



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

- Case Reference** : CAM/33UD/LSC/2018/0017
- Property** : Flat 5, 43 King Street, Great Yarmouth NR30 2PN
- Applicant** : Eduardo Sant'Anna
- Respondent** : Dr Mark Rumble
- Type of Application** : for determination of reasonableness and payability of service charges for the years 2016–17 & 2017–18 [LTA 1985, s.27A]
- For an order that any or all of the costs incurred by the landlord in connection with the application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant and those others named in the application [LTA 1985, s.20C]
- Tribunal Members** : G K Sinclair, G F Smith MRICS FAAV REV & C Gowman BSc MCIEH MCFI
- Date and venue of Hearing** : Thursday 24<sup>th</sup> May 2018 at Great Yarmouth Magistrates Court
- Date of this decision** : 4<sup>th</sup> June 2018

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DECISION

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1. For the reasons set out below the tribunal determines :
  - a. That as no valid service charge demand has been served in the relevant accounting period nothing is presently due and owing by the applicant to the respondent, including alleged debt recovery fees
  - b. Pursuant to rule 13 the respondent shall reimburse the applicant for the tribunal fees of £300 paid by the applicant
  - c. Pursuant to section 20C none of the costs incurred by the landlord in connection with the application are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant and those others named in the application.

### **Background**

2. This case concerns an early 18<sup>th</sup>-century listed building towards the southern end of Great Yarmouth. For most if not all of the 20<sup>th</sup> century it was used as a doctor's surgery, as demonstrated by the framed note concerning the activities of a Dr Levy during the first and second world wars – which includes several examples of the shrapnel removed from his patients after the town was bombed.
3. Judging by the date of the applicant's lease, granted in the same year as a fellow lessee purchased two flats, the building was converted into six self-contained flats in or shortly before 2007. The original intention was that there be communal laundry facilities in the basement, but before the applicant took an assignment of the lease of flat 5 that changed, the communal boiler was disconnected and any washing machines were removed.
4. This application concerns what is said to be an unreasonably high service charge for the year 2016 – 2017 and an anxiety that things will not get any better in the future. The principal elements challenged are a very high electricity bill for the common parts, cleaning (which is said to be next to non-existent), a large sum for rebuilding a door case without having obtained Listed Building Consent, and a much smaller sum for fitting double glazing in the window to a flat, also without the benefit of Listed Building Consent. The applicant alleges that despite many requests by him to inspect receipts, etc. the landlord referred him for answers to his accountant but the accountant refused to reveal them without authority.

### **The lease**

5. Although listed, the building is already nearly 300 years old. It is in a poor part of town. Despite that (and even bearing in mind that many unprepossessing parts of towns and cities across the land have been transformed by rejuvenation or gentrification – see for example Hoxton) the landlord and his solicitors saw fit to grant 999 year leases of the flats. A grant of such a long lease in the case of a house is tantamount to granting away the freehold. As these are flats the situation is different but, remarkably, the applicant's lease shows a firm determination on the landlord's part to maintain maximum control over and interference in the lessee's activities throughout the term.
6. Thus the rent is an initial £200 per year, adjusted for inflation annually according to the retail price index of March of that financial year but so that the yearly rent can never be less than that payable in the preceding financial year. By clause 1.4.3 the rent is expressed to be payable without any deduction by equal monthly payments in advance on the first day of each month.

7. Clause 4 deals with the annual maintenance cost or service charge. Amongst the various cost items set out at clause 4.1.1 are, at iv), the costs of and incidental to compliance by the landlord every notice regulation or order of any competent local or other authority in respect of the property or any part thereof.
8. The various annual maintenance costs may be recovered from the lessees in set proportions according to capital value. They appear in Schedule 5. Unusually, this sets out in full what are anticipated to be the initial charges in the first year. As one of the flats has its own gas supply and meter the proportionate shares of the communal gas bill are slightly different. The total charges for 2007 – 2008 are set out at the foot of page 22 of the lease but appear to include the £200 ground rent. Neither clause 4 nor Schedule 5 make any provision for a reserve or sinking fund to cover occasional items of major expenditure such as external decoration, roof repairs, etc.
9. According to clause 4.4 .1 “The tenant shall in accordance with the manner in which the rent is collected and paid throughout the term pay in advance to the landlord such reasonable sum as the landlord or surveyor shall consider appropriate on account of his contribution to the annual maintenance cost.” The first such payment is payable on signing the lease and, by clause 4.4.3, “The landlord or his surveyor will notify the tenant in writing of the amount of each subsequent payment.” Clause 4.5 then provides for an end of year balancing exercise and the certification of any additional amounts due from the lessee or to be repayable or taken into account in the calculation of the next year’s service charge.
10. In a 999 year lease, therefore, the lessee must pay every single month a share of both the ground rent and the anticipated service charge cost for that year.

#### **Relevant statutory provisions**

11. Section 18 of the Landlord and Tenant Act 1985 defines the expression “service charge”, for the tribunal’s purposes, as :
  - a. 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...
12. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :
  - 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.
13. The tribunal’s powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A of the Landlord and Tenant Act 1985. The first step in finding answers to these questions is for the tribunal to consider the exact wording of the relevant provisions in the lease. If the lease does not say that the cost of an item may be recovered then usually the tribunal need go no further. The statutory provisions in the 1985 Act, there to ameliorate the full rigour of the lease, need not then come into play.

14. Please also note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)<sup>1</sup> is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A.
15. Section 166(1) of the Commonhold and Leasehold Reform Act 2002 provides that a tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment; and the date on which he is liable to make the payment is that specified in the notice. By subsection (7) “rent” does not include either a service charge within the meaning of section 18 of the Landlord and Tenant Act 1985 or an administration charge.
16. However, by section 47 of the Landlord and Tenant Act 1987, where any written demand is given to a tenant of premises for rent **or other sums** payable under the lease (which expression would include a demand for payment of service charge), the demand must contain the name and address of the landlord.
17. Secondly, since 1<sup>st</sup> October 2007 section 21B of the 1985 Act provides that 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. The content of that summary is prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.<sup>2</sup> The document must contain the prescribed heading and text and must be legible in a typewritten or printed form of at least 10 point.<sup>3</sup>
18. Service charge demands and the accompanying notice providing a summary of tenants’ rights and obligations must therefore also be in writing and, if this requirement is not complied with, a tenant may withhold payment of a service charge which has been demanded from him. If he does so, 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 the service charge.
19. By section 21 of the 1985 Act a tenant may require the landlord in writing to supply him with a written summary of the costs incurred over the previous twelve months. The section sets out the requirements of a summary of costs to be supplied under section 21, and if the relevant costs are payable by the tenants of more than four dwellings the summary must be certified by a “qualified accountant”.<sup>4</sup> This expression is defined in section 28 as a person who has the necessary qualification, viz eligibility for appointment as a statutory auditor under Part 42 of the Companies Act 2006, but disqualifying anyone who is an officer, partner or employee of the landlord, or the landlord’s managing agent of

<sup>1</sup> Eg. provisions in a lease stating that the landlord’s accountant’s certificate shall be conclusive, or that any dispute shall be referred to arbitration

<sup>2</sup> SI 2007/1257

<sup>3</sup> *Op cit*, reg 3

<sup>4</sup> See s.21(6)

the property or an employee or partner of such agent.

### **Inspection and hearing**

20. Although the address of the property and front door are on King Street the gable end of the building abuts one of Great Yarmouth's historic Rows – the narrow alleys which were just wide enough to accommodate the narrow carts by which herring was transported from the quayside to the small houses and workshops on either side of the Rows where the fish was gutted and prepared for smoking.
21. The tribunal was informed that the front door was permanently locked shut and that access was obtained from Row 115 into a rear yard and thence through a rear door and lobby into the central lobby and staircase. A front lobby leads from the foot of the stairs to the front door. The applicant showed how the inner lobby door was normally screwed shut, but he had partially unscrewed it so that the tribunal could obtain access. Between the inner door and the locked front door is the fire alarm control box mounted on the wall to one side. Various warning lights indicated that there were two fires in the building. Upon later hearing of this the landlord (who did not accompany the tribunal during its inspection) observed that it must yet again be defective. How this was to be observed, or remedial action taken, if the door giving access to the system is screwed shut, was not explained.
22. There are six flats in the building; two on each floor. There is a simple staircase with a wooden banister supported by turned balusters, save that those leading from the ground floor to the first turn on the stairs have been boxed in. On each landing is a pendant light supporting three bulbs, or at least there are sockets for three bulbs. In each case some were missing. The stairs and landings are carpeted, with some staining present. The applicant informed the tribunal that he cleans the carpet on the top floor outside his flat, and it was much cleaner than the rest of the common parts.
23. The tribunal was taken down to the basement, where the laundry facilities were originally provided. Any sinks or washing machines had been removed but a dark room in one corner was still occupied by a large communal boiler which no longer functioned. Headroom in the basement was low, so it was surprising that illumination was provided by a single, ceiling-mounted naked light bulb which one could easily hit with one's head. Against the gable wall, and immediately next to the boiler room, are the electricity meters for each of the flats. Some are card meters while the rest are not. On an adjoining wall was what appeared to be the meter for the common parts, but the hearing bundle contained an exchange of correspondence in which the landlord suggested that the actual common parts meter was in the far corner of the boiler room. That was the one from which readings should be taken. There is indeed such a meter in the corner and it is live. However, running from it towards the walls containing the other meters are four cables using some plastic drainpipe as a conduit. At the far end some can be seen going through the wall in the location of what was perceived to be a common parts meter while the others headed in the direction of those for the flats. A survey by an electrician is required in order to identify whether the meter that the landlord considers reflects the cost of usage for the lights in the common parts is in fact the main or master meter recording all the electricity usage in the building (including the individual flats).

24. At the hearing both parties appeared unrepresented. They were each referred to the directions order issued by the tribunal and in particular to the need for the parties to produce copies of the demands for service charges that had been served. It quickly became clear that this was as easy as proving a negative, as both admitted that no such demands have ever been made. Dr Rumble referred to the lease and his belief that the amount demanded merely had to be adjusted annually. It was explained to him that the lease not only requires monthly payments of ground rent and service charge but that clause 4.4.3 says that the landlord or his surveyor will notify the tenant in writing of the amount of each subsequent payment. That means that each monthly payment must be demanded in writing. It was explained to him that the law also required that each written demand be accompanied by the relevant summary of the tenant's rights and obligations with respect to service charges. Unless and until that was served no sums were payable and therefore the various demands from solicitors, including a fee for their recovery of the debt, lacked any basis in law.
25. The parties were informed that in the circumstances none of the service charges challenged by the applicant were payable. Any part-payments of service charge that the applicant has already made should therefore be credited to his account once the Schedule 5 costs for the relevant years have been assessed and certified by the landlord's accountants and lawful demands served.
26. That is sufficient to conclude the matter, but the tribunal considered it important to bring to the parties' attention its concern about the inadequacies of the lease and the landlord's lack of understanding of the legal and practical complexities involved in managing residential leasehold property. The desirability of all three lessees (including the landlord) agreeing to a radical variation and simplification of the terms of the lease, possibly including making provision for a reserve or sinking fund, was emphasised.
27. The tribunal also drew to the parties' attention, and wishes to record, that it is concerned about certain of the items which the landlord sought to recover by way of service charge, namely :
  - a. The size of the electricity bills is alarming and, in the absence of a proper electrical survey indicating which meters do what, the tribunal cannot see how a few light bulbs can be responsible for the excessive cost claimed.
  - b. The service charge included a four figure sum for the repair to a door case on a former but now blocked up door on the gable in Row 115. Damage and rot can be seen in photographs produced in the bundle and repair was certainly necessary. However, this is a listed building and Listed Building Consent was not sought before the work was undertaken. The tribunal is not impressed by the quality of the work, which is extremely poor and does not justify the price charged. There may be a limited number of joiners in Great Yarmouth, as Dr Rumble claimed, but he need not limit himself to such a small area. Tradesmen are prepared to travel. The local authority has served an enforcement notice in respect of the work. While the lease provides that the service charge may include any work carried out pursuant to a notice or order served by local authority that does not apply if the order is as a result of the landlord's own wrongdoing.
  - c. The cost of replacing windows to an individual flat (and then replacing them again when the local authority objected) is not a service charge item.

- The window is part of the demise; not of the common parts.
- d. The cost of cleaning equates to £25 per week. Dr Rumble confirmed that this did not include the cost of cleaning materials. Given the state of the building, the tribunal is surprised that much if any cleaning took place and considers the amount claimed excessive. Dr Rumble may have agreed this figure but a proper managing agent would have exercised tighter control.
28. Although Dr Rumble informed the tribunal that the fire officer had instructed him to lock the front door at the time the fire alarm system was installed, some years ago, the tribunal was so concerned that it considered referring the matter to the local authority for investigation whether any action should be taken by it under Part 1 of the Housing Act 2004. Why one would lock and/or screw shut the doors of an escape route defy comprehension. How also can one check the status of the fire alarm control system if it is behind locked doors?
29. Finally, the tribunal suggested most strongly to Dr Rumble that the management of residential leasehold property was best left to a professional managing agent as there are legal obligations involved of which he was simply unaware. Although he claimed that he had asked William H Brown & Co to take over management the evidence suggested that the firm denied it, and the tribunal observed that the firm were really estate agents and letting agents, which might handle the lettings of his flats, but that property management is very different. He was urged to seek assistance from a firm of chartered surveyors.
30. As no lawful demands had ever been made the applicant has succeeded and the tribunal determines that the issue and hearing fees totalling £300 paid by him are to be reimbursed by the landlord under rule 13. The tribunal also makes an order under section 20C that any or all of the costs incurred by the landlord in connection with the application are to be disregarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant and those others named in the application.

Dated 4<sup>th</sup> June 2018

*Graham Sinclair*

Graham Sinclair  
Tribunal Judge