.
13. The end result has been that the Respondent has taken the view that the unequivocal indications given both by and to the Tribunal at and since the May decision, do not apply to them. They must understand the terms of their contract with the Applicant, i.e. the lease, which firstly specifies the proportion of service charges payable by this Applicant and secondly says that service charges accounts must be prepared as soon as practicable after the 31st December in any year.
14. Both of these provisions have been ignored by the Respondent and are still being ignored despite the guidance given by the Tribunal in the May decision. It will therefore come as little surprise to the Respondent that the orders have been made as set out above.
15. To elucidate further, whatever Companies House may say about the filing of a company's accounts, this is overridden by the terms of the lease. As far as the apportionment of service charges is concerned, the fact that this has not been

resolved by agreement leaves the Respondent open to a substantial claim in the county court from the lessees of Grant Close who have clearly overpaid what may be a substantial amount of service charges. Finally, the failure to give attention to the discrepancy in the reserve fund from 2009 to 2010 could well reach a stage where the Respondent and its officers could be accused of complicity in a criminal offence, if fraud is ultimately found to be the cause of the discrepancy.

.....
Bruce Edgington
Regional Judge
19th August 2015