

12180



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

Case Reference : **CAM/OOMF/LSC/2017/0004**

Property : **Flat 4 Five Ten Reading Road, Winnersh,
Wokingham, Berkshire RG41 5PX**

Applicant : **Andrew Cotton**

Representative : **Mr Andrew Cotton in person with his father Mr
Brian Cotton**

Respondent : **Mr M Weaver**

Representative : **no attendance**

Type of Application : **Application for the reasonableness of and the
liability to pay service charges**

TribunalMembers : **Tribunal Judge Dutton
Mrs H C Bowers BSc (Hons) MSc MRICS
Mrs L Walter MA (Hons)**

**Date and venue of
Hearing** : **Hilton Anne's Manor Hotel, Wokingham on
7th February 2017**

Date of Decision : **25th April 2017**

DECISION

DECISION

The Tribunal determines that the service charges in the sum of £7,200 are not payable by the Applicant to the Respondent for the reasons set out below. In addition pursuant to the provisions of rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 we order Mr Weaver to reimburse Mr Andrew Cotton the Tribunal fees of £300 within 28 days.

BACKGROUND

1. In an application dated 6th January 2017 the Applicant, Andrew Cotton, applied to the Tribunal for a determination as to the payability of service charges for the period 2010 to 2015. It was said in the application that no demands for service charges had ever been made nor had works been undertaken at the property nor had cleaning be carried out by outside agents.
2. Prior to the determination of this matter we received a bundle of papers which included the application and the directions issued on 30th January 2017. Also included was a letter of 7th March 2017 from the Tribunal to both Mr Cotton and Mr Weaver highlighting the necessity for Mr Weaver to produce documentation at that time, given that there was no sensible or reasonable reason given for the delay.
3. In addition to these documents, there was a witness statement prepared by Mr Cotton but signed also by his father in March of this year and a further statement by Mr Cotton dated 12th March. We also had a copy of a letter from a Mr Langridge of 10th March 2017 confirming that he was unaware of any request having been made either written or verbal for service charge monies whilst he occupied the flat.
4. There then followed a copy of the lease dated 7th August 2007 with the landlord shown thereon as Cellular Services Limited and the tenant a Mr Gary Jones. It seems that since that time the freehold has been purchased by Mr Weaver. The lease contains the usual provisions in respect of the payment of service charges, subject of course, to the landlord carrying out the provisions of those services, which are set out in the 4th schedule to the lease and following the provisions of the 5th schedule requiring a statement of the summary of expenses to be delivered to the lessee.
5. A forth batch of papers included a letter from Kealy Farmar LLP dated 8th September 2010 to Messrs Austin Law Solicitors acting for Mr Cotton on his purchase of the subject property and raising at that time the question of service charges. A response from Austin Law indicated that Mr Weaver was in the process of preparing accounts and that he would accept an £80 service charge inclusive of the insurance, at that time.
6. It was not until Mr Cotton came to sell the flat that the question of service charges arose. It appears that in completing the Leasehold Property Enquiries form (LPE1) Mr Weaver indicated that there were service charges arrears of £7,200.

This was queried by Mr Cotton's solicitors Frances Lindsay and Co pointing out the provisions of the Landlord and Tenant Act 1985 and requiring clarification. This appears to have prompted an email from Mr Weaver dated 31st October 2016 when he says as follows: *"The apartment was purchased by Mr Cotton on 24th September 2010 and he was well aware it was leasehold & there was a service charge to be paid. Mr Cotton called me asking what the service charge was and I gave him a rough breakdown.*

My accountant sends out demands and statements direct to each apartment around Dec/Jan I don't think Mr Cotton understands with a leasehold apartment there are costs to maintain the everything.

I have attached accounts and I am not sure why your client is saying he completed the purchase without formal charges agreed he new it was leasehold and there was a service charge. Regards Mark Weaver."

With that document appeared to be service charge statements for the periods 31st January 2009 to 31st December 2009 a period for which it seems Mr Cotton was not the owner and subsequently for the years January 2010 through to December 2012. There are no accounts for January 2013 onwards.

7. Attempts were made by Mr Cotton's father Brian to sort out the service charge accounts but without success.
8. A further letter was sent by Frances Lindsey and Co to Mr Weaver in November 2016 pointing out the requirements of the Landlord and Tenant Act 1985 and the need for demands to be sent. Whilst it was said Mr Cotton accepted he had a liability to pay service charges, he disputed that £7,200 was the correct amount and that he had never received a demand. A request for documentation to support the amounts claimed was made. A chasing letter was sent in December of 2016 but it was not until 6th December 2016 that Thackray Williams LLP instructed to act on behalf of Mr Weaver that the question of the outstanding service charges was addressed. Those solicitors expressed surprise that those had not been dealt with on the sale of Mr Cotton's flat to Miss Webb for whom Convey Law now acted and to whom this letter from Thackray Williams LLP was addressed. The letter went on indicating that they were asking their client to release copies of previous demands together with supporting financial statements but there appeared to be nothing further forthcoming and certainly at the time this matter came before us for hearing Mr Weaver had failed to participate in the proceedings in any way shape or form other than to ask for more time. Indeed, we should record that he telephoned the Tribunal on the morning of hearing saying that he would not be attending.
9. Prior to the hearing, we inspected the subject property. The building is a modern two storey detached property with additional attic accommodation. There is car parking to the front and rear, the latter being accessed by an underpass which is controlled by electric metal gates. Beyond the rear car park is a garden area which is fenced off. Externally the property appeared to be in good order and the gardens well maintained. We noted that there was a CCTV camera in situ although we could not say whether it was working. The entrance to the common parts was governed by a door entry system. The common parts themselves were clean and in

reasonable order and there was carpeting to the stairs and the upper floor landing. There was also common parts lighting and what appeared to be fire/smoke alarms.

HEARING

10. The hearing was held at the Hilton Anne's Manor Hotel. As we indicated above, Mr Weaver did not attend but Mr Cotton with his father Brian did. We had had the opportunity of considering the paperwork and the limited evidence Mr Cotton and his father gave to us confirming that at no time had any demands been made by Mr Weaver for payment of the service charges whilst Andrew Cotton had been an owner of the flat. They accepted that they had received the email from Mr Weaver last year with the accounts up to December 2012 but that no further documentation had been produced. However, those accounts only came to light following the completion of the LPE1 form which was on 31st October 2016 when Mr Weaver sent them across to Mr Cotton's solicitors. We noted also the statements that had been made by Mr Cotton who confirmed that they had agreed with the purchaser of the flat last year that the sum of £7,200 together with a further sum of £400 would be retained by Mr Cotton's solicitors pending clarification of the matter before us.
11. It is right also to note from the witness statements signed by both Mr Andrew and Mr Brian Cotton that attempts had been made by Mr Andrew Cotton to resolve service charges, particularly at around the time of his purchase, but without success. Mr Cotton confirmed that he and friends had on occasion swept up and clipped hedges, weeded and picked litter. They had also undertaken some cleaning. The statement also goes on to deal with certain issues relating to car parking and other matters that we do not need to deal with.
12. It appears that Mr Weaver had made attempts to recover service charges from the person who purchased from Mr Andrew Cotton and this prompted Mr Cotton to make the application to the Tribunal as he considered it was grossly unjust that the Respondent should be seeking to take any action against the new owner. Attempts even after the application had been made to try to resolve matters had been suggested but to no avail and as we have indicated above Mr Weaver took no part in these proceedings.

THE LAW

13. The law applicable to this application is set out in below.

FINDINGS

14. This is a somewhat unusual case. It appears that at no time has the landlord properly made demands for service charges during the period of ownership by Mr Cotton. The email sent in October of 2016 may have rescued him in part if it had included service charges up to the time that Mr Cotton sold the property. However, the statements do not apply beyond the year ending 31st December 2012 and includes service charges for a period that appears to be prior to Mr Cotton's purchase. Accordingly, Mr Weaver has failed to comply with section 21B of the

Landlord and Tenant Act 1985 and provide proper demands including the summary of rights and obligations of tenants. That in itself is not fatal because those demands could be issued but the demands should also of course comply with the Landlord and Tenant Act 1987 sections 47 and 48.

15. However, matters do not stop there. Firstly, Mr Weaver has produced no evidence whatsoever to support the various items shown on the statements of accounts which he has produced and secondly even if those constituted demands under the provisions of section 20B(2) they were not given to Mr Cotton within 18 months of those costs being incurred and accordingly would not be recoverable by reason of section 20B(1) of the 1985 Act.
16. In those circumstances, therefore, we have no hesitation in finding that the sum of £7,200 is not due and owing by Mr Cotton to Mr Weaver and presumably upon receipt of this decision those monies can be released.
17. Mr Cotton asked us to consider the reimbursement of fees paid to the Tribunal. We have power to make such an award under the provisions of rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. Given the complete lack of involvement on the part of Mr Weaver, which continued with his failure to respond to a Tribunal letter concerning the reimbursement of fees, and the findings that we made, we conclude that it would be appropriate to order Mr Weaver to reimburse Mr Andrew Cotton the sum of £300. This sum represents the application fee of £100 and the hearing fee of £200. Such reimbursement is to be made within 28 days.

Andrew Dutton

Judge:

A A Dutton

Date: 25th April 2017

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (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 or 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.
- (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.

Section 19

- (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 provisions 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.
- (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

- (1) An application may be made to the appropriate 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 the appropriate 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.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 21A Withholding of service charges

- (1) A tenant may withhold payment of a service charge if—
- (a) the landlord has not provided him with information or a report—
 - (i) at the time at which, or
 - (ii) (as the case may be) by the time by which, he is required to provide it by virtue of section 21, or
 - (b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

(2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—

(a) the service charges paid by him in the period to which the information or report concerned would or does relate, and

(b) amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.

(3) An amount may not be withheld under this section—

(a) in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or

(b) in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.

(4) If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.

(5) Where a tenant withholds a service charge under this section, any provisions of the tenancy relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.