



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

Case Reference : LON/00BG/LSC/2016/0374

Property : 12 Whiteadder Way, Clippers Quay, E13 9UR

Applicant : Clippers Quay (Milwall) Management Company Limited

Respondent : Miss Sarah Hunnisett

Parties present : Mr Morrell (Counsel for the Applicant)
Mr Chandler (Managing Agent)
Mrs DeSuiza (Director of Applicant Company)
Miss Hunnisett

Type of Application : Service Charges

Tribunal : Mr M Martynski (Tribunal Judge)
Mr P Roberts DipArch RIBA
Mrs L Walter MA (Hons)

Dates of Hearing : 27 & 28 March 2017

Date of Decision : 7 April 2017

DECISION

DECISION SUMMARY

1. *The sum due:* Service Charges in the sum of £6,109.56 are reasonable and payable by the Respondent for the Service Charge years 2010-2016.
2. Fees: Following an application from the Applicant, the tribunal orders the Respondent to pay to the Applicant the sum of £300.00 in respect of the fees paid by the Applicant to the tribunal. That sum should be paid within three weeks of the date of this decision.

BACKGROUND AND LEASE

3. This Applicant's application was made to the tribunal on 30 September 2016. The application seeks a declaration for the Service Charges years 2010 to 2016 (the Service Charge year being the calendar year).
4. 12 Whiteadder Way ('the Property') is a house contained within an estate ('the Estate') containing other houses and various flats.
5. The Estate sits next to Clipper Quay and contains pathways, unadopted roads and other communal areas.
6. The freehold of the Estate is owned by the Applicant. The Applicant's directors and members are made up of the leaseholders of the Estate.
7. The Estate is managed by Mr Chandler, an independent Managing Agent.
8. The Respondent's lease is dated 18 October 1985 and is for a term of 999 years from 1 January 1984. The Respondent is the original party to the lease.
9. The Applicant was also an original party to the lease (as the Management Company). We understand that the Respondent was, some years ago, very active in the Applicant Company (as a Director) and was one of those who assisted in the process of obtaining the freehold for the Applicant Company.
10. It appears that the Respondent has been in dispute with the Applicant since at least 2003 and that there have been previous proceedings between the parties. The Respondent alleges that she cannot get full use of her home due to surveillance and harassment from her neighbours and some of the directors at the Estate and that she is banned from AGM's at the Estate (this was denied by the Applicant).
11. The Service Charges for the Estate are separated out so that house owners such as the Respondent are only charged for Service Charges that relate to the Estate as a whole. The flats pay additional charges.

THE PROCEDURAL HISTORY AND THE RESPONDENT'S ABILITY TO DEAL WITH THE PROCEEDINGS

12. A Case Management Conference was held on 3 November 2016. The Respondent attended that hearing with a friend, Miss Ledwith, to assist her. Directions were given at that hearing. Those directions included the information that the Respondent is responsible for a 1/258th of the relevant Estate Service Charge (this was wrongly recorded in the directions as 1/158th but as far as we are aware, this typographical mistake did not mislead either party).
13. The tribunal directed at that hearing that the Applicant should by 1 December 2016, send the Respondent some information so that she could consider that information and set out her challenges to the Service Charge (those challenges were not clear at this stage). Direction 13 (d) ordered the Applicant to send to the Respondent:-

A schedule with a separate page for each service charge year, showing the items of service charge invoiced in those years in accordance with the service charge accounts together with any comments on payability. The schedule should also show the total costs and proportion applied to this property. Details of reserve funds held over each year in [sic] should be provided with any expenditure taken from the fund

The application was set down for a final two-day hearing.

14. At the Case Management Hearing, Miss Ledwith had offered to help the Respondent and the Applicant agreed to send to her the schedule required by Direction 13 (d). The Applicant had some problems in collating information and asked for an extension of time to comply with the direction. That extension was granted by the tribunal.
15. It then appears that the Applicant sent out a schedule to Miss Ledwith. That schedule (in the form of a Scott Schedule) sets out, for each Service Charge year, the total spend on Estate Charges for each head of Service Charge (i.e. cleaning, gardening and landscaping, general repairs etc.). The schedule however did not comply with the directions as it does not show the proportion of Service Charge costs applied to the Respondent's particular property. The schedule contained a column for the Applicant's comments and a column for the Respondent to make comments next to each head of Service Charge for each year in dispute.
16. By email dated 21 December 2016, Miss Ledwith states that she has been sent documents by the Applicant but not the documents required. She states that she is no longer able to assist the Respondent.
17. The Respondent then writes to the tribunal on 31 December seeking an adjournment due to the confusion over the documents. However, it appears that by this time, the Respondent has been sent the Schedule referred to in paragraph 15 above.

18. In a letter to the Applicant's solicitors dated 12 January 2016, the Respondent records that the documents relating to direction 13 would be posted to her address.
19. By letter dated 26 February 2017, the Respondent writes to the tribunal to say that she has been unable to respond to the application as the Applicant has not produced the information "*detailed under Direction 13*". In response, a Tribunal Judge refuses to vary the directions further or to postpone the final hearing.
20. On 15 March 2017 the Applicant's solicitors write to the tribunal saying that they have not received any response from the Respondent in accordance with direction 14 and so cannot proceed. In response a Tribunal Judge directs that the final hearing will proceed and that the Applicant should continue to present its case at that hearing.
21. The Applicant's solicitors then send out the bundles for the final hearing on 22 March 2017.
22. By letter dated 23 March 2017, the Respondent seeks an adjournment of the final hearing due to her health. A Tribunal Judge refuses the application and notes that no medical evidence has been supplied by the Respondent.
23. The Respondent attended the final hearing on 27 March 2017. At the hearing she again sought an adjournment and produced medical evidence. We considered the medical evidence which confirmed, in very general terms, what the Respondent was saying openly in the hearing - which was that she suffered from fatigue and would find it very difficult to attend court.
24. The Respondent had only received the bundles of documents (prepared by the Applicant's solicitors - 3 large ring binders) for the hearing on the weekend immediately prior to the hearing. She brought those bundles to the hearing but had not opened them from their packaging.
25. By the date of the final hearing, the Respondent had not taken any substantive part in the proceedings. She had not completed the Scott Schedule sent to her to state what heads of Service Charge she objected to nor had she put forward any submission in any other form. She had not considered any of the documents.
26. The reason given by the Respondent for not having taken any part in the proceedings was that the Scott Schedule sent to her was not in the form as required by the directions. The directions stated that the schedule '*should also show the total costs and proportion applied to this property*'. As stated above, the schedule set out each service charge head for each year charged to the Estate as a whole and set out the amount charged under that head each year. What the schedule did not do was to set out, for each head, the proportion payable by the Respondent. Whilst there was obviously a failure on the part of the Applicant to follow the

tribunal's directions to the letter, in order for the Respondent to know what proportion of each Service Charge head applied to her property (and so what was payable by her) all she had to do was to divide the total figure for each head by 258. The Respondent was well aware of this for three reasons; First, the 258th share had been confirmed in the Case Management Conference which the Respondent had attended; Second, as stated above, the Respondent was the original leaseholder under the lease and was involved in the management of the Estate and was familiar with the way in which the accounts were managed; Third, the end of year accounts are in any event sent out to each leaseholder each year. Those accounts contain exactly the same information as is contained in the Scott Schedule, i.e. the amount of each Service Charge head and the amount charged to the Estate for which the Respondent pays a share.

27. We concluded that the Respondent did have sufficient information to take part in the proceedings. We accept that the Respondent suffers from ill health but she did have plenty of time to make a response to the proceedings and plenty of time to get help to make a response if she needed help.
28. During the first morning of the hearing, we encouraged the Respondent to open the bundles of documents provided by the Applicant and to look at the pages that we were considering which she had appeared reluctant to do. We found that the Respondent was well able to articulate her views when pressed to do so. We therefore adjourned the proceedings in order to give the Respondent the chance to complete the Applicant's Scott Schedule to set out her case. We provided the Respondent with a room and asked her if she needed any other facility in order to complete the task. We made it clear to her that we only required her to complete the schedule in brief and general terms so that we and the Applicant could have some idea as to what her objections to the Service Charge were.
29. After a short time, the Respondent told us that she did not feel able to complete the schedule in any way. She told us that she was finding it impossible to follow the proceedings and that she did not feel well enough to continue.
30. We made it clear to the parties that we intended to continue with the hearing and to reach a conclusion on the case within the two days allocated for the final hearing. We informed the parties of the reasons why we had decided to proceed in this way, those reasons were:-
 - (a) We considered that the Respondent had been given sufficient information about the Service Charge in order to respond to the proceedings
 - (b) We considered that the Respondent had been given sufficient time since the Case Management Conference in order to respond to the proceedings
 - (c) By reason of her former involvement in the management of the Estate, the Respondent was relatively well informed and competent

- (d) The Respondent is clearly an intelligent woman, well able to understand the issues in the case
 - (e) The Respondent had not paid any Service Charge *at all* since at least 2010 (she told us in fact, that she had not paid any Service Charges since 2003) – this is rather an extreme and (passively) aggressive stance vis-à-vis the management company; whilst a person may be entitled not to make any payment at all to a Service Charge if that person reasonably believes that Service Charge is not payable, taking such a position in our view puts the onus on that person to properly justify their position if challenged
 - (f) The Respondent was able to clearly articulate her views when pressed by the tribunal and was able to take part in some lively debate during the hearing
31. We therefore continued with the hearing. Given that the Respondent had still not set out any case at all, we decided to go through each head of Service Charge (dealing with these heads generally, not specifically year by year) and seek the Respondent's oral submissions in respect of them. As it turned out, for the most part the Respondent's submissions amounted to broad general statements of discontent, lacking detail and substance.

THE SERVICE CHARGES AND OUR DECISIONS

Cleaning (including windows)

32. The Respondent's only comment here was to query why the cleaning costs did not come under the gardening and landscaping contract (charged as a separate head). The Applicant's response to this was that this was a separate contract. The firm who carried out Estate cleaning did so under the same contract as for the cleaning of the flats on the Estate.
33. In the absence of any other objection and after considering the amounts charged for cleaning over the years in question (a few pounds a year payable by the Respondent), we found those charges to be reasonably incurred and payable.

Gardening and landscaping

34. The Respondent pointed out that there had been a large expenditure on this item in 2010. We asked her if she had taken this up with the Applicant before, she had not. The Respondent added that she had thought that the point of the planting scheme at the Estate was to provide plants and bushes that did not require too much maintenance and so to reduce costs over the years.
35. We were told by the Applicant's representatives that there was a full time gardener/estate manager; that the Estate, although private in that some of its roads and paths were unadopted, was open to the public. The Estate was a considerable size and required the sort of expenditure made.

36. In the absence of any other objection and after considering the amounts charged for gardening over the years in question (around £200 per year payable by the Respondent), we found those charges to be reasonably incurred and payable.

Estate manager

37. We had very much the same discussion as for gardening above. The Estate, we were told by the Applicant's representatives, was large and open to the public and raised a great many issues each year and it was necessary to employ someone to deal with those issues.
38. In the absence of any other objection and after considering the amounts charged for the Estate manager over the years in question (around a £100 a year payable by the Respondent), we found those charges to be reasonably incurred and payable.

General repairs

39. The Respondent commented that the amounts appeared to be 'a lot'. The Applicant's representatives commented, again, that the Estate had unadopted roads and that, for example, there was paving, walls and Estate lighting to be paid for that was not provided by the local authority.
40. Again, in the absence of any other objection and after considering the amounts charged for this item over the years in question, we found those charges to be reasonably incurred and payable.

Refuse collection

41. The Respondent did not raise any specific issue on this. We considered the amounts in question for each year and found them, in the absence of any other objection, to be reasonable.

Security

42. The Applicant's representatives explained that there were a number of security issues at the Estate. The way in which they had secured security services had changed over the years in order to try and make it as effective as possible. Currently security is used during periods of what is perceived as peak risk, for example during school holidays. Security was an on-going issue at the Estate, for example children had to be stopped playing in and around the dock next to the Estate.
43. The Respondent commented that she would prefer that there was no security and that the estate manager be used to deal with this.
44. In the absence of any other objection and after considering the amounts charged for security over the years in question, we found those charges to be reasonably incurred and payable. We further found it reasonable, for

the purposes of Estate management, for the Applicant to pay for security services.

Storage

45. The Respondent did not object to this item.

Sundry expenses

46. The Respondent had no issue with this item so long as there were the necessary supporting invoices.

Insurance

47. The Applicant's representatives told us that the insurance charged to the Estate was for public liability and common parts. The Respondent had no comment on this.

Electricity

48. This is for street lighting on the Estate. The Respondent had no comment.

Audit and accountancy fees

49. The Respondent had no issue with this sum other than commenting that when she was involved with the management company, they used to do the accounts themselves.

Company fee and health and safety

50. No issues were raised by the Respondent.

Management fees

51. The Respondent's concern was that there was more work involved in the management of the flats and less for the management of houses such as hers. The basic management fees for the Estate are split equally between all leaseholders in flats and houses. The basic management fee has remained largely the same over the years in question and the proportion of the fee charged to the Respondent is around £192 per year.
52. The Respondent's lease allows for management fees to be charged (as an Estate item) specifically for management of 'all the units' (Part 1 of the Fourth Schedule). There is also provision for management fees to be paid in respect of management of the flats only (to which the Respondent has no liability to contribute – (Part 2 of the Fourth Schedule)).
53. We conclude that, so far as the basic management fee is concerned, this fee is properly charged to 'all units' under the lease and is payable by the Respondent.

54. The Respondent agreed that the management of the Estate was reasonable and we were impressed with Mr Chandler, the Managing Agent who attended the hearing; he appeared to be very well informed and capable.

Legal and professional fees

55. The Respondent raised the concern that some of these fees may involve previous legal action taken against her that was ultimately compromised.
56. In the absence of any substantive or detailed objection to the Service Charges in question from the Respondent, we decided to carry out, so far as was possible in the time available to us, a detailed enquiry as to the reasonableness of the charges. We looked at the accounts for the various years in question, we noticed that there were large and varying amounts charged in respect of legal and professional fees over the years and we decided to carry out a more detailed examination of these expenses.
57. The problem for the Applicant at the hearing was that, given that the Respondent had not set out her case prior to the hearing, it could not possibly be prepared to answer every query raised at the hearing. We allowed the Applicant some time during the hearing to gather together as many of the invoices relating to this head of expenditure as possible so that we could examine individual amounts within this charge over the years.
58. We spent some time going through individual expenses. Mr Chandler and Mrs DeSuiza were able to give some detailed explanations for the various items that we examined. Of the individual invoices that we examined, none seemed unreasonable or without explanation. We concluded therefore that, having looked at a representative sample of invoices, and in the absence of any detailed objection, that the charges for legal and professional expenses were reasonable and payable.

The second day of the hearing, the Respondent and her concerns

59. We started the second day of the hearing on the examination of the individual invoices for legal and professional expenses. At 11.20am the Respondent told us that she did not feel able to continue with the hearing, she felt that she was unable to follow proceedings and did not feel well enough to go on. We explained to her that we were going to use the time available to conclude the proceedings.
60. After leaving the hearing room, the Respondent decided that she wanted to come back in to complain and to set out her views further.
61. The Respondent came back in at 12.15. She then proceeded to set out her views in detail and spoke, uninterrupted for some 20 minutes. This, it appeared to us, was another example of the fact that the Respondent was well able to understand what was being discussed and well able to put

forward her case. After speaking the Respondent decided again to leave without hearing any response to her comments. She did not return. We spent the remainder of the day dealing with the individual items in the legal and professional fees category.

62. As to the views expressed by the Respondent (set out on the morning of the second day of the hearing), we summarise those as follows.
63. The Respondent stated that she did not believe that she received a reasonable service for the charges levied nor did she believe that the charges were reasonably incurred.
64. The Respondent referred to issues that she had with the Service Charge and the reserves in the years 2003-2009 (outside of the years in consideration in this application).
65. The Respondent referred again to the alleged harassment that she had suffered from other residents and considered she had a counterclaim against the Applicant in respect of that harassment.
66. The issue with the way in which the Scott schedule was provided by the Applicant was again raised, the Respondent insisted that she was unable to deal with the Schedule because it had not broken down each head of charge into the 258th share payable by her.
67. The issue of reserves was raised. The Respondent made numerous references to an issue of misappropriation of Service Charges by a previous manager outside of the period in question.
68. The other issue that the Respondent had with the reserves was that payments were made to reserves outside of the terms of her lease. The lease allows for a charge to be made for a contribution to reserves. At the end of each year, if the actual spend on Service Charges (including contribution to reserves) is less than the payments made on account, the balance should be credited to the lessee's account. As we understand it, what has actually happened is that any such surplus balance had been put into reserves. The Applicant realises that this is incorrect and that the terms of the lease should be followed. Of course, as the Respondent has not actually paid any Service Charge at all for many years, this is somewhat academic in her case. However, we have taken this issue into account when assessing the sums actually payable by the Respondent for the years in question.

The sum claimed in the application and the sums allowed

69. The Applicant's application sought a declaration as to the payability and reasonableness of *Service Charges* for the years 2010-2016. The total value of these charges was said to be £13,527.33.
70. In order to arrive at the amount of *Service Charges* payable by the Respondent, we looked at the amounts actually spent on Service Charges

for the Estate by the Applicant as per the accounts. We then divided those yearly figures by 258 to arrive at the amounts payable by the Respondent year-on-year as follows:

Year	Service Charge Expenditure	Respondent's share
2010	281,678	1,091.78
2011	236,216	915.57
2012	195,498	757.74
2013	199,086	771.65
2014	206,114	798.89
2015	228,306	884.91
2016	229,368 (est)	889.02

71. Calculating in this way, we arrive at the total figure of £6,109.56. This figure includes only the amount of Service Charges actually incurred (including planned reserve contributions). It avoids the issue of wrongly crediting surpluses for the year to reserves.
72. The figure of £13,527.33 in the application included a number of Administration Charges levied on the Respondent over the years. The application before us did not include an application to consider Administration Charges and therefore we have not dealt with these.

Demands

73. During the hearing, the Respondent alleged that she had not received any valid demands for Service Charges over the years. Again, she had failed to set this out as her case prior to the final hearing. We were shown numerous samples of the demands sent to the Respondent over the years. We concluded that there was no evidence to suggest that Service Charges had not been properly demanded.

Fees

74. At the end of the hearing, Counsel for the Applicant made an application for the Respondent to be ordered to pay the fees paid to the tribunal by the Applicant.
75. We consider that it is just and reasonable for the Respondent to pay these fees. She had taken no real part in the proceedings. She had forced the Applicant to make the application by not paying any Service Charges and had then failed to put any reasonable case when opposing the application.

Mark Martynski, Tribunal Judge
7 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 Tribunal 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 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.
4. 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.