



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : MAN/00CX/LUS/2015/0034

Property : The Maisonette 12 Crossbeck Road Ilkley
West Yorkshire

Applicant : Mr. Greg Radick and Ms Lindsay Gledhill

Representative : Ms. Lindsay Gledhill

Respondent : Mr. John Markam

Representative : self represented

Type of Application : Service Charge determination s27A(1) Land-
lord and Tenant Act 1985
Section 20C Landlord and Tenant Act 1985

Tribunal Members : Mr. John Murray
Mrs Jenny Jacobs

**Dates and venues
of hearings** : Bradford Tribunal Office, Phoenix House
Ruston Avenue, Thornbury Bradford BD3 7BH
22 August 2014

Skipton County Court, The Law Courts, Otley
Street, Skipton BD23 1RQ
30 September 2015

Date of Decision : 31 October 2015

DECISION

DETERMINATION

1. The Service Charges payable to the Respondent by the Applicants shall be restricted to their contributions to the insurance payments (“the Insurance Contributions”) as no Summary of Rights and Obligations were served as required by s21A Landlord and Tenant Act 1985.
2. The Insurance Contributions for the following years will be as follows:-
 - (a) 2007: £265.87
 - (b) 2008: £202.95
 - (c) 2009: £305.33
 - (d) 2010: £25.83
3. Should the Respondent subsequently serve Summary of Rights and Obligations then the service charges (in addition to the Insurance Contributions) payable by the Applicants for the years under review would be as follows:
 - (a) 2007: £28.69
 - (b) 2008: £160.78
 - (c) 2009: £135.42
 - (d) 2010: £28.82
4. The Respondent shall pay the Applicant’s costs in the sum of £233.43.
5. An Order be made under s20C Landlord and Tenant Act 1985

INTRODUCTION

3. The Tribunal received an application dated 23 February 2015 from the Applicants for an order determining service charges for the years 2007, 2008, 2009 and 2010 and an order pursuant to s20C Landlord and Tenant Act 1985.
4. The Respondent was the Landlord of the Property for the years under review. In 2010, management of the Property was transferred to a Right to Manage company, of which the Applicants Ms. Lindsay Gledhill and Mr. Greg Radick are Directors.
5. The Applicants are the leasehold owners of a Maisonette on the ground and first floor in a converted Terrace forming part of two Victorian Terraced houses at 12 - 14 Crossbeck Road Ilkley (“the Property”) owned in the same Freehold. The remainder of the Property is laid out to Flats.

6. Directions were made by the Tribunal at a hearing on the 20 April 2015. At that hearing it was determined that the application be heard consecutively with MAN/OOCX/LCB/2015/0004 and MAN/OOCX/LCB/2015/0022, which were separate applications made against the same Respondent by the Right to Manage Company, of which the Applicants are both Directors.
7. The Applicants were required to file and serve a statement of case and bundle in support within 21 days, and the Respondent was to file his statement in response within 21 days. The Parties were to prepare a Scott Schedule. The parties have complied with the Directions save that the Respondent delivered his bundle some fourteen days late.
6. Two separate bundles were prepared in respect of each application.
7. The Tribunal had determined to hear the matter immediately following two separate applications made by the Right to Manage Company against Mr. Markham.
7. A Tribunal was appointed and an inspection of the Property took place at 10am on the 29 June 2015. The Applicants were represented by Ms. Gledhill. The Respondent Mr. Markham attended the Inspection in person.
8. The substantive hearing of the application was held on 29 June 2015 at 11.30am. At the substantive hearing, the Applicants were represented by Ms Gledhill and the Respondent appeared in person. The hearing was adjourned until 30 September 2015 as although all of the evidence and most of the submissions had been heard and made, the Respondent stated that he wished to make further representations.

THE PROPERTY

9. The Property 12 – 14 Crossbeck Road forms part of a row of imposing Victorian terraced houses built at the foot of Ilkley Moor. The Property was originally constructed as two adjoining houses in the middle of the terrace, which whilst in the ownership of one individual, was converted into separate dwellings. There are now five flats and a maisonette intermingled across the five stories of the two former houses.
10. One flat, (flat four) spreads over the top floor of numbers 12 and 14, and is accessed using the communal staircase and entrance door of number 12. Flat number 1 is not self-contained but has a number of separate lockable rooms on the cellar ground and first floor. It also has access via the front door of number 12. The Maisonette, situated in number 14, is self-contained in terms of communal space. It has a flat above (flat four) and below.

THE LEASES

11. The Maisonette at number 14 is held under a lease dated 20 August 1987 for a term of 999 years from the 1st of January 1987. The lease provides in the Eighth Schedule for the Lessor to maintain repair and renew and decorate and keep in good repair:
 - (a) external walls, and timbers, foundations gutters and rain water pipes, boundary walls, path coloured brown and yard colours yellow on Plan 2 on the lease, except the part of the Maisonette hatched red on and the rear area and garage edged in Pink on Plan 2 on the lease;
 - (b) Gas and water pipes, tanks drains and electrical lighting and wires in the Reserved Property and the Flats and enjoyed or used in common by the Lessee
 - (c) The common drains sewers manholes and inspection chambers serving the flats
 - (d) Halls passages staircases (which are also to be refurbished, heated and lit)
12. The day to day management of the Reserved Property might be delegated to a Managing Agent whose costs and fees shall be deemed to be properly incurred by the Lessor.
13. The Lessor or Agent is obliged to keep proper books or records of all costs, charges and expenses incurred by him in performing his obligations, and an account taken at least once a year.
14. The Lessees are obliged at clause 3(b) to pay 20% of all expenditure incurred by the Lessor in connection with carrying out obligations under the Eighth Schedule and to pay on account of those charges on the 1st of January and July each year as the Lessor should demand on account of costs. The Tribunal was told that subsequently shares had been changed by agreement to one-sixth to reflect there being six, not five, separate leasehold interests in the block.
16. The Lessee to each lease is further obliged to pay into a Reserve Fund, and to contribute to ins
17. urance of the Property.

APPLICATION UNDER S27A(1) LANDLORD AND TENANT ACT 1985

THE LEGISLATION

18. The relevant legislation is contained in s27A Landlord and Tenant Act 1985 02 which reads as follows:

s27A Liability to pay service charges: jurisdiction.

(1) An application may be made to a 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 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 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 of an application under subsection (1)
or (3).

(7) The jurisdiction conferred on a tribunal in respect of any matter by virtue of
this section is in addition to any jurisdiction of a court in respect of the matter.

THE EVIDENCE AND SUBMISSIONS

EVIDENCE AND SUBMISSIONS FOR THE APPLICANTS

19. The Applicants filed a comprehensive statement of case signed by Lindsay Gledhill, who gave evidence and made submissions. They sought a refund of £1250.21 for service charges due for the years 2007 - 2010 being effectively all the service charges for those years, less amounts charged for insurance payments, which they accepted were due.
20. Their objections to the service charges were set out in a Scott Schedule with specific objections assigned to each item.
21. In opening, Ms Gledhill said that the Respondent had served no service charge demands with statutory Summary of Rights and Obligations, as required by s21A Landlord and Tenant Act 1985 (amended by s153 Commonhold and Leasehold Reform Act 2002,) resulting in prejudice to them.
22. They objected to the Respondent having carried out works to the wall at the front of the property. These works for the main part were executed by the Respondent himself. The works took an excessive amount of time - over two years - leaving the wall unsightly and dangerous (it abuts the pavement) during the whole of that time. The Applicants submitted that the Respondent had charged an excessive amount given how long it took him to complete the works, at an hourly rate of £15, and with an excessive amount of hours being spent. He had not consulted on the works, as required by s20C Landlord and Tenant Act 1985. The charges were in excess of £250 per lessee. The works were finally completed by a professional at an additional cost of £1250, on top of the charges the Respondent had made.
23. The Applicants objected to the Respondent charging service charges for self management, which he described as a "discount". The Respondents asserted that he was not entitled to charge for his own management; the lease only provided for professional managing agents to charge. They also pointed to an email he sent on 17th January 2007 when he indicated he would charge only for items purchased.

24. The Applicants also objected to charges raised for works to the garden and communal areas for number 12, which they were not obliged to contribute to. They maintained that their lease did not provide for him to do so, and they had notified him by email dated 25 November 2006 by email that they did not wish him to carry out any gardening on their behalf. They objected to him keeping the front garden of number 14 mown or planted.

EVIDENCE AND SUBMISSIONS FOR THE RESPONDENT

25. The Respondent filed his evidence late despite being granted an extension of time, which gave the Applicants very little time to respond. He produced medical evidence indicating that he had suffered from a back problem which had resulted in him being unable to undertake desk work, although this did not prevent him producing a 27 page statement, and in an earlier email he had indicated that he had misunderstood the date by which his representations were required. The Tribunal determined to allow the late submission and to proceed with the hearing.
26. The Respondent's submissions set out in detail the history of the management of the Property and how he intended to manage after he purchased the freehold from the previous owner Mr. Heptonstall, little of which was relevant to the application.
27. During the course of the hearing he produced bank statements which revealed that he had been using two of his personal Halifax bank accounts for service charge transactions, despite his insistence at a Tribunal hearing in 2014 (when statements were not produced) that there was only one. The statements produced showed that on the 2nd January 2010 he had transferred the sum of £4500 from the main service charge account used for Crossbeck Road into his personal account, which was overdrawn to approximately the same amount at that time.
28. The Respondent said that the previous freeholder Mr. Heptonstall had taken advice from a local solicitor who had advised him that he could recover the costs of everything not specifically let to lessees, including the gardening. The Respondent had followed that advice. He said that another local solicitor, Mr. Bloomer, had confirmed that the ownership of the garden for number 14 remained with the freeholder and the freeholder might charge the lessee for maintaining the garden and grounds. He described Ms. Gledhill's challenge to payment of service charges for the maintenance of her gardens after several years of maintenance as, in his opinion, "no more than an avacious attempt to grab cash for a service already provided"

29. When the Respondent took over the property he said that there was a dispute over what work should be done and when, and how to fairly allocate costs when the properties in 14 for example did not benefit from the internal works to the communal areas of number 12. A consensus was arrived at, and the Respondent agreed that there should be two funds, one for 14, and a "staircase" fund (for number 12) resulting in the Applicants and the other lessee of 14 at the time, Nick Carr paying £55 pcm and the lessees, in number 12, paying £100 pcm on account of service charges.
30. In relation to the fence between 10 and 12, the Respondent indicated that it was in a poor state of repair, and was collapsed. The Respondent felt it needed doing while he was still managing the property. No-one else at the property wanted to prioritise fixing the fence; they were more concerned about the state of the front wall. The fencing the Respondent bought in June 2010, after service of notice, was never fixed. There was a letter of objection to the proposed new fence on 02.03.2013 from the neighbour, Mr. Cheney. After the RTM company took over, they consulted and agreed with Mr Cheney on the type and size of a new fence and shared the cost.
31. When questioned about his Costco membership the Respondent said he had it for use in connection with the general management of the Property. He had also bought things for his own use; there seemed to be only one invoice seen for Costco which was for management items.
32. When questioned about computer equipment (a router, hard drive and printer), the Respondent indicated that he was using a computer for personal reasons as well, and would have purchased these items in any event. He did not hand them over when the ownership of the freehold transferred. He said that the printer was no longer working.
33. The Respondent said that the final cost for the wall, including his time and materials, as well as the work carried out by Nick Carr (£1250), was £3966.03. There had been an estimate for £5,000 obtained from one Eric Dixon previously. He said that he had done what he could given the lack of money available.
34. At the adjourned hearing on the 30 September 2015, the Respondent presented lengthy written submissions largely alleging bias on the part of the Tribunal. Not for the first time, he attacked the personal integrity of the Tribunal members with sweeping and apparently unfounded allegations of prejudice against him. On questioning he was not prepared to offer any further detail as to apparent conversations or substantiating information that was not in writing.

35. The Tribunal had wanted to question the Respondent in more detail as to some of his submitted accounts with a view to determining precisely which items would be recoverable should Service Charge accounts be correctly served retrospectively but he made it clear he was not prepared to discuss anything as he did not wish to deviate from his written submissions.

THE DETERMINATION

36. The Tribunal has jurisdiction under s27A to determine whether service charges are payable, and who they are payable to.
37. The Tribunal determined that no service charges were payable as a consequence of the Respondent failing to serve statutory Summary of Rights and Obligations as required by s21A Landlord and Tenant Act 1985, save for the payments due for insurance (the Insurance Contributions), which the Tribunal had no jurisdiction to determine, as the Applicants had admitted they were due.
38. The position under s21A could be retrospectively rectified if notices are served by the Respondent retrospectively; consequently and in accordance with the Overriding Objective. Having heard the evidence, the Tribunal went on to determine the payability of service charges under review to avoid the need for any further hearing should s21A notices be subsequently served by the Respondent and service charges become payable.
39. The Respondent made representations that the Applicants had not objected to the service charges previously, and that they were embarking on a vexatious campaign against him. The Applicant Ms. Gledhill said that she had not directly challenged the Respondent, as she found him intimidating, even within the controlled environment of the Court room. He has in the past cut through a climbing plant on her land, and has stored a barbecue, a boat and a trailer on communal areas against the wishes of his neighbours and in breach of his leasehold covenants.
40. The Tribunal found the Respondent to have a very forceful manner, with a tendency to personalise disputes, and formed the view that he would be likely to be an obstinate and difficult freeholder and neighbour when challenged. A previous Tribunal Chair had warned him about abusive behaviour in the Courtroom. The Chair of this Tribunal warned him about directing personal comment to a Panel Member. In any event the Applicants had not admitted the service charges (save for the insurance payments), and were entitled to ask for them to be reviewed by the Tribunal under s27A, even if they had not been challenged earlier.

41. The Respondent's accounting systems were found by the Tribunal to be opaque and extremely difficult to follow. The spreadsheets had charged a monthly amount to each lessee, but the Respondent had never reconciled payments on account with finalised annual accounts. He had served no Summary of Rights and Obligations. The Respondent was invited at the hearing on the 30 September to clarify matters to the Tribunal, but as indicated above he was not prepared to divert from the written submissions he had prepared so offered no further information.
42. The Tribunal had concerns about the Respondent's probity. He had told the Tribunal at the hearing on 22 August 2014 that he only had one bank account but that it was not a Service Charge account as such, as he also used it for personal banking. This was why he felt he did not have to produce his bank statements although they had been required by Directions. He had repeatedly asserted that he could account for every penny spent. At the hearing on 29 June 2015, he admitted that there was a separate account he used, and that he had transferred £4500 of leaseholder's monies (which were subject to statutory trust under s42 Landlord and Tenant Act 1985) to another personal account of his which had been overdrawn by this amount.
43. In evidence he said that he had used the service charge monies paid on account by lessees to pay off his personal overdraft to avoid his incurring bank charges of £50 per month. He seemingly had no misgivings or qualms about this breach of statutory trust, nor the discrepancy with his previous evidence in August 2014 that monies held on behalf of the Lessees were at all times intermingled with his own funds in his Halifax current account.
44. At the time of giving his evidence in August 2014 he was obviously fully aware (but did not disclose) that he had transferred lessees' monies to offset his overdrawn account, in breach of trust, and putting other people's monies at risk. This was in the Tribunal's judgment why he failed to produce his bank statements in direct contravention of the Tribunal's Direction to do so.
46. The Tribunal made the following findings which would be applied generally to service charges sought before the details of each financial year were considered:-
47. The Respondent is not entitled to charge a management fee for his own time through the service charge. By the Fourth Paragraph of the Eighth Schedule the Lessor was entitled to delegate the day to day management to a Managing Agent whose costs and fees would be deemed to be properly incurred by the Lessor. This would not permit the Lessor to charge for his own time in management.

48. The Respondent is not entitled to charge number 14 for maintenance, electrical work and gardening for number 12 nor for gardening at number 14. The obligations to maintain the common parts of number 12 are not obligations owed to the Applicants, and consequently they are not responsible for paying towards them. The Applicants have to contribute towards the Respondent's costs incurred in carrying out obligations in the Eighth Schedule which contains no obligation to garden or to carry out electrical works other than those used in common by the Lessee; which the equipment to number 12 clearly is not.
49. The Tribunal allowed a total of £1500 for any works to the front wall including the railings. Service charges would be limited to £250 per lessee as the Respondent did not carry out any consultation exercise under s20 Landlord and Tenant Act 1985. Consequently any service charges that appear to have been raised for works or materials by the Respondent be limited to £250. The Tribunal did not have to determine therefore what a reasonable cost for the works might have been in so far as that amount would be higher than £1500.
50. The Respondent had purchased fencing materials which were not ultimately used, so these costs should be removed.
51. In relation to the accounts filed and the information supplied by the Respondent for the specific years the Tribunal made findings relying upon the information contained in his written submissions, which were not always consistent with his job sheets nor accounting system, with some entries showing in the latter presumably being his own personal expenditure as he was keeping monies in his own personal accounts.
52. The Tribunal had to assess from the information before them what charges were reasonably payable for the years under review. The accounts were not complete, and not always easy to follow. There were discrepancies between the software reports and the schedule in the Respondent's submissions, which may have been because of the discrepancies between number 12 and 14, or may have been because of errors on the part of the Respondent.
53. As no accounts had been prepared in accordance with the lease, as full copy bank statements were not provided, and as the Respondent refused to offer further clarification, the Tribunal has had to assess the accounts solely on the information provided.
53. The Tribunal found that the following service charges were reasonably incurred:

54. Service charges year ending April 2007

- (a) Stationery £5.02
- (b) Rentokil insurance £139.13
- (c) Cable Reel £27.98

55. Total £172.13 divided by 6 would be £28.69

56. £2324.50 had been requested for the roof repairs. This payment was not challenged by the Applicants in their application who presumably accept that the works were carried out and the invoices paid. As the amount was accepted by the Respondent as due and payable, it was not therefore due for consideration by the Tribunal and does not form part of this judgement.

57. Service charges year ending April 2008

- (a) Printer Ink £24.99
- (b) Paper £5.73
- (c) Materials £19.96
- (d) Woodboring insects insurance £144.00
- (e) Repairs (Drains) £20

58. Total £214.68 divided by 6 would be £35.78

59. Wall and railings (50% of total allowed) £125 . The wall and railings cost was incurred over two financial years. The Tribunal determined a maximum of £250 per lessee would be permitted on account of the lack of consultation by the Respondent.

60. Total £160.78

61. Service charges year ending April 2009

- (a) 21.4.09 Mortons Ilkley Wood Glue £5.99
- (b) 16.5.09 B and Q paint £39.98
- (c) 16.5.09 Focus Propane £11.97
- (d) 16.5.09 Machine Mart Wire Brush £4.59

62. Total £62.53 divided by 6 would be £10.42

63. Wall and railings (50% of total allowed) £125

64. Total £135.42

65. Service charges year ending April 2010

- (a) 2.1.10 Rocksalt and Drain Care Materials £17.94
- (b) 27.4.10 Rentokil Insurance £154.99

66. Total £172.93 divided by 6 would be £28.82

67. The Tribunal took the view that no reserve/sinking funds were collected under the lease (although allowed for). Whilst monies were paid over by the Leaseholders no reserve fund was collected. The monies collected were not placed in trust, or a separate account, or indeed earmarked for a particular purpose.

Costs

68. The Tribunal has jurisdiction under Rule 13 of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013 to make an order requiring a party to reimburse tribunal fees, or costs where a party has behaved unreasonably.

69. A number of the issues could have been resolved at the Directions hearing in April 2015, but the Respondent was not prepared to discuss any of the issues, saying he wished to take legal advice, and that he felt the Tribunal was biased.

70. The Tribunal determined that the Respondent should pay the Applicant's costs, which were assessed as reasonable in the sum of £233.43.