

11457



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

Case Reference : CHI/21UD/LIS/2015/0034

Property : Flat 3, 11 Magdalen Road, St Leonards on Sea, East
Sussex. TN37 6EP

Applicant : Mr Barry Markham (the Landlord)

Representative : HAS Property Management

Respondent : Mr I D Bailey (the Tenant)

Representative : Helix Law

Type of Applications: Application for determination as to reasonableness
of service charges pursuant to Section 27A
Landlord and Tenant Act 1985

Tribunal Members : Judge P.J. Barber
Mr N Robinson FRICS Valuer Member

Date of Decision: 16th June 2016

DECISION

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Decision

- (1) The Tribunal determines in accordance with the provisions of Sections 19 and 27A Landlord and Tenant Act 1985 ("the 1985 Act") that the sums which are reasonably payable by the Respondent to the Applicant in respect of service charges for the Property for the accounting period 1st July 2013 to 30th June 2014 are, for cleaning £140.00, and for management fees, £150.00 & VAT. In regard to the major works costs proposed to be incurred for the period 1st July 2015 to 30th June 2016, the Tribunal considers the Section 20 consultation process in relation to those proposed works to have been flawed and also, the provisional sums envisaged, to be so disproportionately high in relation to the tendered work costs, such as to obviate any determination being made as to the reasonableness of such proposed costs.

Reasons

INTRODUCTION

1. The application in this matter was made pursuant to Sections 27A of the 1985 Act for determination of the reasonable service charges payable by the Respondent to the Applicant in the service charge years 2013/2014 and 2015/2016. Directions were issued in the matter, following a telephone case management hearing, on 24th July 2015.
2. The claim relates to service charges in respect of the Top Floor Flat No. 3, 11 Magdalen Road, St Leonards on Sea, East Sussex, TN37 6EP ("the Property"). The Property is a former single mid terraced house, containing 3 flats; the application describes the Property as comprising a 3 storey building with one flat on each floor. The Applicant is the freehold owner of the Property; the Respondent is the lessee of the Property pursuant to a lease dated 7th December 1990 ("the Lease") for a term of 125 years from 1st July 1990.
3. The Property has been managed throughout the period under dispute by HAS Property Management, a business owned by the Applicant's late wife, Mrs Eileen Bowen who died in March 2013. The Applicant seeks a determination as to the reasonableness of service charges in respect of the Property in 2013/2014 and 2015/2016.
4. The application provided that the Applicant would be content with a paper determination in the matter; the directions referred to at paragraph 1 above provided that the matter would be determined without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013, unless a party objected in writing within 28 days of receipt of such directions. No objections having been received, the matter is being determined on the papers and without an oral hearing.

INSPECTION

5. The Tribunal carried out a brief external inspection of the Property before considering the matter. The Property comprises a 3 storey mid terraced building

converted into three flats. The Property has grey external rendered walls and was noted to be in generally poor external decorative order.

THE LAW

6. Section 19(1) of the 1985 Act provides that :

“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 if the services or works are of a reasonable standard;*
- and the amount payable shall be limited accordingly.”*

Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

“(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 cost, 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.*

“Service Charges” are defined in Section 18 of the 1985 Act as follows

(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, insurance, or the landlord`s costs of management, and*
- (b) the whole or part of which varies or may vary according to the relevant costs*

18(2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

(3) *For this purpose-*

(a) *“costs” includes overheads, and*

(b) *costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*

CONSIDERATION

7. The Tribunal have taken into account all the case papers provided by the parties and contained in the bundle, although it has noted a distinct lack of clarity and logical order in the presentation of the papers in the bundle which refers to a number of different appendices, and includes various duplications and repetitions, resulting in the bundle not being easy to follow.
8. The Tribunal notes from Page 9 of the application that it is made in respect of the years 2013/14 and 2015/16; the Applicant seeks determination of service charges incurred for 2013/14 and, prospectively, in respect of major works not yet carried out, but proposed in 2015/16. The Respondent in paragraph 6 of his statement dated 19th October 2015, acknowledges that Clause 7.1 of the Fifth Schedule of the Lease provides for payment of service charges in advance, on the 1st July in every year, but points out at paragraph 7 of his statement, that the service charge year or account period as provided in the Lease, is from 1st July and not 1st January as previously operated in practice, by the Applicant. In response, in his statement dated 4th December 2015, the Applicant provided some newly adjusted annual accounts including for the period 1st July 2013 to 30th June 2014 and accordingly in the context of the Applicant`s original application in this matter, the Tribunal has considered the annual account for the period 1st July 2013 to 30th June 2014, as provided at Page 16 of the bundle.

Service Charges for Period 1st July 2013 to 30th June 2014

9. The charges referred to in the Applicant`s adjusted account for this period are as follows:

	£
Property Insurance	336.38
Cleaning	720.00
Property Repairs	-
Fire Precaution Works	3,038.64
Bank charges	62.59
Accountancy Fees	480.00
Management fees	1500.00

Insurance : No invoice was produced in respect of insurance, only a copy of a letter from HAS Property Management (“HAS”) to the Respondent dated 16th January 2015 at Page 1h of Appendix A, referring to insurance falling due at the end of December and stating that the new premium would be £202.96; being less than the premium previously payable by the Applicant’s insurance broker Hamilton Fraser, of £336.38. However in the absence of any actual invoice being provided, the Tribunal is not in a position to determine whether such sum is reasonable and accordingly it is disallowed.

Cleaning: In regard to cleaning, the amount claimed is £720.00, but the only invoice provided at Page 14 of Appendix C, is from “Nice n Clean”, is undated and refers to charges of £840.00 for the period 1/1/14 to 31/12/14. The Respondent in his statement of 19th October 2015 at Appendix B in the bundle, submits at paragraph 10 that the Applicant has failed to provide evidence of cleaning and disputes the claim. The Respondent has not however provided any clear evidence that cleaning has not been done and accordingly the Tribunal considers it reasonable to allow half the charges claimed, in a sum of £420.00.

Fire Precaution Works: In regard to Fire Precaution Works, the parties made no detailed references to or raised specific dispute in regard to same. Accordingly these costs are outside the Tribunal’s jurisdiction for any determination to be given. The Tribunal noted that these costs had not been included at all in the Applicant’s previously produced annual accounts for the year 1st January to 31st December 2014 at Page 1k of Appendix A.

Bank Charges: the Respondent submits that such charges are not recoverable under the Lease; the Applicant refers in his statement of 4th December 2015 to a reference in the Fifth Schedule of the Lease to “...such other expenses...incurred by the lessor in and about the maintenance and proper management of the building”, citing it as a catch-all provision. This is an apparent reference to Clause 4 of the Fifth Schedule of the Lease. The Tribunal however does not accept that this is a sufficiently general or open provision such as to allow for bank charges to be included in the service charge and accordingly disallows that sum.

Accountancy Fees: the amount of £480.00 claimed for accountancy services provided by Deeks Evans, relates to the invoice provided by the Applicant at Page 1q of Appendix A, but that relates to their charges for three years ended 31 December 2013. A second invoice, provided latterly by the Applicant at Page 6 of Appendix C, is in a sum of £144.00 for the year ended 31 December 2014. Neither of these invoices properly relates to the accounting period as stated in the Lease, being 1st July to 30th June. The Respondent in his supplementary reply dated 11th December 2015 (un-numbered in the bundle and not identified as a separate letter referenced appendix) accepts that the charge of £144.00 is reasonable only if it relates to fees for the year ended June 2015. The Tribunal notes that the invoice actually produced is for the earlier calendar year account, which account was withdrawn by the Applicant when he submitted a new annual account for 1st July to 30th June. Accordingly, given the confused position in regard to accounts dating generally and in the absence of an invoice submitted, clearly relating to the proper accounting period, the Tribunal disallows the sum claimed.

Management Fees: the Respondent submits that charges of £500.00 per year per flat are unreasonable and refers to various other alternative quotes, including from FPE Management at Page 10 of Appendix B - £180.00 & VAT per flat and

We Love Property Limited at Page 11 of Appendix b - £150.00 & VAT per flat. The Applicant disputes whether these are like for like comparisons with the £500.00 per flat charged by HAS, and refers to certain conversations he says he has had with those alternative businesses. The Tribunal considers that a reasonable management fee per flat for the provision of good management service, should be £180.00 & VAT. Given however the apparently confused manner in which the accounts have been run by the Applicant for some time, in respect of incorrect periods and the evident inability to produce full, clear and coherent invoices to support the sums being claimed for the relevant period, the Tribunal considers that a reasonable charge for the relevant period, taking into account the quality of the management services, would be £150.00 & VAT. Accordingly the Tribunal allows £150.00 plus VAT for the period to 30th June 2014.

Service Charges for Period 1st July 2015 to 30th June 2016

10. The application in this regard is for determination as to whether, if costs were incurred for major works in 2015/16, a service charge would be payable. The Tribunal notes that lengthy, although to some extent duplicated documents have been provided by the Applicant in regard to the section 20 consultation process. There is considerable dispute as between the parties, regarding whether or not the Section 20 consultation process was defectively carried out or not. The Respondent alleges a lack of clarity in the notices regarding the works intended and why they are needed; he also expresses concerns in regard to alleged connections as between the Applicant and those businesses tendering for the work. The Respondent further submits that, having issued a notice of reasons for awarding a contract for the works on 1st June 2015, it was not then open to the Applicant to purport to issue a “replacement” notice on 27th November 2015. The Applicant denies that the notices are defective and accepts at paragraph 24 of his statement dated 4th December 2015 that one of the contractors, Coles & Sons, is owned by the Applicant. However the Respondent is further concerned that whilst the bids for the work range from £22,090.00 to £32,065.00, the amounts not tendered for, but provided for as Provisional Sums, amount in total to £35,500.00. The Respondent asserts that the existence of such substantial Provisional Sums tends to show that the quotations given may be unreasonable due to the contractors being unable to competitively quote for those elements of the work. The Applicant disputes the position and refers to a letter from his appointed surveyors, Clarion Chartered Surveyors, dated 2nd September 2015 at Page 4 of Appendix C. The Applicant further submits that no Provisional Sum expenditure would be incurred without approval from his surveyor. The Tribunal notes that Clarion accept in the above mentioned letter that several of the Provisional Sums could have been contractor priced rather than kept open.
11. The Tribunal considers that the purported issue by the Applicant of a “replacement” notice of reasons for awarding a contract in November 2015 is contradictory in relation to the notice issued in June 2015, in which it gave reasons for awarding a contract, ostensibly for the same works but to a different contractor. Having stated that a contract was awarded for those works in June 2015, it is irrational for the Applicant have issued a further notice in which it purported to have entered into a different contract for the same works in November 2015; the position is unclear and equivocal and such in the view of the Tribunal, as to render the Section 20 consultation process in regard to the proposed works, flawed and unreliable.

12. In addition, the Tribunal is of the view that the magnitude of the Provisional Sums in relation to the tender prices and the lack of clarity as to which Provisional Sum elements may or may not ultimately give rise to charges would lead to difficulty in making a determination as to reasonableness of the costs of major works envisaged for 2015/16, even if the related Section 20 process had not been flawed.
13. We made our decisions accordingly.

Judge P J Barber

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.