



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

Case reference	:	CAM/22UF/LSC/2015/0076
Property	:	16 Littlecroft, South Woodham Ferrers, Chelmsford, Essex CM3 5GQ
Applicant	:	David Greening
Respondents	:	(1) Moreland Property Estate Management Ltd. (2) Chancery Lane Investments Ltd.
Date of applications	:	17th September 2015
Type of Applications	:	To determine reasonableness and payability of service charges and administration charges
The Tribunal	:	Bruce Edgington (lawyer chair) David Brown FRICS

DECISION

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1. On the Tribunal's own motion Chancery Lane Investments Ltd. is added to this application as a Respondent.
2. The amount payable by the Applicant to the Respondents or either of them in respect of service charges or administration charges is nil.
3. The Tribunal has no jurisdiction to determine whether ground rent is payable.
4. The Applicant's claim for costs pursuant to rule 13 of **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** ("the rules") is refused.
5. An order is made pursuant to section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act") preventing the Respondents from adding their costs of representation in these proceedings to any future service charge demand.

Reasons

Introduction

6. There are 3 applications in this case namely (a) an application for the Tribunal to determine the reasonableness and payability of service charges (b) an application to determine the reasonableness and payability of administration charges and (c) an application for costs pursuant to rule 13 of the rules.
7. The Applicant owned a leasehold interest in the property until he sold it to Mr. Guy Lehan in March 2011. In December 2014, the Applicant received a letter from solicitors acting for Mr. Lehan who was at that time trying to sell his leasehold interest. They pointed out that the landlord was indicating that there was an outstanding balance due to such landlord of £13,801.24. It was further alleged that some or all of this was due from the Applicant in which case there had been a misrepresentation by the Applicant on his sale to Mr. Lehan.
8. These applications have been made for the Tribunal to determine that no such monies are owed by the Applicant to the landlord. The Applicant named Moreland Property Estate Management Ltd. ("Moreland") as the only Respondent. As a result of questions raised by the Tribunal in its directions order dated 22nd September 2015, it is clear that Moreland are managing agents for the landlord in which capacity they have no contractual relationship with the Applicant.
9. As the questions raised by the Applicant relate to any liability to the landlord and as Chancery Lane Investments Ltd. is the landlord and clearly know about this application, the Tribunal has made that company an additional Respondent on its own motion. Otherwise, there may have been some doubt about ultimate liability because it is clear that no moneys can possibly be due to Moreland as a separate legal entity. In these circumstances, the view has been taken that Chancery Lane Investments Ltd. would welcome this order being made.
10. The monies challenged in the applications are legal fees of £9,640 and ground rent of £20 from 2011; ground rent of £40 and 'arrears letter' of £2.50 from 2012; ground rent of £40 from 2013; ground rent of £40 and 'arrears letters' of £17.50 from 2014 and 'arrears letters' of £25, service charge recovery fees of £200 and interest of £0.12 from 2015.
11. The Tribunal issued its directions order timetabling the case to a conclusion. It said that the Tribunal was content to deal with the case on a consideration of the papers only on or after the 25th November 2015 but offered the option of an oral hearing if either part wanted one. Neither the Applicant nor the Respondents requested an oral hearing.

The Inspection

12. As the basic claim for service charges/administration charges did not relate to the condition of the building, no pre-hearing inspection of the property was considered by the Tribunal to be necessary and none was requested by the parties.

The Lease

13. The copy lease supplied for the Tribunal in the bundle appears to be a copy of the original as it has stamp duty affixed. However it is not dated and the name and address of the lessee is omitted. It is difficult to understand how these obvious defects appear to have been 'missed' by 2 sets of conveyancers, the revenue and the Land Registry. Be that as it may, the lease appears to be for a term of 199 years commencing on the 25th March 1983. It is in modern tri-partite form with a landlord, a tenant and a management company.
14. The copy supplied in the bundle was clearly incomplete as there was no signature block at the end. This is unfortunate because the last page is from the Fifth Schedule which is the part of the lease dealing with what is included within a service charge. Thus it is impossible to say whether there were words after that page and before the signature blocks, dealing with arrears letters, legal costs etc. This would have been very relevant if the issue of any such costs payable under the terms of the lease had been a 'live' issue.

The Law

15. Section 18 of the 1985 Act defines service charges as being an amount payable by a tenant to a landlord as part of or in addition to rent for services, insurance or the landlord's costs of management which varies 'according to the relevant costs'.
16. Section 19 of the 1985 Act states that 'relevant costs', i.e. service charges, are payable 'only to the extent that they are reasonably incurred'. This Tribunal has jurisdiction to make a determination as to whether such a charge is reasonable and, if so, whether it is payable.
17. Paragraph 1 of Schedule 11 of the **Commonhold and Leasehold Reform Act 2002** ("the Schedule") defines an administration charge as being:-

"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable... in connection with a breach (or alleged breach) of a covenant or condition in his lease."

18. Paragraph 2 of the Schedule, which applies to amounts payable after 30th September 2003, then says:-

"a variable administration charge is payable only to the extent that the amount of the charge is reasonable"

19. The Applicant's solicitors have correctly quoted from rule 13 of the rules in respect of the costs application although they have wrongly quoted from a Practice Direction which applies only to the Land Registration part of the Property Chamber. These applications only relate to Residential Property and therefore the only relevant criteria are those set out in the rule itself i.e. that the conduct has to be unreasonable "*in bringing, defending or conducting proceedings*".

The Evidence

20. The evidence produced by the Applicant consisted of a series of demands from Moreland to the Applicant going back to February 2012, the last of which is dated 25th February 2015 and is for £10,012.62. There is no suggestion that the Applicant did not receive these demands. The largest and most contentious claim is for £9,460 for 'legal fees'.
21. The Applicant's statement of case dated 9th October 2015 refers to a previous application by a nominee company called Littlecroft CM3 Freehold Nominees to a Leasehold Valuation Tribunal to determine the terms of a disposal by the freehold owner to a nominee pursuant to section 12B of the **Landlord and Tenant Act 1987**. It is said that this application was withdrawn at the last minute and the costs claimed are those of the freehold owner. No more details of this application are given.
22. However, the most telling piece of evidence is a letter from the landlord, Chancery Lane Investments Ltd. dated 23rd October 2015 which says "*the debt was written off on the 5th June 2015*" i.e. before these applications were made. The Applicant's solicitor, William John Hastings has filed a statement of evidence and his only comment on this is to say, at paragraph 10, "*as the respondent has not filed a defence to the claim and has written off the debt (after the applications were made) I request that orders are made. It is important that orders are made to avoid future disputes*".
23. The problem with this assertion is that the 1st Respondent wrote to Mr. Hasting's firm on the 23rd June 2015 i.e. nearly 3 months before these applications, saying "*we are not pursuing (Mr. Greening) for anything under the terms of the lease*". Later in the letter it says "*for clarification purposes, your client is not being pursued under the terms of any lease...*".

Conclusions

24. The first two applications are for the Tribunal to determine whether service charges or administration charges are payable and, if so, whether they are reasonable. Both service charges and administration charges in this context must arise from a lease i.e. from the lease referred to above. It is quite clear that nearly 3 months before these applications were made, the Applicants solicitors were told that nothing was being claimed from the Applicant under the terms of any lease. If subsequent action had been taken for recovery of any service charge or administration charge, this open letter would have provided a defence.
25. Even if the letter from the landlord itself was received after the applications had been made, it does at least make it absolutely clear that any such alleged debt had been written off.
26. Therefore, in the Tribunal's view these applications are misconceived. It is clear on the Respondents' own admissions that no service charges or administration

charges are payable under the terms of the lease. No costs order is therefore made save for an order under section 20C of the 1985 Act preventing the Respondents from adding their costs of representation within these proceedings to any future service charge demand. The only reasons for this order are (a) they do not appear to have incurred much cost and (b) to prevent this particular piece of litigation from continuing any further.

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Bruce Edgington
Regional Judge
30th November 2015

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.