



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

Case Reference : LON/00AH/LSC/2014/0475

Property : Flat 3, Bradley Court, 104, Denning Avenue, Croydon, Surrey, CR0 4DF

Applicant : Sarum Properties Limited

Respondent : Miss C Nicolaou

Type of Application : Determination of the reasonableness and payability of service charges and administration charges.

Tribunal Members : Mrs HC Bowers BSc (Econ) MSc MRICS

Date and venue of Determination : 8th January 2015
10 Alfred Place, London WC1E 7LR

Date of Decision : 8th January 2015

DECISION

For the following reasons the Tribunal finds that:

- The service charges totalling £2,534.27 have been agreed by the parties.
 - The administration charges of £90.00 are reasonable and payable.
 - No costs are awarded.
 - No order under section 20C is made.
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REASONS

Introduction:

1.) This matter is that was transferred from the County Court at Croydon by order of District Judge Major dated 9th September 2014 (claim number A9QZ1888, issued on 8th July 2014 and served on 13th July 2014). An oral Case Management Conference (CMC) was held on 9th October 2014 and Directions were issued on that date. The issues in dispute are the reasonability and payability of service charges under section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) and the reasonability and payability of administration charges under Schedule 11 of the Commonhold and Leasehold reform Act 2002 (the 2002 Act).

The Law:

2.) A summary of the relevant legal provisions is set out in the Appendix to this decision.

The Hearing/Determination:

3.) This matter was originally set down for an oral hearing for 8th January 2015. However, as some of the aspects were settled between the parties, it was agreed by the parties that the outstanding issues could be resolved by means of a paper determination. Therefore the Tribunal considered this matter on the 8th January 2015, on the basis of the papers submitted.

Background:

4.) The Directions identified that service charges and administration charges amounting to £3,057.59 were disputed. At the CMC Miss Nicolaou (the Respondent) made a further application for an order under section 20C of the 1985 Act.

5.) The claim form under reference A9QZ1888 indicates that a sum of £2,940.27 is being sought. In addition to this sum is £161.52 as interest under section 69 of the County Courts Act 1984 and the court fee of £185.00. Giving a total being claimed in the County Court of £3,286.79. Of the sum of £2,940.27 being claimed it would appear that £1,804.27 relates to 2014 service charges; £30 relates to 2014 ground rent; £376.00 relates to freeholder's legal and administration charges and the remaining £730 appears to relates to service charges in the 2013 service charge year.

6.) This Tribunal does not have jurisdiction to consider ground rent of £30. This is a contractual sum and should be dealt with by the County Court. Likewise the interest charges of £161.52 and the court fee of £185.00 is not within our jurisdiction and should be considered by the County Court. This leaves the sum of £2,910.27 to be determined by the Tribunal.

The Lease:

7.) The lease for Flat 3, Bradley Court, 104, Denning Road, Croydon, Surrey, CR0 4DF (the subject property) is dated 24th March 1986. The lease identifies the original landlord as Farcry Limited and Miss Elaine Frances Burrough and Mr Stephen Colin Chamberlain as the Tenants. The lease is for a term of 99 years from 24th June 1985. The Particulars of the lease defines the development, the retained premises, the refuse bin store, the parking space and the flat (as the demised premises). The lease requires the lessees to pay the service charges and sets out the arrangements for the collection of service charges.

8.) Clause 3(19) of the lease provides that the Tenant is *“To pay all costs charges and expenses (including solicitors’ costs and surveyors’ fees) incurred by the Landlord in contemplation of or for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court”*.

Inspection:

9.) Given the nature of the issues in dispute, the Tribunal did not carry out an inspection of the subject flat, building or development.

Representations:

10.) The defence to the County Court claim that was filed by the Respondent appeared to indicate that the issue related to Miss Nicolaou’s staged payments of the arrears. In compliance with the Directions the Respondent was required to indicate which of the service charges were disputed and the reason for any dispute. In a Scott Schedule dated 28th October 2014 and received by the Tribunal on 30th October 2014, Miss Nicolaou indicated that the service charges disputed for 2013 including late fees was £739.20. In this Scott Schedule she indicated that her issues related to the continuing payment of the arrears rather than any aspect that was particularly disputed. Correspondence from Applicant to the Tribunal explained that they were trying to ascertain the extent of the Respondent’s concerns. Finally, a further Scott Schedule was produced that indicated the items that the Respondent continued to dispute.

11.) In a letter to the Tribunal received on 5th January 2014 Miss Nicolaou provided a schedule of her payments to demonstrate the level of her arrears.

12.) The final Scott Schedule identified six administration charges being disputed amounting to £855.52. Of these six items, two items were not within the Tribunal’s jurisdiction, namely the interest charges of £161.52 and the court fee of £185.00 and these were considered above in paragraph 6. This leaves a sum of £509.00. However only one item, the administration charge of £376.00

is part of the County Court claim and therefore only this item is to be determined by the Tribunal.

13.) The Applicant explained that the charges had been incurred as the Respondent was in breach of her lease. The charges were incurred due to non-payment of ground rent and service charges. A payment schedule was agreed but the payments received were less than had been agreed and the Applicant stated that their requirement was that such a payment schedule should clear the arrears in the service charge year in question. The invoices for each of the administration charges were sent out with the appropriate details of the rights and obligations.

Administration Charges

Freeholder's Further Legal & Administration Costs to Date – 16/7/2014 - £376.00

14.) An invoice for £313.33 plus VAT (total £376) was produced from Wilton Law LLP. This invoice was dated 26th November 2014. The narrative described the work as *“To Activities in the collection of arrears due under the lease for the above property and in the contemplation of forfeiture of the lease for breach of covenant”*. The Respondent stated that the first element (£286) was invoiced on 3rd January 2014 and was after an agreement had been reached as to a new payment schedule and just before the first payment under the agreement was about to be paid. The Applicant stated that Clause 3(19) of the lease allowed for the recovery of all costs in the contemplation of the service of a section 146 notice.

Tribunal's Determination

15.) The lease provides for the recovery of administration charges in contemplation of forfeiture under clause 3(19). However, the representations from the Respondent were that the initial element of £286.00 was invoiced in January 2014 a few days after an arrears payment schedule had been agreed. This would suggest that the Applicant was not at the stage contemplating forfeiture. Accordingly one element of this bill, £286.00 is not recoverable as an administration charge under clause 3(19). There were no other submissions on the remaining £90.00. It may well be that by July 2014 there was a contemplation of forfeiture. This is supported by the fact that it was in July 2014 that the claim was issued and served. Accordingly the Tribunal determines that the element of £90 is an administration fee under clause 3 (19). Although there is no specific description of the work undertaken, the sum is relatively small given that a firm of solicitors were instructed to undertake the work. Accordingly the Tribunal determines that this sum is reasonable and payable.

Service Charges

16.) The Tribunal notes that the outstanding service charges of £2,534.27 are no longer disputed by the Respondent.

Costs

17.) At the end of the Applicant's statement of case there was a further application for a determination that the costs for bringing the hearing, including the production of the bundle and attendance at the CMC.

Tribunal's Determination

18.) The jurisdiction for the Tribunal to award costs is found in Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. This allows the Tribunal to award costs in circumstances when a party to the proceedings has acted unreasonably. The Applicant did not make any submissions or produce any evidence to demonstrate that the Respondent had acted in an unreasonable manner in the course of these proceedings. Accordingly no award for costs is made under Rule 13.

Section 20C

19.) The Respondent made an application for an order under section 20C of the 1985 Act. However, no submissions were made by the Respondent in support of this application.

Tribunal's Determination

20.) The Tribunal makes no order under section 20C of the 1985 Act. It appears to the Tribunal that this case was part of the County Court claim and that the Applicant was required to produce the paperwork and attend the CMC as part of the natural resolution of this case.

The Next Steps

21.) As mentioned above the Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court at Croydon.



Chairman: Helen C Bowers

Date: 8th January 2015

APPENDIX

LANDLORD AND TENANT ACT 1985

Section 19 Limitation of service charges: reasonableness

(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 provision of services or the carrying out of works, only of the services or works are of a reasonable standard;
- and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation 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.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been subject of determination by a court, or
- (d) has been subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement,

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

.....

Section 20C Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred by the landlord in connection with proceedings before a court or leasehold valuation tribunal, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

.....

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Schedule 11

Paragraph 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.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(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.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Paragraph 2

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

Paragraph 3

(1) Any party to a lease of a dwelling may apply to [the appropriate tribunal] ¹ for an order varying the lease in such manner as is specified in the application on the grounds that—

(a) any administration charge specified in the lease is unreasonable, or
(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or
(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Paragraph 5

(1) An application may be made to [the appropriate tribunal] ¹ 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 [the appropriate tribunal] ¹ 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.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or
(b) on particular evidence,

of any question which may be the subject matter of an application under subparagraph (1).

**Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules
2013/1169**

Rule 13. — Orders for costs, reimbursement of fees and interest on costs

- (1) The Tribunal may make an order in respect of costs only—
- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (i) an agricultural land and drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs—
- (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
 - (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
- (a) summary assessment by the Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
 - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
- (8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on

Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.