



12234

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

Case reference : CAM/00KF/LSC/2017/0033

Property : Flat 2, 19 Anerley Road,
Westcliff-on-Sea,
SS0 7HJ

Applicant : Russell Newman
Self Representing

Respondent : Garrii Bailey
Self Representing

**Date of Transfer from
the County Court at
Southend** : 27th February 2017

Type of Application : to determine reasonableness and
payability of service charges and
administration charges

The Tribunal : Bruce Edgington (Lawyer Chair)
Stephen Moll FRICS
Lorraine Hart

**Date and place of
Hearing** : 1st June 2017 at The Court House,
80 Victoria Avenue, Southend-on-Sea,
SS2 6EU

DECISION

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1. The Tribunal determines that of the claim for ground rent, service charges and administration charges in the total sum of £885.88 is reasonable and payable.
2. The claim is transferred back to the county court sitting at Southend under claim no. C5QZ5C59.

Reasons

Introduction

3. Court proceedings were issued by the Applicant for the sums stated above plus statutory interest on about the 29th June 2016. He had been the freehold owner of 19 Anerley Road, Westcliff-on-Sea since 1990 following the death of his mother. He sold the freehold on the 16th February 2016

and his case is that the claim represents service charges, ground rent and interest owing on that date.

4. A defence was filed which is extremely difficult to read but, doing the best it can, the Tribunal assumes it reads as follows:-

“My defense to this is that Mr. Newman got builders to inspect the problems with the drains and there was a written rapport to say that ‘concrete’ was found down the drains which lead from flat 4 (this was the flat Mr. Newman was doing building work on before he sold it. This concrete was from his negligance and I am not paying towards his mistake and want this removed from the total amount. Also I had people at my flat to try to resolve this as it was effecting my garden and this cost me a few hundred which russel would not contribute even tho it then showed it was from himself

I enquired about buying the freehold (when I was in a financial position to do so) and Mr. Newman refused and said it wasn’t for sale because I was in arrears. I agreed to pay £100 per month to clear debt. I then received a letter (invoice) from ‘NEW’ freeholders looking for ground rent etc. from me which I couldn’t afford because paying Mr. Newman so I had no choice to stop as the bank would of charged me for them to bounce back. I am not in a good financial position to pay more than £20 per month. I am also waiting on work tax credits to come through to help me out..... Also the hallway lighting bill this is unfair as we are paying £18 per year and Mr. Newman charged it to solar to save us money but the charge went up to £25 per year which is not fair”

The defence also referred to Mr. Bailey’s health problems which the Tribunal did not feel it was appropriate to duplicate as it has nothing to do with the issues.

5. The Order of District Judge Molineaux dated 27th February 2017 is for the case to be transferred to this Tribunal and then added *“this claim shall be heard by a Judge of the First Tier Property Tribunal authorised to sit as a District Judge of the County Court”*. The Tribunal chair is so authorised and his reasons for the county court order made are incorporated into these reasons.
6. The Tribunal made a directions order on the 5th April 2017. In view of the difficulty in understanding precisely what Mr. Bailey was saying about the service charges, the Tribunal ordered him to prepare a statement *“setting out exactly what service charges he is challenging and why. If he does not do this, it will be assumed that he agrees the figures and is merely arguing about payment”*. He has prepared no statement as such but he did write to the Tribunal office about dates to avoid and said that further to his comments about the common parts lighting, he also objected to the £25 per year because the lighting does not work and the occupants have to use

a torch. He asks for a refund of moneys paid on behalf of himself and the other leaseholders.

The Lease

7. The bundle produced for the hearing included what appears to be a copy of the counterpart lease which is dated for the 7th March 1986 and is for a term of 99 years from 29th September 1983 with an increasing annual ground rent. The lease provides that the landlord shall insure the property and keep the building and grounds in repair. It can then recover 39 per cent of the cost of so doing from the leaseholder. Following an extension of flat 4 into the roof, it appears that the parties have agreed to reduce this to 29 per cent. The lease should clearly be varied to reflect the change.
8. As to administration fees relating to litigation costs, there is no provision in the lease for them to be recovered in any situation other than in contemplation of or incidental to proceedings under sections 146 and 147 of the **Law of Property Act 1925** i.e. for forfeiture. This clause ("the section 146 clause") specifically covers all expenses including solicitors' costs. This cannot be relied up in this case because (a) forfeiture does not seem to have even been contemplated and (b) the Applicant is no longer the landlord.
9. Clause 3(2) and the Third Schedule deals with service charges. The service charge can include expenses including professional fees for the maintenance and management of the building but not litigation costs. The Upper Tribunal has repeatedly said over the years that for legal costs to be recoverable, the wording has to be clear and unambiguous.

The Law

10. 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'.
11. 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.
12. Section 27A of the 1985 Act says, in effect, that this Tribunal has no jurisdiction where a service charge has been agreed or admitted. Payment does not necessarily mean agreement or an admission but payment without complaint or comment could clearly indicate that.

The Inspection

13. The members of the Tribunal did not undertake a pre-hearing inspection of the property as the complaints were very old and it was not considered that such an inspection would help the Tribunal. The Tribunal could, of course, have inspected after the hearing but, again, it was felt that this would not achieve anything.

The Hearing

14. The hearing was attended by the 2 parties and they were both reasonable and civil to each other for which they are commended.
15. The Tribunal chair explained that the Tribunal members would resolve the issues over the service charges. However, he also explained that he was a county court judge and could resolve everything else if that was what both of them wanted. They both said very quickly that they wanted the whole dispute resolved there and then.
16. Mr. Newman said that the lighting charge and management fees of £50 each per annum were what he considered to be reasonable. As far as the lighting was concerned, when it was installed, the bulbs were not reliable and the batteries had to be renewed. The bulbs cost £26 to replace and the batteries £90. There often had to be call out charges of £60 each. He had paid for the initial installation which cost £600.00.
17. Mr Bailey said that these lights had always been unreliable and in fact they were not working at all now and the new freehold owner had told them not to touch the system. Mr. Newman said that as soon as he was told of something not working, he would immediately arrange to put it right but he could not speak for the present owner.
18. As far as the drainage problem was concerned, Mr. Bailey accepted that he had made an error in the defence by describing the blockage as having been caused by concrete. He accepted that it was plaster and his only means of knowledge of that was the invoice at page 55 in the bundle. Mr. Newman said that he had undertaken the work to flat 4 more than two years before the blockage and 6 properties drained into that rear drain.
19. When asked why Mr. Bailey had agreed to pay the whole amount for outstanding rent, service charges and interest, he said that he "*just wanted to finish this and get it out of the way*". He had made 3 payments of £100 per month until the new owners demanded more money as set out in his defence. As to what he could pay, he agreed to pay £40 per month which Mr. Newman, after some discussion, reluctantly agreed to accept on the basis that he would at least get something.

Discussion

20. There is a copy letter in the bundle from Mr. Newman to an undisclosed person dated 16th June 2007 which says that the hallway lighting will be changed to solar power and the cost will increase from £18.00 per annum to £25.00 per annum from 1st July 2007. Unfortunately, Mr. Newman's 'consultation' did not mention the capital cost or the likely further costs to be incurred. After all, most people would think that solar equipment would involve little, if any, ongoing cost. As the Respondent was clearly aware of this letter, it is assumed that it was written to all the leaseholders at the time. He complains about the cost but there is no evidence that he responded to the consultation.
21. The drain blockage occurred in October 2009 and yet even Mr. Bailey seemed to accept that the work to Mr. Newman's flat had occurred in the summer of 2007. The Tribunal finds it difficult to accept that the blockage was directly caused by the work to flat 4. It is conceivable that there was a

partial blockage in 2007 which turned into something worse some 2 years later. Whatever happened, the Tribunal really has no evidence one way or the other and plaster, if put down a drain, would set quite quickly.

22. As far as interest is concerned, the Applicant has calculated interest on the outstanding amounts at the rate stated in the lease i.e. 5.5%, and this is included in the claim. However, what he seems to have missed is that he has charged the interest on a compound basis. In other words he has charged interest and if that was not paid, he charged another amount of interest on the whole amount outstanding. Thus there are many charges of interest on top of interest. The true rate he is claiming is not 5.5% but far more than that. He says that this was allowed by a previous Tribunal. If that is the case, then it would seem that the point was not spotted.
23. There is then a letter from the Applicant to the Respondent dated 11th May 2016 confirming an agreement that Mr. Bailey would pay £100 per month until the debt was cleared. It also records that payments had stopped and this is, of course, accepted by Mr. Bailey. The Tribunal concludes, therefore, that Mr. Bailey, whilst knowing of his complaints, made a positive decision to pay all monies outstanding and he is therefore, arguably, contractually bound to pay that sum in any event.

Conclusions

24. Of the points in dispute mentioned above, the Tribunal, having taken all the evidence and submissions into account, determines that the lighting of the common parts is not entirely satisfactory but the cost has been reasonable, it has not increased over the years and it is accepted that Mr. Newman attempted to keep the system going at considerable cost to himself, no matter what the current freeholder is doing.
25. With regard to the drains, the evidence would tend to support Mr. Newman's position i.e. that the blockage in 2009 had little or nothing to do with the work to his flat in 2007.
26. The other parts of the claim are not disputed. The Tribunal did consider whether the management fee was reasonable and concluded that whilst it may not have been based on actual cost, it was within the realms of reasonableness and, again, had not increased over the years. At least the leaseholders knew what they were having to pay for management and the lighting of common parts in advance. Many other leaseholders, in the Tribunal's considerable experience, pay much more by way of service charges, particularly when professional managing agents are involved.

Costs

27. The Applicant has claimed fees incurred in the court application (£60), in the Tribunal part of the claim (£240), postage and stationary (£50) and travel and accommodation (£170). Unlike court proceedings where costs orders are usually made, applications before this Tribunal are the opposite. Costs orders are made only if a party has behaved unreasonably in actually progressing the claim. This does not mean that if a party 'wins', then he or she will not automatically have a finding that the other party has behaved unreasonably. It is behaviour during the proceedings which is relevant,

not whether he or she has a strong or weak case. The Tribunal does not order payment of costs or expenses.

County Court matters

- 28. Turning now to the outstanding issues, I have to allocate the other matters to the Small Claims Track, which is what I do. I confirm that the ground rent claimed is contractually payable as the appropriate statutory notices have been served.
- 29. As far as fees and costs are concerned, I order Mr. Bailey to pay the court and Tribunal fees. I can, as part of the court process, order the unsuccessful party, Mr. Bailey, to pay reasonable expenses incurred by the successful party, Mr. Newman. He has claimed £50 for the bundles. Including the bundle served on Mr. Bailey, there are over 325 pages of copying and £50 is less than 20p per page which is reasonable.
- 30. The travelling and hotel cost is more troubling because it is hardly Mr. Bailey's fault that Mr. Newman decided to move to Wales. £170 is claimed and Mr. Newman said that the hotel was £55 which means a cost of £115 for petrol and parking. I find that this is unreasonable and will allow a total of £100.
- 31. The claim for the cost of consulting a solicitor is not, in my view, recoverable. It is not a cost of representation and the letter accompanying the solicitor's invoice at page 63 in the bundle simply says that the solicitors assisted Mr. Newman in the preparation of a statement of case. Bearing in mind the relatively straightforward issues in this case, that is something he could, and in my view, should, have done himself.
- 32. I am not going to award any further sum for interest. The amounts claimed and allowed already exceed 5.5% of the outstanding service charges and ground rent because of the way that interest has been claimed on interest. Mr. Newman did not present me with any detailed calculation of what should have been claimed. I have taken the view, on balance, that the fair solution is to say that no further interest should be payable.
- 33. I determine that a total of £1335.88 is payable and make judgment accordingly.

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Bruce Edgington
Regional Judge
2nd June 2017

ANNEX - RIGHTS OF APPEAL
This only applies to the Tribunal decision

- i. If a party wishes to appeal the Tribunal part of 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.